THE OFFICE OF PERSONNEL MANAGEMENT recently notified federal agencies to take steps to ensure the accuracy of the data they collect regarding employees’ use of telework.

“OPM has discovered telework data collection and reporting remains an area of challenge for agencies,” OPM Associate Director of Employee Services Mark Reinhold stated in an Aug. 11 memo to federal human resources officials.

“Therefore, we will provide agency and subagency reports summarizing your agency’s data submissions for a single pay period,” Reinhold wrote, “We are asking each agency to work with your HR staff and telework managing officers—TMOs—to examine the report to assess the accuracy of the data and determine any potential issues that may be affecting data reporting and accuracy.”

OPM has touted its recent and ongoing work to automate telework data collection, notably through its Enterprise Human Resources Integration, or EHRI, system. The agency plans to use the employee telework eligibility and usage data—which is collected as part of monthly EHRI HR-Status data feed and biweekly EHRI payroll data feed—in reports to Congress required by the Telework Act. OPM said it also will analyze the data to examine how telework affects agency outcomes such as employee engagement.

ONE AGENCY’S EXPERIENCE
This is not the first time that agencies’ tracking of telework usage has come under scrutiny. Two years ago, two House committees examined alleged abuses of the telework program at the Patent and Trademark Office, which offers eligible employees the federal government’s No. 1 telework program, as measured by percentage of participating employees.

Aspects of the PTO’s telework program were called into question when the Commerce Department Office of Inspector General issued a report finding that paralegals at a PTO component had idle time on their hands and engaged in personal activities during official work time.

Hiring or internally recommending that your relative be hired for a position at a federal agency is a violation of the nepotism statute and can be met with serious consequences.

This issue of nepotism was tackled in a 2016 report by the Merit Systems Protection Board (MSPB). In the realm of Federal Civil Service law, nepotism “refers to assistance or favors that employees provide to relatives within a specific degree of closeness.” The individuals who fall under the term “relative,” according to 5 U.S.C. § 3110(a)(3), include a father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.

If a person is found to have violated the nepotism statute at the administrative level, penalties can range from removal to reduction in grade, debarment from federal employment for a period not to exceed five years, suspension or reprimand.

While the seriousness and the scope of the nepotism is taken into consideration when deciding an appropriate penalty, whether a person committed the actual act of nepotism tends to be a very clear-cut issue.

For example, in the precedential decision of Rentz v. U.S. Postal Service (1984), a manager was found to have committed nepotism after he wrote a
“While we found isolated problems in our telework and timekeeping systems, the evidence did not support a finding of widespread or systemic abuses,” PTO Deputy Director Michelle K. Lee told one congressional panel in 2014, downplaying the errors. Lee noted that there were “extensive accountability systems” in place.

Those systems have been improved upon since then, according to the leader of a labor group that represents PTO employees.

“I think it’s now going fine—PTO telework is going fine,” Patent Office Professional Association President Pamela R. Schwartz told FEND. “There have been a lot of added steps taken to obtain more information about the teleworkers’ schedules, and get a better idea when teleworkers are and are not working.”

“And these steps have been done both inside and outside of our agency,” she added.

“The [PTO] has as much information on telework as [any other agency], at the very least,” she said. “They have workstation information—when they are working, when they are logged on, and when they are logged off, for example.”

“We call full-time teleworkers ‘hotelers,’” Schwartz said. “By that I mean they do telework for the vast majority of their work hours.” Schwartz said the hotelers “are following the new rules” that the agency created in the wake of the 2014 inquiries.

In Schwartz’s opinion, “the time abuse allegations made against PTO people [in 2014 and after] were probably no different” at PTO than any other agency—and the facts behind them were no worse. Instead, she told FEND, “because our telework workforce is large and in the spotlight a little more, it got more attention. In fact, we have many more ways to track than many other agencies.”

“A problem that helped lead to the congressional inquiry is that there was an assumption that all work that should count happens when employees are logged onto their workstation—and that just wasn’t the case, and isn’t right,” Schwartz told FEND. “Many hotelers did work, but were simply not on their workstations at that time. It was confusing.”

“The whole matter led to a huge discussion in our agency,” she said. “Supervisors and managers and everyone talked about what actually tells them who is working, how we track and certify attendance, and what constitutes ‘work.’ [For example] do I have to be on my keyboard? Or can I be reading a document, which may not be logged on—that should count.”

“It ended up that added rules were set up to remedy this situation,” Schwartz said. “Like, if you are doing work, you should be logged in—even if you are reading at your desk. We need to use systems to let your supervisor know, and help create smooth communication on this.”

Senators call for FLTCIP hearings

TWO SENATE LAWMAKERS are asking for hearings to investigate the steep premium increases announced last month for the Federal Long Term Care Insurance Program.

Sens. Ben Cardin and Barbara Mikulski, both Maryland Democrats, last week wrote to the leaders of the Senate Homeland Security and Governmental Affairs Committee asking the panel to conduct hearings on the increase when Congress reconvenes next month.

The two also sent a letter to Office of Personnel Management acting Director Beth Cobert, charging that OPM has “failed to meet its oversight responsibility.”

“We were flabbergasted to learn that Federal Long Term Care Insurance Program (FLTCIP) premiums will increase by 83 percent, on average, and by as much as 126 percent for some individuals, in November,” they wrote.

“They are being asked to pay an additional $111 per month, on average,” the two wrote. “This is unacceptable, and so are the alternatives: a reduction in coverage to keep premiums at their current level, taking a ‘contingent benefit upon lapse’ for those who are eligible, or dropping coverage altogether.”

Rep. Chris Van Hollen (D-Md.) earlier this month also urged the House Oversight and Government Reform Committee to conduct hearings, and two Virginia Democrats, Reps. Donald Beyer Jr. and Gerry Connolly—who represent districts in the national capital region which they said are home to a “disproportionate share” of FLTCIP enrollees—called on OPM last month to provide them with details on the rate increases.

Putting such rules into action means that now much more work at PTO is done while employees are properly logged on, and employees are counted at work more fairly.

“It absolutely has helped clear things up,” Schwartz said.

Having said that, Schwartz cautioned that she anticipates a different kind of trouble ahead. Instead of inadequate documentation of work, and congressional worries over it, she sees overly intrusive documentation just down the pike, which she believes can affect employee morale.

“There are many different ways available to track employees,” she said. “Employees are working just as hard as they were years ago—the vast majority are doing their work properly, and there were always some who didn’t do what they were supposed to. It’s the same now, but there are many ways to track all of it.”

“And, the issue is, as more tools become available, management is going to be locking down tighter and tighter,” Schwartz said. “At some point, we will be getting into some interesting issues—where we are really micromanaging the question ‘What is work?’”

“Already, many employees have felt very negatively impacted by this,” Schwartz continued. “There are others who don’t—but I think many of those who don’t are just less aware. If you have an employee who is working very hard, and they have to endure too much tracking and intrusion—or even repetitive jokes questioning whether they’re working hard in telework—this can get very trying for employees.”

“A second issue, beyond too much tracking, that we dealt with is we have what can become a push for a work schedule—we already have constant training on the need to keep proper work hours records,” Schwartz said. “Employees do not want it all totally locked down, and do not want to keep a specific work schedule when it’s not necessary. If you do that, you lose the flexibility on work hours they love. We have worked many ways to try to retain the flexibility on the work schedule.”

“At PTO, we have a very liberal work schedule—which is great—but some people were just not keeping track, and were lax on this,” she told FEND. “Now that we’ve had lots of training—and lots of discussion, even focus groups for everyone including supervisors, about this—that’s another big positive change. We see a lot of good effect from this.”

**AFGE praises decision to phase out contract prisons**

**THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES** cheered a Justice Department decision to phase out the use of privately operated prisons.

“We are thrilled that the Department of Justice announced an end to the use of private prisons, and applaud the DOJ for their instruction to the Bureau of Prisons to decline or drastically reduce the use of contract incarceration as a means to an end,” AFGE National President J. David Cox Sr. and AFGE Council of Prison Locals President Eric Young said in joint statement.

DOJ announced the move Aug. 18 in the wake of an inspector general’s report that found that private prisons were less safe and secure than comparable federal facilities operated by the Bureau of Prisons.

“Today, I sent a memo to the Acting Director of the Bureau of Prisons directing that, as each private prison contract reaches the end of its term, the bureau should either decline to renew that contract or substantially reduce its scope in a manner consistent with law and the overall decline of the bureau’s inmate population,” Deputy Attorney General Sally Q. Yates wrote in a statement explaining the decision. “This is the first step in the process of reducing—and ultimately...
ending—our use of privately operated prisons. While an unexpected need may arise in the future, the goal of the Justice Department is to ensure consistency in safety, security and rehabilitation services by operating its own prison facilities.”

AFGE expressed hopes that the decision would impel Congress to provide BOP with enough resources to reduce the prison overcrowding that prompted the agency to resort to private contractors in the first place. The union also maintained that BOP is better prepared to operate the facilities.

“The men and women working in our federal Bureau of Prisons are the most professional, highly trained correctional workers in the nation, and are uniquely equipped to handle the heavy demands of inmate supervision,” AFGE said in a press release. “Returning the responsibility of caring for and rehabilitating inmates will ensure that these men and women serve their time productively, and re-enter society as reformed, valuable citizens.”


SEA issues transition guide

THE SENIOR EXECUTIVES ASSOCIATION has published a handbook to help career federal executives through the presidential transition.

The Handbook on Presidential Transition for Federal Career Executives, published by SEA’s Professional Development League, was developed with the aid of the Distinguished Executives Advisory Network—a group of Senior Executive Service and Senior Professional members who have received the Presidential Rank of Distinguished Executive or Distinguished Senior Professional.

SEA said the handbook was drawn up to prepare career execs for the transition through written guidance and other resources, and by familiarizing them with best practices and lessons learned.

“For many executives, this is their first presidential transition in an executive leadership position,” said SEA Interim President Jason Briefel.

“There are also those career executives without a specific role in their agencies’ transition process who may not recognize the need to prepare individually for this change,” he said. “This handbook was devised with the objective of comprehensively compiling the tools and resources career leaders need to smoothly lead their organizations into the next administration.”

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ALL FEDERAL EMPLOYEES are, or will in the near future, be eligible for Medicare. It is important that as employees reach the age of eligibility, they understand why they need to enroll in Medicare. Medical costs in retirement can consume a significant portion of a federal annuitant’s retirement “nest egg.” Employees therefore should be fully aware of the Medicare enrollment rules discussed in this column.

All federal employees—this includes employees covered by the Civil Service Retirement System or the Federal Employees Retirement System—are eligible for Medicare when they become age 65. There are four parts to the Medicare program: (1) Medicare Part A—hospital insurance; (2) Medicare Part B—medical insurance; (3) Medicare Part C—Medicare Advantage Program; and (4) Medicare Part D—prescription drug program. The discussion here focuses on when employees should enroll in Medicare Parts A and B, the “original” Medicare started in 1965. Medicare Part C is actually a variety of private health insurance plans that are often health maintenance organizations (HMOs), or preferred provider organizations (PPOs) that are not part of the Federal Employee Health Benefits program. Since most employees are eligible to continue their FEHB insurance coverage into and throughout their retirement, a federal annuitant would have little use for Medicare Part C. Also, because most FEHB insurance plans offer good prescription drug coverage, a federal annuitant enrolled in an FEHB plan does not need to enroll in Medicare Part D.

Eligibility for Medicare Parts A and B occurs at age 65. If an employee retires from federal service before age 65 and maintains his or her FEHB insurance coverage in retirement, the FEHB plan will be the payer of his or her hospital and medical bills until age 65. Some individuals under age 65 are eligible for Medicare, such as those who have been receiving Social Security disability benefits for at least 24 months.

The enrollment period for Medicare—the “initial enrollment period”—is a seven-month window that starts three months before the month in which an individual becomes age 65 and extends for three months after that month. An individual can and is encouraged to sign up for Medicare online by going to www.socialsecurity.gov/medicareonly. The following example illustrates:

Jennifer becomes age 65 on Nov. 15, 2016. Jennifer can enroll in Medicare Parts A and B any time between Aug. 1, 2016, and Feb. 28, 2017. If she enrolls in Medicare before Nov. 1, she will receive her Medicare card with coverage becoming effective Nov. 1, 2016.

There is no monthly premium for Medicare Part A if one has been paying the Medicare hospital insurance tax for at least 10 years, as all federal employees have. There is, however, a monthly premium for Medicare Part B. The amount of the premium depends on one’s modified adjusted gross income (MAGI) from the previous year. The table at the top of the page lists Part B monthly premiums for Medicare Part B recipients during 2016.

Individuals who did not enroll in Medicare Part A and/or Part B when they first become eligible during the initial enrollment period are able to sign up during the general enrollment period from January through March 31 of each year. Medicare coverage will then become effective the following July 1.

For those individuals who do not enroll in Medicare Part B when they are first eligible during the initial enrollment period at the time they became age 65, they will have to wait for the next general enrollment period. They most likely have to pay a late enrollment penalty for as long as they are enrolled in Medicare. Their monthly premium for Part B may increase by 10 percent for each full 12 month period that they could have been enrolled in Medicare Part B but were not enrolled in it. There are exceptions to this penalty that will be discussed in next week’s column.

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**Federal Benefits Q&A**

**QUESTION:** “My colleague is 60 and has more than 30 years of federal service. He also has a grave illness and will not be able to work much longer. Although he is eligible for immediate retirement, he would like to file for disability retirement instead. I have heard that if a person is eligible for immediate retirement, there is a rule against granting disability retirement. Is that true?”

**ANSWER:** Most agencies are not going to approve a disability retirement for an employee if the employee is eligible for regular retirement.

Readers are encouraged to ask questions related to general employee benefits—such as CSRS, FERS, the Thrift Savings Plan, tax and estate planning, insurance, Social Security and Medicare—at the “Federal Benefits Q&A” at www.FederalSoup.com.

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**Thrift Savings Plan Share Prices**

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**Lifecycle Funds**

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letter of commendation for his wife advocating that she be considered for a promotion. According to the MSPB, the manager violated the nepotism statute simply by recommending his wife for the promotion. It was irrelevant that he did not overstate her qualifications and that the recommendation was an accurate representation of her skills.

The MSPB has held, however, that simply inquiring about the availability of a position is not the same as recommending a specific person for that position, and thus the board has found no nepotism violation under such circumstances.

For example, in Alexander v. Department of the Navy (1984), an employee requested information about the availability of a position for his daughter. The MSPB ruled that simply inquiring about the availability of a position on behalf of a relative, as the employee did in Alexander, is different than directly recommending a relative for a position, as the employee did in Rentz, and found no nepotism violation.

Recommending a relative through a third-party intermediary will not insulate that employee from being charged with violating the provisions of the nepotism statute.

For example, in Welch v. Department of Agriculture (1988), the MSPB found that an employee, who requested that a subordinate supervisor “prepare a written justification for the temporary appointment” of the employee’s son, had violated the nepotism statute even though he did not make the recommendation directly.

In order to avoid violating the nepotism statute, an employee should take no part, even if it is minimal, in any personnel actions that involve hiring, recommending or advocating employment for one’s relatives.

For example, in Wallace v. Department of Commerce (2007), the MSPB found that an employee who was a GS-15 supervisor—after he learned that his sister was applying for a position that fell under his jurisdiction—had not committed nepotism when he notified his senior manager and recused himself from the decision-making process. Although the supervisor-employee in this case still had authority over those individuals who chose to hire his sister for the vacant position, the MSPB ruled that this, standing alone, was insufficient evidence to charge the employee with a nepotism violation because those who made the decision felt “no pressure, overt or otherwise” to hire the employee’s sister.

If you have been accused of committing a nepotism violation, you should contact an experienced federal employment law attorney immediately to discuss your options. ■

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