



Eye on Ethics

January 2014

This Month's Topic: Nepotism – 5 U.S.C. §2302(b)(7) & 5 U.S.C. §3110

This bulletin highlights the often misunderstood federal laws prohibiting nepotism. Under federal law, Public Officials, including members of the armed services, may not appoint, employ, promote, advance, or advocate the selection of a relative into the agency that the federal employee is serving, or over which he exercises jurisdiction and control. The term "relative" is specifically defined as including: "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." Notably, the definition does not include cohabiting unmarried couples, close friends, or acquaintances, although improper favoritism in the employment of such people would still be actionable as a violation of the Merit Principles. Furthermore, under ethics regulations, federal personnel cannot take any action that can be viewed as seeking to improve the employment prospects of relatives, friends, or others with whom they have a business relationship.

The term "advocate" prohibits a public official from recommending a relative, or referring a relative for consideration for appointment, employment, promotion, or advancement. This term includes either a written or oral recommendation.

Although it is perfectly appropriate for you to encourage friends and relatives to apply for federal employment, you MAY not

- advocate for the employment of a relative,
- take a discretionary personnel action that increases the pay of a relative,
- be a member of a selection panel if a relative is under consideration for one of the openings, or
- use your official position for the private gain of relatives.

However, there is NO prohibition against

- family members working at the same agency,
- making relatives aware of a job opening at the same agency, and
- co-workers at the same agency getting married to one another.

Nepotism is a serious matter. It is a violation of federal law. Penalties for the offense include possible removal, prohibitions against federal employment for up to five years and fines. Furthermore, an individual appointed, employed, promoted, or advanced in violation of the provisions is not entitled to pay. Hence, improperly appointed employees may be removed. While there is nothing improper about a federal employee encouraging a relative to apply for an appointment to federal service -- or even obtaining information about how to apply for a position -- it is critical that the employee not play any part in the evaluation, selection, or appointment of a relative to federal service. Again, the federal employee may not even advocate or "lobby" on behalf of the relative.

A recently released Department of Energy Inspector General report provides a good example. The employee contacted a number of department officials within various program offices to inquire about intern opportunities for his children. In some instances, he spoke with officials regarding his children's qualifications and provided them with resumes of his children. He contacted officials a number of times to follow up on his initial inquiries regarding employment for one of his children. In this example, the program office hired one of the employee's children as an intern. The charge of nepotism was substantiated and corrective action is currently being taken.

While Commanders are responsible to prevent prohibited personnel practices such as nepotism and to comply with and enforce civil service laws, rules, and regulations, the U.S. Office of Special Counsel (OSC) has overarching authority as the independent federal investigative and prosecutorial agency. OSC receives and investigates claims of prohibited personnel practices, including nepotism. If OSC concludes that there has been a violation, it may prosecute the alleged violator before an Administrative Law Judge of the Merit Systems Protection Board.

Again, nepotism is a serious matter and the consequences are equally as serious. If you have any questions surrounding the employment of relatives, please ask your local Office of General Counsel or NAVSUP Counsel, Sandra Jumper, at 717-605-7753 or sandra.jumper@navy.mil.