



**NUMBER 1
HIGH STANDARDS**

"All employees should maintain high standards of integrity, conduct, and concern for the public interest."

What does this mean and why is it important?

This merit system principle serves as the foundation for the standards of ethical conduct applied to all Federal employees. It recognizes that public service is a public trust and that employees are obligated to honor that trust by respect for and adherence to the Constitution, laws, and ethical principles of Government service. In order for an agency to accomplish its mission, its employees' conduct must command the respect and confidence of the public.

What role does it play in the Merit Systems Protection Board's decision-making process?

One of the Merit Systems Protection Board's (MSPB) primary roles is to adjudicate appeals from individuals against whom certain disciplinary actions have been taken by their agency. Some employees are disciplined specifically for a violation of the agency's standards of conduct or for conduct unbecoming a Federal employee. Some examples are found in *Todd v. Department of Justice*, 71 M.S.P.R. 326 (1996), and *Sullivan v. U.S. Postal Service*, 56 M.S.P.R. 196 (1993). Others may be charged with specific misconduct, such as absence without leave, falsification of documents, criminal activity, and misuse of Government resources. A charge of unacceptable conduct of any nature will generally implicate this merit system principle.

The MSPB's consideration of any disciplinary action that is being appealed requires a determination of whether the action promotes the efficiency of the service and the penalty is within the tolerable bounds of reasonableness. One of the Board's seminal cases, *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), sets out a list of factors that, when applicable to the particular case, should be considered by the agency in assessing the penalty. Among those factors that specifically recognize the import of the fourth merit system principle are: (1) the seriousness of the offense; (2) the effect of the offense on the employee's ability to perform at a satisfactory level and its effect upon the supervisors' confidence in the employee's ability to perform assigned duties; (3) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; (4) the notoriety of the offense or its impact upon the reputation of the agency; (5) whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; and (6) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

Through its decisions, the Board has held that all Federal employees are expected to be trustworthy and to maintain high standards of integrity, *Parsons v. Department of the Air Force*, 21 M.S.P.R. 438 (1984), but that certain employees, because of the nature of their position, may be held to an even higher standard of conduct. For example, law enforcement officers and supervisory personnel, who set an example for the type of conduct expected not only for Federal employees, but the public as well, are held to a higher standard of conduct. See *Martin v. Department of Transportation*, 103 M.S.P.R. 153 (2006); *Merino v. Department of Justice*, 94 M.S.P.R. 632 (2003).

Does the fourth merit system principle implicate any other MSPB role?

The MSPB has been charged with conducting special studies relating to merit systems in the executive branch. That function resides in MSPB's Office of Policy and Evaluation (OPE). Several of the reports issued through OPE address specifically the conduct of Federal employees and the general expectation that they should maintain high standards of integrity, conduct, and concern for the public interest. Examples of the studies conducted by OPE, and which may be accessed from this website, include "Whistleblower Protections for Federal Employees," "Prohibited Personnel Practices," and "Reference Checking in Federal Hiring: Making the Call."

How is this principle communicated to Federal employees?

The standards of ethical conduct applicable to all public employees may be found at 5 C.F.R. Part 2635. This Part of 5 C.F.R. identifies the basic obligations of public service, their applicability, and any exceptions. In addition, most Federal agencies have published supplemental standards of conduct for their employees which are generally disseminated to them during initial orientation sessions. They are also

often posted on agency bulletin boards and printed in agency orders, directives, and newsletters. Some agencies have established a table of penalties to put employees on notice of offenses they deem particularly worthy of discipline.

The concern about employee conduct is expressed through specific statutory provisions as well as the regulations of the Office of Personnel Management. An example is the “crime” provision which allows an agency to take an appropriate adverse action on shortened notice when there is cause to believe the employee has committed a crime for which imprisonment may be imposed. See [5 U.S.C. § 7513\(b\)\(1\)](#) and [5 C.F.R. § 752.604\(d\)](#).

Finally, as the Board stated in *Coons v. Department of the Navy*, [15 M.S.P.R. 1](#) (1983), the standards of conduct are largely a matter of common sense and cover an area which employees are presumed to know. There is no legal requirement upon an agency to describe in detail all potentially proscribed employee conduct and related discipline. See *Brown v. Federal Aviation Administration*, [15 M.S.P.R. 224](#) (1983), *aff’d in part, rev’d in part on other grounds*, 735 F.2d 543 (Fed. Cir. 1984).

Do any other agencies provide guidance concerning the conduct of Federal employees?

The Office of Special Counsel (OSC) is an independent Federal investigative and prosecutorial agency whose primary mission is to safeguard the merit system by protecting Federal employees from prohibited personnel practices. In furtherance of the mission, OSC provides guidance to Federal employees concerning conduct that directly conflicts with merit system principles, such as retaliation for whistleblowing or illegal political activity. See www.osc.gov.

The Office of Government Ethics (OGE) was established to prevent conflicts of interest on the part of Government employees, and to resolve those conflicts of interest that do occur. As described on its website, “in partnership with executive branch agencies and departments, the Office of Government Ethics fosters high ethical standards for employees and strengthens the public's confidence that the Government's business is conducted with impartiality and integrity.” See www.oge.gov.