

**EEOC TRAINING INSTITUTE  
EXCEL CONFERENCE  
ORLANDO, FLORIDA  
July 12-15, 2010**

Uniformed Military Supervising Civilian  
Employees  
by Peter Mina and  
Administrative Judge Joel Kravetz

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**Presentation Overview**

- Identify key potential issues of workplace discord between military supervisors and civilian employees.
- Learn how EEO complaints are addressed and processed when a civilian employee makes a claim of discrimination against a military supervisor.
- Understand the procedural framework employed when a contractor files an EEO complaint against a federal employee manager.
- Understand the challenges presented when attempting to resolve workplace disputes between military personnel and civilians in a combat environment.

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**Convergence of Perspectives**

- In today's federal workforce, there are more opportunities for uniformed military personnel to supervise civilian employees, both federal employees and contractors. In addition, many agencies employ former service members in management positions who often utilize practices and leadership styles developed during their military service. The resulting differences in backgrounds, expectations, terminology and standards can lead to workplace conflicts and can contribute to the filing of complaints and/or possible disciplinary action taken against the employee.

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### Common Issues When Supervising Civilian Employees

- Lack of education about the civilian workforce and civilian personnel systems.
- What we have here is a failure to communicate...
- Who's the boss?
- Respect my authority.

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### Speaking Different Languages

- One of the primary sources of potential discord between uniformed military supervisors and their civilian subordinates is the lack of education for military supervisors regarding civilian personnel regulations and the differences in how civilian employees interact with their managers.

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### Educate

- Agencies should establish formal processes by which new military supervisors can be oriented to the differences between the military and civilian workforces as well as receive guidance regarding the statutes and regulations that govern the civilian personnel system in terms of evaluating both performance and conduct.

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### Accountability

- Education alone will not be enough to improve the relationship between military supervisors and civilian subordinates.
- Military supervisors or those with military backgrounds need to be held accountable for their understanding or lack thereof of the civilian personnel system.
- For civilians coming from prior military service, Agencies should better utilize the supervisory probationary period to both monitor and counsel new supervisors regarding the policies and regulatory framework that govern how managers manage.
- For uniformed military supervisors who are not otherwise subject to civilian personnel regulations, processes need to be created to hold managers accountable for violations of civilian personnel laws and regulations.

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### What we Have Here is a Failure to Communicate

- Often military supervisors, or those supervisors with a military background fail to provide a rationale or explanation to employees for their decisions which affect policy or work assignments.
- Civilian employees generally expect that they will be able to question policy decisions or provide input.
- The lack of communication between supervisors and employees often leads to discord and potential workplace disputes.

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### Let me explain...

- Managers with military backgrounds who, often due to the mission critical nature of their jobs or tasks, are likely not used to engaging in a dialogue with their staff regarding the rationale behind a particular decision. However such interaction and can not only make the employees feel part of the process but also likely avoid any misunderstandings which could lead to complaints in the future.

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### Let me explain...

- While employees are entitled to question why a decision is made, employees, particularly those new to a defense or military environment need to evaluate the proper time and method by which to raise such questions in order not to adversely effect the success of the project or mission. Further, when a final decision is made, employees must know to respect it and move on.

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### Scenario 1

John Smith, a retired Navy Major is a senior manager at the Agency. He supervises a staff of civilians including Program Manager Judy Jetson. Major Smith instructs Ms. Jetson to allocate a large amount of funds to a project that Ms. Jetson does not feel will be ultimately successful. After receiving Major Smith's instruction, Ms. Jetson questions his rationale and suggests that the funds be redirected to another program. Major Smith believes that Ms. Jetson is being insubordinate and proposes a five day suspension.

What went wrong here?

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### My Way or the Highway

- Like the scenario involving Major Smith, another issue that may arise between military supervisors unaccustomed to supervising a civilian workforce is a belief that it is the supervisor's way or the highway.
- A common complaint from active duty or former military supervisors is a frustration with the civilian bureaucracy and the difficulty in effectuating a personnel action. This frustration can lead to improper efforts to circumvent the bureaucracy to achieve their objectives.

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### Who's the Boss?

- Given the many moving parts in a defense, intelligence or other environment in which military and civilian personnel regularly interact, there is often great confusion over who reports to whom. This can occur particularly when the employees under a military supervisor are both uniformed and civilian.
- This situation becomes even more complex when dealing with contractors who must often straddle the interests of their non-federal employers with that of their federal clients.

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### Respect My Authority

- One of the fundamental tenants of the military environment is a strict adherence to the chain of command. The delineation of who reports to whom becomes murky when the staff is comprised of both military and civilian employees. Issues often arise when a civilian tries to assign a task to a uniformed service member, when that civilian seemingly has no power to instruct, order or evaluate the service member. Tensions can also rise when a civilian employee, unfamiliar with the notion of chain of command, reports an issue to someone above the military supervisor.

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### The Contractor Dilemma

- The issue of who is in charge is even more difficult when dealing with contractors. A contractor can have as many as three supervisors: a supervisor at the contracting company, a civilian program manager or contract technical representative, and a military officer. Contractors are often forced to juggle what may be competing interests between his/her supervisor at ABC Contracting Corp. and his/her federal employee or military clients.

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## Scenario 2

- Chris Contractor works for ABC Contracting on an Agency contract. In the execution of the contract he deals with the program manager, Frank Fed and the military head of the department, Capt. Sam Service. At Capt. Service's direction, Frank Fed instructs Chris to complete a task that his supervisor at ABC Contracting thinks is outside the scope of the contract. What should Chris do? Who's the boss in this situation?

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## Houston... We have a Problem: What Happens When a Dispute Arises

- Disciplinary Actions
  - The disconnect between military or former military supervisors and their civilian subordinates can lead to potential disciplinary action against the subordinate arising out of policy disagreements, miscommunication regarding expectations and objectives or a violation of chain of command.
- EEO Complaints
  - The lack of communication regarding managerial decisions or an inability for a manager and subordinate to communicate effectively can lead to distrust by an employee and the possible belief that there may be an illegal motive, such as discrimination, behind the supervisor's actions.
  - Favoritism a military manager may exhibit toward current/former members of the military versus civilian employees can also lead to EEO complaints or grievances.

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## I'd Like to File A Complaint: Where do Employees Go to File Complaints?

- Agency EEO Office
- EEOC
- Union/Administrative Grievance
- Merit Systems Protection Board
- Other relevant Agency (OSC, Department of Labor)
- Office of Inspector General

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## Military v. Civilian EEO Process

- One of the ways in which employees can challenge the actions of their supervisors is to allege that they are victims of discrimination in violation of statutes such as Title VII of the Civil Rights Act of 1964 or the Rehabilitation Act of 1973.
- One of the difficulties that may arise for active duty or retired military supervisors managing civilians is understanding and managing within the framework of the civilian EEO process, a process which is dramatically different in an exclusively military environment. Understanding when each process applies is critical for a supervisor of both uniformed service members and civilians.

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## EEO in the Military

- Title VII does not apply.
- Much of the EEO process is not formalized.
- No judicial review or remedy outside of the agency.
- The Commanding Officer determines whether an investigation is appropriate and if discrimination is found, what if any remedies are appropriate.
- Outside of sexual harassment claims, discrimination claims rarely lead to discipline against a military supervisor.
- Military EEO processes apply only when all parties are service members.

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## EEO Complaints Involving Both Military and Civilian Employees

- When a civilian employee feels he or she is being discriminated against by a service member, he or she should continue to use the civilian EEO process.
- When a service member feels he or she is being discriminated against by a civilian employee, the service member can contact a civilian EEO counselor.
- When a contractor believes he or she has been discriminated against, the appropriate process to lodge a complaint will depend on whether the contractor is an employee of the Federal Agency.

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## Identifying Employers and Employees

- An “employee” is “an individual employed by an employer.”
- An individual may have more than one employer.

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## EEO Complaints by Federal Contractors

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### Scenario 3

Susan, a worker hired by a Federal agency through ABC Temporary Services on a one-year contract to provide administrative support, contacts the agency’s Civil Rights or EEO Office to raise a concern that she is being sexually harassed by a co-worker.

What should the agency’s Civil Rights Office advise Susan to do?

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## EEO Counseling

- All workers, regardless of employment status, are entitled to meet with an EEO counselor.
  - Makovsky v. Dep't of the Navy, EEOC Appeal No. 01A60197 (Apr. 7, 2006).



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## EEO Counseling Cont.

- Workers should be advised about:
  - the Federal sector EEO process; and
  - the private sector process/deadlines to file a charge of discrimination at a local EEOC or FEPA Office.
- Unlike the Federal sector, workers in the private sector have 180 or 300 days (in jurisdictions with a state or local FEPA) from the date of the adverse action to file a charge of discrimination.

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## Employer-Employee Relationship

- The Commission applies the common law of agency test to determine if a worker is an agency employee or applicant.
  - Baker v. Dep't of the Army, EEOC Appeal No. 01A45313 (March 16, 2006).
  - Ma v. Dep't of Health and Human Services, EEOC Appeal No. 01962390 (May 29, 1998).

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### Employer-Employee Relationship Cont.

- The Commission will examine several factors that are set forth in the Commission’s Compliance Manual, Section 2: Threshold Issues, 2-III.A.1, pages 2-25 and 2-26 (May 12, 2000). These factors include:
- The employer has the right to control when, where and how the worker performs the job.
- The work does not require a high level of skill or expertise.
- The employer furnishes the tools, materials, and equipment.

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### Employer-Employee Relationship Cont.

- The work is performed on the employer’s premises.
- There is a continuing relationship between the worker and the employer.
- The employer has the right to assign additional projects to the worker.

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### Employer-Employee Relationship Cont.

- The employer sets the hours of work and the duration of the job.
- The worker is paid by the hour, week, or month rather than the agreed cost of performing a particular job.
- The worker does not hire and pay assistants.

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### Employer-Employee Relationship Cont.

- The work performed by the worker is part of the regular business of the employer.
- The employer is in business.
- The worker is not engaged in his/her own distinct occupation or business.

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### Employer-Employee Relationship Cont.

- The employer provides the worker with benefits such as insurance, leave, or worker's compensation.
- The worker is considered an employee of the employer for tax purposes (i.e., the employer withholds federal, state and Social Security taxes).
- The employer can discharge the worker.
- The worker and the employer believe that they are creating an employer-employee relationship.

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### Joint Employment

- Both a staffing firm and a Federal agency may be employers of the same worker.
- The Commission refers to each employer as a joint employer.
- A Federal agency will qualify as a joint employer if it has the requisite means and manner of control of a worker under the previously discussed factors.

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## Union/Administrative Grievance

- To the extent that the employee is a member of a bargaining unit or subject to an administrative grievance procedure, an employee can file a grievance to challenge what the employee perceives to be an unfair or discriminatory employment practice.
- Employees must be aware of a potential election of remedies made when filing a grievance which may bar the subsequent filing of an EEO complaint or Merit Systems Protection Board Appeal.

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## Merit Systems Protection Board Appeals

- For actions such as a suspension of 15 days or more, a demotion, a reduction in pay, or removal, an employee can file an appeal with the Merit Systems Protection Board (MSPB).
- The MSPB can hear claims of discrimination in connection with the motive behind a given personnel action and findings regarding a claim of discrimination by the MSPB are appealable to the EEOC.
- The MSPB also hears claims involving violations of the Uniformed Service Member Employment and Reemployment Rights Act (USERRA) and the Veterans Employment Opportunities Act (VEOA).
- Employees must also be informed if they are the kind of employee who has MSPB appealable rights.

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## For More Information

- EEOC.gov
- MSPB.gov
- Army Regulation 600-20 (Description of Army EO process)
- Army: <http://www.armyg1.army.mil/eo/default.asp>
- Navy: [http://www.cnic.navy.mil/CNIC\\_HQ\\_Site/EOA/FAQs/index.htm](http://www.cnic.navy.mil/CNIC_HQ_Site/EOA/FAQs/index.htm)
- Marine Corps: <http://www.usmc-mccs.org/leadersguide/Harassment/SH/generalinfo.cfm#EOA>
- DoD: <http://www.dodig.mil/fo/eo/process.htm>
- Liff, Stewart, Managing Government Employees: How to Motivate Your People, Deal with Difficult Issues, and Achieve Tangible Results'

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