

Seasons Greetings



WIFLE®

**Newsletter
December 2020**

**Wishing you and your loved ones
a happy and healthy 2021.**

WIFLE

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MESSAGE FROM WIFLE PRESIDENT CATHERINE SANZ

This year has been trying, to say the least. As 2020 comes to a close, very few of us have not been touched in some way by the coronavirus, whether it is the loss of someone dear, your own illness, or just learning how to navigate working from home. Each of us has had to change something in our lives. However, many of you have placed your personal safety and the safety of your families at risk just by doing your jobs. For that, we wish to thank you for your bravery and perseverance.

Unfortunately, the events of this year led WIFLE to cancel its Annual Leadership Training. Like so many other organizations, we were able to bring some of the planned sessions to you virtually. Hopefully, the release of the vaccine will allow us to go forward with our plans to hold the Annual Leadership Training in August 2021, in Tampa, Florida, where we can all meet once again.

On behalf of myself, Vice President Jessie Lane, the WIFLE Board, and all of our wonderful WIFLE volunteers, we wish you all a safe and happy holiday season.

A handwritten signature in black ink that reads "Catherine W. Sanz".

President, WIFLE Foundation, Inc.
Executive Director, WIFLE, Inc.



Your Federal Benefits Explained

by Sandra K. Harman
President, Harman & Associates, Inc.

I. FEDERAL EMPLOYEES HEALTH BENEFIT (FEHB) OPEN SEASON

The FEHB Open Season for all federal employees, retirees and survivors runs November 9 thru December 14. During that time, you can change your FEHB plan and your FEDVIP enrollment. Current employees (not retirees) can enroll in the Flexible Spending Accounts.

For the first Open Season ever, the FEHB program will offer Medicare Advantage Programs. What does that mean; nothing if you aren't age 65 or beyond. For those WIFLE members who are 65 or beyond this gives you something more to think about. OPM has added Medicare Advantage Plans directly to the FEHB program. Prior to this Open Season, if you were 65 and beyond you had to have FEHB coverage, enroll in Medicare A, B & C (Medicare Advantage), provide evidence to OPM that you have FEHB, Medicare A, B & C, before OPM would suspend your FEHB enrollment. This was an important process because it then allowed you to rejoin (during an Open Season or Qualified Event) any FEHB program you qualified for.

With the addition of Medicare Advantage Plans to FEHB, you no longer have to go through the process of suspending your FEHB in order to have the ability to rejoin standard FEHB.

The following Medicare Advantage Plans are available nationally and others may be available regionally.

Aetna Medicare Advantage Plan
United Healthcare Medicare Advantage Plan

Kaiser Permanente Medicare Advantage Plan
for Federal Members

Why should you consider a Medicare Advantage Plan?

That is a very personal decision. What are your medical service needs? Did you enroll in Medicare B at age 65? Do you plan to travel?

What are your medical service needs?

If you are basically healthy and work to maintain your health, Medicare Advantage plans could work well for you because they emphasize wellness. Some plans include "silver sneaker" enrollment and other benefits to encourage wellness.

Did you enroll in Medicare B at age 65?

If you did not enroll in Medicare B at age 65, the Medicare Advantage Plan could be expensive. All Medicare Advantage plans require that you have Medicare A & B; Medicare B has a monthly premium. More importantly Medicare B has a late enrollment penalty. The penalty is calculated as 10% per year beyond age 65 times the premium in effect for that year.

There is no cap on the penalty and it is not a one-time penalty. For example, if you are 70 and enrolling in Medicare B for the first time you would have a 50% penalty, the minimum premium for 2021 is \$148.50 per person per month; therefore, your Part B premium for 2021 would be \$222.75 per person per month.

Do you plan to travel?

Medicare, including Medicare Advantage, does not provide coverage outside the United States. Further, many Medicare Advantage Plans are “in-network”; therefore, even in the U.S. only emergency services would be covered out-of-network.

How do Medicare Advantage Plans work?

Medicare Advantage Plans, sometimes called “Part C” or “MA Plans,” are an “all-in-one” alternative to Original Medicare. They are offered by private companies approved by Medicare. If you join a Medicare Advantage Plan, you must have Medicare. These “bundled” plans include Medicare Part A (Hospital Insurance) and Medicare Part B (Medical Insurance), and usually Medicare drug coverage (Part D).

Covered services in Medicare Advantage Plans

Most Medicare Advantage Plans offer coverage for things Original Medicare doesn’t cover, like some vision, hearing, dental, and fitness programs (such as gym memberships or discounts). Plans can also choose to cover even more benefits. For example, some plans may offer coverage for services like transportation to doctor visits, over-the-counter drugs, and services that promote your health and wellness. Plans can also tailor their benefit packages to offer these benefits to certain chronically ill enrollees. These packages will provide benefits customized to treat specific conditions. Check with the plan before you enroll to see what benefits it offers, if you might qualify, and if there are any limitations.

Rules for Medicare Advantage Plans

Medicare pays a fixed amount for your care each month to the companies offering Medicare Advantage Plans. These companies must follow rules set by Medicare.

Each Medicare Advantage Plan can charge different out-of-pocket costs. They can also have different rules for how you get services, like:

Whether you need a referral to see a specialist
If you have to go to doctors, facilities, or suppliers

that belong to the plan for non-emergency or non-urgent care

These rules can change each year.

Costs for Medicare Advantage Plans

What you pay in a Medicare Advantage Plan depends on several factors. In many cases, you will need to use doctors and other providers who are in the plan’s network and service area for the lowest costs. Some plans won’t cover services from providers outside the plan’s network and service area.

If you decide that due to medical service needs or plans to travel (perhaps spend sometime in a warmer climate) a Medicare Advantage Plan is not for you; consider the incentives and options that some FEHBPs offer if you enroll in Medicare A & B (assuming that Medicare is your primary insurance):

Most plans waive deductibles and copays when Medicare is primary.

Some plans offer a health fund for Medicare premium reimbursement or some credit toward the cost of Medicare Part B.

Plans that focus on Medicare beneficiaries frequently have a lower premium.

It is a lot to think about. Here are two resources to help in comparing costs and coverage: [OPM’s Plan Comparison](#), and, [Consumers Checkbook Guide to Health Plans for Federal Employees and Retirees](#).

II. CHANGES TO THE THRIFT SAVINGS PLAN (TSP) AS A RESULT OF THE SECURE ACT

The Setting Every Community Up for Retirement Enhancement (SECURE) Act included some changes that impact on the TSP.

- Increases from 70½ to 72 the Required Minimum Distribution (RMD)

Changes the period over which some beneficiaries must withdraw the TSP. The SECURE Act in effect limits the “stretch” IRA, replacing it with a 10-year

rule for the vast majority of beneficiaries. Until the SECURE Act the heirs of traditional or Roth IRAs had the option of taking required withdrawals over their lifetime and perhaps receive decades of income – tax-free or tax-deferred – after the original owner’s death.

•Under the new rules there will be no annual RMDs for inherited IRAs. Instead, the only RMD for either an inherited traditional IRA or Roth IRA will be a lump-sum payment of the balance of the IRA at the end of the 10-year period after the death of the IRA owner.

•Under the legislation there are five classes of eligible designated beneficiaries who are exempt from the 10-year post-death payout. They are:

- ◆ Heirs of IRAs whose original owners died before January 1, 2020;
- ◆ Surviving spouses;
- ◆ Chronically ill or disabled heirs;
- ◆ Heirs within 10 years of age of the original owner; and
- ◆ Minor children up to the age of majority or age 26, if the child is still in school. Once the minor reaches the age of majority, or if still in school at age 26, the 10-year payout period begins.

III. CATCH-UP CONTRIBUTIONS WILL SOON GET EASIER

Starting in January 2021, the Thrift Board will make the catch-up process easier: if you’re turning 50 or older, you will no longer need to make two separate elections each year in order to take advantage of catch-up contributions.

Instead, your contributions will automatically count toward the IRS catch-up limit if you meet the elective deferral limit and keep saving. If you’re eligible for an agency match, contributions spilling over toward the catch-up limit **will qualify for the match on up to 5% of your salary**. Your election will carry over each year unless you submit a new election.

For 2020 catch-up contributions, you do still need to complete the current process and make a separate election.

The contribution limits for 2020 are \$19,500 (IRS’s annual elective deferral amount) and the catch-up contribution for 2020 is \$6,500. The Thrift Board announced November 2, 2020, that these figures are unchanged for 2021.

**COFFEE with CATHY
and Guest Speaker Frank Figliuzzi.
January 13, 2021, 11:30 AM EST**

[Registration open now wiflemembers.org](http://wiflemembers.org)

Cesare Frank Figliuzzi, Jr., is the former assistant director for counterintelligence at the Federal Bureau of Investigation.





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 FAIR**
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 OPEN
 SEASON

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FEDERAL BENEFITS OPEN SEASON NOVEMBER 9 - DECEMBER 14, 2020



BENEFEDS is administered by Long Term Care Partners, LLC, with oversight by the U.S. Office of Personnel Management.



The Federal Long Term Care Insurance Program is sponsored by the U.S. Office of Personnel Management, insured by John Hancock Life & Health Insurance Company, under a group long term care insurance policy, and administered by Long Term Care Partners, LLC.

FEDERAL BENEFITS OPEN SEASON: NOVEMBER 9, 2020 - DECEMBER 14, 2020

The Fair will be available throughout Open Season beginning November 9.

The Virtual Benefits Fair is hosted by Long Term Care Partners, LLC, the administrator of the Federal Long Term Care Insurance Program (FLTCIP), and BENEFEDS, the secure online portal to enroll in the Federal Employees Dental and Vision Program (FEDVIP).

Please use the link below to register for the Virtual Benefits Fair:

<https://vshow.on24.com/vshow/FVBF20/registration/18051>

EXCELSIOR NEWS AND EVENTS UPDATES



Transfer Made Easy: Excelsior College Information Session, Tuesday, December 2nd, 3-4pm EST

In this webinar we'll provide an overview of Excelsior College and the many ways that you can transfer in credits, or earn credits as a student. We will also highlight the benefits we have to offer as well as the individual schools and degree programs that we have available. [Click here to register!](#)

Partnership Virtual Open House, Tuesday, December 8th 3-4pm EST

It's not too late to prepare for the Spring I term with Excelsior College. Attend our virtual open house designed for students, employees, and members of Excelsior [College's educational, corporation, veteran, and association partners](#) on Tuesday, December 8 at 3 p.m. ET, and get started on achieving your educational and career goals. At this online event, you will have the opportunity to:

- Learn more about Excelsior College and how online classes work;
- Get step-by-step assistance on how to enroll;
- Speak to representatives from Admissions, Financial Aid, the Center for Military and Veteran Education, and undergraduate and graduate degree programs; and
- Learn about Career Development services

When you enroll through a partnership, you receive benefits such as discounts on tuition and fees that save you time and money when pursuing your degree. The webinar will provide all the information you need to get started.

[Register now](#) for Excelsior College's Virtual Open House for Partnership Students. We are excited to connect with you!

Webinar: Talent Management, December 21 @ 12:00 pm - 1:00 pm EST

Talent management is a business strategy that refers to an organization's commitment to recruit, hire, manage, develop, and retain talented employees. Human Resources perform many of these functions, but managers perform the critical role in developing employees on a day-to-day basis. In this webinar, hear talent managers discuss their techniques. Panelists include Dr. Michele Paludi, Matthew Baird, Dr. Teresa Jepma, Dr. John Theodore, and Dr. David Lawyer. This will be an important introduction to the new interdisciplinary course Excelsior is developing: "Strategic Talent Management in a Complex World."

[Click here to register](#) Presented by the SHRM Student Chapter at Excelsior College

FED AGENT

WELCOMES WIFLE TO THE FEDFORUM



As we maintain six feet of distance, **FEDagent** wants to ensure the law enforcement community remains connected. The **FEDforum** is our new initiative to unite law enforcement groups from all corners of government.

The **FEDforum** ensures you are always in the know with updates and insights from across the law enforcement community in one single space. The forum will serve as a landing spot within the **FEDagent** newsletter for organizations to share news, initiatives, conferences, and more.

FEDagent is proud to have WIFLE as an inaugural FEDforum partner!

FEDAGENT IS IN YOUR INBOX EVERY THURSDAY WITH:

- **Top News** stories impacting federal law enforcement
- **Takedowns** covering major law enforcement busts
- **Case Law Updates** from the attorneys of Shaw Bransford & Roth
- Partner columns from FLEOA, NLEOMF, and more

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WIFLE WELCOMES DR. ROSALYNDE M. FENNER, Ed.D., AS A NEWSLETTER CONTRIBUTOR

Dr. Fenner will be co-writing articles with veteran WIFLE Newsletter contributor, June Rogers, Ph.D., pictured above left. Welcome Dr. Fenner.

Biography - Dr. Rosalynde Fenner retired from the U.S. Drug Enforcement Administration (DEA) in 2011, after 25 years of distinguished service as a Supervisory Special Agent, and currently serves as an Assistant Professor in the School of Humanities, Education, Social and Behavioral Sciences and the Department of Criminal Justice at Saint Augustine's University in Raleigh, NC. Dr. Fenner starts as the new Department Chairperson for the School of Justice at Miami Dade College, North Campus, Miami, FL on January 4, 2021. As a DEA Agent, Dr. Fenner worked in the New Orleans Division, the New York Division, the Office of Inspection: Security Programs at DEA Headquarters, the Caribbean Division in San Juan, Puerto Rico, and the Atlanta Division's Charlotte District Office. Dr. Fenner received her Doctoral degree in Education in Organizational Leadership with an emphasis Organizational Development from Grand Canyon University in Phoenix, AZ, a Master of Arts degree in Criminal Justice from the City University of New York, John Jay College of Criminal Justice in New York, NY, and her Bachelor of Science degree in Criminal Justice from Saint Augustine's University (formerly Saint Augustine's College). Dr. Fenner is a member of the Alpha Phi Sigma Criminal Justice Honor Society. She is a Diamond Life member of Delta Sigma Theta Sorority, Inc., where she recently served as the Recording Secretary for the Knightdale – Wake Forest Alumnae Chapter (2016 – 2019). Dr. Fenner is a life member of the National Council of Negro Women (Durham Section), a life member of the National Alumni Association of Saint Augustine's University, and a life member of the National Organization of Black Law Enforcement Executives (NOBLE). She currently serves as the National Parliamentarian and is the immediate past president of the Eastern North Carolina Chapter. Dr. Fenner led the efforts to charter the local chapter in June of 2010. Dr. Fenner is also a member of the National Association of Black Narcotic Agents, the Federal Law Enforcement Officers Association, the Association of Federal Narcotics Agents, the International Association of Chiefs of Police, and the North Carolina Federation of Business & Professional Women.



WANTED – LAW ENFORCEMENT OFFICERS – COURAGE REQUIRED

By Retired DEA SSA Rosalynde M. Fenner, EdD and Retired DEA SAC June Rogers, PhD

Is the term courage in your job description? Yes, but it is not likely to be explicit.

Peppered throughout a law enforcement federal job description is the need for courage. Confronting suspects, making arrests, infiltrating criminal organizations, and executing search warrants are just a few of the tasks performed that require a high degree of courage. But what of some of the less perceived duties requiring bravery, such as interacting with coworkers, supervisors, or subordinates?

If you have ever spoken to someone where emotions are involved, where the stakes are high with opposing opinions, you likely held a *crucial conversation*. In their book, Patterson et al. (2012) provide several strategies for navigating these thorny discussions. But before you can work toward crafting an effective conversation, you first must recognize the need to start one.

We contend that while the law enforcement culture embraces one dimension of the crucial conversation triangle, there is a tendency to avoid the other two. For example, high-stakes conversations consistent with the law enforcement mission, such as targeting criminal enterprises or arresting political figures, occur regularly within our profession. But when emotions or strong opposing opinions enter the picture – not so much. We offer evidence that it is unlikely that many of the politically driven conversations occurring in the workplace are being considered, let alone addressed.

Indeed, there is a tendency to ignore or avoid what we will call "courageous conversations" primarily because of the many downsides (i.e., arguments, misunderstandings, etc.). But a failure to do so is fraught with the type of organizational deficiencies Patterson et al. says their research uncovered – namely, that “silence kills,” and “silence fails.” Applying this theory to law enforcement, not warning your boss about how you know the community will interpret a press release with political undertones can erode public confidence. Recognize that holding that courage filled conversation about how culture, religion, political or other sensitive views affect work can reduce downsides while introducing a tremendous "up-side."

Relationship building is the reward for holding and navigating courageous conversations. When a supervisor and a subordinate can exercise an honest and open dialogue on any subject, both parties have a sense of acceptance. You can eliminate the perceived fear that an idea, suggestion, or response could lead to rejection. The dynamics of a good quality leader-follower relationship begins with three leader-member exchange theory (LMX) dimensions, "affect, loyalty, and respect." Affect, is the mutual interpersonal attraction between the leader and the follower (Graen & Uhl-Bien, 1995). The relationship a supervisor builds with subordinates ultimately impacts the supervisor's job performance in several ways, just as the relationship affects the subordinate's job performance. Adding loyalty and respect for each other and the organization's mission leads to that desired openness we would like to have in the workplace. It is crucial to put aside all fear of approaching the courageous conversation.

How do we begin to build high-quality relationships? We know that it does not happen overnight, and we should also understand that it will take on a different process for each dyad between the leader and the follower. Accessibility and inclusivity are good starting points to building a high-quality LMX relationship. It is essential to realize your role as a leader in the dyad also. Leaders will continue to lead and not stray away from the responsibilities of their duties. The leader informally initiates the relationships. When a leader includes their subordinates in decisions that affect them and their ability to carry out their duties, it builds trust.

Having discussed the connections between crucial conversations and relationship building, remember exhibiting courage and bluster are not the same thing. So, take some time to build your toolbox with success techniques such as the Patterson et al. approach. (Several no-cost materials are widely available via the Internet using a few keywords).

Do not be surprised if the holidays provide a few opportunities to practice courage filled conversations. Whether you are celebrating virtually or in person, we hope that you find joy and remain safe!

1 Patterson, K., Grenny, J., McMillan, R., & Switzler, A. (2012). *Crucial conversations: Tools for talking when the stakes are high* (2nd ed.). McGraw-Hill.

2 Graen, G. B., & Uhl-Bien, M. (1995). Relationship-based approach to leadership: Development of leader-member exchange (LMX) theory of leadership over 25 years: Applying a multi-level multi-domain perspective. *Leadership Quarterly*, 6(2), 219-247



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WHAT'S IN STORE FOR 2021 FOR FEDERAL LEOs

The year 2020 dealt federal law enforcement officers a uniquely perilous hand—you have been coping with the everchanging narrative surrounding your profession that has resulted in more scrutiny from the public than ever before. Across federal law enforcement, officers in different agencies have been impacted in varying ways by the COVID-19 pandemic and the civil unrest in many cities across the country this summer.

The Federal Bureau of Investigations is still dealing with the 2019 spike in reported hate crimes (the highest levels since 2008). This trend most assuredly continued in 2020 with COVID-19 and social unrest resulting in increased scrutiny of officers by the media, agencies, and the public.

COVID-19 has radically altered the job responsibilities of Bureau of Prisons (BOP) officers, forcing them to drastically modify operations within an extremely tense prison environment. BOP

officers have also been dealing with public criticism over the treatment of prisoners and increased agency pressure on job performance.

U.S. Probation and Pre-Trial Services officers are under ever-increasing job pressures, as COVID-19 spikes have forced broad and unprecedented release of prisoners onto federal probation. These releases have significantly increased the workload of probation officers and threatened public safety.

Due to the recent expansions of federal/local task forces, officers on these task forces have experienced an increased workload and amplified performance pressure. In addition to these new responsibilities, Task Force Officers are still expected to fulfill their local duties, contain protests, combat COVID-19, and face intense media scrutiny the entire time.

Department of Homeland Security officers deployed in large numbers to cities across the country faced difficult, unfamiliar circumstances and have been subjected to extreme scrutiny from the public and media while coming to grips with aggression and anger perpetuated toward them.

As we near the end of this unprecedented, exhausting year, it's imperative that federal law enforcement officers start planning for 2021. Historically, existing social tensions and inequalities have intensified both during and after periods of epidemics. And the continued psychological effects of everything that happened in 2020 will likely be unknown until well into 2021.

Use the unusual break from holiday celebrations this year to ensure you and your family are doing everything you can to protect yourselves. Federal law enforcement officers must be prepared for a likely increase in civil suits resulting from intensified interaction with the public, as well as a potential increase in agency-directed disciplinary actions. Professional liability insurance gives you the peace of mind that comes with knowing you have legal defense against allegations and coverage for financial judgments.

For more information about what FEDS Protection can offer WIFLE members, please call WIFLE or visit www.fedsprotection.com or call (866) 955-FEDS Monday – Friday 8:30 am – 6:00pm ET.

MARIST



PARTNERS IN EDUCATION

As a way of saying "thank you" to our members, WIFLE is continuing our academic partnership with Marist College. The partnership offers special tuition pricing for all members and their immediate family.

PARTNERSHIP BENEFITS

- A **50% tuition discount** on the NASPAA accredited Masters of Public Administration (MPA) for all members.
 - **Saving over \$16,000**
- A **25% tuition discount** on select graduate and undergraduate programs for all members and their immediate family.
- Options for full-time and part-time master's and bachelor's degree programs offered 100% online, in-class, or a combination of both.
- Enjoy state-of-the-art classrooms for our bachelor's and master's programs offered on our main campus in Poughkeepsie, NY. We also offer a classroom-based MPA option at our satellite locations in Queens and Albany, NY.

ELIGIBILITY

WIFLE members, and their immediate families, must show proof of membership in order to qualify for the partnership tuition rate. **Qualifying students must be 22 years of age or older upon admission, and must apply through either Graduate Admission or Adult Undergraduate Admission.** Final determination of eligibility is made by Marist College.

To help get you started, Marist is host to several campus open house events as well as virtual information sessions. Visit us online for a complete list of upcoming events and virtual information sessions at marist.edu/admission/graduate/admission-information-session.

For further information contact Van Riley, Senior Assistant Director at **845-575-3981**, Van.Riley@marist.edu, or complete our online inquiry form at think.marist.edu/inquiryform. All contact information provided is confidential.



UPCOMING EVENTS

The best way to find out about Marist's programs is to attend an open house or virtual information session! Visit the website and RSVP.

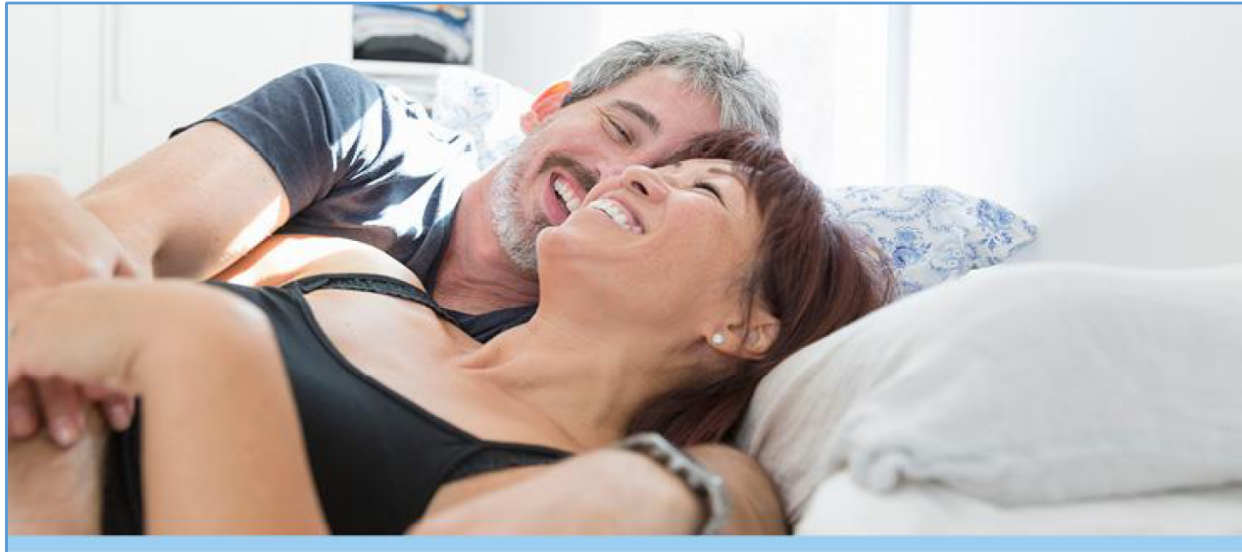
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Poughkeepsie, NY
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MIND-BODY WELLNESS



Simple ways to be kind to yourself

Practicing self-care is good for the mind, body, and spirit. Here are some simple things you can do to boost your mood, beat stress, and enjoy life more. Each one takes just a little time and effort — and you're worth it.

Take up meditation

Focus on your breath and being present in the moment. You might not experience instant inner peace, but a few minutes of quiet meditation can help clear your thoughts, calm your senses, and recharge your energy.

Sleep well — and sleep enough

Lack of sleep can affect the way you feel mentally and physically. Limit bedtime distractions if you have trouble sleeping — you can't leave the day's stresses at the door if you're checking email, texting, or browsing online.

Socialize face-to-face

Connecting with others can do wonders for your physical and emotional wellness. Calls, texts, and social networks are great for staying in touch, but quality time together is what really helps people — and relationships — thrive.

Visit kp.org/mindbody.

Self-care apps at your fingertips — at no cost to members. Visit kp.org/selfcareapps.

Kaiser Permanente health plans around the country: Kaiser Foundation Health Plan, Inc., in Northern and Southern California and Hawaii • Kaiser Foundation Health Plan of Colorado • Kaiser Foundation Health Plan of Georgia, Inc., Nine Piedmont Center, 3495 Piedmont Road NE, Atlanta, GA 30305, 404-364-7000 • Kaiser Foundation Health Plan of the Mid-Atlantic States, Inc., in Maryland, Virginia, and Washington, D.C., 2101 E. Jefferson St., Rockville, MD 20852 • Kaiser Foundation Health Plan of the Northwest, 500 NE Multnomah St., Suite 100, Portland, OR 97232 • Kaiser Foundation Health Plan of Washington or Kaiser Foundation Health Plan of Washington Options, Inc., 601 Union St., Suite 3100, Seattle, WA 98101



Peter J. Jeffrey, Esq., Member
The Jeffrey Law Group, PLLC
The Federal Employee's Law Firm ®

ABSOLUTE IMMUNITY FOR TESTIMONY IN EEO PROCEEDINGS? – THINK AGAIN.

By [Peter J. Jeffrey, Esq., Member,
The Jeffrey Law Group, PLLC, The Federal Employee's Law Firm ®](#)

Title VII prohibits an employer from taking action against an employee because she has "made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing" governed by Title VII. But does this statutory prohibition bar Federal employers from taking adverse action against an employee who gives false testimony in an EEO proceeding? The U.S. District Court for the District of Columbia addressed this question in *Ominoba Egei v. Jeh C. Johnson, Secretary, Department of Homeland Security*, 116 LRP 27892 (D.D.C. Jun 24, 2016).

In September 2008, FEMA sent temporary employee Egei to Houston, Texas, in response to Hurricane Ike. Following notice that she would be sent home to await another assignment, Egei alleged that her supervisor sexually harassed her. Specifically, Egei alleged that on or around October 17, 2008:

[Her supervisor] called her in the evening and asked her to come to his hotel in order to run an errand. According to Egei, however, when she arrived at his room, he emerged from his bathroom "half naked" and asked her to shower with him. When she refused, she claims, he threatened to terminate her, saying, "You might be going home." When she continued to refuse [her supervisor's] advances, he allegedly instructed her to take him to a strip club. Ultimately, Egei claims, she drove [her supervisor] to a nearby print shop, where he obtained directions first to a strip club and then to a nightclub.

Id. (internal citations omitted). However, at the hearing before an EEOC administrative judge, Egei's testimony significantly differed from her previous accounts. Specifically, although Egei had stated in her formal complaint and in response to interrogatories that her supervisor had attempted to have sex with her on October 17, 2008, FEMA's counsel impeached her with a government travel voucher showing that she had picked up a rental car from the airport during the timeframe in which she alleged she was with her supervisor. Thus, the EEOC administrative judge denied Egei's complaint, finding in part, that "that the alleged events did not occur." *Id.*

About a year and a half after the administrative judge's decision, FEMA terminated Egei's temporary appointment. Specifically, FEMA terminated Egei on the basis of the allegations she had made in her 2008 EEO complaint and her sworn testimony before the EEOC, which FEMA alleged constituted lack of candor. Egei filed suit alleging that FEMA was prohibited from terminating her for her prior EEO testimony under the anti-retaliation provision of Title VII. Thus, the Court was left to decide whether Title VII shields an employee from adverse action on the basis of the testimony she provides in an EEO proceeding. *See id.*

Adopting the majority view, the Court held "that Title VII's participation clause protects an employee from adverse employment action taken on the basis of the substance of a charge or testimony she makes in the course of her participation in Title VII EEO proceedings." *Id.* (citing and comparing *Glover v. S.C. Law Enft Div.*,

170 F.3d 411, 414-15 (4th Cir. 1999)(holding that an employee may not be terminated on the basis of statements made during an EEO proceeding), and *Pettway v. Am. Cast Iron Pipe Co.*, 411 F.2d 998, 1007 (5th Cir. 1969)(same), with *Mattson v. Caterpillar, Inc.*, 359 F.3d 885, 890-91(7th Cir. 2004)(holding that she may be). Specifically, the Court stated, "that it is not possible to permit employers to take adverse action against EEO claimants based on false charges or testimony . . . without chilling truthful charges and testimony." *Id.*

Nevertheless, this absolute privilege held by the 4th, 5th and D.C. Circuit Courts has yet to be tested in a termination for failure to maintain a personnel security clearance, or where a Federal law enforcement officer is found to be *Giglio* impaired, on the basis of her statements made during an EEO proceeding. As the U.S. Supreme Court held in *Department of Navy v. Egan*, 484 U.S. 518 (1988), the MSPB does not have authority to review the substance of an underlying security-clearance determination in the course of reviewing an adverse action. Therefore, based upon *Egan* and its progeny, a Court would not have the authority to review the revocation of a security clearance even if that revocation was based upon one's testimony in an EEO proceeding. Further, it is unclear what would happen if the USAO made a *Giglio* determination that a Federal law enforcement officer was impaired in testifying based upon her prior false testimony in an EEO proceeding. *See e.g., Trong Q. Nguyen v. Department of Homeland Security*, 737 F.3d 711 (Fed. Cir Dec. 9, 2013)(holding that a USAO's *Giglio* determination is analogous to a third-party agency revocation of a credential or qualification necessary to perform the employee's position). Thus, the absolute immunity provided by Title VII's anti-retaliation provision in the 4th, 5th and D.C. Circuits may not be so absolute.

The information contained in this article is of a general nature and is subject to change; it is not meant to serve as legal advice in any particular situation. For specific legal advice, the author recommends you consult a licensed attorney who is knowledgeable about the area of law in question.