

OPM reassures managers of ‘extremely narrow’ liability in performance management actions - Government Executive

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Executive Summary

This article addresses the Office of Personnel Management's effort to reassure federal managers about their limited personal liability when taking performance-based actions against subordinates. The central argument, conveyed through an OPM memo authored by Veronica Hinton, is that adverse personnel actions are legally attributed to the employing agency rather than individual managers, with DOJ representation typically available in rare personal lawsuits. Key evidence includes Hinton's direct quotes clarifying legal responsibility, existing federal law permitting partial reimbursement of personal liability insurance premiums, and commentary from legal expert Dan Meyer of Tully Rinckey and former federal HR official Ron Sanders. Meyer contextualizes the memo as a response to manager anxiety surrounding the return of Schedule F and forced performance rating distributions, suggesting a broader political agenda of reshaping the federal workforce. Sanders, while supportive of stronger performance management, argues the memo targets the wrong audience — managers rather than agency lawyers — and notes that Federal Employee Viewpoint Survey data has long documented poor performer management failures. The article implies the memo serves both legitimate HR governance and potentially political workforce restructuring goals.

Key Insights

1. OPM's memo clarifies that performance-based actions are legally attributed to the employing agency, not individual managers, significantly limiting personal liability exposure for supervisors.
2. Legal expert Dan Meyer connects the memo to the Trump administration's broader workforce restructuring agenda, including the anticipated return of Schedule F and forced distribution of performance ratings, suggesting the reassurance is designed to embolden managers to take more aggressive personnel actions.
3. Former federal HR official Ron Sanders argues the memo misidentifies the source of institutional reluctance — asserting it is agency lawyers, not managers, who typically obstruct adverse performance actions — and cites decades of Federal Employee Viewpoint Survey data indicating employees believe poor performance is systematically undermanaged.

Practical Takeaways

- Federal managers and supervisors are legally shielded from personal liability in most performance management actions, with DOJ representation available in exceptional cases and partial reimbursement available for personal liability insurance premiums.

- The effectiveness of OPM communications aimed at improving performance management enforcement may depend on whether agency legal counsel, not just supervisors, receives clear guidance on supporting adverse actions.

Critical Analysis

Strengths: The article provides direct sourcing from the OPM memo, quotes the relevant OPM official by name and title, and includes substantive expert commentary from both a practitioner attorney (Meyer) and a former Republican administration HR official (Sanders), offering ideological balance. **Limitations:** The article does not quote the full memo, limiting independent assessment of its scope and tone. No data is presented on actual manager liability lawsuit rates or MSPB outcomes to contextualize the 'extremely narrow' claim. **Biases:** Meyer's firm primarily represents federal employees, which may color his interpretation of administrative intent. Sanders' supportive framing reflects a traditionally managerialist HR philosophy. The article's framing subtly foregrounds politicization concerns, particularly through Meyer's 'spoils system' analogy, which may influence reader interpretation beyond the memo's literal content.

Organizational Practice

The article describes the OPM practice of issuing guidance memos to agency Chief Human Capital Officers clarifying manager legal protections in performance management. It also describes existing federal law permitting agencies to reimburse up to half the cost of personal liability insurance premiums for managers. The Merit Systems Protection Board is identified as the adjudicating body for employee appeals of adverse actions, and the Department of Justice as the typical legal representative for managers sued personally for in-scope employment actions.

Strategic Implications

The memo reflects a pattern of using HR policy communications to shift organizational culture toward more assertive performance management enforcement within the federal government. The concurrent introduction of forced performance rating distributions and the anticipated return of Schedule F signals a structural realignment of federal PMS toward greater executive control and differentiation of employee performance. The identification of agency legal counsel — rather than line managers — as the primary barrier to adverse action suggests a potential gap in where PMS reform communications are directed. Long-term, the framing of performance management tools as mechanisms for workforce composition change raises questions about the boundary between performance-based and politically-motivated personnel decisions in public sector PMS design.

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