

INTRODUCTION

“To educate a person in the mind but not in morals
is to educate a menace to society.”

—Theodore Roosevelt

The federal government’s ethics rules are promulgated through a variety of media: laws, criminal and civil; regulations, government-wide and agency-specific; executive orders; and interpretations from both the courts and the regulatory bodies. However, they are all enforced almost exclusively at the agency level.

This is significant because federal management at all levels bears the primary responsibility for learning, communicating, training, and enforcing these rules. In carrying out this responsibility, federal supervisors have two main concerns.

The first, and most important, is to protect yourself as a manager. The government has warehouses full of rules all of which the government considers sinful to violate, but these sins are in real life both venial and mortal. You violate some rules, and you’re a hero; violate others and you’re a degenerate, and the same is true with ethics rules. You need to recognize the distinction because some violations will earn you at worst, a mild talking to that ends with a smile, while others will cost you your job or even land you in jail. No joke. The Office of Government Ethics publishes a yearly notification of DOJ prosecutions of federal employees for ethics violations, usually conflicts of interest. While most result in probation, restitution, and fines, many violations by federal employees actually result in hard time.

The second concern is to protect your employees. Many employees who get in trouble for ethics violations were not dishonorable people, but crossed lines that they did not know existed or were misled by their agency’s acquiescence.

My purpose in writing is not to make you an expert on ethics rules. Many of the rules on ethics, especially those dealing with money and gifts, present convoluted and dependent questions requiring an algorithmic structure to answer. What saves us is that the government already has an outstanding resource on ethics. The Office of Government Ethics (OGE) not only writes most of the government’s ethics regulations, but also gives us excellent advisory, interpretive, and training materials on its website (www.oge.gov). There, you can instantly find an answer to most issues covered by ethics regulations.

Another reason I do not want to try to make you an expert is because I want to force you when confronted with an ethics issue, especially one that personally affects you, to get help. All agencies are required to have ethics officers and advisors tasked with handling and resolving ethics issues with employees and supervisors. To be sure, their quality varies dramatically. In some agencies, these advisors are attorneys with extensive knowledge of and experience on ethical issues. In others, they are often HR specialists that the agency doesn't know what to do with so it assigns them the duty of giving supervisors bad advice.

Regardless of the quality of the advice, the simple significance of seeking guidance is that once you do, you are completely protected from any agency administrative action. The ethics regulations state unequivocally:

Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances.

5 CFR 2635.107(b).

Since the Carter Administration, my publisher, a D.C. lawyer, has been representing federal supervisors and employees charged with ethical violations, among other misdeeds, and he calls this provision a "get out of jail free card." If you come clean to your ethics advisor, you're safe from unfavorable agency actions no matter how erroneous the advice.

Technically, this protection only prohibits administrative disciplinary actions by the agency. If the ethical issue is covered by criminal statutes, like the laws against bribery or financial conflicts, there is no automatic "get out of jail free card." The authorities are only required to consider the advice given as a factor in deciding whether to prosecute. I cannot imagine, though, the Department of Justice ever pursuing a criminal case against an employee who disclosed all the facts and then relied in good faith on agency ethics advice.

I am also only covering those ethical rules that apply to all federal government employees, and am omitting those that only apply to special classes of employees or rules unique to rare situations. I am not ashamed to admit that when I look at some of the arcane provisions of OGE regulations governing matters like post-government employment for senior officials, I react both as a vampire to a crucifix or an eight-year old to Einsteinian physics.

I want to give you enough of the basics about ethics rules so you can handle virtually all the straightforward ethical issues you'll face. I also want you to know which issues are sufficiently complex to require expert help. When you finish this book, you should be able to handle almost any issue about the use of government property and equipment or gifts. When you get into more complex issues like financial conflicts, though, you should always get help.

Last, I also want to teach you how to best communicate ethical rules to your employees, and show you how to properly enforce the rules to protect both you and your employees. In the [first chapter](#), we'll look at the sources of ethics rules. The remaining chapters cover all the major ethical issues, and the last chapter will show you how to carry out your supervisory responsibilities in promulgating and enforcing ethics rules.

A quick editorial note: in previous editions, whenever I mentioned appeals cases about ethics violations, I put in the citations, which I now feel needlessly cluttered the text. Therefore, I have only included those citations when I quote from the appeals or court decision. I still have the citations, so if you need the exact citation for an example or have any other questions, just email me at the address below. Good luck and I hope this book helps.

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CHAPTER ONE

SOURCES OF ETHICS RULES

The basic ethics rules that bind federal employees come from four major sources: laws passed by Congress, government-wide regulations by several agencies, internal agency regulations, and executive orders from the President. Interpretation and guidance come in the form of advisory opinions from the Office of Government Ethics and your own agency counselors, as well as from precedential decisions from federal courts and appellate authorities.

LAWS

Importantly, federal ethics laws are not in one central location. “Ethics laws” are scattered throughout different laws contained in various titles of the United States Code (USC), both civil and criminal.

Most of the civil ethics laws are contained in 78 sections of seven different titles of the US Code. Most laws governing federal employment are contained in Title 5 (Government Organization and Employees), and the criminal laws are mostly in Title 18 (Crimes and Criminal Procedure). These laws are further broken down into parts, subparts, chapters, and sections unique to the legal system. These laws are typically cited by title then section. The part of Title 5 law governing suspensions is cited as 5 USC 7503, the part on gifts to supervisors is in 5 USC 7353. Most ethics regulations are in Title 5 (Government Organization and Employees), but many others are contained in other Titles, some of which overlap. For example, the ethics provisions in Title 5 contain the prohibition on misuse of government property, but Title 31 contains the specific prohibition on willful misuse of a government vehicle.

Many ethics requirements are also in Title 18, the federal criminal code. For example, 18 USC 201 allows up to two years in federal prison for anybody who gives or accepts a bribe to a government official.

GOVERNMENT-WIDE REGULATIONS

When Congress passes laws that require a federal agency to provide further guidance and enforcement, it will give a specific federal agency the authority to write more detailed regulations. When issued, these regulations are contained in what is called the Code of Federal Regulations, which is broken into Titles with numbers corresponding to those in the US Code. Title 5 of the Code of Federal Regulations (Administrative Personnel) has the regulations authorized by Title 5 of the US Code.

Most of what we know as ethics regulations are issued by the Office of Government Ethics (OGE). For example, 5 CFR 2635 contains the basic ethics regulations for all government employees, but Title 5 also has ethics regulations specific to individual federal agencies. For example, Part 3501 contains ethics regulations specifically for employees of the Department of the Interior, such as 5 CFR 3501.105(2), which prohibits employees of the Bureau of Land Management from holding an active real estate license. Part 3201 contains ethics regulations governing the FDIC, such as 5 CFR 3201.102(b) (1) (prohibiting employees from auditing, reviewing, or evaluating banks that have loaned them money).

INTERNAL AGENCY REGULATIONS

Individual agencies write their own internal regulations about ethical issues. For example, I mentioned ethics regulations unique to the Department of the Interior. The Department of the Interior also issues internal regulations (not in the Code of Federal Regulations, but published as internal agency directives) that contain, for example, guidance on the use of government property, allowing *de minimus* use of the Internet for personal use.

For our purposes, at the operating level of the federal supervisory/employee relationship, the difference between a government-wide ethics regulation and an agency-specific ethics regulation is meaningless. Whether an activity is prohibited government-wide or internally does not matter—the requirement, regardless of its source, is binding on employees and may be enforced through the disciplinary process. For example, the Department of the Interior ethics rules mentioned above allowing *de minimus* use of the Internet specifically prohibits using the Internet for stock trades.

If you were to discipline a Department of the Interior employee for making stock trades on a government computer, it does not matter to an appellate authority whether this was prohibited by law, government-wide regulation, or an agency regulation. In addition to proof of the offense and justification of the penalty, appeals authorities are concerned primarily with whether the act was prohibited, and in cases involving intent, as we shall discuss in detail later, whether the employee knew it was prohibited.

LEGAL INTERPRETATIONS

Laws and regulations are mostly empty words until somebody with authority interprets them and explains how that interpretation applies to specific situations and to the people who have to apply them. What, for example, does “willful misuse” mean in the law? What tells federal employees what they can and cannot do with a government vehicle?

The answers lie in precedential decisions by federal appellate authorities and the federal courts. If you discipline a tenured employee with anything more than a fourteen-day suspension, for example, the employee may appeal to the Merit Systems Protection Board (MSPB). The MSPB is an independent federal agency that reviews the agency's actions and makes a final and binding decision on the appropriateness of the action. An employee covered by a labor contract might persuade their union to challenge the action before a labor arbitrator rather than MSPB. If an employee alleged that a disciplinary action was illegal discrimination or a violation of federal labor law, the employee could challenge the action before the Equal Employment Opportunity Commission (EEOC) or, in the case of alleged labor law violations, before the Federal Labor Relations Authority (FLRA). Employees who are unsuccessful before an appeals authority can then enter the federal court system.

In the case of the MSPB and federal courts, most of their decisions are precedential and binding on all federal agencies. What those forums say a law or regulation really means is binding in all future similar situations. The MSPB has issued dozens of precedential decisions defining "willful misuse" and giving us fairly exact guidance about what situations justify discipline or those that constitute legitimate "minor personal use." We shall discuss this in detail in [Chapter Six](#) on misuse of property.

GUIDANCE

Guidance on ethics rules and their application is available from anybody who has an opinion and access to the Internet. The most reliable source, though, is the Office of Government Ethics, which gives guidance through a variety of media, including formal advisory opinions.

Also important is guidance from your own agency that comes in two forms: written materials almost always available online and guidance from agency ethics counselors. Advice from ethics counselors is of variable quality, but gives you that "get out of jail free card" I mentioned in the [Introduction](#). This is true as long as you've divulged all the facts. Now let's turn to the specific ethics rules.

I want to avoid reciting a series of laws and regulations, so I've decided to use my own organization and coalesce the different ethics rules into separate topics, regardless of their source. I'm also not going to cover every ethical rule in the regulations. I omit those that are fairly obvious or are little more than motherhood support statements.

For example, one of the fourteen basic principles of government service in the OGE regulations is: