

Attachment 1 to OSC Form 14

Prohibited Personnel Practice Class Action Complaint on behalf of multiple EPA environmental justice employees

Complainants with and through counsel at Public Employees for Environmental Responsibility file this complaint on their own behalf and on behalf of all others similarly situated to petition the Office of Special Counsel to investigate this matter and, in the meantime, to seek from the Merit Systems Protection Board an order ending their illegal administrative leave and immediately returning them to duty status.

I. INTRODUCTION

On February 6 and 7, 2025, approximately 168 civil servants within the U.S. Environmental Protection Agency (EPA)'s Office of Environmental Justice and External Civil Rights were summarily stripped of all job duties and placed on administrative leave, effectively immediately. Later that month, agency employees in other offices experienced the same. The rationale: EPA had identified them as having environmental justice job duties.

These employees have been kept on administrative leave ever since: a period of over eight weeks and counting for those notified earliest. Many have explicitly sought the opportunity to transfer (or to detail) to other areas of the agency to complete other work for which they are qualified, but were constructively denied and notified they would remain in administrative leave status.

The stripping of all employment duties from these complainants implicates several prohibited personnel practices as enumerated in 5 U.S.C. § 2303 including, although not necessarily limited to, the following:

1. 5 U.S.C. § 2302(b)(4): Obstructing the right to compete for employment
2. 5 U.S.C. § 2302(b)(10): Discrimination on the basis of non-performance-related factors
3. 5 U.S.C. § 2302(b)(12): Violation of merit system principles

This discrimination on the basis of non-job-related conduct and improper personnel actions are jurisdictional bases for OSC to investigate and seek corrective action. A prerequisite for OSC jurisdiction is that the complainant has been subjected to a "personnel action" as defined by 5 USC § 2302(a)(2) which says in relevant part that –

“(2) For the purpose of this section— (A) ‘personnel action’ means— (i) an appointment; ... (iv) a detail, transfer, or reassignment; (v) a reinstatement; (vi) a restoration; (vii) a reemployment; ...and (xii) any other significant change in duties, responsibilities, or working conditions; with respect to an employee in, or applicant for, a covered position in an agency...”

In this instance, the loss of all duties and the inability to transfer constitute personnel actions. Accordingly, complainants now petition the Office of Special Counsel to investigate this matter and to seek from the Merit Systems Protection Board an order ending their illegal administrative leave and immediately returning them to duty status while OSC conducts its investigation.

II. EPA'S MASS PLACEMENT OF ENVIRONMENTAL JUSTICE EMPLOYEES ON ADMINISTRATIVE LEAVE

On February 6 and 7, 2025, approximately 168 civil servants within the U.S. Environmental Protection Agency (EPA) assigned to Environmental Justice (EJ) duties received an unsigned email message sent from the address Notice1@epa.gov. The message informed them that they were being placed on administrative leave, effectively immediately, further stating, "You are receiving this email because you have been identified as an EPA employee working in 'environmental justice' or a diversity, equity, and inclusion position and/or office." Later that month, employees in other EPA offices received similar notices based on the determination that their jobs involved environmental justice components.

These employees have been kept on administrative leave for since then. During this time, they have been cut off from work email and forbidden from visiting their workplaces or conducting any official business. The representative employees whose details we provide in individual complaints have requested the opportunity to transfer or to detail to other available work in the agency, but despite having the qualifications to do so, they were informed that they would remain in administrative leave status: an effective denial of their requests.

III. VIOLATIONS OF LAW AND PROHIBITED PERSONNEL PRACTICES

A. Violation of Civil Service Law

Under the provisions of 5 USC § 1212(a)(5), OSC is authorized to investigate and seek appropriate corrective and disciplinary action for "[a]ctivities prohibited by any civil service law, rule, or regulation." The Administrative Leave Act of 2016 states that "during any calendar year, an agency may place an employee in administrative leave for a period of not more than a total of 10 work days." 5 U.S.C. § 6329a(b). All the affected employees have been kept on administrative leave far beyond this statutory limit.

Although Congress directed the Office of Personnel Management (OPM) to promulgate regulations to implement the act, this statutory prohibition does not require an implementing regulation as some of the other provisions of that Act (such as reporting requirements) do. This is a clear violation of an unambiguous statutory prohibition.

B. Prohibited Personnel Practices

Three Prohibited Personnel Practices as set out in 5 U.S.C. § 2302 have direct application to the EJ employees stranded in administrative leave status. The PPP violations clearly warrant investigation and a stay of EPA's stripping complainants of their job duties.

1. Violation of (b)(4): Obstructing the right to compete for employment

Several of the named complainants, after being placed on administration leave, specifically requested transfer to another office to use their substantial skills and experience to continue to serve EPA's mission and the American public. There is no evidence that the requests were even considered, and managers informed the requestors simply that they would remain in administrative leave status. While non-selection is not considered willful obstruction, here there has been a constructive denial of the opportunity to apply and to compete for other positions where managers have refused to consider valid transfer requests.

2. Violation of (b)(10): Discrimination on the basis of non-performance-related factors

In this instance, the EJ employees are being literally segregated (*e.g.*, told to stay away from the office) due to their prior posting and the Trump Executive Order 14148 rescinding all previous Executive Orders promoting environmental justice and in effect outlawing EJ as a legitimate government function henceforth.

The actions against these EJ employees violates 5 U.S.C. § 2902(b)(10) which prohibits discrimination "against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others." *See* House Conference Report No. 95-1717, 95th Cong. 2d Sess. at 131, reprinted in 1978 U.S. Code Congressional and Administrative News 2864 ("The conferees intend that only conduct of the employee or applicant that is related to the duties to be assigned to an employee or applicant or the employee's or applicant's performance or the performance of others may be taken into consideration in determining that employee's suitability or fitness.")

EPA has not alleged that any EJ employee had engaged in conduct adversely affecting their performance or the performance of others. Notably, many of the affected employees had transferred to the EJ office from other offices at EPA, and in some cases had worked in other EPA offices for decades. These employees, along with employees who were hired as external candidates into the EJ office, have significant qualifications (such as public health analysts, engineers, grant administration) with potential application in many organizational programs beyond EJ. Their EJ posting has no bearing on their ability to perform other work for which they are qualified. Nor would their reintegration into other agency programs negatively affect the performance of their colleagues. Their placement in administrative leave status for a period of time exceeding the statutory limit of 10 working days constitutes discrimination against them in violation of 5 U.S.C. § 2302(b)(10).

3. Violation of (b)(12): Taking actions contrary to laws, rules, and regulations implementing and/or directly concerning merit systems principles

In addition to, but in conjunction with, violation of the civil service law on administrative leave discussed above, the treatment of the EJ employees is prohibited by 5 U.S.C. § 2902(b)(12) which prohibits taking or failing “to take *any other personnel action if the taking of or failure to take such action* violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.” (emphasis added)

5 U.S.C. § 2301, which lays out the merit principles, provides, *inter alia*, that --

- “selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.”
- “The Federal work force should be used efficiently and effectively.”
- “Employees should be retained on the basis of the adequacy of their performance.”
- “Employees should be protected against arbitrary action, personal favoritism, or coercion for partisan political purposes.”

In this instance, the cited treatment of the EJ employees is not just contrary but is anathema to these merit principles. Being stripped of all job responsibilities, locked out of their offices and computer systems, and having requests for changes in job duties or transfers to other offices ignored violates each of these principles.

IV. CLASS APPEAL

While these complaints are not directly appealable to the Merit Systems Protection Board (MSPB), OSC can request a stay with MSPB on behalf of similarly situated EJ employees. The MSPB rules state:

“Class appeals. (a) Appeal. One or more employees may file an appeal as representatives of a class of employees. The judge will hear the case as a class appeal if he or she finds that a class appeal is the fairest and most efficient way to adjudicate the appeal and that the representative of the parties will adequately protect the interests of all parties...In determining whether it is appropriate to treat an appeal as a class action, the judge will be guided but not controlled by the applicable provisions of the Federal Rules of Civil Procedure.” (Title 5 Chapter II Subchapter A Part 1201§ 1201.27)

In this instance, a class complaint would be the most efficient path to protect the interests of the scores of employees without prejudicing the interests of the Agency.

V. ACTIONS REQUESTED

The complainants seek the following corrective actions:

1. Immediate removal from administrative leave and assignment of substantive duties or placement of complainants on mutually acceptable assignments with other offices or divisions of the Agency;
2. Written permission for complainants to seek and obtain transfers to fill any EPA vacancy;
3. Removal from classification as “environmental justice employees” for future reduction in force purposes, as the employees could - and should - have been reassigned duties elsewhere in the agency rather than placed on administrative leave;
4. Award of appropriate attorney fees and costs to PEER.

We are available and ready to offer any assistance that may expedite the process of investigating this complaint and filing a petition with MSPB to return EJ employees in EPA to active duty status during the investigation period. Please feel free to contact me with any questions or concerns.

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