

Lesson 2: Legal Basis for Federal HR Professionals

Lesson Overview

Like all federal government actions, the actions of federal HR professionals must be authorized through laws and policies. These laws and policies outline what HR professionals can and cannot do in their jobs.

In this lesson, you will learn to:

- Define statutes, regulations, policies, and Executive Orders (EOs) that are applicable to federal HR functions
- Explain how the public process for creating regulations affects federal HR professionals
- Distinguish between the roles of OPM, MSPB, EEOC, CHCOs, OSC, and various HC professionals

Legal Basis for Federal HR Professionals

The legal basis for HR professionals comes from a combination of documents from the legislative and executive branches. There are four types of legal basis that you should be able to define in order to understand HR policy in the federal government.

Statutes

A statute is a written law passed by Congress. A statute begins as a bill that is proposed or sponsored by a legislator in either the Senate or the House of Representatives. A bill becomes a statute after it is approved by a majority in both houses of Congress and then signed by the President.

Regulations

Regulations are instructions issued by departments or agencies in the executive branch. They direct the actions of the departments or agencies in enforcing the intent of the statutes enacted by Congress. Therefore, they have the force of law.

Agency Policies and Requirements

Policies and requirements are guidelines for how executive departments or agencies should conduct their business. These are specific to each department or agency and not usually applicable across the government.

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Executive Orders (EOs)


An EO is an instruction that comes directly from the President—rather than an executive agency—that implements or interprets a federal statute. It carries the same weight as a law for executive branch employees.

Legal Publications

Statutes, regulations, policies, and EOs are all published so that they are available to the public. You can use these publications to find laws and policies that are applicable to HR professionals:

U.S. Code (U.S.C.)

The U.S.C. contains the laws of the United States, organized into titles based on subject matter. It is prepared and published by the Office of the Law Revision Counsel (OLRC) of the House of Representatives. It is organized into a hierarchy of Titles, Parts, Chapters, and Sections.

The U.S.C. can be found online at <http://uscode.house.gov> 

Federal Register (FR)

The FR is an official, daily, centralized publication system for presidential documents and executive branch rule and notice documents. The FR includes a record of the following documents:

- EOs and proclamations
- Documents of general applicability and legal effect
- Documents that impose a penalty
- Any other documents required by Congress

You can access the FR at <https://www.federalregister.gov/> 

Code of Federal Regulations (CFR)

The CFR is an arrangement of the rules published in the Federal Register by the executive departments and agencies of the federal government. The CFR contains regulations directing how to implement the laws in the U.S.C. It provides the official and complete text of agency regulations in a single publication. The CFR is arranged in a hierarchy of Titles, Volumes, Chapters, and Parts.

You can access the CFR at <https://www.archives.gov/federal-register/cfr> 

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Laws, Regulations, and EOs Important to HR

Now let's discuss some of the laws, regulations, and EOs that are particularly relevant to HR professionals.

5 U.S.C.

5 U.S.C. contains the laws related to the organization of the government and the management of its employees. There are three Parts in Title 5.

Part I—The Agencies Generally

5 U.S.C. Part I covers the organization, powers, and procedures of the agencies and departments of the government.

Part II—Civil Service Functions and Responsibilities

5 U.S.C. Part II deals with civil service functions and responsibilities, including the establishment of the Office of Personnel Management (OPM).

Part III—Employees

U.S.C. Part III contains many of the laws regarding the management of employees, including retention, performance, attendance and leave, and labor management and employee relations.

5 CFR Chapter I, Subchapter B

The majority of the regulations that are most relevant to HR professionals are found in 5 CFR Chapter I, Subchapter B. Review a description of selected 5 CFR parts by selecting each part from the list below.

This is only a selection of applicable regulations. Depending on your role, you may find that other parts are more relevant to your day-to-day activities. You can always visit www.ecfr.gov and select “Title 5 – Administrative Personnel” from the drop-down menu to learn more about these and other 5 CFR parts in more detail.

Part 210 Basic Concepts and Definitions

Part 210 provides the definitions for key HR terms discussed in the regulation.

Part 211 Veteran Preference

Part 211 defines veterans' preference and the administration of preference in federal employment.

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Part 213 Excepted Service

Part 213 provides the definitions of excepted service and excepted position. It also describes identification of positions, publication of excepted appointing authorities, and special provisions for Schedules A, B, C, or D.

Part 302 Employment in the Excepted Service

Part 302 provides information for applying excepted service preferences.

Part 315 Career and Career-Conditional Employment

Part 315 describes the Career and Career-Conditional employment system. This includes:

- The requirements for career tenure
- The process by which an employee can become a Career or Career-Conditional employee from Registers, by Reinstatement, or by Transfer
- Other details regarding this system

Part 330 Recruitment, Selection, and Placement (General)

Part 330 describes the processes—and gives the definitions—related to recruiting and placing government employees. It includes descriptions of the Reemployment Priority List (RPL), Agency Career Transition Assistance Plan (CTAP), and Interagency Career Transition Assistance Plan (ICTAP).

Part 335 Promotion and Internal Placement

Part 335 provides agencies authority to promote, demote, or reassign employees. It describes the requirements for merit promotion programs, and requires agencies to notify OPM of job announcements.

Part 362 Pathways Program

Part 362 describes, and provides the authority for, the Pathways Program. It gives provisions and processes for the Internship Program, Recent Graduates Program, and Presidential Management Fellows Program.

Part 410 Training

Part 410 describes the requirements for planning, evaluating, implementing, paying for, and reporting on training for federal employees. It also provides the rules for how and when employees may accept awards received in connection with non-government-sponsored training.

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Part 430 Performance Management

Part 430 describes the appraisal system and the process by which managers will plan, monitor, and rate employee performance.

Part 531 Pay under the General Schedule (GS)

Part 531 implements USC 5332, 5333, and 5334, which deal with setting and adjusting the pay rates for GS employees.

Part 630 Absence and Leave

Part 630 describes the requirements for monitoring employee absences and granting leave. This includes the accrual and accumulation of annual leave, requesting and granting sick leave, and provisions for home, shore, funeral, emergency, family and medical, and disabled veteran leave. It also establishes the voluntary leave transfer program.

Executive Orders (EOs)

The President can also clarify the enforcement of laws through EOs. The selection of EOs below are of particular relevance to HR professionals. Read each EO below to learn more about it.

EO 11246

EO 11246, issued by President Lyndon B. Johnson, made it illegal for government and government contractors to discriminate against employees or applicants on the basis of race, color, religion, or national origin.

EO 11375

EO 11375, also signed by President Johnson, amended EO 11246 to include “sex” as a category against which government and government contractors could not discriminate.

EO 10988

EO 10988, issued by President John F. Kennedy, recognized that federal employees had the right to collective bargaining. This allows federal employees to join unions or other worker organizations.

EO 11491

EO 11491, issued by President Richard Nixon, established a framework for managing labor and management relations within the federal government. It effectively replaced EO 10988, strengthening the labor-management relation system and creating policies and practices that applied to all applicable federal employees.

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EO 13197

EO 13197, issued by President William J. Clinton, applied the merit system principles across the executive branch and required government agencies to submit workforce information to OPM for tracking and evaluation purposes.

EO 13562

EO 13562, issued by President Barack Obama, changed the way the government hires students under the Pathways Programs in the excepted service.

Creating Laws and Regulations

As an HR professional, it is important for you to understand the process surrounding the creation of laws and regulations. You need to stay aware of changes in laws and regulations surrounding HR and the effects of those changes on how you do your job. Knowing where a law or regulation is at in terms of the process for change will help you know how and when you will apply those changes.

The next section of this lesson will explain the processes for creating laws and regulations. As you continue, think about how these processes directly affect your role as an HR professional.

Process for Creating Law

Before a law becomes part of the U.S.C., it must be acted upon by both houses of Congress as well as the executive branch.

Read the steps below for a better understanding of a law becomes part of the U.S.C.

Step 1

When a Senator or Representative has an idea for a new law, he or she produces a rough draft of the idea and sponsors it, which makes it a bill.

Step 2

The bill then goes to whichever legislative branch the sponsoring Senator or Representative belongs (Senate or House of Representatives).

Step 3

The sponsor's version of the bill then goes through a process that can change it or lay it, meaning that the legislature will not vote on whether or not to make it a law.

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Step 4

If the bill is not laid, it will be voted on by the legislative branch of the sponsoring Senator or Representative. If a majority of the branch votes to pass it, the bill will be sent to the other branch. There it will go through a similar process of changing and voting or laying.

Step 5

If a majority in both the House and the Senate approves all of the changes made to the bill, the final version of the bill then goes to the President. The President takes action on the bill by either signing it into law, letting it become law without a signature, vetoing it, or pocket-vetoing the bill.

Step 6

If the bill is signed into law, it becomes codified in the U.S.C. and becomes the law of the land.

Process for Creating a Regulation

Once a law is enacted, the agencies and departments of the executive branch must enforce that law. Regulations outline the way in which the executive branch will enforce the law. A regulation must also go through a process—called rulemaking—before it is approved and legally binding.

To learn more about the rulemaking process read the steps below.

Step 1

An agency develops a draft of a regulation or rule that outlines how they will enforce a statute. The draft is reviewed within the agency and the executive department. In some cases, the Office of Management and Budget (OMB) also reviews the rule.

Step 2

The agency publishes a notice in the FR that a rule is being proposed, and the public is given an opportunity to make comments on the proposed rule.

It's important to realize that the public response to the proposed rule can give you an indication, as an HR professional, of the type of inquiries or concerns from your internal and external customers that you will need to address while performing your job duties.

Step 3

When the comment period ends, the agency considers the feedback, responds to comments, makes changes as necessary, and publishes a final rule in the FR with a date when the rule becomes effective.

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The Process of Creating Laws and Regulations Can Affect Your Role in the Following Ways:

When the draft regulation is published, you can begin to see what changes will result. The public response to the proposed rule can give you an indication of the type of inquiries or concerns from your customers that you will need to address.

Once the final regulation is published, you will be expected to apply those changes to how you conduct your business as an HR professional.

The Role of Government Agencies in Federal HR

There are several agencies responsible for the management and oversight of HR in the federal government. As an HR professional, you need to be able to identify the role of each of the following agencies with regard to HR.

Office of Personnel Management (OPM)

OPM is responsible for several broad categories of HR management, including: recruiting, retaining, and honoring the federal workforce. OPM is responsible for:

- Managing federal job announcement postings
- Conducting background investigations
- Upholding the merit system principles through agency oversight
- Managing pension benefits and insurance programs
- Providing training and development programs
- Developing, testing, and implementing new policies that relate to HR

Merit Systems Protection Board (MSPB)

MSPB is an agency dedicated to protecting the merit system principles and ensuring that prohibited personnel practices are not encountered in the federal workplace.

Federal Labor Relations Authority (FLRA)

FLRA administers the labor-management relations program and establishes policies and guidance related to labor-management relations and resolving disputes.

Equal Employment Opportunity Commission (EEOC)

The EEOC is responsible for enforcing laws that make it illegal to discriminate against an applicant or employee in both the public and private sectors.

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Chief Human Capital Officers (CHCO) Council

Established as part of the Homeland Security Act of 2002, the CHCO council advises and coordinates activities of agencies on modernizing HR systems, improving the quality of HR information, and drafting, reviewing, or responding to legislation affecting HR operations and organizations.

Office of Special Council (OSC)

OSC is an independent investigative and prosecutorial agency whose mission is to safeguard the merit system principles by protecting federal employees and applicants from prohibited personnel practices, especially regarding whistleblower protection.

The Role of HC Professionals in Federal HR

HC professionals play a critical role in advising management.

They are usually technical experts in one or more functional areas (e.g., staffing, classification, employee relations) and function as advisors to develop HR solutions to address customer issues and achieve specific or long-term organizational goals.

They may serve as advisors or strategic partners on any number of workforce issues including workforce planning, analysis of programs and organizations, learning and development, strategic recruitment, and accountability.

Lesson Summary

Congratulations, you have completed Lesson 2: Legal Basis for Federal HR Professionals.

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