

# NEPOTISM & IMPARTIALITY

## In the Workplace

### Definitions and Considerations



***Zoom Into Training!***

Presented by Brian J. Wagner

NAPS Past National President

# NEPOTISM

What is nepotism?

“Nepotism” generally refers to favoritism shown to a relative in the workplace on the basis of the personal relationship.

# NEPOTISM

## What is impartiality?

Impartiality is when someone demonstrates being fair, rather than *partial* or *biased*, in dealings with other employees.

# NEPOTISM

Why should you care about nepotism and impartiality?

- Criminal statute      18 USC § 208
- Civil statute          5 USC § 3110
- USPS rules            EL-312, ELM 660
- Fed. ethics regs      5 CFR § 2635
- Workplace morale
- Legal actions, OIG, public opinion, congressional inquiries

# CONFLICT OF INTEREST STATUTE: 18 USC § 208

Under this statute, an employee may not:  
Participate “personally and substantially” in  
any “particular matter” that would have a  
“direct and predictable effect” on their  
financial interests, or those imputed  
(credited) to them.

## CONFLICT OF INTEREST STATUTE: 18 USC § 208

- Participation is personal and substantial when it is direct or supervisory, and is significant to the outcome of the matter, even if it is not determinative by itself.
- A particular matter involves deliberation, decision or action; impacts specific persons or entities or an identifiable class thereof, and involves more than broad policy.
- The direct and predictable effect on the financial interests can be either a good or bad effect.
- Imputed (*credited*) interests include those of the employee's: spouse; minor children; general business partners; prospective employers, and entities for which the employee works or serves as an officer, director, employee, or partner.

# CONFLICT OF INTEREST STATUTE: 18 USC § 208

## **Example:**

- EAS supervisor borrows a substantial amount of money from a craft employee in the office -- interest free.
- EAS supervisor loans a substantial amount of money to a craft employee at a reasonable interest rate.

## IMPARTIALITY REGULATION: 5 CFR 2635.502

- An employee must consider whether his/her impartiality would *reasonably be questioned* if he/she participated in a particular matter involving others with whom he/she has certain personal or business relationships.
- If his/her impartiality could be questioned, he/she should not participate in the matter unless he/she informs an ethics official about the matter and is authorized to proceed.



## IMPARTIALITY REGULATION: 5 CFR 2635.502

- The Standards also require employees to avoid even the appearance of a conflict of interest or any other impropriety. (emphasis added)
- But this generally turns on whether the employee recognized the potential for the appearance of partiality or impropriety – this section of the regulations is rather mushy
- Even if employee doesn't recognize the appearance of a conflict of interest doesn't mean there isn't a possible conflict.

# ANTI-NEPOTISM STATUTE: 5 USC 3110

Prevents a federal employee from:

- Appointing, employing, promoting or advancing a relative
- Advocating the appointment, employment, promotion or advancement of a relative

# POSTAL POLICY: EL-312

Postal selection policies prohibit an employee from being on a promotion review board, or a selecting official, when the employee's child, sibling, housemate, parent, or other relative is an applicant.

# NEPOTISM

## Spousal Relationships

- It is never appropriate for spouses to have a direct reporting relationship.
- Criminal statute (shared financial interests)
- Impartiality concerns
- Appearance issues



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May 22, 2002

VICE PRESIDENTS, AREA OPERATIONS  
MANAGER, CAPITAL METRO OPERATIONS

SUBJECT: Reporting Relationships Involving Postal Spouses

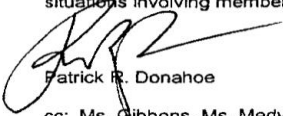
As you know, situations in which a postal employee's direct supervisor is his or her spouse are problematic under the criminal conflict of interest law. Sometimes, even if there are a number of layers of supervision between the spouses, there may still be cause for concern, including the appearance of impropriety. For these reasons, situations involving reporting relationships between spouses should be promptly brought to the attention of the area Human Resources manager and analyzed on a case by case basis with help from the Law Department.

Under the criminal conflict of interest law, a postal employee may not take official action in any matter in which he has a personal or imputed financial interest. The financial interests of an employee's spouse are imputed to the employee. Thus, an employee may not participate in any official matter that will have a direct and predictable effect on his—or his spouse's—financial interests. Participating in any matter that affects or involves pay, workhours, awards, promotional opportunities, overtime, and even work assignments, depending on the circumstances, are considered to affect the spouse's—and thus the supervisory employee's—financial interests.

The closer the reporting relationship between spouses, the more obvious and significant the conflict of interest problem is. It is *never* appropriate for one spouse to report **directly** to the other. When the reporting relationship is more attenuated, however, there *may* be no need to move or reassign either employee to ensure compliance with the law. But because this is a criminal law, we must not take any chances. It is our responsibility to avoid putting—or keeping—employees in situations where they are in violation of a criminal statute.

As soon as a spousal reporting relationship comes to your attention, contact the Human Resources manager in your area. If necessary, he or she will involve the managing counsel of your area Law Office for an analysis and prompt resolution of the situation. Working in conjunction with Human Resources, the lawyers will recommend action appropriate to the specific situation.

Finally, as information, please be aware that the financial interests of an employee's minor children, outside employer, and certain others are also imputed to the employee. Since the Postal Service does not employ minors, only a reporting relationship involving a spouse may cause a conflict of interest concern under the criminal statute. But while reporting relationships between unmarried employees who share a household are not covered by the *criminal* statute, they are often problematic under the Standards of Ethical Conduct and postal policies. Please contact Human Resources or the Law Department for more information about how to deal with situations involving members of the same household.

  
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## Spousal Relationships

**Scenario 1:** *Husband and wife are both bargaining unit employees. Wife applies and is selected for Supervisor, Customer Service position. Wife provides day-to-day supervision, approves overtime and leave requests for her spouse (among others). Problems?*

- Criminal statute -- can't act in matters in which you have financial interest (here, imputed interest due to husband's pay issues, etc.)
- Impartiality regulations -- can't act in matter that will directly and predictably affect financial interest of member of your household UNLESS specific authorization is received from agency designee.
- Direct supervision of spouse is a problem -- can't move the bargaining-unit spouse.

### **Resolution:**

USPS should have provided for this before promoting wife (spouse). Unless AVP approves "artificial reporting relationship" (where husband actually reports to someone other than his wife), non-bargaining (EAS) employee can be directed to move to another position that will terminate the reporting relationship.

# Spousal Relationships

*Scenario 2: A Manager, Distribution Operations (MDO), marries a tour supervisors (SDO). Problems?*

- Criminal statute -- can't act in matters in which you have financial interest (here, imputed interest due to husband's pay issues, etc.)
- Impartiality regulations -- can't act in matter that will directly and predictably affect financial interest of member of your household UNLESS specific authorization is received from agency designee.

## **Resolution:**

- New relationship **MUST** be revealed to the higher level. Higher level must take steps to redirect the reporting relationships, moving one of the employees if necessary, so that no reporting relationship exists between the two married employees.



# NEPOTISM

## Household Members

- It is not appropriate for one household member to report to another.
- Criminal statute does not apply **BUT** impartiality regulations **do** apply AND so do appearance issues.

# NEPOTISM: Household Members

*Scenario 3: Same as Scenario 1, Supervisor and Craft , but the employees are just living together, not married. Problems?*

- Criminal statute does not apply, but the impartiality regulations do. Household members' financial interests are considered to be connected.
- IMPARTIALITY REGULATION: 5 CFR 2635.502 requires that approval be sought and obtained for EACH TIME an employee must act in a particular matter in which his or her action will have a direct and predictable effect on his or her household member. Not very practical in a direct reporting situation.

## **Resolution:**

USPS should have provided for this before promoting one of the “living together” couples (i.e., Life Partners). Unless AVP approves “artificial reporting relationship” (where one life-partner actually reports to someone other than the other partner), non-bargaining (EAS) employee can be directed to move to another position that will terminate the reporting relationship.

# NEPOTISM: Household Members

**Scenario 4:** *Same as Scenario 2: (MDO and SDO), but employees just moved in together and are not engaged or married. Problems?*

Again, criminal statute is not implicated, but impartiality regulations apply. Because this relationship poses problems under the ethical conduct regulations, it, too, should be reported to the higher level. Same steps should be taken to resolve it.

## **Resolution:**

- New relationship **MUST** be revealed to the higher level. Higher level must take steps to redirect the reporting relationships, moving one of the employees if necessary, so that no reporting relationship exists between the two non-married employees.

# NEPOTISM

## Other Relatives

Whether non-spousal relatives may be in reporting relationships depends on the facts of the situation and relevant postal policy.

- Criminal statute does not apply
- BUT impartiality regulations do apply
- As do appearance issues

# NEPOTISM: Other Relatives

*Scenario 5: A postmaster has a carrier register with three candidates. The top score is a veteran who is his nephew. No other preference eligibles are among the applicants. Postmaster hires the nephew without forwarding the case to the next higher level of management, though he is obligated to reveal the relationship to the higher level. Problems?*

- USPS must consummate the hiring action (Veteran's Preference Act does not permit bypassing a veteran for a non-veteran; also, Uniform Services Employment and Reemployment Rights Act).
- Arguably, the PM could have recused and passed the selection responsibility along to the higher level. As long as the PM discloses the relationship to the next higher level, he has complied with the law assuming a kind of *pro forma* approval for hiring situations with these facts. The postmaster's hands were tied.

# NEPOTISM: Other Relatives

*Scenario 6: A couple is divorced and the ex-spouse (husband/wife) participates in an EAS selection committee for a higher-level position. The person's ex-spouse (husband/wife) is a member of the applicant pool. Problems?*

- There is no longer a legal relationship between the two. However, the appearance of impropriety is likely to enter into the situation.
- Arguably, the ex-spouse on selection committee may have a financial interest in getting their ex-spouse a promotional increase resulting in a reduction of post-marital or child support payments.
- Ex-spouse on selection committee **could/may** bear ill will against their former spouse and wish to limit their possibility for a promotion. Either way, these concerns are eliminated if the ex-spouse on selection committee recuses self from committee.

# CONSIDERATIONS IN NON-SPOUSAL SITUATIONS

What exactly is the nature of the personal relationship between the supervisory and subordinate employees?

*Generally, household members almost invariably have a shared financial interest in the household. However, a parent and adult child, for example, who do not share a household may not have any other shared financial interests; there may still be appearance concerns.*

Are the employees “dating”, but not living together?

*Dating employees may not have any shared financial interests, but there is often an appearance issue of impropriety.*

If they are parent and child, siblings, cousins, or in-laws, do they reside in the same household?

*Household members usually have a shared financial interest in the household. For example, cousins who share a home may pose more of an impartiality and/or appearance issue than siblings who do not share a home or other financial interests.*

# CONSIDERATIONS IN NON-SPOUSAL SITUATIONS

Do the two own any real property together?

*The shared financial interest may exacerbate an appearance issue.*

Have other employees complained about, or simply noted, special treatment being received by the subordinate employee?

*What were the complaints, from whom, and are they credible? Is just one person complaining, or are a number of people alleging partiality?*

Is there any evidence of any type of favoritism?

*EVIDENCE – not just allegations – of preferential treatment should be checked out and dealt with, via transfer, termination, or other disciplinary action, as the facts warrant.*



# CONSIDERATIONS IN NON-SPOUSAL SITUATIONS

Is an investigation necessary in order to elicit answers to these questions?

- Contact USPS Field Law Office, or at headquarters, the Chief Counsel, Employment Law, or the Chief Counsel, Ethics and Federal Requirements, if additional investigation seems necessary.
- Often, a management investigation will be the most timely and efficient way to check out the allegations; OIG is contacted for its concurrence that management should investigate.
- USPS prefers to avoid having the Office of Special Counsel (independent agency) investigate – per a longstanding agreement with OSC, the USPS is permitted to investigate and otherwise handle any nepotism allegations involving postal employees.

# NEPOTISM

Attempting to exert influence in a selection, promotion, or transfer matter, especially when it involves a relative, *violates* the impartiality section of the Standards of Ethical Conduct, *and* the EL-312.

# ADVICE TO VOID POTENTIAL NEPOTISIM

- If involved in a relationship with a craft employee in same office, expect EAS to be moved from office, not craft employee. Inform higher-level manager of any relationship to avoid violations of USPS.
- Reconsider applying for an EAS promotion or taking a lateral position to an office where you could supervise spouse or non-spousal person.
- If spouse or non-spousal employee works in morning, and EAS closes office, could still be considered Nepotism.
- Immediately report any potential **nepotism** situation involving yourself before issues becomes bigger.
- Trying to rationalize that your nepotism situation is “OK”, does not supersede USPS policy or the law.

# FOR GUIDEANCE AND ASSISTANCE

For assistance with matters to avoid committing or needing clarification about nepotism, contact:

- USPS Human Resources or Field Law Office
- Contact the USPS Law Department: Chief Counsel of Employment Law or Chief Counsel of Ethics and Federal Requirements.
- Contact NAPS Representative if you charged with violating USPS Nepotism rules or require guidance.

# *Thank You!*



# *Questions?*