



*(January 25, 2016)*

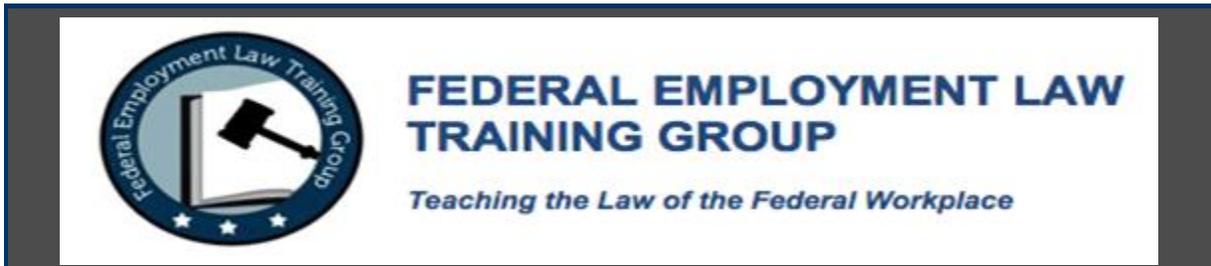
In order to further improve the lines of communication and to respond to the concerns between the National VA Council and you our members, I have established a National VA Council Briefing. This NVAC Briefing will bring you the latest news and developments within DVA and provide you with the current status of issues this Council is currently addressing. I believe that this NVAC Briefing will greatly enhance the way in which we communicate and the way in which we share new information, keeping you better informed.

**Alma L. Lee**  
National VA Council, President

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**In This Briefing:** Who is considered a Whistleblower? MSPB needs your help to decide.

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**FELTG IS COMING TO DALLAS IN FEBRUARY!**

Join Barbara Haga on February 23-25 for

**Advanced Employee Relations**



*Deborah Hopkins,*

**UPCOMING SEMINARS IN WASHINGTON, DC**

February 1-5:  
**Absence & Medical Issues Week**  
*Space is still available.*

March 7-11:  
**MSPB Law Week**

March 14-17:  
**Leave & Attendance Management and Performance Management**

April 4-8:  
**EEOC Law Week**

April 18-22:  
**Workplace Investigations Week**

May 2-6:  
**FLRA Law Week**

May 16-20:  
**Supervisory HR Skills Week**

June 6-10:  
**Employee Relations Week**

July 11-15:  
**Legal Writing Week**

## WEBINARS ON THE DOCKET

**Understanding the Family & Medical Leave Act, Parts II & III**  
February 11  
March 10

**Preventing and Correcting Workplace Discrimination: A Focus on Religion and National Origin**  
March 3

**Dealing with Technology**

*FELTG Executive Director* Usually when you make a change, you expect it to be a change for the better. So when FELTG switched over to a new website design and host a few weeks ago, we expected good things and instead were disappointed to find out that the format wasn't what we were hoping for. On top of that, because of some IT-firewall-thing (as you can tell, I am not a tech person), a number of you have been completely blocked from accessing our site. That's bad.

We sincerely apologize for all that, and want to let you know we have nearly resolved this problem and expect to be re-revamped and up and running in just a few days.

If you've been getting our email newsletters but have been unable to access the [www.feltg.com](http://www.feltg.com) website, rest assured that we are still open for business and are taking registrations for all our upcoming programs. In the meantime if you have questions please call us at 844.at.FELTG (283.3584) or email us at [info@FELTG.com](mailto:info@FELTG.com), and we'll be happy to assist.

Take care, and thanks much for your patience!

Now, read on to see how *you* can help the MSPB define who is considered a whistleblower, and perhaps mark your place in history at the same time. It's a big job, but we're confident you can do it!

See you soon,  
Deb

## Must One Be an Employee to Blow One's Whistle? By William Wiley



Pop Quiz: If an individual who is not a federal employee discloses an agency's gross mismanagement and then is denied federal employment in reprisal by an agency for making that disclosure, is that individual entitled to pursue a whistleblower reprisal claim through OSC and the Board?

Hmmm.

*And the answer is:* Nobody knows.

That's why on January 19, the Board issued a Federal Register notice calling for amicus briefs to address the issue, [81 Federal Register 11 \(January 19, 2016\), pp. 2913-2914](#). Seems as though there's a case pending at MSPB that raises a similar hypothetical and the Board would like to know what you wonderful practitioners think about the issue, *Mark Abernathy v. Army*, MSPB Docket No. DC-1221-14-0364-W-1.

## Issues in the Federal Workplace

March 24

## Sometimes it's Good to Settle: Resolving Disputes Without Litigation

March 31

[Join Our Email List](#)

Now, I know many of you readers have a lot of spare time on your hands and are looking for something extra to do. And you'd like to show off your employment law chops just in case our next President's transition team is looking for a new Board member (actually, two) over at MSPB about this time next year. What better way to have a sample of your work to send to them than an elucidating legal brief, discussing the pros and cons of both interpretations of the Whistleblower protection legislation (especially in light of the Department of Defense Authorization Act of 1987 - zzz), while reaching the conclusion that everyone on Earth, natural-born citizens and genetically-modified organisms alike, as well as citizens as yet unborn, and perhaps even visitors from other planets (with a proper visa, of course) is a protected whistleblower.

On one hand, it's nice to see the Board members asking for opinions from us practitioners. Goodness knows, they should have done that before they went down the dark road of *Miller*-reassignments and world-wide comparator employee analysis. On the other hand, although this is no doubt an important question for Mr. Abernathy (and perhaps your loyal reporter, were he seeking future federal employment), does it really concern enough potential appellants to be worth the effort of a call for amici?

As Pope Francis once said, "Who am I to judge?" The Members want to know your opinions, and now's your chance to tell them. The deadline is February 9 so don't dilly-dally. Be sure to review the Federal Register notice carefully so that you can fully understand this issue. Write well, write strongly, and perhaps affect the future course of federal employment law.

And, simultaneously create a nice writing sample for the President-elect to consider on her way to being inaugurated.

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*Teaching the Law of the Federal Workplace*

