**Nepotism**

**Overview**

Nepotism is the term used to describe the granting of improper preference, assistance or advancement to an individual related by blood or marriage. It is prohibited under both [5 USC 2302](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+2302)(b)(7) and [5 USC 3110](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+3110)(b).

**Key Points**

These key-point summaries cannot reflect every fact or point of law contained within a source document. For the full text, follow the link to the cited source. The references to ***Broida*** in this Quick Start Guide are to federal employment law expert, Peter Broida's, treatise *A Guide to Merit Systems Protection Board Law and Practice* (Dewey Publishing, Inc.), to which ***cyber*FEDS®** has exclusive Web rights.

**In general**

* A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. [5 USC 3110](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+3110)(b).
* An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual. [5 USC 3110](http://www.cyberfeds.com/CF3/servlet/GetReg?cite=5+USC+3110)(b).
* Engaging in nepotism is a prohibited personnel practice under 5 USC 2302(b)(7). The Office of Special Counsel has jurisdiction over prohibited personnel practices committed against most employees or applicants for employment in executive branch agencies and the Government Printing Office. The OSC has limited jurisdiction over U.S. Postal Service allegations of nepotism. Under a memorandum of understanding between the OSC and the USPS, the OSC refers alleged violations of the anti-nepotism statute 5 USC 3110 to the USPS for investigation. Once the USPS completes its investigation, it reports its findings and any proposed action to the OSC. [OSC Web site -- Prohibited Personnel Actions](http://www.osc.gov/ppp.htm).
* An official's mere presence in the chain of command for a position to which a relative is appointed does not constitute impermissible nepotism. The relative of a public official can be appointed by a subordinate of the official if the official is in no way involved in the action and if the agency concerned has no regulations prohibiting such employment. *Wallace, et al. v. Department of Commerce*, 107 LRP 31241, 106 MSPR 23 (MSPB 2007).
* Prior to being abolished, the Federal Personnel Manual specifically provided, "The relative of a public official may be appointed by a subordinate of the official if the official is in no way involved in the action and if the agency concerned has no regulations prohibiting such employment." [Federal Personnel Manual, Chapter 310, Subchapter 1-3(b)(1) (1988](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Federal+Personnel+Manual:+Chapter+309+to+315)). The FPM can be used for guidance in appropriate circumstances. *Drury v. Office of Personnel Management*, 98 FMSR 5453, 79 MSPR 493 (MSPB 1998).

**'Relative' defined**

* "Relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. 5 USC 3110(b).

**Charges sustained**

* The MSPB upheld the disciplinary reassignment and 60-day suspension of an official for directing a subordinate county executive director to establish a temporary position and fill it with his son in violation of 5 USC 3110(b) and the agency's own regulations. *Welch v. Department of Agriculture*, 88 FMSR 5148, 37 MSPR 18 (MSPB 1988).
* A supervisor was removed for nepotism for using his position to support his wife's attempts to obtain a promotion. The provisions of the U.S. Postal Service Personnel Operations Handbook P-11, Section 312.33, did not require that an employee be successful in enhancing a relative's employment status in order to support a charge of nepotism. The supervisor's act of recommending his wife for promotion was itself a violation of the standards enunciated in the handbook. *Rentz v. U.S. Postal Service*, [84 FMSR 5043](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+5043), 19 MSPR 35 (MSPB 1984).

**Charges not sustained**

* Although the employee's second-level supervisor was his father-in-law, his hiring by another, subordinate manager did not constitute nepotism. *Keller v. Department of the Navy*, [96 FMSR 5003](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=96+FMSR+5003), 69 MSPR 183 (MSPB 1996).
* ***Broida:*** The charge of advocacy of employment of a relative is not sustained if the appointing officer is not lower in the chain of command than the official making the referral or recommendation. [*Broida Guide to MSPB Law:* Nepotism; Hiring of Friends](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Subsection+09:+Invidious+Discrimination;+Offensive+Remarks;+Preferential+Treatment;+Reprisal,+Part+A:+Nepotism;+Hiring+of+Friends).
* A supervisory personnel specialist's delivery of his daughter's application for summer employment to a personnel specialist who was not his subordinate did not constitute improper advocacy, and therefore did not provide a basis for a demotion and 21-day suspension. *Alexander v. Department of the Navy*, [84 FMSR 6071](http://www.cyberfeds.com/CF3/servlet/GetCase?cite=84+FMSR+6071), 24 MSPR 621 (MSPB 1984).
* ***Broida:*** The MSPB considered and found unsupported allegations by the agency that the appellant, acting chief of personnel for the Patent Office, violated nepotism statutes and associated OPM regulations and that she created the appearance of a conflict of interest through the hiring process when her sister was hired for a position with the personnel office of the agency. [*Broida Guide to MSPB Law:* Nepotism; Hiring of Friends](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Subsection+09:+Invidious+Discrimination;+Offensive+Remarks;+Preferential+Treatment;+Reprisal,+Part+A:+Nepotism;+Hiring+of+Friends), *citing* *Wallace, et al. v. Department of Commerce*, 107 LRP 31241, 106 MSPR 23 (MSPB 2007).

**MSPB jurisdiction**

* ***Broida:*** The MSPB has jurisdiction over an appeal from an employee who successfully challenged a discharge from a position that the agency claimed she held through nepotism. There was no absolute statutory bar to the appointment; the matter was with the adverse action appellate jurisdiction of the board. [*Broida Guide to MSPB Law:* Nepotism](http://www.cyberfeds.com/CF3/servlet/GetDocByTitle?doctitle=Subchapter+01:+Adverse+Actions+Defined,+Section+A:+Cancellation+of+Appointments,+Promotions,+Subsection+01:+Appointments,+Part+D:+Nepotism), *citing* *Wallace, et al. v. Department of Commerce*, 107 LRP 31241, 106 MSPR 23 (MSPB 2007).
* A reasonable person in the appellant's position could believe that his supervisor was violating 5 USC 2302(b)(7) and 5 USC 3110 by employing her son or assisting in the advancement of her son by giving him preferential treatment in training, assuming that those allegations are true. Therefore, he made a nonfrivolous allegation that he made a protected disclosure in his whistleblower claim. *Hudson v. Department of Veterans Affairs*, 106 LRP 72764, 104 MSPR 283 (MSPB 2006).

**Exceptions**

* When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in 5 CFR 230.402(a)(1), a public official may employ relatives to meet those needs without regard to the restrictions on the employment of relatives in 5 USC 3110. Such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency need still exists at the time of the extension. 5 CFR 310.102.