

# NEWSLETTER

**DSZ** has scheduled its own 2019 EEO Update Training for November 8, 2018. We're excited to bring DSZ's Investigators, Counselors and Supervisors together for a fun and engaging session. Topics will include:

- ▶ A Deep Dive into Reprisal;
- ▶ Amendment Worthy or Part and Parcel;
- ▶ Investigatory Approaches to Harassment versus Disparate Treatment;
- ▶ and of course, a Legal Update addressing new cases impacting our work.

We can't wait to see our DSZ family!

## IN ADDITIONAL TRAINING NEWS...

DSZ has delivered LOA training to multiple federal clients and the reviews are in!

*"Great information! One of the best training events that I have received as an EEO Specialist!"*

*"Hands down the best training I have attended. Thank you, thank you, thank you."*

*"Thank you for clearing everything up for us! This class has helped with my confidence with accept/dismiss."*

*"I thoroughly enjoyed the course. I feel as though I am prepared to write letters of accept/dismiss...I now have tools and resources."*

Contact DSZ to learn more about our training. We look forward to hearing from you!

≈≈≈Our contact information is on page 4≈≈≈



This newsletter is designed to keep our readers informed about the happenings in and out of the DSZ office.

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## EXCEL CONFERENCE

DSZ exhibited at Excel this year and we had a wonderful time! We thoroughly enjoyed seeing old friends and meeting new ones as well as attending some truly outstanding training sessions on such diverse subjects as Establishing an Effective Federal Agency Anti-Harassment Program and the Benefits of Tailoring Implicit Bias Training for Your Organization. EEOC ran an exemplary conference and we look forward to 2019's!

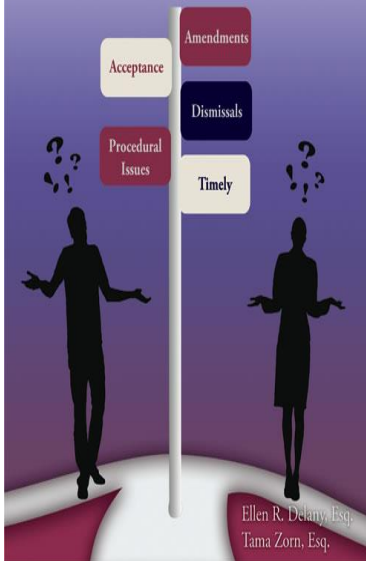


Sonya Williams (l), President & Megan Zorn (r), Exe. Vice President at Excel conference in DC.

**AND SPEAKING OF LOAS:**

Writing Letters of Acceptance and Dismissal:  
A Step-By-Step Guide for the Federal EEO Professional

2nd Edition



The confusion surrounding what to accept and what to dismiss is immense. Need help? Consider DSZ's publication "Writing Letters of Acceptance and Dismissal: A Step by Step Guide for the Federal EEO Professional." This book is for use by federal sector equal employment opportunity (EEO) professionals, including EEO specialists, EEO Directors, or agency attorneys, who carry out the mandates of the federal sector EEO program related to the formal EEO complaint process. For both the agency and the complainant, the first critical step in the formal EEO complaint process is the agency's decision whether to accept and investigate the discrimination issues identified during informal counseling and in the formal EEO complaint. An equally important step is the agency's identification and analysis of EEO issues that it prepares to dismiss, in whole or part. These key agency decisions are communicated to the complainant through an agency letter of acceptance (LOA) or an agency dismissal.

The underlying assumption of this book is that an analytical framework is essential for a full understanding of the varied requirements and complexities in drafting LOAs and dismissals. The goal of this book is to help you develop a workable, analytical framework that includes a review of all key procedural and substantive standards for preparing timely and complete LOAs, and defensible dismissals. Your use of this book will enable you to preserve the rights of all parties during the formal EEO complaint process, while maintaining your commitment to the underlying integrity of the EEO complaint process. To order simply go to [DSZ.com](http://DSZ.com)!

**Extra! Extra!**

DSZ strongly encourages federal sector EEO Investigators to look at the "The Federal EEO Investigator's Manual", published for Labor Relations Press and written by DSZ's very own (sadly but deservedly retired) Elizabeth Lytle. A nuts and bolts guidance to conducting EEO Investigations, The Investigator's Companion is an indispensable resource.



Answer to crossword on page 4

Across: 1. ra; 4. slit; 6. dot; 9. age; 10. yacht; 12. delany; 15. nag; 16. ma; 17. Czar; 20. Soe; 22. Fads; 23. Apes

Down: 1. Cis; 3. And; 5. Ice; 7. Try; 8. Chicken; 9. Art; 11. Rhyme; 13. La; 14. Agency; 18. Asap; 19. Rode; 21. Ess; 22. fa

## *New Executive Orders*

**W**e know our federal clients have familiarized themselves with two new Executive Orders with the potential to impact EEO; EO 13839 and 13837, both issued in May 2018.

### **Executive Order 13839: Promoting Accountability and Streamlining Removal Procedures**

Consistent with Merit System Principles is designed to make it easier to remove employees for unacceptable conduct and poor performance. Sec. 2. Principles for Accountability in the Federal Workforce of the EO aptly describes the goal, reading in part: “(a) Removing unacceptable performers should be a straightforward process that minimizes the burden on supervisors.” The EO clarifies, among other things, that supervisors not be required to use progressive discipline; that like conduct does not require like discipline: “agencies are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct”; employee records may no longer be expunged or altered to resolve complaints.

In addition, the EO also seeks to limit the Union’s ability to participate in negotiations involving termination. We concentrate on these 4 specifications: limits to progressive discipline, limits to union involvement, limits to considerations of comparative discipline, and finally, the abolition of the common use of expungement to resolve complaints because, as EEO professionals, we surmise these changes are most likely to impact our work. How? Well actually we don’t know but consider this: could limiting the unions ability to represent employees subjected to termination and other disciplinary actions result in more employees turning to EEO? Could leeway in applying comparative discipline for comparative offenses, a requirement set forth in the disparate treatment standard of proof, result in an uptick in complaints of discrimination? Similarly, will not requiring progressive discipline leave terminated employees in need of information and will they seek it through the EEO process? Will abolishing expungement of records limit the ability to settle discipline cases? Stay tuned.

**Executive Order 13837: Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time** Use has been covered extensively with articles appearing in Newspapers throughout the country as well as federal publications. As we know, EO 13837 seeks to limit the paid time unions may spend on union activities and additionally deny unions free or discounted office space, supplies, etc. How might this impact the EEO process? Per MD-110, “Section 1614.605 of 29 C.F.R. provides that individuals/complainants are entitled to a representative of their choice during the administrative EEO pre-complaint counseling and at all stages of the administrative EEO complaint process. Both the complainant and the representative, if they are employees of the agency where the complaint arose and was filed, are entitled to a reasonable amount of official time to present the complaint and to respond to agency requests for information, if otherwise on duty. 29 C.F.R. § 1614.605(b).”

The limitations this EO imposes on the use of union time and agency resources to support that time are significant: in its current form EO 13837 simply may not provide enough paid time to union officials to represent EEO complainants nor will unions have federal offices, private space in which to assist complainants, unless they pay for it. This despite EEOC’s clear direction that both complainants and their agency representatives are entitled to a reasonable amount of official time. As it stands, the U.S. District Court for the District of Columbia has combined 15 separate federal union lawsuits challenging the executive orders into one consolidated hearing, scheduled for July 25th. So again, stay tuned.

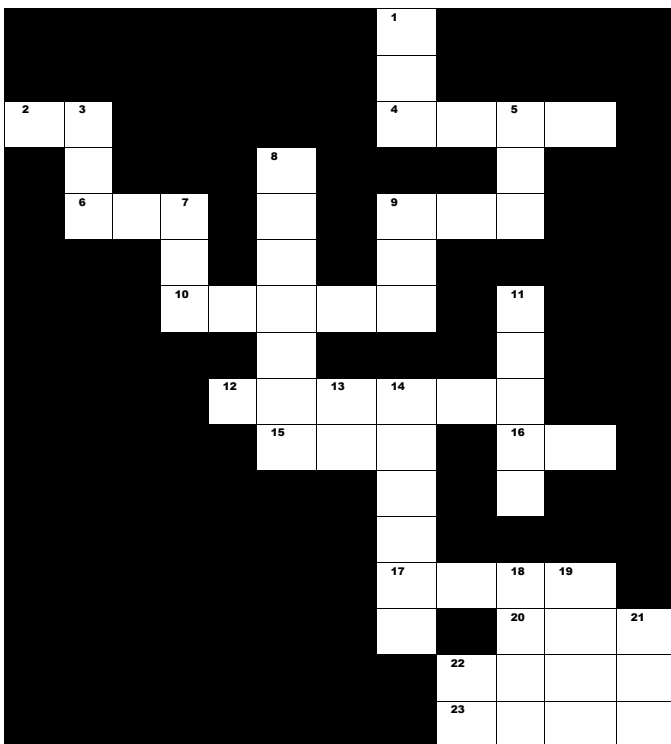
### ***What to keep an eye on:***

HR-559: The Modern Employment Reform, Improvement and Transformation (MERIT) Act which was recently voted out of committee and will head to the house floor. The MERIT Act is designed to make it easier to terminate federal employees by shortening the notice period prior to removal, shortening the time periods for filing MSPB appeals and issuing MSPB decisions, eliminating whistleblower stays, lowering the standard required to justify termination, and extending the probationary period of most new employees from one to two years. This is one to watch.

## A Case Of Note

**R**izo v. Fresno County Office of Education, was issued in April of 2018. The U.S. Court of Appeals for the 9th Circuit found that relying on prior compensation when setting a worker’s pay is a violation of the Equal Pay Act. “The Equal Pay Act stands for a principle as simple as it is just: Men and women should receive equal pay for equal work regardless of sex,” wrote Judge Stephen Reinhardt in the opinion. “The question before us is also simple: Can an employer justify a wage differential between male and female employees by relying on prior salary? Based on the text, history and purpose of the Equal Pay Act, the answer is clear: No.”

## Crossword Puzzle of the Day



**Across**

- 2. Musical Note
- 4. Cut
- 6. Tiny mark or government agency
- 9. A bases of Discrimination
- 10. Luxury boat
- 12. A part of DSZ
- 15. Annoy
- 16. State of DSZ office
- 17. Russian emperor
- 20. Large wooden tub
- 22. Conclusions based on investigative records, informally
- 23. Copies

**Down**

- 1. Sub Agency of DHS
- 3. Also
- 5. Sister of 1 down
- 7. Attempt
- 8. Domesticated Fowl
- 9. Part of NEA
- 11. Poem
- 13. Musical Note
- 14. Federal \_\_\_\_\_
- 18. Swiftly!
- 19. Travelled as a passenger
- 21. Curve in the road
- 22. Musical note

## Contact us

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