

[Trump memo grants government-wide firing power to OPM](#)



Hampton Dellinger, shown here in June 2024, leads the Office of Special Counsel. He was fired by Trump earlier this month, but a federal court reversed that decision and reinstated him to his post. The Trump administration has challenged that ruling up to the Supreme Court, but justices there last week declined to overturn Dellinger's reinstatement. C-SPAN/SCREENGRAB GOVEXEC

[Workforce](#)

Oversight agency finds Trump's federal worker firings unlawful, asks for some employees to be reinstated

The findings could have sweeping impacts for the tens of thousands of recently dismissed workers.

ERIC KATZ | FEBRUARY 24, 2025

CIVIL SERVICE | MSPB | DEPARTMENT OF GOVERNMENT EFFICIENCY



Updated Feb. 24 at 2:07 p.m.

An independent federal oversight agency has deemed at least some of President Trump's mass firings of probationary period employees unlawful, creating a pathway for those employees to regain their jobs.

The Office of Special Counsel, the agency responsible for investigating illegal actions taken against federal employees, issued its decision for six employees, each at different agencies. While the decision was technically limited in scope, it could have immediate impact on all terminated staff at those six agencies and could set a wide-ranging precedent across government. It has not been made public and was provided to *Government Executive* by a source within the government. OSC, which did not provide the document to *Government Executive*, verified its authenticity.

OSC has turned the case over to the quasi-judicial Merit Systems Protection Board for enforcement of its findings and is so far requesting a 45-day stay on the firing decisions. The agency said it will use that time to further investigate the dismissals and determine the best way to mitigate the consequences from the apparent unlawful actions.

MSPB has three business days to issue a decision on the stay request. If it does not act by that deadline, the stay will go into effect. Henry Kerner is thought to have recused himself from the case as he previously led OSC.

Differing Violations

Before the expiration of the stay, OSC can issue a request for a corrective action to the employees' agencies. That would likely seek to get the employees reinstated with back pay. If the agencies refuse OSC's request, it can initiate corrective action litigation before MSPB. OSC can also seek disciplinary action against the individuals responsible for taking the unlawful personnel actions against the employees.

Special Counsel Hampton Dellinger, who leads OSC, found differing violations for the complainants on the case: for one set, he said, the government has violated the federal statute that governs the termination of employees in their probationary periods. For the second set, Dellinger said in the decision that was co-signed by Deputy Special Counsel Bruce Fong that the Trump administration had essentially issued layoffs without engaging in the government's reduction-in-force procedures.

"In accordance with its legal responsibility to safeguard the merit system, OSC seeks this stay because the probationary terminations at issue in this matter appear to have been effectuated in a manner inconsistent with federal personnel laws," the agency said in its decision.

Trump earlier this month [fired Dellinger](#) from his job, but a federal court reversed that decision and reinstated him to his post. The Trump administration has challenged that ruling up to the Supreme Court, but justices there last week declined to overturn Dellinger's reinstatement. A federal court has also [reinstated MSPB Chair Cathy Harris](#) to her role after Trump attempted to fire her.

Probationary Firings

The Trump administration earlier this month began [firing thousands of federal employees](#) who are in their probationary periods, typically those hired within the past one-to-two years depending on their hiring mechanism. Such workers have weaker civil service job protections. The administration has, in some cases, included longtime government employees that were recently hired or promoted into new positions, though the legal rationale for quickly dismissing those workers is less clear.

The firings are ongoing and will likely eclipse at least 25,000 this week. The agencies named in the case now before OSC are the departments of Veterans Affairs, Housing and Urban Development, Education, Energy and Agriculture, as well as the Office of Personnel Management.

After publication of this story, OSC released a statement confirming its findings and suggesting Dellinger is actively contemplating expanding them to include far more federal workers.

"The special counsel believes other probationary employees are similarly situated to the six workers for whom he currently is seeking relief," OSC said. "Dellinger is considering ways to seek relief for a broader group without the need for individual filings with OSC."

By law, agencies terminating employees in their probationary periods must do so because their "performance or conduct demonstrates that they are unfit for federal employment." OSC found, however, that agencies had mass fired their employees without specifying what performance or conduct issues individual employees presented. In some cases, agencies did not cite performance or conduct at all. It noted the language agencies used in their termination notices were "quite similar" to one another and none of the firing letters "provide any detail or individualized assessment."

OSC investigated the backgrounds of the employees who made the complaint to the agency and found none of them had any indication of poor performance or conduct in their histories and instead had received only exemplary evaluations.

"Based on public statements, the agencies' decision to terminate large numbers of probationers was to accomplish reorganizations and cost savings," OSC said. "In other words, a RIF."

“Compelling agencies to assess the specific fitness of each employee prior to terminating them ensures that outstanding employees are not arbitrarily lost and that terminations are truly in the best interests of the federal service and consistent with merit system principles.”

-- THE OFFICE OF SPECIAL COUNSEL

Agencies improperly firing their employees have denied them of pay, benefits, possible accrual of tenure and due process rights, OSC said. Some employees, due to their high performance marks and federal layoff procedures, would not necessarily lose their jobs under a RIF.

Some of the probationary firings more specifically violated rules surrounding those dismissals, OSC said. Agencies must use the “trial period” to earnestly assess employees’ performance.

“This requirement is not a simple bureaucratic technicality—compelling agencies to assess the specific fitness of each employee prior to terminating them ensures that outstanding employees are not arbitrarily lost and that terminations are truly in the best interests of the federal service and consistent with merit system principles,” OSC said.

'Chaos and Suffering'

The employees’ cases were brought to OSC by Democracy Forward and Alden Law Group. They had sought to have the case heard as a class action, a proposition MSPB can still consider. If MSPB grants the stay request, according to federal personnel experts who reviewed the case, it could immediately apply to all fired employees at least at the six named agencies.

“Today’s news from the Office of Special Counsel confirms what we have long known: the mass termination of federal workers is unlawful and Trump’s only plan here seems to be to inflict chaos and suffering on the American people and the federal workers who serve them as opposed to using our government to better the lives of working Americans, families, and communities across the country,” said Democracy Forward President Skye Perryman. "It is among the many harmful and unlawful actions being taken by this Administration without regard for impact or purpose."

The group is asking MSPB to move swiftly to reinstate the employees.

“It’s common sense that if you want to remove someone for poor performance, you actually have to look at that person’s performance in the job. And if they looked, they’d see the value that these workers bring,” said Rob Shriver, former Acting OPM director and managing director of Democracy Forward’s Civil Service Strong program. “The mass terminations of probationary employees are flatly illegal and we urge the MSPB to move swiftly to implement this recommendation.”

The White House and OPM did not immediately respond to request for comment.

This story has been updated with comment from OSC.

Related articles

[Federal agencies are still firing probationary employees—most recently the Navy](#)



How are these changes affecting you? Share your experience with us:

Eric Katz: ekatz@govexec.com, Signal: erickatz.28,

Sean Michael Newhouse: snewhouse@govexec.com, Signal: seanthenewsboy.45

Erich Wagner: ewagner@govexec.com; Signal: ewagner.47

SHARE THIS:



NEXT STORY:

[House Dems press administration on telework for military spouses](#)

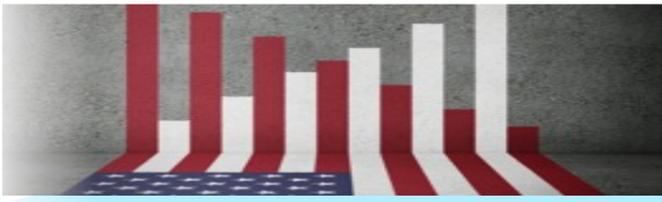


[Management](#)



[Workforce](#)

[Reinventing government: Reflections 30 years later](#)[Retiring NTEU President Reflects on 3 Decades in Organized Labor](#)



[Management](#)

[Workforce](#)

[Oversight](#)

['Long, Long Overdue': An Oral History of the GPR](#)
[State of the Unions: A New Normal](#)
[What I Learned Covering Government for 34 Years](#)