

Political appointees like Sherrod deserve due process

By Joe Davidson
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Contrary to folklore, federal employees can be fired, as demonstrated by the sorry situation involving Shirley Sherrod.

Sherrod, of course, was the Agriculture Department's Georgia state director of rural development who was crudely bounced because her bosses acted without bothering to investigate the full story behind a video.

Agriculture Secretary Tom Vilsack thought the worst about edited and misleading footage that left the impression Sherrod was promoting a racist perspective when in fact the opposite was true. Vilsack apologized and offered Sherrod a new job. President Obama called to offer his regrets. Few workers are so quickly vindicated, let alone celebrated.

Sherrod is considering the job offer, although one former fed, responding to a question posed to readers by The Washington Post, suggested she think long and hard before accepting it.

Irene West, a Rockville resident who said she spent 43 years in federal service, said in an e-mail: "That's what they did to employees they wanted to put on the shelf . . . give them a title that sounds like a promotion, i.e., Special Assistant or Senior Advisor to the Secretary, etc., and stick them in an office with no staff or supervisory responsibilities and, most of the time, with nothing to do."

Uncle Sam generally doesn't push his people out while they are driving, ordering them to pull over and submit a resignation via cellphone, which is what happened to Sherrod. Most federal workers have due process rights that political appointees like her don't get.

"They harassed me as I was driving back to the state office from West Point, Georgia, yesterday," Sherrod told CNN Tuesday. "I had at least three calls telling me the White House wanted me to resign." According to Sherrod, Cheryl Cook, Agriculture's deputy undersecretary, said: "They want you to pull over to the side of the road and do it because you're going to be on Glenn Beck tonight."

As cruel as that was, USDA officials were within their rights to terminate Sherrod so abruptly. As a "Schedule C" appointee, like thousands of other politicians, Sherrod could be fired at will, at the drop of a misleading video or for no reason at all.

Fortunately, that's not the case for civil servants. More than 9,000 were fired last year, but before they got the boot, due process procedures designed to protect them had to be followed.

"You don't want federal employees being fired for the wrong reasons, particularly partisan political reasons," said John Palguta, a civil service expert with the Partnership for Public Service.

The process includes appeals to an arbitrator, the Equal Employment Opportunity Commission or the Merit Systems Protection Board.

"Generally, employees think the process is fair," said Colleen M. Kelley, president of the National Treasury Employees Union. "If there is an 'unfair' aspect to it, it is that the termination goes into effect while an appeal is pending. If an employee is reinstated on appeal, they typically get back pay. But often that does not make up for the harm they suffer while they are without income while the appeal is pending. They often cash out their retirement savings, may lose a home, or become delinquent on their bills."

What else is not fair, said Mark Roth, general counsel of the American Federation of Government Employees, is an attempt by the Defense Department and other federal agencies to limit the merit board's scope of inquiry into cases of the many thousands of employees who handle sensitive data, such as Social Security numbers. The agencies, Roth said, want the board to consider only their process for disciplining employees and not mitigating factors that could reduce employee penalties.

Limiting the role of the merit board would result in "a kangaroo court," Roth said. The Pentagon did not respond to a request for comment.

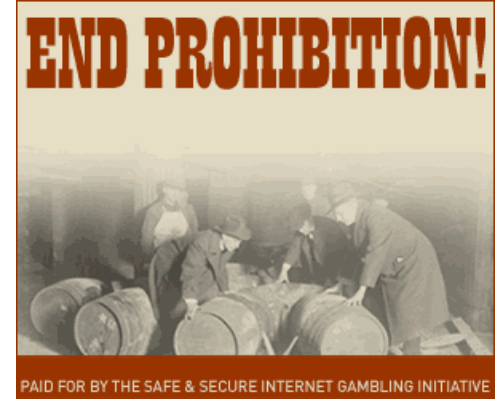
Generally speaking, "the process is much more judicious and thorough" than what Sherrod experienced, said Debra Roth, a private federal labor law lawyer who is not related to Mark.

That process includes a probe of charges against an employee by an agency's internal investigative body. That could take three to nine months, Debra Roth said. Those internal investigations include getting the employee's side of the story.

Something Vilsack didn't do.

"You would be hard pressed to find an instance where the internal investigative body did not come to the subject and say, 'Here's what we got. What's your response?,'" Debra Roth said. "That's the normal course."

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That's so fundamental. Even a political appointee should get basic fairness.