EPA Employee Rights
Agency 2
06-29-2022

Employee Rights

Section I. Right to Union Membership

A. Pursuant to 5 U.S.C. Section 7102, each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.

B. Employees temporarily assigned to a managerial or supervisory position or a position outside the bargaining unit may not serve as a Union representative and are temporarily outside of the bargaining unit.

Section II. Right to Private Lives

Subject to applicable law, rule, and regulation, employees ~~shall~~ have the right to ~~direct and/or fully pursue their~~ privacy~~te~~ ~~lives~~, personal welfare and personal beliefs without ~~interference, coercion or~~ discrimination by the Agency so long as ~~such~~ their activities do not conflict with job responsibilities. Managers are expected to ~~respect the privacy of their employees,~~ protect confidential information regarding their employees, and only share such information with individuals with a "need to know."

~~As applicable to the employee's position, the Right to Private Lives includes but is not limited to the following~~

~~A. 1st Amendment Right to Freedom of expression on social media platforms while not duty time or Agency equipment;~~
~~B. Free from electronic monitoring while not on duty time or Agency equipment;~~
~~C. Holding confidential the basis for which annual or sick leave is requested and/or used;~~
~~D. Freedom of association, right to protest and/or march;~~
~~E. Workplace free from search and seizure without probable cause, including review of email traffic, keystrokes, use of video surveillance, etc.; and~~
~~F.~~A. ~~Not being required to work for no compensation, including but not limited to accepting telephone calls, text messages, etc. outside of duty time.~~

Commented [CR1]: Agree

Commented [CR2]: Agree

Commented [CR3]: Managers are not always expected to respect privacy There are many instances where they need to know private information

Commented [SA4R3]: When divorced from the specifics of, say, the Privacy Act, it is also unclear what is considered "confidential information " This is a landmine

Commented [SA5]: Agree would delete all this
Adding: (1) There is a whole body of law which permits agencies to take action for off-duty misconduct where there is nexus
(2) Giglio considerations (which includes "off duty potential impeachment information") for Agency employees who are witnesses in criminal environmental cases
Off-duty information is sometimes brought to our attention and if it falls into these categories we are not committing to ignore

Commented [SA6]: The "or" here ("while not on duty time or Agency equipment") is weird We have a right to monitor even when you are not on duty time while you are on Agency equipment

Commented [CR7]: What does this have to do with privacy?

Commented [CR8]: This is contrary to reg allowing supervisors to get medical documentation

With annual leave, a supervisor may ask what the annual leave is for to see if tsomething else can be worked out

Commented [SA9R8]: And, again, when divorced from "Privacy Act" the word "confidential" here is undefined

Commented [SA10R8]: Where information related to leave is covered under the Privacy Act, we can agree to treat it as such

Commented [CR11]: How does this affect privacy?

Commented [SA12]: We have so many people who complain that their spvr sends email messages during their off hours
And the spvrs are like: "listen, I don't remember everybody's schedule I'm not asking them to respond today; I'm just trying to move it off my desk They can address it when they're back on duty "
To avoid this
I actually would not mind something somewhere in MCBA addressing this
If there's somewhere it can go, I can draft up language

Section III. Merit Systems Principles

As required by ~~The Agency will abide by the Merit System Principles set forth in~~ 5 U.S.C. 2301(b) (1) through (9), the Agency's personnel management program will be implemented with the following ~~. M~~merit ~~S~~system ~~P~~principles ~~include but are not limited to the following~~*quoted verbatim*:

A. Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

B. All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

C. Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

D. All employees should maintain high standards of integrity, conduct, and concern for the public interest.

E. The federal workforce should be used efficiently and effectively.

F. Employees should be retained on the basis of the adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards. G. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

G. Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

H. Employee's should be—
(1) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and
(2) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for election.

I. Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences—

Commented [CR13]: What others are there?

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1. *a violation of any law, rule, or regulation, or*
2. *mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.*

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Commented [CR14]: Why are these necessary? We think verbiage from the ICBA is more accurate

Section V. Prohibited Personnel Practices

The following personnel practices are prohibited pursuant to 5 U.S.C. 2302(b)(1) through (14) and are quoted verbatim:

1. *discriminate for or against any employee or applicant for employment—*
   - *a. on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16);*
   - *b. on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);*
   - *c. on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));*
   - *d. on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or*
   - *e. on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;*

2. *solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of—*
   - *a. an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or*
   - *b. an evaluation of the character, loyalty, or suitability of such individual;*

3. *coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;*

4. *deceive or willfully obstruct any person with respect to such person's right to compete for employment;*

5. *influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;*

6. *grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;*

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7. *appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;*

8. *take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of—*
   a. *any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences—*
      (i) *any violation of any law, rule, or regulation, or*
      (ii) *gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or*
   b. *any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences—*
      (i) *any violation (other than a violation of this section) of any law, rule, or regulation, or*
      (ii) *gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;*

9. *take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of—*
   a. *the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation—*
      (i) *with regard to remedying a violation of paragraph (8); or*
      (ii) *other than with regard to remedying a violation of paragraph (8);*
   b. *testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A)(i) or (ii);*
   c. *cooperating with or disclosing information to the Inspector General (or any other component responsible for internal investigation or review) of an agency, or the Special Counsel, in accordance with applicable provisions of law; or*
   d. *refusing to obey an order that would require the individual to violate a law, rule, or regulation;*

10. *discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant*

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for any crime under the laws of any State, of the District of Columbia, or of the United States;

11. (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement;

12. take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title;

13. implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: "These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."; or

14. access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13). This subsection shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress. For purposes of paragraph (8), (i) any presumption relating to the performance of a duty by an employee whose conduct is the subject of a disclosure as defined under subsection (a)(2)(D) may be rebutted by substantial evidence, and (ii) a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.

Section VI. Additional Principles

The Union and the Agency further agree to the following principles:

A. Assign Work and Direct Employees: This Agreement is not to be interpreted or applied

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Commented [CR15]: Again not clear on the need given they are in Statue?
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by the Union or by an arbitrator to prevent, limit or interfere with management's reserved right to assign work, including determining the method and manner to assign work and direct employees, except as provided by 5 USC 7106(b)(2) and (3) unless otherwise negotiated.

1. ~~The Agency will provide direction in an atmosphere that will avoid public embarrassment or ridicule.~~
2. ~~Employees should discuss conflicting orders with their immediate supervisor to resolve the conflict. Employees will have the right to Union representation.~~
3. ~~1.~~ ~~Managers will provide sufficient training for the duties employees are assigned and distribute workloads equitably based on the employee's grade and without favoritism.~~

B. Working Conditions: The Union recognizes the Agency's right to assign work.

1. ~~The Agency will not subject any employee to intimidation, coercion, harassment, or unreasonable working conditions as reprisal nor shall any employee be used as an example to threaten other employees.~~ Employees, in the legitimate exercise of their rights and responsibilities as designated representatives of the Union, will be protected from interference, restraint, or coercion by the agency.
2. ~~The Agency will provide all employees equal access to training, tools, materials, meetings, and information requested to effectively perform their job.~~
3. ~~Manager Accountability: When an employee perceives inequity in working conditions, the employee or Union representative can request and the Agency shall:~~

   a. ~~Provide employees impacted by negative working conditions an opportunity to participate in a 360 assessment of the responsible manager(s) within 30 calendar days of the request. The results of the 360 assessment(s) shall be provided to the employee and the Union within 10 business days.~~
   b. ~~Provide a Human Resource Management assessment per Standard Operating Procedures number 18-001S, dated January 3, 2018 when disparities exist. Interviewees will include (where appropriate): Employee Groups, First-line and second-line supervisors, Senior managers, Program Management Officer and/or staff, Regional Human Resources Officer and/or staff, Union Officials, Training Officer or staff. The assessment will be conducted within 30 calendar days of request in accordance with the Standard Operating Procedure. The Agency will provide the final report (e.g., a report that includes assessment findings, required actions and recommended action that need to be addressed), within 10 business days of report completion to the subject, the employee and the Union. The identification of the employee requesting the assessment will remain confidential.~~

Commented [CR16]: One person's normal discussion is another's "embarrassment or ridicule " Agency's ability to create an atmosphere is limited

Commented [CR17]: Conflicting with what? Why would the Union be involved in normal work assignments?

Commented [CR18]: Training portion is covered by Section III G "Equitable distribution" violates management right to assign work

Commented [CR19]: This is already in the harassment article (or belongs there) We do not want conflicting articles

Commented [CR20]: Reworked Article 3 Section 1 -- Union Rights and Duties of the ICBA

Commented [CR21]: This is in III G

Commented [SA22]: "Manager Accountability": Not a union or contractual function

Commented [CR23]: This would grind offices to a halt

Commented [SA24R23]: @Coomber, Robert And providing the Union with assessments of managers does not seem consistent with, as is sought above, an agency commitment to privacy and confidentiality towards its employees (and managers are a type of agency employee)

Commented [CR25]: This feels like a grievance

Commented [SA26]: "disparities" in what?

Commented [SA27]: They are not entitled to HR (i e management) assessments of managers and we're not providing

C. Service of a Warrant or Subpoena: If an employee is to be served with a warrant or subpoena, to the extent it is within the Agency's control, the service will be done in private without the knowledge of other employees.

~~D. Supervisory Instructions and Orders: Supervisors will provide instruction in an atmosphere that will avoid public embarrassment or ridicule. When employees receive conflicting orders, they should discuss the matter with their immediate supervisor to resolve the conflict.~~

~~1. Employees may refuse work if they reasonably believe that an order or instruction patently violates any law, rule, regulation or Agency policy. The employee should state their beliefs to their supervisor. Supervisors will ensure that all orders and instructions are consistent with law, rule, regulation or Agency policy.~~

~~2. The employee may document their belief that the order or instruction violated one or more laws, rules, regulations or Agency policies. If an employee refuses to carry out an order or instruction promptly and the Agency takes an adverse personnel action against the employee as a result of such refusal, that employee may assert as a defense that they believed the order or instruction to be illegal. An employee will not be subject to discipline on the basis that the employee carried out the order of the supervisor.~~

~~E.~~D. Personal Belongings and Agency Equipment: ~~The Agency will provide for the secure storage of personal belongings. When new furniture is installed, the furniture will contain lockable, secure space for the storage of personal belongings.~~ The Agency is not responsible for personal belongings brought to the workplace by an employee. Any search of these accommodations must be done in compliance with applicable law, rule and regulation. All furniture and equipment furnished by the Agency for an employee's use in carrying out the employee's duties is the property of the Federal government and may be: (1) recalled by the Agency at any time without notice; and (2) may be searched by the Agency at any time without notice.. ~~Employee's personal belongings may not be searched without probable cause and notice.~~

~~F.~~E. Resign/Retire: An employee may resign or retire at any time~~,~~ and to set the effective date of their resignation or retirement~~, and to withdraw their resignation/retirement at any time before it has become effective~~. The Agency may accept or deny an employee request to withdraw a resignation/retirement before its effective date. An employee will be informed of the reason(s) when a request to withdraw a resignation/retirement is denied. Reasons to deny a request include, but are not limited to, administrative disruption, the hiring or plans to hire a replacement, the acceptance of a VERA/VISP signified by submitting retirement forms to HR, and the presence of an executed settlement agreement.

1. When an employee is faced with the prospect of Employer-initiated action such as termination or removal, the employee ~~shall have~~has the right not to resign or, if the employee chooses, to make a resignation effective at any time prior to the effective date of the Employer's action. ~~When authorized by a settlement agreement, the~~

Commented [CR28]: Accept

Commented [CR29]: Very similar to VI a 1 Atmospheres are beyond supervisory control

Commented [SA30R29]: @Coomber, Robert I'd be okay with codifying employee responsibility to seek clarity when they receive conflicting orders

Commented [CR31]: This is the same as above, but doesn't mention union representation

Commented [CR32]: This is contrary to the "obey now grieve later" standard, referring to employee danger, and would be unworkable in situations where employees misunderstand or have a different understanding of law, rule, regulation, or policy

Commented [CR33]: This would be incredibly disruptive to management's right to assign work Employees' philosophical differences with management cannot prevent management from directing work Management's ability to direct employee would be unduly affected

Commented [SA34R33]: @Coomber, Robert Also, employees not rendered immune from discipline (or prosecution, but that's not our issue) if they carry out a facially illegal instruction on behalf of a manager: Go break into that facility after hours to conduct an inspection

Commented [CR35]: This is internal security, and non-negotiable

Commented [SA36]: I'm not sure what word "accommodations" means here We have a right to access our space

Commented [CR37]: This is not the law Personal belongings in public space may be searched Also non-negotiable because it is the agency's internal security procedures Also notice of a search is kinda out there Also, what about an employee sleeping in their office? Do they have to be woken up and notified?

~~employee's record shall only state that they resigned; no reference shall be made to such action occurring "for cause" when an employee voluntarily resigns. The employee will be advised that they may consult with a Union representative and have a representative present prior to making a decision. This advice will be acknowledged in writing by the Agency and the employee. A copy of this acknowledgment will be provided to the employee and the Local Union. Resignations shall not be secured by coercive or deceptive means.~~

~~G. Methods to Evaluate Employees: Employees are entitled to accurate and truthful evaluations of performance. Evaluations shall be conducted by a subject matter expert and provided to the Union upon request in cases where employees are considered for disciplinary action(s) including removal and/or placed on a performance assistance plan or performance improvement plan.~~

1. ~~Employees have the right to document any difference of opinion regarding their evaluation. The employee may place materials reflecting the difference of opinion in the evaluation file (e.g., PARS, PIPs) and also may submit such materials as a rebuttal to the employee's next performance appraisal.~~
2. ~~The Agency shall not monitor the employee's activity on the Agency system (currently MS Teams) as part of the evaluation process.~~

~~H.~~F. No Recording Protected Union Activity: No recording will be made without mutual consent by the Agency or by the Union or by a unit employee of any conversation involving 5 U.S.C. 7102 protected Union activity.

~~I.~~G. Recording Other Conversations: No recording will be made without mutual consent by the Agency or by the Union or by a unit employee of any conversation involving any management official involving work related matters, except for Inspector General Investigations, or other law enforcement investigations conducted by the Agency or agencies outside of the Agency. When a transcript is made from a recording, except for Inspector General Investigations, or other law enforcement investigations conducted by the Agency or agencies outside of the Agency, the employee will be given the opportunity to review the transcript for accuracy and the employee will be provided a copy of both the tape and the transcript if any. Information obtained in conflict with this section will not be used as evidence against any employee. This provision does not apply to training sessions, all-hands meetings, or other events where the agency intends to use future viewings or the recording as a resource.

~~J.~~H. Outside Employment: Employees may work at outside employment only when consistent with applicable law, Government-wide regulations, and Agency regulations and policies and after seeking approval of outside activity. ~~do not conflict with job responsibilities, and do not raise a real or an apparent conflict of interest. Approval for outside employment will only be required when such employment would be reportable on OGE 450 Form as a potential conflict of interest.~~ When prior Agency approval of outside employment is

Commented [CR38]: Contrary to current regulations

Commented [CR39]: We don't want to have the affirmative obligation to bring in the Union, especially when the situation may be private/embarrassing

Commented [CR40]: this is for the performance section

Commented [CR41]: Agree with addition of former language

Commented [SA42R41]: @Coomber, Robert Are these "or's" awkward here? Should it be instead "by all participants (the Agency, the Union, and unit employees)"

Commented [SA43]: Same comment as above: Are these "or's" awkward here? Should it be instead "by all participants (management officials, the Union, unit employees)"

Commented [SA44]: What if the subject is not a "work related matter"? This suggests okay to record

Commented [SA45]: Not comfortable agreeing to this
(1) As written, applies to a case in which we are not a party For example, someone records without following this protocol and it gets turned over to law enforcement or to an outside counsel in a civil case involving the employee
(2) If this is intended to be restricted to "evidence" used by the Agency against the employee, for what? Discipline? Performance? Selection to another position? What if: a spvr unknowingly doesn't follow this and has recording of EE admitting to serious misconduct EE denies it We would be waiving right to use even to impeach EE's credibility
(3) Lacks mutuality Doesn't say EE can't use surreptitious recording against a manager

Commented [SA46]: added this language

Commented [CR47]: Not all EPA employees have to fill these out but many employees who do not could run afoul of ethics obligations

required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment within ten (10) business daysa reasonable timeframe. The Ethics Officer or designee will respond in writing and, if the request is denied, the justification reason for denial doing so will be included. Employees may raise questions about an ethics determination to the Office of General Counsel's Ethics Office, which oversees the Agency's ethics program.

Section VIII. Right to Obtain Information

A. Right to Voice Concerns: If the employee wishes to discuss a condition of employment, working conditions or potential grievance with a Union representative, the employee shall have the right to contact and meet with their Union representative on duty time.

B. Employees shall also have access to management officials on duty time and in accordance with this Section. Employees have the right to communicate with the following on matters directly affecting the employee:

1. Any management officialThey supervisor;
2. The A Human Resources Office:Representative.
3. An Equal Employment Opportunity RepresentativeSpecialist or Officer and/or an Equal Employment Opportunity Counselor; and
4. The A Financial Management Officer or designee Payroll Office Representativeon matters directly affecting the employee.

Section VIII. Employee Examinations

A. If an employee requests Union representation under this Article and a Union representative is not available, the examination will be rescheduled as soon as practicable, but not to exceed five (5) workdays in order to secure a Union representative.

A.B. If prior to or during any examination of an employee in the unit by a representative of the Agency in connection with an investigation there is reasonable belief by the employee that the examination may result in disciplinary action against the employee, and the employee requests Union representation, the employee has the right to Union representation.

B. Any discussion with employees by representatives of the Agency which may reasonably be considered by an employee to lead to disciplinary action will be conducted in private. At any meeting referred to above, the Agency agrees:

1. To inform the employee in advance of the meeting, of the general subject of the interview, including whether or not it is criminal in nature; and
2. That the interview will be scheduled to allow the employee an opportunity to seek the counsel of a Union representative and to prepare for the investigatory

Commented [CR48]: Trying to bring it more into line with the current language

Commented [CR49]: Very dependent on the situation in our estimation so we wouldn't want to limit it

Formatted: No bullets or numbering

Commented [CR50]: Private how?

Commented [CR51]: Not a best practice for investigations

Commented [SA52R51]: and, in early stage, way may not know whether criminal or not

~~interview.~~

~~3. An employee cannot be disciplined for remaining silent unless they are informed that his responses and their fruits cannot be used against him in a criminal matter (Kalkines Rights).~~

~~4. An employee retains their right against self incrimination in criminal matters (Garrity Rights)~~

C. ~~Employees shall be given any warnings required by law to protect their constitutional privilege against self incrimination in criminal proceedings. Refusal to respond to questions based on a proper invocation of the privilege against self incrimination in a criminal proceeding may not be used as the sole basis for a disciplinary or adverse action. The Agency may determine, in circumstances potentially involving criminal misconduct, that it is necessary or desirable that employees being interviewed be required to respond to questions concerning misconduct or face disciplinary/adverse action, provided that the employees are informed that their answers cannot be used to incriminate them.~~

~~D. When employees are given a warning, they shall be given a "Statement of Rights and Obligations." Employees will acknowledge on the statement the receipt of the above warning. Employees may acknowledge on the statement the receipt of this warning. Employees shall be given a copy of the statement for their records. The employee's acknowledgment indicates only that the employee received the warning. It does not constitute a waiver of an employee's rights against self incrimination or the employee's admission of any wrongdoing by the employee.~~

~~E.~~D. When an employee being interviewed is accompanied by a Union representative, the role of the representative includes (where doing so would not unduly disrupt the examination):

1. Requesting that the interviewer clarify questions;
2. Clarifying responses provided by the employee;
3. Assisting the employee in providing favorable extenuating facts;
4. Suggesting other employees who may have knowledge of relevant facts; and
5. Advising and/or conferring privately with the employee during the course of the meeting.

At the conclusion of the interview, the Union representative and employee may meet to determine if there are additional facts the employee would like to bring to the interviewer's attention and correct or clarify the transcript~~/notes~~ of the meeting.

~~F.~~E. All rights and privileges apply whether the employee examination is in person or virtual or by other means.

Section IX. Rights

Commented [CR53]: This turns Weingarten on its head

Commented [CR54]: These are criminal standards and rarely relevant

Commented [CR55]: The agency has limited law enforcement ability against its own employees This would be holding the agency accountable for outside entities

Commented [CR56]: Why is needed? "Sole basis" may be accurate but it is misleading to employees

Commented [CR57]: This seems to be close to the legal standard, but it is odd here The Agency's determinations on criminal misconduct are not appropriate for the agreement

Commented [CR58]: Given a warning by whom? What is the Statement of Rights and Obligations? When is a warning considered "given?" When is an employee considered to have been warned? Is this only in criminal proceedings?

~~A.~~ Whistleblower Rights. The Agency or the Agency's Office of Inspector General shall annually inform the employees of their rights under the Whistleblower Protection Act and their rights to be protected from retaliation and prohibited personnel practices. ~~The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 and the U.S. Office of Special Counsel (OSC)'s Reauthorization Act of 2017 further enhance and reinforce these protections. The Parties agree that education on employee rights may be supported and enhanced by the training activities conducted by the Joint Union-Management Scientific Integrity Advisory Board.~~

Whistleblowing is defined as the disclosure of information an employee reasonably believes evidences:

1. A violation of any law, rule or regulation;
2. Gross mismanagement;
3. Gross waste of funds;
4. An abuse of authority;
5. A substantial and specific danger to public health or safety; or
6. Censorship related to scientific research ~~or analysis~~if censorship meets one of the above-listed catergories~~.~~.

Whistleblowers or employees engaging in whistleblowing activity may request Union representation ~~at any time,~~ and may choose to go to the OSC [1] or the Agency's Inspector General (IG) ~~for issue resolution~~.

~~B.~~A. Weingarten Rights. Agency shall inform employees each year ~~on May 1st or the workday closest to May 1st~~ of their Weingarten Rights via email.

B..

~~1. Agency or the Inspector General shall inform the Union and the employee three days in advance of any meeting if Weingarten Rights will be read.~~

~~2. Any examination of an employee by a representative of the Agency in connection with an investigation where there is a reasonable belief by the employee that the examination may result in disciplinary action against the employee, the Union and the employee will be provided three days advance notice of the meeting that union representation may be considered. If the employee requests Union representation, the employee has the right to Union representation in the meeting.~~

~~3. If during any examination of an employee by a representative of the Agency in connection with an investigation there is a reasonable belief by the employee that the examination may result in disciplinary action against the employee, the employee may stop the meeting and request union representation. If the employee requests~~

[1] The OSC is an independent agency protecting federal employees from prohibited personnel practices, including whistleblower retaliation and unlawful hiring practices. OSC provides an independent, secure channel for disclosing and resolving wrongdoing in federal agencies.

Commented [CR59]: This is a different section

Commented [CR60]: Adjust to meet OSC definition https://osc gov/Documents/Outreach%20and%20Training/Posters/Reprisal%20for%20Whistleblowing%20Poster pdf

Commented [CR61]: The OIG and the OSC do not resolve issues

Commented [CR62]: I do not want to create a grievance because the OHR director was out one day We will send it out every year

Commented [CR63]: We do not control the OIG, we do not read Weingarten rights, and we will not wait three days to interview someone

Commented [CR64]: We have this above 3 days is not reasonable

~~Union representation, the employee has the right to Union representation in the meeting.~~

~~4. Security clearance meetings shall be covered by Weingarten Rights.~~

Section IX. Right of Access to Documentation

A. ~~In accordance with applicable laws and regulations, employees have the right to be made aware of and receive copies of any information specific to them that is maintained under the Agency's official systems of records as published by EPA in the Federal Register. Upon request, an employee may see such records and have a copy made of them. All such records shall be deemed confidential, shall be viewed or disseminated only to officials/employees with a legitimate administrative need to know, and must be maintained in a secure location.~~ The Agency will maintain and utilize records covered by the Privacy Act of 1974 in accordance with that law. Employees may review and/or copy the records and/or make comments and recommendations on corrections with regard to the records maintained under the Privacy Act of 1974 as provided for in that law. As workload permits, employees shall be granted a reasonable amount of duty time to perform these activities during their regular work hours.

~~B. Employees shall have the right to examine any of their personnel records during their regular work hours. Any Union representative present for the examination of records will be granted official time. The employee shall have the right to prepare and enter on the record, while in duty status, a response to material placed in such records.~~

~~C. Access to the employee's personnel records shall be granted to the employee and/or the employee's representative within three (3) work days of the request if such records are maintained on the premises in which the employee is located or are electronically maintained and are readily available. If the records are not so maintained, the Agency will initiate prompt action to obtain the records from their remote location.~~

~~D. Employees or their personally designated representatives may obtain a photocopy or electronic copy of documents pertaining to the employees with the exception of records restricted by law or Government-wide rule or regulation. Charges, if any, for photocopies supplied shall be in accordance with 5 C.F.R. § 297.206.~~

Commented [CR65]: We have this above

Commented [CR66]: Internal security practices are non-negotiable

Commented [CR67]: Need to check with our data people

Commented [CR68]: Covered by section above

Commented [CR69]: Covered by above Not clear what is being sought here

Section X. Participation in Voluntary Activities

Employees have the right to participate or decline to participate in voluntary activities publicized by the Agency. The Agency will not require or coerce employees to participate in any way in voluntary activities. ~~Participation or non-participation will not be used to advantage or disadvantage employees.~~

Commented [CR70]: Some voluntary activity can be considered relevant to employees' qualifications

Section XI. Right to Debt Collection Protection

~~A.~~ The Agency will comply with: 5 C.F.R. Part 581 regarding Processing Garnishment Orders for Child Support and/or Alimony, and 5 C.F.R. Part 582 regarding Commercial Garnishment. The Agency agrees to hold in confidence all matters related to this Section. Notice to employees regarding debts will be sent in accordance with applicable law and regulation. ~~Employee garnishments will be processed in accordance with the provisions of 5 C.F.R. Parts 581 and 582. The Agency agrees to hold in confidence any and all debt notices and in the event of a dispute between an employee and a private individual or firm with respect to an alleged debt or financial obligation, where the debt is not acknowledged by the employee or reduced to a judgment, the Agency will not act as an arbitrator nor will the Agency take any action against the employee which is not directly related to the debt. This provision does not apply to debts against the United States of America which are considered a just obligation upon presentation to the employee, or to debts incurred on credit cards issued to the employee for use in Official Government business.~~

Commented [SA71]: Suggestion for alternative language (so we're not beholden to unclear "in confidence" language): Where such issues are covered under the Privacy Act, the Agency will adhere to those standards

~~B. Prior to initiating a collection action through salary offset for a debt against the United States, the Agency will provide notice to the employee of the employee's rights as outlined in appropriate regulation, as well as a copy of such regulation.~~

Section XII. Right to Proper Payment

The Agency will comply with applicable Government-wide regulations, including 5 C.F.R. 5584 and Agency regulations and polices regarding: the delivery of employee pay; overpayments; waiver of overpayment and underpayments. When an employee becomes aware of an overpayment, it is the responsibility of that employee to notify the Agency of the overpayment immediately. If an employee notifies the Agency that they have been overpaid, the Agency will explain to the affected employee the circumstances of the overpayment and will explain the process for completing a Request for Waiver of Claim for Erroneous Payment. ~~The Agency agrees that employees are entitled to their proper pay or reimbursement at the proper time in the proper amount. If an employee is overpaid, the Agency will explain to the affected employee the circumstances of the overpayment and will assist the employee in the completion of a Request for Waiver of Claim for Erroneous Payment.~~

~~In the case of overpayment or underpayment of net pay due to the error of the Agency, the Agency will expeditiously correct the overpayment, and reimburse the employee any interest and penalties incurred by the employee as a result of the overpayment, to the extent authorized by law,~~

~~rule and regulation. If the employee is required to reimburse the Agency for overpayment, no repayment will be required until sixty days after the issue is resolved and the employee will be afforded a pay plan equal to the amount of time the Agency was in error.~~

Section XIII. Right to Notice of Benefits

A. Notices: The Agency will notify employees using electronic messaging systems designed to send individual notification regarding OPM announcements of the following payroll related events:

1. Open season for the Thrift Savings Plan;
2. Open season for Federal Employee Health Benefits (FEHB);
3. How to obtain copies of FEHB provider brochures;
4. ~~Timely notice of d~~Discontinued service by an FEHB provider; and
5. ~~Notice of any o~~Open season~~s~~ for Federal Group Life Insurance~~, and conversion for other pension systems, etc~~.

B. FEHB and Non-Pay Status: The Agency will comply with applicable law and Government-wide regulations regarding the coverage under the FEHB when an employee is i~~o~~n a non-pay status.

~~Section XIV. Loss of Information~~

~~If an employee's Personal Identifiable Information (PII) is disclosed to an unauthorized, third (outside) party by the Agency, the U.S. government or their agent, the Agency will offer the employee identity theft protection for lifetime.~~

~~Section XV. Religious Accommodations~~

~~Religious Accommodations shall be provided to employees with a sincerely held religious belief, practice, or observance upon request, as provided by federal and state laws and regulations where they do not provide a hardship to the Agency. Such accommodations may include, but are not limited to, flexible use of time, scheduling and use of leave, including flexible break time, flexible leave use, expanded comp time, use of maxi flex scheduling to include daily prayers, providing a reasonably comfortable and private location for praying, modifications to workplace policies, and other needed and effective accommodations. The presence of and details of a Religious Accommodation shall be confidential between the employee and the Decision Maker, typically their immediate supervisor.~~

Commented [CR72]: Belongs in the RA Article