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, and agency policy employees have the right to direct and/or fully pursue their private lives, personal welfare and personal beliefs without interference, coercion or unlawful discrimination by the Agency so long as such 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. Not being required to work for no compensation, including but not limited to accepting telephone calls, text messages, etc. outside of duty time.~~

~~**AFGE willing to include "subject to" or "limited by" language~~

Commented [OPM1]: AFGE
Agency to consider language

Commented [SA2R1]: Agency: Without "unlawful" there is no standard for what this means and may be used to claim anything is discrimination The parties have a mutual understanding of unlawful, but without that language the parties will not have a mutual understanding, which will increase litigation and decrease efficient enforcement of this CBA

Commented [OPM3]: AFGE rejects this deletion This language is in the 2007 MCBA

Commented [CR4]: Managers are not always expected to respect privacy There are many instances where they need to know private information

Commented [OPM5R4]: AFGE
Employees have the right to have their privacy respected by managers
Agency to consider alt language

Commented [CR6R4]: EPA:
AFGE wants agency to consider ways in which the agreement can clarify managers should not be unnecessarily involved in employees' private situations, while reserving management's ability to delve in the few instances where that's maybe needed

Commented [OPM7R4]: AFGE
Union expects the managers will "respect the privacy of their employees"

Commented [SA8R4]: Agency: We considered language Asking AFGE to consider that employees only need to share need to know information

Commented [CR9]: What does this have to do with privacy?

Commented [OPM10R9]: AFGE
For "A" perhaps "subject to rules, policies, etc"?
For "B" perhaps "without cause" and "actively monitoring"

Commented [CR11]: 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 [OPM12R11]: AFGE
Agency to consider language

Commented [BJ13]: confidential-medical info? Someone being on vacation should not be encompassed

Commented [CR14]: How does this affect privacy?

Commented [OPM15R14]: AFGE
For "D" what is done during private time

Commented [BJ16]: our changes are gone

Commented [OPM17]: AFGE

Section III. Merit Systems Principles

As required by 5 U.S.C. 2301(b) (1) through (9), the Agency's personnel management program will be implemented with the following merit system principles *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—*

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.*

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;*

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 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 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 manner that will avoid public embarrassment or ridicule.~~

Employees should discuss conflicting orders with their immediate supervisor to resolve the conflict. ~~Employees will have the right to Union representation~~

1. Employees recognize their responsibility to promptly comply with all orders and instructions from their supervisors. If an employee reasonably believes that an order or instruction ~~patently~~ violates any law, rule, regulation, or Agency policy, they should state their beliefs to their supervisor. Additionally, Supervisors recognize their responsibility to ensure that all orders and instructions are consistent with law, rule, regulation, or Agency policy. 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 was~~to be~~ illegal. ~~An employee will not be subject to discipline on the basis that the employee carried out the order of the supervisor.~~

~~[AFGE OPEN TO LANGUAGE LIMITING THIS PARAGRAPH TO THE PARAGRAPH ABOVE] If there is a disagreement between the employee and the Agency regarding the employee's right to Union representation pursuant to this MCBA the meeting will be delayed no more than one full workday, in order to permit the employee to consult with their Union representative, and for the supervisor to consult with the local HR office. Contact with union representatives and/or HR officials should occur as soon as the meeting is scheduled.~~

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. ~~All employees shall be treated fairly and equitably and without discrimination or actions that are threatening, intimidating, bullying and/or disturbing.~~

~~1.~~

~~2. Manager Accountability. When an employee perceives inequity in working conditions, the employee or Union representative can request and the Agency shall:~~

Commented [CR18]: One person's normal discussion is another's "embarrassment or ridicule " Agency's ability to create an atmosphere is limited

Commented [OPM19R18]: AFGE
Agency concerned with "atmosphere"

Commented [CR20R18]: Agency
Agency can look at alternative language

Commented [OPM21R18]: AFGE
Union rejects this deletion This language is in 2007 MCBA

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Commented [CR22]: Conflicting with what? Why would the Union be involved in normal work assignments?

Commented [OPM23R22]: AFGE
Employee may need Union to work through conflict…Agency concerned with micro management of management…AFGE to consider (Marie?)

Commented [SK24]: Agency could accept timely

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Commented [SA25]: Agency Comment: Follow the Rules Act, extended protection to agency policy However, following orders is essential to meeting agency mission Therefore, the order must actually be illegal to make the defense—not just a belief Alternately agency is fine with deleting this sentence

Commented [SK26]: Agency: Agency to reconsider based on deletion above

Commented [SA27R26]: Agency: Looked at this language this evening and it seems to be covered by the language below "It is a Prohibited Personnel Practice to take a personnel action against any employee for refusing to ob ...

Commented [SA28]: Agency: if the union believes that the agency improperly denied union representation at a ...

Commented [CR29]: This is already in the harassment article (or belongs there) We do not want conflicting ...

Commented [OPM30R29]: AFGE ...

Commented [SA31R29]: AFGE doesn't believe this language is in the harassment article

Commented [OPM32]: AFGE
Agency want to have "bullying" definefd

Commented [SA33R32]: Agency: This sentence is undefined and will increase litigation and decrease efficien ...

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Commented [OPM34]: AFGE
Union is open to hearing a different trigger

Commented [SA35]: Agency: for this section, if there is unlawful discrimination, violation of policy, or violation o ...

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.~~

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.~~

~~1. Employees may refuse work if they reasonably believe that an order or instruction patently violates any law, rule, or 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~~regulation, or Agency policy. Employees must follow any lawful order. Employees may refuse a specific work assignment if performing the work assignment would violate law, rule, or regulation. It is a Prohibited Personnel Practice to take a personnel action against any employee for refusing to obey an order that would require the individual to violate a law, rule, or regulation.

~~2. The employee may document their reasonable belief that the order or instruction violated one or more laws, rules, or 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.~~

Commented [CR36]: This would grind offices to a halt

Commented [CR37R36]: AFGE:
What if Grievances filed are triggers? Looking for more equitable accountability

Commented [SA38R36]: Agency considered The union's proposal would negatively impact the efficiency of the agency in accomplishing our environmental mission

Commented [CR39]: This feels like a grievance

Commented [OPM40]: AFGE
The Union rejects the deletion of this section
Union requests the Agency consider options

Commented [OPM41]: AFGE
As far back as 07-13, the Union has been open to discussing different triggers for this 360 assessment The Agency has led the Union to believe they would consider and provide counter Union has agreed to not restate Union representation in the language above about conflicting orders…this acceptance by AFGE is based on Agency acceptance of manager accountability

Commented [OPM42R41]: AFGE
Agency rejects "Manager Accountability" in total
Agency to provide counter to this concept of manager accountability

Commented [CR43]: Very similar to VI a 1 Atmospheres are beyond supervisory control

Commented [OPM44R43]: AFGE
Propose with language modification

Commented [CR45]: 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 [OPM46R45]: AFGE
Union rejects this deletion
Agency to come back with different language

Commented [OPM47]: AFGE
Union rejects this deletion

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Commented [BJ48]: "follow the rule" act

Commented [CR49R48]: EPA:
AFGE will look at the proposed language

Commented [OPM50]: AFGE
Union willing to delete this sentence IF agreement on the rest of the paragraph as presented

Commented [CR51]: This would be incredibly disruptive to management's right to assign work Employees'

Commented [OPM52R51]: AFGE
Union added "reasonable"

Commented [OPM53R51]: AFGE

~~E.~~D. Personal Belongings and Agency Equipment: The Agency will continue to make reasonable efforts to provide for the secure storage of personal belongings in existing work spaces. When new furniture is being contemplated as part of a space update, this is a matter appropriate for local negotiation. The Agency is not responsible for personal belongings brought to the workplace by an employee. 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, in compliance with applicable law, rule and regulation. Employee's personal belongings may be searched when reasonable for the circumstances and in compliance with applicable law, rule and regulation.

~~F.~~ Resign/Retire: An employee may resign or retire at any time and may set the effective date of their resignation or retirement. An employee may request 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 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. ~~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.~~ The employee may designate a representative for ~~Union has the right to attend meetings and obtain documents related to~~ any agreement between the Agency and an employee when the employee is resigning in lieu of Agency initiated action, such as termination or removal.

~~G.~~2.

~~H.~~E. 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.~~ 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 by the Agency from a recording, except for Inspector General Investigations,

Commented [CR54]: We don't want to have the affirmative obligation to bring in the Union, especially when the situation may be private/embarrassing

Commented [OPM55R54]: AFGE
Union rejects this deletion

Commented [CR56]: Agency:
Union will consider adding a provision of employees' rights to talk to the union and then add specific situations where employees have the right to involve the union

Commented [OPM57R56]: AFGE
See Union revisions

Commented [SA58]: Agency counter

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Commented [OPM59]: AFGE
Union rejects this deletion With the highlighted language, this is the same as the ICBA

Commented [SA60R59]: Agency: Some states have laws requiring dual consent for phone and other communications Union's language may imply to employees that they can record, which would result in illegal activity Separate from that concern, we do not want disputes between management and employees – arguing about whether it was a work related matter, when the language should be clear that recording is not allowed without consent

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Commented [OPM61]: AFGE
Union rejects this deletion With the highlighted language, this is the same as the ICBA

Commented [SA62R61]: Agency: this language suggests caveats "other law enforcement " Can union explain what they are seeking to exclude with "conducted by the agency or agencies outside of the agency"?

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 recording and the transcript, if any. ~~Information~~ Recordings made by management ~~obtained~~ in conflict with this section will not be used as evidence against any employee in a disciplinary process~~.~~ . This provision does not apply to training sessions~~,~~ and all-hands meetings or where the agency intends to use future viewings or the recording as a resource. ~~otherwise agreed by the parties. where the agency intends to use future viewings or the recording as a resource.~~

F. 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 prior approval of outside activity as required by the Agency's Supplemental Standards of Ethical Conduct for Employees of the Environmental Protection Agency, 5 C.F.R. Part 6401.,~~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 required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment within ~~ten (10) business days a~~ reasonable timeframe. The Deputy Ethics ~~Officer~~ Official or designee will respond in writing and, if the request is denied, the reason for 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.

~~J.~~

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 official~~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:

1. A supervisor or management official of a higher rank than the employee's immediate supervisor ;
2. The Human Resources Office;.
3. An Equal Employment Opportunity Specialist or Officer and/or an Equal Employment Opportunity Counselor; and
4. The Financial Management Officer or designee on matters directly affecting the employee.

Commented [OPM63]: AFGE
Why is the Agency deleting this language

Commented [OPM64]: AFGE
Union rejects this change…"Information" is in the ICBA

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Commented [OPM65]: AFGE
Need to assess this need
Union seeks to not use the recording in evidence

Commented [OPM66]: AFGE
Union doesn't see a need for this language

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Commented [CR67]: Outside Employment: Employees may work at outside employment only when consistent with applicable law, Government-wide regulations, and Agency ~~rules,~~ regulations and policies ~~directives, guidance and manuals; and if such activities do not conflict with job responsibilities, and do not raise a real or an apparent conflict of interest [ ]~~ When prior Agency approval of outside employment is required, the Agency agrees to approve or disapprove an employee's written request to engage in outside employment within a reasonable ...

Commented [OPM68]: AFGE
How much do these differ from government wide ...

Commented [CR69R68]: Agency ...

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Commented [CR70]: Not all EPA employees have to fill these out but many employees who do not could run afoul ...

Commented [OPM71R70]: AFGE ...

Commented [OPM72]: AFGE
Union rejects this deletion ...

Commented [OPM73]: AFGE ...

Commented [SA74]: Agency: we're okay with this as written? Want to confirm union is okay with accepting?

Commented [BJ75]: Agency accepts w change noted to bring in line w 2007

Commented [OPM76]: AFGE rejects this deletion
Employee is on duty time, AFGE rep is on official time

Commented [CR77R76]: Agency:
Bob to double check

Commented [SA78R76]: Agency: 5 USC 7131 Official time) d)Except as provided in the preceding ...

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 in order to secure a Union representative.

~~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. . 5 USC 7114 (a)(2)(B) provides that an exclusive representative shall be given the opportunity to be represented at any examination of an employee by a representative of the agency in connection with an investigation if the employee reasonably believes the examination may result in disciplinary action and the employee requests representation.

~~C. 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 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)~~

~~D.~~C. Weingarten Rights. Agency shall inform employees each year by May 1st of their Weingarten Rights via email.

~~any examination of an employee in the unit by a representative of the agency in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee:~~
~~the employee requests representation; and.~~
~~1. until the union representative arrives, the employee may choose not to participate in the discussion.~~
1. 5 USC 7114 (a)(3) provides that employees may request an exclusive representative be given the opportunity to represent them at any examination in connection with an investigation if the employee reasonably believes the examination may result in disciplinary action and the employee requests representation.

D. If a matter being investigated concerns potential criminal misconduct, warnings (Garrity

Commented [OPM79]: AFGE
Agency to work on including "reasonable belief" language

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Commented [OPM80]: AFGE does not agree with this insertion

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Commented [CR81]: Private how?

Commented [OPM82R81]: AFGE
Closed office or conference room with only "need to know" attendees

Commented [CR83]: Not a best practice for investigations

Commented [SA84R83]: Agency: Agency will not inform in advance because this is a poor investigatory practice

Agency and union have historically used the statutory standard

Commented [CR85]: This turns Weingarten on its head

Commented [OPM86]: AFGE
Union rejects deletion…language is in NTEU

Commented [SA87]: Agency: Not statute and hinders agency investigation

Commented [CR88]: Agency
Agency is looking at Kalkines language for AFGE to consider

Commented [CR89]: These are criminal standards and rarely relevant

Commented [OPM90R89]: AFGE
Agency to rework language (Kalkines/Garrity)

Commented [OPM91R89]: AFGE
Where is the Kalkine and Garrity language??

Commented [OPM92]: AFGE
Union does not agree with this deletion

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or Kalkines) will be provided to interviewed employees, as appropriate.

E. Garrity Warning: At the commencement of, or as soon as it might become applicable during the course of, a voluntary investigatory interview, the Agency will provide an employee a warning regarding the employee's constitutional privilege against self-incrimination, which may be invoked when the employee reasonably believes their statements may be used against them in a criminal proceeding. An employee's refusal to respond based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for administrative disciplinary action. Evidentiary value of an employee's silence may be considered in administrative proceedings as part of the facts surrounding an investigation. Any statement provided by the employee may be used as evidence in criminal and/or administrative proceedings.

F. Kalkines Warning: At the commencement of a compelled investigatory interview, where prosecution has been declined by the appropriate authority, the Agency will provide an employee a warning that the employee's statements concerning the allegations during the interview cannot and will not be used against them in a subsequent criminal proceeding, unless the employee provides false statements or information; in which case, criminal proceedings may be instituted against the employee for falsifications. Refusal to answer or failure to respond truthfully to any questions may result in administrative disciplinary action.

~~Employees shall be given any warnings (Garrity warning) 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.~~

G. ~~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. In such cases, the Agency shall provide a Kalkines warning, orally and in writing, to the employee being investigated.~~

~~E.~~

H. ~~When employees are given a warning, they shall be given a "Statement of Rights and Obligations." Employees will may 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 the employee's a waiver of an employee's rights against self-incrimination or the employee's admission of any wrongdoing by the employee.~~

~~F.~~I. When an employee being interviewed is accompanied by a Union representative, the role

Commented [SA93]: Agency: This is our understanding of the law/case law We are okay with D/E/F as a package, but if the union does not agree, our offer is D

Commented [CR94]: The agency has limited law enforcement ability against its own employees This would be holding the agency accountable for outside entities

Commented [OPM95R94]: AFGE
Need more research

Commented [CR96]: Why is needed? "Sole basis" may be accurate but it is misleading to employees

Commented [OPM97R96]: AFGE
Union rejects this deletion
Agency thinks this may be covered by new language they will suggest

Commented [CR98]: 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 [OPM99R98]: AFGE
Union rejected deletion
Need more research

Commented [OPM100]: AFGE
Union rejects this deletion…language as modifiedis in NTEU

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Commented [SK101]: Agency
AFGE proposes that HR when they give Kalkines should give a statement which provides the Kalkines rights in writing

Commented [CR102]: 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?

Commented [OPM103R102]: AFGE
Union awaiting Agency response

Commented [OPM104]: AFGE
Union rejects this deletion…language with changes is in NTEU

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~~ for correction and clarification. ~~correct or clarify the transcript/notes of the meeting or meeting notes.~~

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

Section IX. Rights

~~B.~~ 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. ~~the Dr. Chris Kirkpatrick Whistleblower Protection Act, the U.S. Office of Special Counsel's Reauthorization Act of 2017, and the Follow the Rules Act of 2017~~ and their rights to be protected from retaliation and prohibited personnel practices.

~~C.~~ 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. if censorship meets one of the above-listed categories.

An employee may choose at any time to go to the Office of Special Counsel (OSC)[1] or the Agency's Inspector General (IG). Whistleblowers or employees engaging in whistleblowing activity may request Union Representation.

~~D.~~

[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 [OPM105]: AFGE
Union to review case law

Commented [OPM106R105]: AFGE
Union can't accept this language…

Commented [OPM107R105]: AFGE
Agency to propose language to address if disruption occurs…not that participation is disruptive

Commented [SA108R105]: Agency the case law is clear that the union representative may not unduly disrupt the examination. "The FLRA declined to adopt a per se rule giving employees the right to confer with their union representative where doing so would not unduly disrupt the examination. *FCI, El Reno, Okla.*, 96 FLRR 1-1132 , 52 FLRA 421 (FLRA 1996)."

Commented [CR109]: Agency:
Union to take this back and take a look

Commented [OPM110]: AFGE
Agency to consider

Commented [SA111]: Agency: Employee does not get to erase what they've said

Commented [SK112]: Agency:
Union to take a look

Commented [SA113]: Agency: looking into this language

~~B. If an employee has a reasonable belief a meeting could in any way lead to the employee being disciplined, terminated, or have their personal working conditions affected, the employee may request that a union representative, officer or steward be present at the meeting.~~

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 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

~~D.~~ 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. Employees may request information in accordance with the Privacy Act at EPA.gov/privacy (or it's successor site). As workload permits, employees shall be granted a reasonable amount of duty time to perform these activities during their regular work hours.

~~E. 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.~~

~~F.~~ Access to the employee's personnel records as defined in 5 CFR Part 293 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.~~

~~G. Employees or their personally designated representatives may obtain a photocopy or electronic copy of documents pertaining to the employees with the exception of records~~

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Commented [CR114]: We do not control the OIG, we do not read Weingarten rights, and we will not wait three days to interview someone

Commented [CR115]: We have this above 3 days is not reasonable

Commented [CR116]: We have this above

Commented [CR117]: Internal security practices are non-negotiable

Commented [OPM118]: AFGE
Union does not accept this deletion
Agency to research

Commented [SA119]: Agency

Union argument is that "reasonable" should be sufficient to control here and don't need "as Workload permits"

Commented [SA120]: Agency: we see this is new proposed language and we want to understand more about how addition impacts language
Agency does not agree to this sentence

Commented [SA121]: Agency: pertaining to goes beyond privacy act So broad/vague as to be unmanageable

~~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 [CR122]: Covered by above Not clear what is being sought here

Commented [OPM123R122]: AFGE
Are all records electronic now? Agency…the larger employee file is electronic

Commented [OPM124R122]: AFGE
Union looking to provide access to BUEs

Commented [OPM125]: AFGE
Union does not agree with this deletion…need further discussion

Commented [CR126]: Agency
Agency suggests we use the briefing to sus out this information – could be multiple SORNs

Easy to get down a rabbit hole re this information Agency suggesting guardrails limiting to EOPF and disciplinary file (LERIS or LERTS) Union to consider after briefing

Commented [OPM127R126]: AFGE
Union waiting for briefing…no counter at this time

Commented [SA128]: Agency: Ask if there are any privacy act timelines for a response

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 in itself will not be used to advantage or disadvantage employees.

Section XI. Right to Debt Collection Protection

~~A.~~ It is recognized that all employees are expected to pay promptly all just financial obligations. 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.

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The Agency or payroll provider will initiate debt against the United States collections in accordance with 5 CFR 550.1104(e) and 40 CFR 13.22. The parties recognize that smaller debts to the government (e.g., overpayment of $50 or less) may not result in a debt letter. The Agency or payroll provider will provide notice in debt letters to the employee of the employee's rights as outlined in appropriate 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 or payroll provider will ~~explain~~ provide the employee a debt letter explaining 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 parties recognize that smaller debts to the government (e.g., overpayment of $50 or less) may not result in a debt letter. 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 discontinued service by an FEHB provider; and
5. Open season~~s~~ for Federal Group Life Insurance, and
6. Opportunity to convert from an existing pension system to a new pension system (e.g., CSRS to FERS).

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 in a non-pay status.

Section XIV. ~~Loss of~~ Disclosure of Personal Identifiable Information (PII) by the Agency

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 implement appropriate remedial actions in accordance with agency policy, law and regulation, including potentially offering the employee identity theft protection ~~for lifetime~~.

Section XV. Religious Accommodations~~Arrangements~~

The Agency will not discriminate based on religion as detailed under Title VII of the Civil Rights Act of 1964. The Agency will grant requests for Religious Accommodations ~~Arrangements shall be provided to~~ for 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 arrangements 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~~~~arrangements~~. An employee's religious accommodation will ~~The presence of and details of a Religious Accommodation Arrangement shall~~ be treated as confidential ~~between the employee and the Decision Maker, typically~~ and shared only with those

Commented [OPM129]: AFGE
From 2007

Commented [OPM130]: AFGE
Agency to discuss with OCFO to determine possibilities

Commented [CR131]: Agency
Agency to flesh out its position further – just getting information as we discuss Two policies apply to the repayment process –
https://intranet.epa.gov/ocfo/policies/direct/2540/2540-09-p1_billing_and_collecting.pdf

https://intranet.epa.gov/ocfo/policies/direct/2540/2540-09-p2_non_federal_delinquent_debt.pdf

Commented [OPM132R131]: AFGE
Union awaits response from Agency

Commented [SA133R131]: Agency: Language not compliant with regs, which discuss 30 days and they start accruing interest/etc We can't promise anything other than following regs (40 CFR 13.22)

Commented [SA134R131]: Agency:

Union would like briefing on overpayment, payment plans (what occurs if no repayment plan) How it relates to folks that got leave and shouldn't have had to pay back time? (parental leave act folks?)

Parties close on top—need to resolve bottom first

Commented [CR135]: Agency
Going on the list of stuff to be briefed – this we need an OCFO contact for

Commented [OPM136R135]: AFGE
Union waiting on briefing before counter

Commented [SA137R135]: Agency: we checked with OCFO and they provided the regs and explanation regarding $50 This is the agency counter

Commented [OPM138]: AFGE
Union rejects this deletion…remedies under the Privacy A ...

Commented [BJ139R138]: https://www.opm.gov/cybersecurity/ ...

Commented [BJ140R138]: https://www.opmdatabreach.com/

Commented [CR141R138]: Agency ...

Commented [OPM142R138]: AFGE
See union revisions

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Commented [SA143]: Agency: EEOC uses religious accommodation

Commented [SA144]: Agency 9/16/22 researching and cannot agree to this language at this time

who have a need to know~~their immediate supervisor~~. ~~Where there is a conflict or concern, the issue will be raised to the local employee relation representative.~~

Commented [SA145]: Agency

A union concern is need to know folks need to know person has religious accommodation and needs X/y/z, but doesn't need to know underlying religion or "approved accommodation" instead of "religious accommodation"

Commented [CR146]: Belongs in the RA Article

Commented [OPM147R146]: AFGE
Union rejects this deletion…Religious accommodations are not the same as reasonable accommodations…religion is not a disability
Agency sees the process as similar…Agency to consider

Commented [BJ148R146]: 'leave' portion should go in leave section for ease of reference Other provisions dealing with work space, policies move to RA article since process so similar

Commented [CR149]: Agency

Agency suggests something along the lines of – "Employees have separate rights to accommodations for both disabilities and sincerely held religious beliefs per article ACCOMMODATIONS…" agency will continue to work on

Union will continue to work on too

Commented [OPM150R149]: AFGE
See Union revisions

Commented [OPM151R149]: AFGE
Agency to review and provide counter

Commented [SA152]: Agency position is that this should be included as a second part of a Reasonable accommodations for disabilities and religious accommodations article, but our edits are below

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