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, regulation, and Agency policy employees have the right to direct and/or fully pursue their private lives, personal welfare and personal beliefs without harassment or bullying (as defined by Order 4711) ~~interference, coercion retaliation, discrimination, or harassment, including freedom from conduct that is threatening, intimidating or bullying~~. ~~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." Information given in confidence by employees to management shall be kept in confidence and only shared on a need-to-know basis.~~

~~Subject to employment conditions established by law and regulation for EPA employees, the Right to Private Lives includes but is not limited to the following:~~
~~As applicable to the employee's position, the Right to Private Lives includes but is not limited to the following:~~

A. Employees generally have a 1st Amendment Right to Freedom of expression on social media platforms while not duty time or Agency equipment so long as it does not violate law, rule, regulation, Agency policy, or otherwise interfere with their job duties;
~~B. Free from electronic monitoring while not on duty time or Agency equipment;~~
~~C.~~B. Generally, managers are expected to ~~Holding~~ keep confidential the medical basis for which ~~annual or sick~~ leave is requested and/or used;
~~D.~~C. In their private lives employees generally have a Freedom of association, right to protest and/or march so long as it does not violate law, rule, regulation, Agency policy, or otherwise interfere with their job duties;
D. ~~Workplace free from search and seizure without probable reasonable cause, including review of email traffic, keystrokes, use of video surveillance, etc.; and~~
E. The Agency may, at its discretion, inspect packages, briefcases and other containers in the

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

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Commented [OPM3R1]: 5 0 EPA Policy Statement EPA maintains a zero-tolerance policy for any form of workplace harassment or discrimination Harassment or discrimination based on race, color, religion, sex (including pregnancy, sex stereotyping, sexual orientation, gender identity, gender expression or transgender status), national origin, sexual orientation, disability, age, protected genetic information, ...

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Commented [OPM4]: AFGE rejects this deletion This language is in the 2007 MCBA

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Commented [CR5]: Managers are not always expected to respect privacy There are many instances where they need ...

Commented [OPM6R5]: AFGE ...

Commented [CR7R5]: EPA: ...

Commented [OPM8R5]: AFGE ...

Commented [SA9R5]: Agency: We considered language Asking AFGE to consider that employees only need to sha ...

Commented [OPM10R5]: AFGE
Union offers this language

Commented [CR11]: Agency: ...

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Commented [OPM12]: AFGE
Union proposes this language to address Agency concerns

Commented [CR13]: What does this have to do with privacy?

Commented [OPM14R13]: AFGE
For "A" perhaps "subject to rules, policies, etc"? ...

Commented [CR15]: This is contrary to reg allowing supervisors to get medical documentation ...

Commented [OPM16R15]: AFGE
Agency to consider language

Commented [BJ17]: confidential-medical info? Someone being on vacation should not be encompassed

immediate possession of employees arriving on, working at, visiting, or departing from Federal property.

~~E.~~

F. Except for limited circumstances such as employees who have reached the federal pay cap, emergency response situations, and government shut downs, employees will ~~N~~not be~~ing~~ required to work for no compensation~~, including but not limited to accepting telephone calls, text messages, etc. outside of duty time~~.

Commented [BJ18]: 41 CFR § 102-74 370 What items are subject to inspection by Federal agencies? Agency proposes this as alternative if union wishes this subject matter addressed Agency is ok with deleting this subsection as well

Commented [CR19]: Agency:

Needs to double check what circumstances affect this situation

Commented [SA20]: Agency to consider first part of sentence Maybe examples?

Commented [CR21R20]: Agency:

Agency concerned with first half Struggling to come up with language given pay cap waiver (GS15 step 10 on a weekend) or emergency response situations

Commented [CR22]: How does this affect privacy?

Commented [OPM23R22]: AFGE
For "D" what is done during private time
For "E" there is a right to privacy unless the Agency has cause…Agency states there is a right to access agency office…perhaps clarify

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Commented [BJ24]: our changes are gone

Commented [OPM25]: AFGE
Union rejects this deletion AFGE sees this language to the BUE and the 1st line supervisor to provide examples of what the previous paragraph means

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 will have the right to Union representation.~~

~~Consistent with the Agency's XXX Policy, there will be zero-tolerance for any form of workplace harassment or discrimination in the assignment of work. In addition, the Agency will not tolerate other types of harassment in the assignment of work based on conduct that is threatening, intimidating, or bullying.~~

1. Orders and instructions.
   a. Employees should discuss conflicting orders with their immediate supervisor to resolve the conflict.
   b. Employees recognize their responsibility to timely comply with all ~~lawful~~ orders and instructions from their supervisors.
   c. If an employee reasonably believes that an order or instruction violates any law, rule, regulation, or Agency policy, they should state their beliefs to their supervisor.
   d. Supervisors recognize their responsibility to ensure that all orders and instructions are consistent with law, rule, regulation, or Agency policy.
   e. The employee may document their belief that the order or instruction violated one or more laws, rules, regulations, or Agency policies.
   ~~a.~~ f. Employees may refuse a specific work assignment if performing the work assignment would violate law, rule, or regulation.
   g. 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.

   ~~An employee will not be subject to discipline on the basis that the employee carried out the order of the supervisor.~~

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

1. ~~Subject to applicable law, rule, regulation, and Agency policy employees have the right to be free from interference, coercion, retaliation, discrimination, or harassment, including freedom from conduct that is threatening, intimidating or bullying in the workplace.~~

2. Employees, in the legitimate exercise of their rights and responsibilities as designated representatives of the Union, will be protected from interference, unlawful retaliation, unlawful discrimination, unlawful harassment, restraint, or coercion by the Agency.

Commented [CR26]: One person's normal discussion is another's "embarrassment or ridicule " Agency's ability to create an atmosphere is limited

Commented [OPM27R26]: AFGE
Agency concerned with "atmosphere"

Commented [CR28R26]: Agency
Agency can look at alternative language

Commented [OPM29R26]: AFGE
Union rejects this deletion This language is in 2007 MCBA

Commented [OPM30R26]: AFGE
Union can agree to this deletion IF the Agency accepts the new #1

Commented [CR31]: Conflicting with what? Why would the Union be involved in normal work assignments?

Commented [OPM32R31]: AFGE
Employee may need Union to work through conflict…Agency concerned with micro management of management…AFGE to consider (Marie?)

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Commented [BJ33]: EPA: addressed elsewhere in contract See bullying/harassment language above, which tracked similar language in Grievance article

Commented [SA34R33]: Agency: union language here is for inside the workplace—above is for private lives Union indicates this is their #1 per comment above

Commented [OPM35]: AFGE
Union suggest exchanging this language for the deleted #1

Commented [BJ36]: EPA: this works with b

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Commented [CR37]: Agency:

Union concerned about employees in low power situations asked to approve illegal actions Agency concerned about language as a blunt instrument and potentially culpable employees escaping responsibility

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Commented [CR38]: This is already in the harassment article (or belongs there) We do not want conflicting

Commented [OPM39R38]: AFGE

Commented [SA40R38]: AFGE doesn't believe this language is in the harassment article

Commented [CR41R38]: Union's discrimination and harassment article refers to this group of topics Suggest it

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3. Manager Accountability

a. In cases where the Council 238 or a local Union president is concerned about a trend of complaints, the Agency agrees to ~~informally~~ meet with the Union to discuss opportunities to address the issue.
b. Topics of discussion may include, but are not limited to:
   i. Training;
   ii. 360 reviews; and
   - Other Union suggestions. ~~Annually the Agency will provide a report to the AFGE Council 238 President on the nature of complaints against managers, and the number of actions taken as a result of those complaints across the Agency, including but not limited to the following:~~
   - ~~reprimands (verbally and written);~~
   - ~~the number of proposed suspensions;~~
   - ~~the number of actual suspensions (including the length of suspension);~~
   - ~~proposed and actual removals.~~
   - ~~Training, coaching or counseling ordered;~~
   - ~~Reassignments; and~~
   - ~~Appointment of the complainant to new supervisor.~~

~~1.~~c. ~~The AFGE Council 238 President and Agency Deputy Administrator will meet to jointly review the report to identify national concerns/trends to be addressed no later than 60 days after the report is received by AFGE.~~

~~2.~~

~~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);~~

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Commented [CR42]: Agency:

Agency agrees to remove

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Commented [OPM43]: AFGE
Union proposes this in replacement of the 360 Assessment

Commented [CR44R43]: Manager disciplinary information is beyond the scope of negotiations, solidly within the agency's discretion to carry out, and creates a host of privacy concerns

Commented [OPM45]: AFGE
Union is open to hearing a different trigger

Commented [SA46]: Agency: for this section, if there is unlawful discrimination, violation of policy, or violation of the MCBA, the union may file a grievance

Commented [CR47]: This would grind offices to a halt

Commented [CR48R47]: AFGE:
What if Grievances filed are triggers? Looking for more equitable accountability

Commented [SA49R47]: Agency considered The union's proposal would negatively impact the efficiency of the agency in accomplishing our environmental mission

Commented [CR50]: This feels like a grievance

~~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.~~

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 workspaces. 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.

E. 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.

G. When an employee is faced with the prospect of Agency-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 Agency's action. The employee may designate a representative ~~The Union has the right~~ to attend meetings when an employee is faced with the prospect of an Agency-initiated action such as termination or removal ~~unless the employee has expressly stated they do not want the Union present~~. ~~The Union retains the right to obtain and review all documents related to these matters.~~ Resignations shall not be secured by unlawfully coercive ~~or deceptive~~ means. The employee may designate a representative for any agreement between the Agency and the employee when the employee is resigning in lieu of Agency initiated action, such as termination or removal.

H. 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

Commented [OPM51]: AFGE
The Union rejects the deletion of this section
Union requests the Agency consider options

Commented [OPM52]: 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 [OPM53R52]: AFGE
Agency rejects "Manager Accountability" in total
Agency to provide counter to this concept of manager accountability

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Commented [CR54]: Agency:

Union seeks resignation agreements for employees Agency does not believe this entitlement is consistent with employees' rights (vs union's right to information)

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Commented [CR55]: 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 [OPM56R55]: AFGE
See Union revisions

Commented [OPM57]: AFGE
The Union rejects the deletion of the sentence

Commented [OPM58R57]: AFGE
Agency to consider

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involving 5 U.S.C. 7102 protected Union activity.

I. Recording Other Conversations: No recording of any conversation or meeting between a BUE and a management official will be made without mutual consent except for Inspector General Investigations, or other law enforcement investigations. When a transcript is made by the Agency from a recording, except for Inspector General Investigations, or other law enforcement investigations, 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 obtained in conflict with this section will not be used as evidence against any employee. This provision does not apply to training sessions and all-hands meetings or otherwise agreed by the parties. Employees will be given notice whenever an all-hands meeting, or training is being recorded, which can be accomplished through Teams (or successor system) displaying or indicating recording is in progress.

J. 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. 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 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. ~~An employee may grieve unreasonable delays in review of outside employment requests.~~

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 as reasonable and necessary on official time. ~~on officialduty 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

Commented [CR59]: Agency

This was added and not flagged

Commented [CR60R59]: Agency:

Union wants to add this to Teams invites where recording occurs Also notes agency accepted this already

Agency worried about having this requirement come with all invites and the burden/potential litigation created over this when most attendees can see on teams

Commented [CR61]: Outside Employment: Employees may work at outside employment only when consistent wi ...

Commented [OPM62]: AFGE
How much do these differ from government wide ...

Commented [CR63R62]: Agency ...

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Commented [OPM64]: AFGE
Union rejects this deletion ...

Commented [OPM65R64]: AFGE
Union can accept this deletion with the sentence added ...

Commented [OPM66]: AFGE ...

Commented [SA67]: Agency: we're okay with this as written? Want to confirm union is okay with accepting?

Commented [OPM68]: AFGE
Union will accept "reasonable timeframe" IF the Agency ...

Commented [OPM69R68]: AFGE
Agency to consider

Commented [CR70]: Agency ...

Commented [CR71]: Agency: ...

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Commented [BJ72]: Agency accepts w change noted to bring in line w 2007

Commented [CR73]: Agency ...

Commented [OPM74]: AFGE rejects this deletion
Employee is on duty time, AFGE rep is on official time

Commented [CR75R74]: Agency:
Bob to double check

Commented [SA76R74]: Agency: 5 USC 7131 Officia ...

Commented [OPM77R74]: AFGE ...

Commented [OPM78R74]: AFGE
Agency to consider

Employment Opportunity Counselor; and

4. The Financial Management Officer or designee on matters directly affecting the employee.

Section VIII. Employee Examinations

A. 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. 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.

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C. Weingarten Rights. Agency shall notify employees each year by May 1st of their Weingarten Rights via email. This notice shall include:

1. A bargaining unit employee has the right to union representation at any examination of the employee by a representative of the agency in connection with an investigation if:
   i. The employee reasonably believes the examination may result in disciplinary action against the employee; and
   ii. The employee requests representation.

~~D.~~

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~~E.~~D. If a matter being investigated concerns potential criminal misconduct, warnings (Garrity or Kalkines) will be provided to interviewed employees, as appropriate.

1. 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 or adverse 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.

2. 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.

~~When employees are given a warning by the Agency, 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 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.~~E. When an employee being interviewed is accompanied by a Union representative, the role of the representative includes:

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;
5. Advising and/or conferring privately with the employee during the course of the meeting; and
6. Not unduly disrupting the examination.

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 for correction and clarification ~~of the meeting notes~~. ~~The Agency will provide a copy of the notes to the employee and the Union representative as soon as practicable upon request.~~

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

Section IX. Rights

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.

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

Commented [SK79]: Agency
AFGE proposes that HR when they give Kalkines should give a statement which provides the Kalkines rights in writing

Commented [CR80]: 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 [OPM81R80]: AFGE
Union awaiting Agency response

Commented [OPM82]: AFGE
Union rejects this deletion…language with changes is in NTEU

Commented [OPM83R82]: AFGE
Union to provide a copy of "Statement of Rights and Obligations"

Commented [CR84R82]: Agency:
Union has not provided "Statement of Rights and Obligations " We do not like this language

Commented [CR85R82]: Agency:

Union sent agency some statements via email the agency hasn't looked at One is a form and one is a scanned document Agency to take a look

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Commented [CR86]: Agency:

This was marked as accepted but the agency has not agreed to it

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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.

C. 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.

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Section IX. Right of Access to Documentation

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 its successor site). In coordination with their supervisor, Employees shall be granted a reasonable amount of duty time to perform these activities during their regular work hours.

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~~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) workdays of the request. Specifically, any record or document retrievable by a personal identifier. 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.~~

Commented [SA87]: 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 [OPM88R87]: AFGE
Agency to consider

Commented [CR89R87]: Agency:

We have given briefings and have above the right to access information The Union's proposal has not changed at all

Commented [CR90]: Agency:

Union to further consider Heightened concern over the information the agency retains over employees

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

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

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[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.

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.

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 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.

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 in the case of underpayment, 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);

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Commented [OPM91]: AFGE
Agency to discuss with OCFO to determine possibilities

Commented [CR92]: 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 [OPM93R92]: AFGE
Union awaits response from Agency

Commented [SA94R92]: 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 [SA95R92]: 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 [OPM96R92]: AFGE
Union awaits briefing from OCFO

Commented [OPM97R92]: AFGE
Union still awaiting briefing from OCFO

Commented [CR98R92]: Agency

OCFO is working on a slide deck

3. How to obtain copies of FEHB provider brochures;
4. Timely notice of discontinued service by an FEHB provider; and
5. Open season 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. Disclosure of Personal Identifiable Information (PII) by the Agency

If an employee's Personal Identifiable Information (PII) is disclosed to an unauthorized party by the Agency or their agent, the Agency will implement appropriate remedial actions in accordance with law, regulation, and Agency policy, including potentially offering the employee identity theft protection.

Section XV. Religious Accommodations

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 for employees with a sincerely held religious belief, practice, or observance upon request, as provided by federal laws ~~(where State law is the same or more stringent than Federal law)~~ and regulations where they do not provide a hardship to the Agency. An employee's religious accommodation will be treated as confidential and shared only with those who have a need to know. ~~The Decision Maker for Religious Accommodations will be the employee's first line supervisor to preserve employee confidentiality.~~ If the Decision Maker is not the first line supervisor, the employee will be notified in writing of the identity of the Decision Maker. ~~Where there is a conflict or concern, the issue will be raised to the employee's 2nd level of management.~~

Commented [SA99]: 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 [OPM100R99]: AFGE
Agency to consider

Commented [OPM101]: AFGE
Agency to consider

Commented [CR102]: Agency:

We would still prefer this to be in the accommodations article

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