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

A. 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) by the Agency so long as such activities do not conflict with job responsibilities.

B. Generally, managers are expected to keep confidential the basis for which leave is requested and/or used. Employee information shared with managers for which the employee has requested confidentiality will be kept in confidence and only shared with individuals with a "need to know."

C. The Right to Private Lives includes but is not limited to the following:

1. Employees generally have a 1st Amendment Right to Freedom of expression on social media platforms while not on duty time or Agency equipment so long as it does not violate law, rule, regulation, Agency policy, or otherwise interfere with their job duties;

2. The Agency will not direct any Agency representative or contractor to electronically monitor a bargaining unit employee's activity while the employee is not on duty time or Agency equipment without ~~reasonable~~sufficient cause.

3. 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;

4. Supervisors may request electronic monitoring such as PIV entrance/exit time frames or log-in/log-out time frames with a written justification to and concurrence from the applicable PMO/HRO.

5. The Agency may, at its discretion, inspect packages, briefcases and other containers in

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Agency considering "reasonable"

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

6. Except for limited circumstances such as employees who have reached the federal pay cap where a waiver is not permitted or for identified essential personnel during a lapse in appropriations employees will not be required to work for no compensation.

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.

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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 IV. 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 V. 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 comply with all laws and Government-wide regulations prohibiting discrimination against employees on the basis of race, color, religion, national origin, sex, union activity, political affiliation, marital status, age, sexual orientation, a qualified person with a disability and genetic information. EPA also will not tolerate harassment of any type. Assignment of work by a supervisor, a difference of opinion, a disagreement on a work-related matter, or any other similar communication that is expressed in a professional manner, are not considered harassment.

    2. 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 legal orders and instructions from their supervisors.
        c. If an employee reasonably believes that an order or instruction violates or is inconsistent with 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 or was inconsistent with one or more laws, rules, regulations, or Agency policies.
        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.
        h. If an employee follows a supervisor's order(s)or instruction(s) which is not consistent with law, rule, regulation, or Agency policy such employee may raise lack of knowledge as a mitigating factor in response to any proposed discipline

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

    1. Employees, in the legitimate exercise of their rights and responsibilities as

designated representatives of the Union, will be protected from Agency actions that would constitute unlawful:

a. interference;
b. retaliation;
c. discrimination;
d. harassment;
e. restraint; or
f. coercion.

2. 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 meet with the Union to identify potential corrective measures to address the issue(s). Corrective measures may include, but are not limited to training, 360 reviews, other potential actions.

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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. 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.

F. 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 to attend meetings when an employee is faced with the prospect of an Agency-initiated action such as termination or removal; in such cases where the Union has been designated as the employee's representative. . Tthe Union employee and the Union retainhaves the right to obtain review and review, all documents related to these relied on to support the reasons for action given in the notice 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.

G. 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.

H. 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 in the meeting invitation whenever an all-hands meeting, or training a meeting or training is being recorded. which can be accomplished through Teams (or successor system) displaying or indicating recording is in progress.

I. 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 twenty-one (21) business days, provided the request meets all the regulatory requirements. The Deputy Ethics Official or designee will respond in writing and, if the request is denied, the reason for doing so will be included.

Section VI. 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

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Union rejects the deletion of this sentence

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Union to provide background support

Commented [OPM5R3]: AFGE
Union proposes to delete "and review"

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Agency to do more research

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This was added and not flagged

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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 [BJ10]: EPA: we are not understanding why employees need advance notice when Teams gives real-time notice of recording What is the need foreseen by this?

Commented [BJ11R10]: last R5 all-hands notice did say it was being recorded R5 climate change training also had a notice saying it was being recorded Union wants people in person being notified as well

Commented [BJ12R10]: EPA update: still looking into this issue of notice of potential recording

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Union representative as reasonable and necessary on official 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.

Section VII. 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.

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. 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.

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E. When employees are given a Garrity or Kalkines warning by the Agency (excluding the OIG), they shall be given a "Statement of Rights and Obligations." Employees will acknowledge on the statement the receipt of the above warning. Employees shall be given a copy of the statement for their records.

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.

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

Section VIII. 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:

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.

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.

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. 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

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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.

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.

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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.

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 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 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. If the Decision Maker is not the first line supervisor, the employee will be notified in writing of the identity of the Decision Maker.