

## **ARTICLE 5 Employee Rights**

### **Section 1**

- A. All employees shall be treated fairly and equitably in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, disability, sexual orientation, parental status, genetic information, gender identity and with proper regard and protection of their privacy and constitutional rights.
- B. The Parties recognize the need for supervisors, management officials, union representatives, and employees to treat each other and members of the public with courtesy, consideration, and respect.
- C. Employees shall be protected against reprisal for the lawful disclosure of information which the employee reasonably believes evidences a violation of law, rule, or regulation, or evidences mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to health or safety.
- D. If an employee identifies a reasonable concern that their supervisor's order, direction or assignment involves fraud or violates a criminal statute, the employee may address their reasonable concern with their immediate supervisor (or higher-level management) with the intent of resolving the issue. Employees may also report fraud, waste, and abuse allegations to the Office of the Inspector General.

### **Section 2**

The initiation of a grievance in good faith by an employee will not cause any reflection on his/her standing with his/her supervisor or on his/her loyalty or desirability to the organization. Employees who have relevant information concerning any matter for which remedial relief is available under this Agreement will, in seeking resolution of such matter, be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal. The Employer will not impose any restraint, interference, coercion or discrimination, or reprisal against any employee in the exercise of his/her right to designate a Union steward for the purpose of representing the employee to any government agency or official other than the Employer.

### **Section 3**

- A. If an employee wishes to discuss a problem or potential grievance with a Union representative, the employee shall have the right to contact and meet with the Union representative on duty time. Upon request, the employee will be released from duties to contact and meet with the Union representative, unless there is a need to provide immediate service balanced with the employee's need to meet with a Union representative.

If the employee's request to meet with the Union representative cannot be immediately approved, management will make a reasonable effort to allow the employee to meet with the Union representative by the end of the work day that the request was made. If Management cannot accommodate the employee's request, the employee will be allowed to meet with his/her Union representative the next workday. Delaying an employee's release will extend by one workday any time limits that may apply to the representational matter.

- B. Any discussions with employees by representatives of the agency, which may reasonably be considered by an employee to lead to disciplinary action, will be conducted in a private room. Upon request, the employee, in such instance, has the right to have his/her Union Representative at such examination in accordance with Article 8. If the representative is unavailable, the examination will be terminated and rescheduled as soon as practicable after a representative has been secured, normally within one workday. The Union's role is advisory in nature for these meetings. The Union representative cannot answer for the employee, nor tell the employee how to respond. A union representative may not interfere or disrupt the interview. While attending the examination, the Union representative retains all rights under the law applicable to these examinations.

The Parties recognize that representation may be performed in-person, by telephone or by video at the election of the Union. The Agency will incur no expenses related to in-person representation.

- C. Routine discussions, counseling, and appraisal interviews involving work performance shall not normally lead to disciplinary action for the purposes of this section.
- D. Employees will be informed of their right to representation in those situations specified in Section 3B of this article by notices distributed to employees annually electronically.
- E. Regardless of jurisdictional laws, absent written consent from all Parties (with the exception of court reporting transcripts in the conduct of official business), employees and their exclusive union representatives are prohibited from audio or video recording while on duty or conducting union business.

#### **Section 4**

Nothing in the Agreement will require an employee to become or remain a member of a labor organization or to pay money to the organization except pursuant to a voluntary written authorization by a member for payment of dues through payroll deductions or by voluntary cash dues payment by a member.

#### **Section 5**

Each employee shall have the right to join, or assist the Union without fear of penalty or reprisal, and each employee shall be protected in the exercise of such rights. Except as otherwise provided in law and this Agreement, such rights include the following:

- A. The right to act for the Union in the capacity of a representative;
- B. The right, in that capacity, to present the views of the Union to heads of offices, departments and agencies or other officials of the Government, the Congress, or other appropriate authorities; and
- C. The right to engage in collective bargaining with respect to terms and conditions of employment through representatives of the Union.

#### **Section 6**

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary.

#### **Section 7**

- A. The Agency will make every effort to ensure that employees receive their full compensation due on the established payday. For replacement of regular salary payment when such payment is not received, the employee may request assistance from his/her supervisor or contact the payroll liaison in the servicing personnel office.
- B. If an employee is not provided a salary payment when due, the day following the issuance of the replacement payment, the employee may request appropriate leave to pay necessary bills and conduct any other business as a result of the payment. Such leave will be granted in accordance with the leave provisions of this Agreement.

#### **Section 8**

An employee's supervisor may issue notices to an employee via email or in writing. When the supervisor issues written notice to an employee, the notice will consist of one (1) original (which the employee may transmit to his/her union representative) and an

electronic version submitted to the e7B file (or successor program). Such notices could include but are not limited to:

- A. Denial of AWS request;
- B. Imposition of sick leave restriction;
- C. Denial of request for conversion to or from part-time employee status.

### **Section 9**

The Agency may order an employee to undergo a fitness for duty examination only in accordance with applicable federal law and regulation.

### **Section 10**

An employee may withdraw a resignation at any time prior to its effective date provided the withdrawal is communicated in writing to the Agency, and the Agency has not made a valid commitment to any specific person to fill the position.

### **Section 11**

Any person who has the authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority:

- A. Discriminate for or against any employee on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation;
- B. Solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration of any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of:
  - 1. An evaluation of the work performance, ability, aptitude, or general qualifications of such individual, or
  - 2. An evaluation of the character, loyalty, or suitability of such individual;
- C. Coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee as a reprisal for refusal of any person to engage in such political activity;
- D. Deceive or willfully obstruct any person with respect to such person's right to compete for employment;

- E. Influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospect of any other person for employment;
- F. Grant any preference or advantage not authorized by law, this Agreement, rule, or regulation to any employee (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;
- G. Appoint, promote, employ, advance, advocate for appointment, employment, or advancement, in or to a position in the bargaining unit, any individual who is a relative of such employee;
- H. Take or fail to take a personnel action with respect to any employee as a reprisal for:
  - 1. A disclosure of information by an employee which the employee reasonably believes evidences:
    - a. A violation of any rule, law, or regulation, or
    - b. Mismanagement, a gross waste of funds, an abuse of authority or a substantial and specific danger to the health and safety of fellow employees or the public if such disclosure is not otherwise prohibited by law; or
  - 2. A disclosure to the Special Counsel of the Merit Systems Protection Board, or the Inspector General of an agency or another employee designated by the Associate Commissioner to receive such disclosures, of information which the employee reasonably believes evidences:
    - a. A violation of any rule, law or regulation, or
    - b. Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public and employee health and safety;
- I. Discriminate for or against any employee on the basis of conduct which does not adversely affect the performance of the employee or the performance of others; except that nothing in this paragraph shall prohibit the Employer 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; or
- J. 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 concerning merit system principles contained in 5 U.S.C. 2301.

## **Section 12**

- A. The Commissioner or designee may waive in whole or in part a claim of the United States in an amount aggregating not more than \$1,500 against any person arising out of: (1) an erroneous payment of pay or allowances to or on behalf of an employee; or (2) an overpayment resulting from failure to make a deduction for a statutory benefit program. Statutory benefit programs include: retirement, social security, health benefits, and life insurance.
- B. Management will waive collection action under the claim when it would be against equity and good conscience and Management has determined that these criteria will be met when the erroneous payment of pay or allowances occurred through administrative error and that there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any person having an interest in obtaining a waiver of the claim. Any unexplained increase in pay or allowances which requires a reasonable person to make inquiry concerning the correctness of his/her pay or allowances, ordinarily would preclude a waiver when the employee fails to bring the matter to the attention of appropriate officials. Waiver of overpayment of pay and allowances under this standard necessarily must depend upon the facts existing in the particular case.
- C. Where there is an overpayment resulting from failure to make a deduction for other purposes, a waiver may not be considered. Such other deductions include: federal taxes, state taxes, bonds, savings or charitable contributions.
- D. Collection of overpayments under this Article shall be in accordance with applicable law, rules and regulation.

## **Section 13 Outside Employment/Activities**

- A. When an employee files a request for approval of outside employment, the criteria used for such approval shall be fairly and equitably applied. All employee requests to engage in outside employment or activities shall be in writing and must be submitted in advance of the proposed starting date of such employment.
- B. The Agency agrees to address any written request as quickly as possible after such a request is received, but in no case later than twenty-one (21) days following receipt by the Regional Chief Administrative Law Judge (RCALJ).
- C. If an employee is not satisfied with the decision of the RCALJ, he/she may appeal the decision to the Office of the Chief Administrative Law Judge (OCALJ) within ten (10)

days. The OCALJ will have fifteen (15) days following receipt of the appeal to issue a decision.

### **Section 14 Retirement**

The Employer will continue to provide retirement planning information to bargaining unit employees through available technology. Such information may include, but is not necessarily limited to, individual counseling, elder care assistance, retirement materials, legal services counseling, life and medical insurance counseling, Federal benefits options, best retirement dates, Thrift Savings Plan (TSP), TSP withdrawal options, etc.

An employee's decision to resign or retire (if eligible for optional retirement) shall be made freely and in accordance with law, including prevailing regulations.

### **VDT Sidebar**

The Agency has decided to terminate the Vision Program. If the Agency implements a new Vision Program, NTEU bargaining unit employees may participate.