

Date: July 17, 2018

From: Office of Labor Management Relations (LMR)

Subj: Notice of Implementation of the Executive Order #13837: Executive Order Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time Use

To: American Federation of Government Employees (AFGE)/NVAC

NOTICE OF EO IMPLEMENTATION

In accordance with the negotiated agreement between the American Federation of Government Employees (AFGE)/NVAC and the U.S. Department of Veterans Affairs, this memorandum serves as notification of implementation of the May 25, 2018 Executive Order and rescission of provisions set forth in the Collective Bargaining Agreement (CBA) that are not in compliance with the requirements of Executive Order 13837, Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use.

The Executive Order imposes the following requirements on the use of taxpayer funded union time ("official time"):

1. No agency shall agree to authorize any amount of taxpayer-funded union time under section 7131(d) of title 5 ... unless such time is reasonable, necessary, and in the public interest. Agreements authorizing taxpayer-funded union time under 7131(d) that would cause the union time rate in a bargaining unit to exceed 1 hour should, taking into account the size of the bargaining unit, and the amount of taxpayer-funded union time anticipated to be granted under sections 7131(a) and 7131(c) of title 5 ... ordinarily not be considered reasonable, necessary, and in the public interest, or to satisfy the "effective and efficient" goal set forth in section 1 of this order and section 7101(b) of title 5.... Agencies shall commit the time and resources necessary to strive for a negotiated union time rate of 1 hour or less, and to fulfill their obligation to bargain in good faith.
2. Employees shall spend at least three-quarters of their paid time, measured each fiscal year, performing agency business or attending necessary training (as required by their agency), in order to ensure that they develop and maintain the skills necessary to perform their agency duties efficiently and effectively.
3. Employees who have spent one-quarter of their paid time in any fiscal year on non-agency business may continue to use taxpayer-funded union time in that fiscal year for purposes covered by sections 7131(a) or 7131(c) of title 5, United States Code.
4. Any time in excess of one-quarter of an employee's paid time used to perform non-agency business in a fiscal year shall count toward the limitation set forth in subparagraph (1) of this subsection in subsequent fiscal years.

5. A union official may not use taxpayer-funded union time to prepare or pursue grievances (including arbitration of grievances) brought against an agency under procedures negotiated pursuant to section 7121 of title 5, United States Code.
6. Employees may not engage in lobbying activities during paid time, except in their official capacities as an employee.
7. Employees may not use taxpayer-funded union time without advance written authorization from their agency, except where obtaining prior approval is deemed impracticable under regulations or guidance adopted by the Agency. VA's Time and Attendance (VATAS) system will be used to request, approve and track the use of official time.
8. Any employee who uses taxpayer-funded union time without advance written agency authorization shall be considered absent without leave and subject to appropriate disciplinary action.
9. Employees are required to request official time and to specify the number of taxpayer-funded union time hours to be used and the specific purposes for which such time will be used, providing sufficient detail to identify the tasks the employee will undertake. This procedure shall allow the authorizing official to assess whether it is reasonable and necessary to grant such amount of time to accomplish such tasks. For continuing or ongoing requests, employees are required to request authorization that will be submitted not less than once per pay period. Employees are required to request separate advance authorization for any use of taxpayer-funded union time in excess of previously authorized hours or for purposes for which time was not previously authorized.

VA has identified a list, including but not limited to, the following Articles in the 2011 VA AFGE Master Agreement that is inconsistent with the Executive Order:

1. Article 3 – Labor Management Cooperation
 - Section 7 - Use of Time
2. Article 4 - Labor Management Training
 - Section 1 - Union Sponsored or Requested Labor-Management Relations Training
 - Section 3 - Joint Labor-Management Training
 - Section 4 - Third-Party Sponsored Training
3. Article 5 - Labor Management Committee
4. Article 7 - Quality Programs
5. Article 8 - Child Care
 - Section 3 - Local Child Care Committees
6. Article 17- Employee Rights
 - Section 3 - Rights to Union Representation
 - Section 7 - VA Diversity Council/EEO Committees

7. Article 18 - Equal Opportunity Employment
 - Section 7 - VA Diversity Council/EEO Committees
8. Article 25 - Official Travel
 - Section 5 - Transportation, Travel, and Per Diem
9. Article 29 - Safety, Health and Environment
 - Section 2 - National Safety and Health Committee
 - Section 3 - Union Participation
10. Article 43- Grievance Procedure
 - Section 6 - Informal Resolutions
11. Article 44 – Arbitration
 - Section 2 - Arbitration Procedure
12. Article 45 – Dues Withholding
 - Section 6 – Revocation for Bargaining Unit Employees
13. Article 47 – Mid-Term Bargaining
 - Section 2 - National
14. Article 48 – Official Time
 - Section 1 – Purpose
 - Section 2 – Designate Union Officials/ Representatives
 - Section 3 – Accumulated Official Time
 - Section 4 – Additional Time Allotted
 - Section 5 – Travel to other Locations
 - Section 6 – Other Activities
 - Section 10 – Local
15. Article 49 – Rights and Responsibilities
 - Section 9 – New Employee Orientation

This is notification of the Agency's intent to terminate contractual provisions that are inconsistent with the Executive Order 13837 and implement the requirements of the Executive Order. If the Union seeks to bargain, the Parties will meet through post implementation bargaining, within 30 calendar days after receipt of this notice. The Department must receive all proposals for post implementation bargaining no less than 14 calendar days after receipt of this notice.

If you have questions regarding the implementation of E.O. 13837 and/or your existing collective bargaining agreement, please direct your questions vacolmr@va.gov and it will be routed to a member of the LMR team for a response.

Respectfully,

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