

Date: November 7, 2018

From: Acting Assistant Secretary for Human Resources and Administration

Subj: Notice of Repudiation: Official Time for Title 38 Employees in the 2011 Master Agreement between the Department of Veterans Affairs (VA) and the American Federation of Government Employees (AFGE)

To: Alma L. Lee, President – AFGE/National Veterans Affairs Council

NOTICE OF REPUDIATION

This notice is to alert you that, pursuant to 38 U.S.C. § 7422, employees described in 38 U.S.C. § 7421(b) (“Title 38 employees”) may no longer utilize official time because the use of official time by Title 38 employees negatively impacts direct patient care. The following list of articles from the 2011 Master Agreement between VA and AFGE (“VA/AFGE Master Agreement”) includes multiple contract provisions that reference official time. The list, however, is not all inclusive. The official time exclusion applies to all Title 38 employee official time provisions found in the VA/AFGE Master Agreement, as well as any Memorandum of Understanding (“MOU”), past practices, supplemental agreements, and collectively bargained agreements with AFGE that are currently in effect.

The impacted VA/AFGE Master Agreement articles include:

1. Article 3: Labor Management Cooperation
 - Section 7 – Use of Time
2. Article 4: Labor Management Training
 - Section 3 – Joint Management Training
3. Article 5: Labor Management Committee
4. Article 7: Quality Programs
 - Section 2 – General
 - Section 3 – Quality Programs Council Charter
 - Section 4 – Official Time Usage
 - Section 5 – Labor Management Forums and Official Time
 - Section 6 – Performance Evaluation
 - Section 7 – Return to Duty of 100% Union Representative
5. Article 8: Child Care
 - Section 3 – Local Child Care Committees
6. Article 18: Equal Employment Opportunity
 - Section 7 – VA Diversity Council/EEO Committees

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7. Article 27: Performance Appraisal
 - Section 3 – Policy
8. Article 29: Safety, Health and Environment
 - Section 2 – National Safety and Health Committee
 - Section 3 – Union Participation
9. Article 45: Dues Withholding
 - Section 6 – Revocation for Bargaining Unit Employees
10. Article 46: Local Supplement
 - Section 3 – Ground Rules for Negotiating Local Supplemental Agreements
11. Article 47: Mid-Term Bargaining
 - Section 2 – National
 - Section 4 – Local
12. Article 48: Official Time
 - Section 1 – Purpose
 - Section 2 – Designated Union Officials/Representatives
 - Section 3 – Accumulated Official Time
 - Section 4 – Additional Time Allotted
 - Section 5 – Travel to Other Locations
 - Section 6 – Other Activities
 - Section 7 – Performance Evaluation
 - Section 10 – Local
13. Article 49: Rights and Responsibilities
 - Section 9 – New Employee Orientation

FLRA Precedent Allows for Lawful Repudiation of Nonnegotiable Provisions

FLRA precedent allows Federal agencies to lawfully repudiate a collective bargaining agreement provision that conflicts with Federal law. Specifically, the VA/AFGE Master Agreement, by allowing Title 38 employees to utilize official time, is in direct conflict with the collective bargaining exclusions found in 38 U.S.C. § 7422. 38 U.S.C. § 7422 states that collective bargaining on behalf of Title 38 employees “may not cover, or have any applicability to,” any matter that concerns: direct patient care; clinical competence; peer review; or the establishment, determination, or adjustment of employee compensation.

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Beginning on November 15, 2018, the Department will no longer comply with the official time provisions for Title 38 employees contained in the VA/AFGE Master Agreement, any MOUs, past practices, supplemental agreements, and any other collectively bargained agreements currently in effect.

A handwritten signature in cursive script, appearing to read "Jacquelyn Hayes-Byrd".

Jacquelyn Hayes-Byrd

Acting Assistant Secretary for Human Resources and Administration (HR&A)