

Date: July 17, 2018
From: Office of Labor Management Relations
Subj: Notice of Implementation: Executive Order 13837
To: National Association of Government Employees (NAGE)

NOTICE OF 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 pursuant to subsection (c) or this section. VA's Time and Attendance (VATAS) system will be used to 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 5 – Union Rights Responsibilities
 - Section 8 – New Employee Orientation
2. Article 6 - Official Time
 - Section 1 – General
 - Section 2 – National Union Representatives
 - Section 3 – Local Union Representatives
 - 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
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3. Article 10 – Labor Management Training
 - Section 1 – Union Sponsored or Requested Labor Management Relations (LMR) Training
 - Section 4 – Joint Master Agreement Training
 - Section 5 – Joint 3rd Party Sponsored Training
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4. Article 11 – Labor Management Cooperation
 - Section 7 – Use of Time
5. Article 12 - Labor Management Relations Meeting
6. Article 13 – National Consultations Rights and Mid-Term Bargaining
 - Part A- Section 3 – Official Time
 - Part B – Section 2 – General
7. Article 19 – Official Travel

- Section 5 – Transportation, Travel, and Per Diem
8. Article 27 – Upward Mobility
 - Section 3 – Identifying Positions
 9. Article 36 – Investigations
 - Section 3 – Administrative Investigations Training
 10. Article 38 – Official Records
 - Section 2 – Access to Records
 11. Article 40 – Grievance Procedure
 - Section 7 – Informal Resolution
 12. Article 42 – Equal Employment Opportunity (EEO)
 - Section 7 – Special Emphasis Program Coordinator; EEO Advisory Committee
 13. Article 44 – Safety, Health and Environment
 - Section 2 – Union Participation
 - Section 32 – Ergonomic Lifting; Committees for Safety, Health and Environment
 14. Article 47 – VA Drug Free Workplace Program
 - Section 13 – Union Rights
 15. Article 52 – Child Care and other Dependent Care
 - Section 3 – Local Child Care Committees
 16. Article 58 – Wage Surveys
 - Section 2 – Membership Survey Teams
 17. Article 69 – Title 38 Professional Standards Boards (PSBs)
 - Section 2 – Representation (Union observer to attend hearings)

This is notification of the Agency's intent to terminate contractual provisions that are inconsistent with the Executive Order and implement the requirements of the Executive Order. In accordance with Article 13, Section 3 of the Collective Bargaining Agreement, if the Union seeks to bargain, the Parties will meet through post implementation bargaining, within 30 calendar days after the notice to negotiate appropriate arrangements regarding changes that impact the Agreement. 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 to vacolmr@va.gov and it will be routed to a member of the LMR team for a response.

Respectfully,

Tamika D. Hinton, MHA
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