



## UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

The Director

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### Memorandum for Heads of Executive Departments and Agencies

From: Kiran A. Ahuja, Director

Subject: Highlighting Bargaining Unit Employee Rights in the Hiring and On-boarding Process

On April 26, 2021, President Biden issued [Executive Order \(EO\) 14025, Worker Organizing and Empowerment](#). Section 1 of EO 14025 provides that “substantial evidence shows that union membership increases wages, the likelihood of receiving employer-provided benefits, and job security. Union membership also gives workers the means to build the power to ensure that their voices are heard in their workplaces, their communities, and in the Nation. Therefore, it is the policy of my Administration to encourage worker organizing and collective bargaining.”

Section 2 of EO 14025 established a Task Force on Worker Organizing and Empowerment chaired by the Vice-President and vice-chaired by the Secretary of Labor. Section 2(a) directs agencies to identify executive branch policies, practices, and programs that could be used, consistent with applicable law, to promote the Administration’s policy of support for worker power, worker organizing, and collective bargaining. A key goal of the Task Force is for the Federal government to lead by example as a model employer in promoting worker organizing and collective bargaining. In support of this goal, the Office of Personnel Management (OPM) is evaluating actions Executive Branch agencies can take to help promote worker organizing and collective bargaining consistent with the requirements of the Federal Service Labor-Management Relations Statute (FSLMRS), 5 U.S.C. Chapter 71. This memorandum addresses some actions agencies can take related to the hiring and on-boarding process.

Over 1.2 million federal employees, or approximately 57% of the non-postal Executive Branch workforce, are represented by labor unions in over 2,000 bargaining units. OPM periodically receives inquiries from federal employees who are unaware they are represented by a labor union or seeking assistance in contacting a union representative in their agency. Therefore, OPM believes that actions can be taken in the hiring and on-boarding process for job applicants and new employees to better understand their rights under the FSLMRS, where applicable.

In support of the policies of EO 14025, agencies are strongly encouraged to implement the following actions at the earliest opportunity:

1. Include in all job opportunity announcements (JOAs) whether the position is included in a bargaining unit or not (if not already doing so);
2. Include in all JOAs for bargaining unit positions, the name and local or chapter number of the union which represents the bargaining unit position (if not already doing so);

3. Engage all local unions representing bargaining unit employees in your agency and provide the union(s) an opportunity to be part of any new employee orientation process (if not already doing so). This may require agencies to engage in collective bargaining to establish how the union(s) may be part of this process; and
4. Provide new bargaining unit employees information regarding their rights under the FSLMRS. We have included a recommended template which agencies could use for this purpose during new employee orientation.

The attached questions and answers provide additional guidance for Federal agencies on the above actions which support the policies of EO 14025. Agencies should consult with agency human resources offices and legal counsel to determine any collective bargaining obligations.

### **Additional Information**

Agency headquarters-level human resources offices may contact OPM at [awr@opm.gov](mailto:awr@opm.gov) with additional questions. Agency field offices should contact their appropriate headquarters-level agency human resources offices.

cc: Chief Human Capital Officers (CHCOs), Deputy CHCOs, and Human Resources Directors

Attachments: Hiring and On-boarding FAQs – Bargaining Unit Employee Rights  
Template – Employee Rights under the Federal Service Labor-Management  
Relations Statute

## **Hiring and On-Boarding Frequently Asked Questions Employee Rights Under the Federal Service Labor-Management Relations Statute**

### **1) Why is OPM issuing this guidance?**

As the nation's largest employer, the Federal government has the unique opportunity to lead by example and serve as a model employer. By supporting the President's policy in Executive Order (EO) 14025 to encourage worker organizing and collective bargaining, the Federal government is highlighting the positive impact that unions have in all workplaces.

[EO 14025 on Worker Organizing and Empowerment can be found here.](#)

### **2) Doesn't the law require agencies to remain neutral regarding union organizing?**

Yes. Agencies and their managers and supervisors should remain neutral, but this does not mean agencies are prohibited from providing certain information to employees or removing certain obstacles that might inhibit a union's ability to exercise its rights under the law.

5 U.S.C. § 7116(a)(2) provides that it shall be an unfair labor practice for an agency "to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions of employment." However, 5 U.S.C. § 7116(e) provides that "the expression of any personal view, argument, opinion or the making of any statement which – (1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election, (2) corrects the record with respect to any false or misleading statement by any person, or (3) informs employees of the Government's policy relating to labor-management relations and representation, shall not, if the expression contains no threat or reprisal or force or promise of benefit or was not made under coercive conditions, (A) constitute an unfair labor practice under any provision of this chapter, or (B) constitute grounds for the setting aside of any election conducted under any provisions of this chapter."

With the issuance of this guidance, OPM is simply encouraging agencies to inform employees of the Government's policy relating to labor-management relations and representation and informing employees of their rights under the law.

### **3) Why is OPM asking agencies to highlight bargaining unit employee rights during the hiring and on-boarding processes? Aren't there other actions OPM can take to support the President's policy?**

OPM anticipates taking a number of actions to support the President's policy. OPM is starting with actions related to the hiring and on-boarding processes because this is the earliest moment a federal agency can highlight to job applicants and new employees the bargaining unit status of the incumbent of the position and their rights under the Federal Service Labor-Management Relations Statute (FSLMRS).

**Hiring and On-Boarding Frequently Asked Questions**  
**Employee Rights Under the Federal Service Labor-Management Relations Statute**

**4) Don't agencies already state in job opportunity announcements (JOAs) whether a position is a bargaining unit or non-bargaining unit position?**

Yes, many agencies do state in some JOAs whether a position is a bargaining unit or non-bargaining unit position. However, there isn't a requirement to do so and not all JOAs actually provide this information. OPM is encouraging agencies to do this for all JOAs as one action to support the policy in EO 14025.

**5) Why does OPM encourage agencies to list the name and local or chapter number of the union which represents the bargaining unit position listed in the JOA?**

OPM believes that job applicants should have as much information as possible about any position which they are considering. By providing the name of the union and local or chapter number of the union that represents the position listed in the JOA, the applicant is provided more information related to the position and an opportunity to learn more about the union which represents the position listed in the JOA. While some JOAs do state the name of the union which represents the position, not all JOAs provide this information.

**6) Aren't new employee orientation sessions considered formal discussions, requiring agencies to allow exclusive representative to attend?**

Yes, there are instances in which new employee orientation sessions constitute a formal discussion in which the union has a right to attend. 5 U.S.C. § 7114(a)(2)(A) provides that an exclusive representative has the right to be represented at "any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment..."

The Authority has found that new employee orientation sessions are formal discussions within the meaning of 5 U.S.C. § 7114(a)(2)(A) when attendance is mandatory; sessions are conducted by representatives of the agency (e.g., personnelists), and the discussion is about subject matters pertaining to personnel policies, practices, or other conditions of employment. See *Department of Health and Human Services and National Treasury Employee Union*, [5 FLRA 458 \(1981\)](#); Also see *Social Security Administration and American Federation of Government Employees*, [16 FLRA 232](#) (1984)

**7) While we have heard that some agencies have allowed local unions to talk to new employees in employee orientation as part of the on-boarding process, we have never done this before in our agency. Doesn't the law provide restrictions on when, where and what unions can say to bargaining unit employees regarding joining the union/paying union dues?**

Yes, there are some limitations on what unions can do during work time and in work areas. However, Federal Labor Relations Authority (FLRA) case law has outlined the conditions where a union representative can communicate information to bargaining unit employees about the union and when and where a union can solicit membership to the union.

## **Hiring and On-Boarding Frequently Asked Questions**

### **Employee Rights Under the Federal Service Labor-Management Relations Statute**

The solicitation of union membership is a right protected under 5 U.S.C. § 7102 which guarantees employees “the right to form, join, or assist any labor organization, or to refrain from such activity...” although 5 U.S.C. § 7131(b) specifically requires that such solicitation of membership “be performed during the time the employee is in a non-duty status.” Since new employee orientation sessions are held during duty hours, a union cannot solicit bargaining unit employees to become dues paying union members at such meetings. In one decision, the Authority found that the requirement to be in a non-duty status applies both to the employees being solicited and employees soliciting. See *Social Security Administration and American Federation of Government Employees*, [13 FLRA 409](#), (1983). This does not, however, prevent a union from communicating to bargaining unit employees information about their rights to be represented by a union.

For example, a union cannot distribute information during new employee orientation about benefits available only to dues paying members. In one case, the Authority found that distribution of a brochure on official time that provides benefits available only to dues paying members was solicitation of union membership and clearly in violation of section 7131(b). See *National Treasury Employees Union and Department of Energy* [19 FLRA 224](#) (1985).

However, the union can, inter alia, advise bargaining unit employees that the union is the exclusive representative; describe the bargaining unit it represents; and provide contact information on where Union representatives can be reached as this is deemed representational activity and protected under 5 USC 7131(d). In one case, the Authority reviewed a union proposal which would allow the union to disseminate information about the union. The proposal was found to be within the duty to bargain. By providing the information about the union, it aided in implementing the labor-management relationship and was not an overt plea for union membership. “By advising employees of the Union's status as the exclusive representative, distributing the Chapter announcement cards aids in implementing the labor-management relationship and is not solely related to the institutional structure of the Union.” See *National Treasury Employees Union and Internal Revenue Service* [6 FLRA 508](#) (1981).

#### **8) Why is OPM recommending that agencies provide information to new employees regarding their rights under the FSLMRS in addition to providing the union an opportunity to speak to bargaining unit employees at new employee orientation? Won't the employees receive this information from the union anyway?**

The information OPM recommends be provided to new employees, in addition to any information provided by the local union, communicates the President's policy on worker organizing and collective bargaining as well as an employee's rights under the FSLMRS. OPM believes it is critical for employees to hear from their employer that their rights under the FSLMRS are respected and will be honored by the agency.

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**9) Are there times during new employee orientations when a union may solicit bargaining unit employees to join the union?**

During periodic breaks (e.g., sessions breaks, lunch), the union may solicit bargaining unit employees to join the union.

If it has been determined that employees, at the discretion of management, have been assigned periods of time during which the performance of job functions is not required (i.e., paid free time), the Authority finds that such time falls within the meaning of the term "nonduty status" as used in section 7131(b). Thus, solicitation of membership during such time is permissible. See *Oklahoma City Air Force Logistics Center, Tinker AFB, OK*, [6 FLRA 159](#) (1980).

Distribution of union literature by employees in the employee cafeteria or breakroom during non-duty time is allowed under the statute. See *Internal Revenue Service, North Atlantic Service Center, Andover, MA and National Treasury Employees Union*, [7 FLRA 596](#) (1982)

## Employee Rights Under the Federal Service Labor-Management Relations Statute

*Insert Agency* recognizes the rights afforded to employees under the Federal Service Labor-Management Relations Statute (“The Statute”) to bargain collectively, organize and to participate in any labor organization of their choosing.

In accordance with OPM Memorandum, *Highlighting Bargaining Unit Employee Rights in Hiring and On-boarding*, this notice is provided to inform employees of their rights under The Statute (5 U.S.C. Chapter 71).

5 U.S.C. §7102 provides:

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. Except as otherwise provided under this chapter, such right includes the right:

- 1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and
- 2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

5 U.S.C. §7114, in part, provides:

(a)(1) A labor organization which has been accorded exclusive recognition is the exclusive representative of the employees in the unit it represents and is entitled to act for, and negotiate collective bargaining agreements covering, all employees in the unit. An exclusive representative is responsible for representing the interests of all employees in the unit it represents without discrimination and without regard to labor organization membership.

(2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at--

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if--

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation.

## Employee Rights Under the Federal Service Labor-Management Relations Statute

*Insert Agency/Component/Activity* is currently represented by one of the following organizations certified by the Federal Labor Relations Authority as the exclusive representative:

- ***Insert Labor Organization Name, Representative, and Local Number***  
***BUS Codes(s) Represented***  
***Phone Number***  
***Email Address***  
***Website*** (if applicable)

Employees with bargaining unit status (BUS) codes of 7777 or 8888 are not represented by a labor organization. BUS code 7777 indicates that an employee is eligible but not in a bargaining unit. BUS code 8888 indicates that an employee is ineligible for inclusion in a bargaining unit. *Refer to block 37 of the Notification of Personnel Action (SF-50).*

For more information regarding your rights, you may contact ***Insert Labor Organization*** or your local human resources office at ***Insert Phone Number*** and ***Insert Email Address***.

### References:

- [FLRA](#)
- [The Statute](#)
- ***Insert Link to Agency Labor Management Relations Site***, if applicable