

# ARTICLE 5

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## EMPLOYEE RIGHTS AND RESPONSIBILITIES

### SECTION 1

As provided by 5 U.S.C. § 7102, 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 5 USC Chapter 71. Such rights include the right:

- A. 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 the Employer, the heads of agencies, and other officials of the executive branch of the Government, the Congress, or other appropriate authorities; and
- B. To engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this Agreement.

### SECTION 2

- A. In accordance with 5 U.S.C. section 7114(a)(2)(B), employees have the right to Union representation upon their request, at any examination of them by a representative of the Employer in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary or adverse action against her/him. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected.
- B. The Employer will electronically distribute a semi-annual notice to all employees advising them of their right to representation in such examinations and investigations if they so request such representation.
- C. If an employee requests Union representation under this Article and a Union representative is not available for whatever reason (including non-release from duty), the examination will be terminated for a period of time not to exceed one (1) workday to secure a Union representative. If, however, the examination will be in a field office outside of a regional or district office, or in a headquarters office located in the field, the examination may be postponed no longer than two (2) workdays or sooner pending travel authorization in order for the employee to secure a representative.
- D. If the Union cannot physically attend the examination, they may participate by telephone or video conference if available. The Union may also designate an ad hoc representative to accompany the employee in person. The ad hoc representative must request official time pursuant to Article 10, Union Representatives/Official Time of this Agreement.

- E. The Employer recognizes the need for these examinations to be conducted in a manner that assures that the privacy of the employee is protected. When possible, conduct these meetings outside the normal workplace of employee.

### **SECTION 3**

The Agency's OIG and OIA forms shall be used exclusively in conjunction with this article.

These forms are attached for information purposes only. The parties recognize that these forms may need to be updated and/or changed to comply with requirements by law. Any changes to such forms will be provided to the Union in advance, and subject to any legal bargaining obligations. The Administrative Warning form will be used when an employee is not suspected of a crime and the Employer is compelling the employee to answer questions (this is used for non-suspects and for administrative investigations).

- A. An employee being interviewed by a representative of the Employer in connection with either a criminal or non-criminal matter has certain entitlement/rights when any representative of the Agency, e.g., Inspector General, contractor, etc., is conducting the interview. This section sets forth those rights as well as the procedures that, unless precluded by law, must be followed by the Employer representative conducting the interview.
- B. When an employee is interviewed by the Employer, and the employee is the subject of an investigation, the employee will be informed of the general nature of the matter (i.e., criminal or administrative misconduct) being investigated and be informed whether or not the interview is related to possible criminal misconduct by the employee. This information shall be on a form (see Appendix 5-1), which, unless precluded by law, the employee will initial and date at the outset of the interview.
- C. (Weingarten Rights) When the Employer conducts an interview of an employee regarding a non-criminal matter and the employee is a potential recipient of any form of discipline or adverse action, the Employer shall advise the employee of his/her right to Union representation prior to the commencement of questioning. Failure on the part of the Employer to inform the employee of this right at the time of the interview will not be the sole basis for a grievance.
- D. (Third Party Witness Interviews) Prior to beginning interviews with employees who are being interviewed as third-party witnesses, the Employer, unless precluded by law, will provide employees with a form (such as Appendix 5-3), which shall be signed and dated by the employee at the outset of the interview.
- E. (Miranda Rights) When an employee who is the subject of a criminal investigation is in custody by the Employer, she/he shall be informed of his/her Constitutional rights. Unless precluded by law, the Employer will give the statement in writing on a form (such as Appendix 5-4) to secure the employee's signature prior to commencement of

questioning.

- F. (Beckwith Rights). In a non-custodial interview involving possible criminal matters, an employee will be advised of his/her rights and the consequences of refusing to answer the questions posed to him/her on the grounds that the answers may tend to incriminate him. The information shall be on a form (Appendix 5-5), and unless precluded by law, the Employer will provide the statement in writing for the employee to sign prior to the commencement of questioning.
- G. (Kalkines Rights). In an interview involving possible criminal matters, where prosecution has been declined by appropriate authority, an employee will be required to answer questions only after the Employer representative has provided the employee with the appropriate assurances. Prior to requiring an employee to answer under such circumstances, the Employer representative shall inform the employee that his/her statements concerning the allegations during the interview cannot and will not be used against him in a subsequent criminal proceeding, except for possible perjury charges for any false answers given during the interview. This information shall be on a form (such as Appendix 5-6) which, unless precluded by law, shall be signed and dated by the employee at the outset of the interview.
- H. During investigatory interviews involving criminal conduct, an employee's refusal to respond to questions based on a proper invocation of the privilege against self-incrimination may not be used as the sole basis for disciplinary or adverse action.
- I. When a Union representative represents an employee during any investigation, the role of the representative includes, but is not limited to, the following rights:
  - 1. to clarify the questions;
  - 2. to clarify the responses;
  - 3. to assist the employee in providing favorable or extenuating facts;
  - 4. to suggest other employees who may have knowledge of relevant facts;
  - 5. to request a caucus for a reasonable period of time; and
  - 6. to advise the employee during the examination or a caucus.

However, the Union representative may not disrupt the meeting and may not answer for the employee.

- J. The Employer recognizes that administrative interviews by officials of the Employer are strictly limited to matters of official interest to the Employer and, accordingly, will not address private matters outside the appropriate scope of the investigation.

## **SECTION 4**

- A. The Employer retains the right to hold counseling sessions with employees without the presence of a Union representative. Counseling sessions may include informal discussion between individual employees and their supervisors regarding the employee's performance; work assignments and procedures; application of established office policies and practices; leave practices and requests; and discussions of a personal nature. The Employer may not use these counseling sessions to convey changes to personnel policies, practices or general working conditions that are required to be discussed in formal meetings.
- B. When a counseling session includes (either in person or via telephone) a representative from Employee or Labor Relations, the employee will be given an opportunity to have Union representation present prior to the start of the session. For all other counseling sessions where there is more than one management official or representative present (either in person or via telephone), the employee may request Union representation. If Union representation is requested, the meeting will not be delayed more than one (1) workday.

## **SECTION 5**

- A. The Employer recognizes and respects the dignity of employees in its formulation and implementation of personnel policies and practices and conditions of work. It is the responsibility of all employees and supervisors to control their behavior at all times and abide by the Standards of Conduct of the Department. The Employer, employees, and the Union will treat each other in a professional, businesslike and courteous manner. 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. However, nothing in this section shall be construed to waive the right of the Employer and the Union to engage in robust debate.
- B. The Parties agree that meetings between supervisors, employees, and/or the Union should be as non-confrontational as possible. It is the responsibility of all employees and supervisors to control their behavior at all times. In a meeting with his/her supervisor or management official, if any participant reasonably believes that a physical confrontation or verbal abuse is imminent, s/he may suggest a reasonable break in the meeting for "cooling off." Under such circumstances, the Parties recognize that such a break may be conducive to effective employee/supervisor relationships, and the supervisor will not arbitrarily deny a request for such a break. If the supervisor approves a break, the meeting will be resumed as soon as practicable following the "cooling off" period.

## **SECTION 6**

Employees are required to carry out the lawful instructions of a supervisor or any other HHS management official with real or apparent authority. If there is a disagreement between the employee and the supervisor or other management official, the employee will comply with the instructions and, if desired, challenge the matter later. An employee will not be disciplined or

retaliated against solely for carrying out such an instruction. The Employer is not precluded from imposing discipline on the employee if it is determined that the manner in which the instruction was carried out was inappropriate under the circumstances. Nothing in this section absolves the employee from criminal or civil liability for her/his actions.

## **SECTION 7**

The rights and protections established in 5 U.S.C. Section 2301 (b), Merit System Principles, and 5 U.S.C. Section 2302(b), Prohibited Personnel Practices, are hereby incorporated into this Article. Attachment (5-7) enumerates these statutory rights.

## **SECTION 8**

Employee participation in the Combined Federal Campaign, blood drives, and other solicitations will be voluntary, and employees will not be coerced to contribute. A supervisor will not solicit pledges or contributions from an individual employee under his/her supervision. If the Employer conducts pep rallies, informational meetings, or other activities, e.g. auctions, they will in no case lessen an employee's right to take lunch apart from attending the rallies or meetings. The Employer will seek employee-volunteers prior to assigning employees to perform functions (e.g., CFC key worker or coordinator).

## **SECTION 9**

An employee cannot be required to tell a supervisor the specific circumstances surrounding his/her need to contact a Union representative. When an employee wishes to request permission to leave the work site to contact a Union representative, he/she must inform his/her supervisor only of the general nature of the visit and the estimated time of return as mutually agreed. The employee must receive prior approval from the supervisor to leave the work site and, where possible, s/he must give the supervisor a telephone number at which s/he may be reached while absent in case of urgent work-related need. The amount of time spent will be reasonable. The employee's request will be granted and may be delayed if the employee's absence would hinder the accomplishment of essential workload requirements. Examples of hinder include an inability to complete specific or previously assigned projects timely or when the employee's absence would adversely affect needed physical office coverage and cannot be otherwise accommodated. If permission is not granted, the supervisor will identify the time period when the employee may meet his/her Union representative. Only under compelling circumstances will the supervisor require the delay to exceed one (1) workday.

## **SECTION 10**

- A. If an employee does not receive a salary check (including direct deposit) on the designated date, the employee may contact the local administrative office for the appropriate forms necessary to request a replacement check. The Employer will process fully completed and signed forms expeditiously and in accordance with government-wide regulations. The Employer will urge the payroll office to process the information within two (2) workdays

of receipt.

- B. When an employee does not receive a salary check (including direct deposit) the employee may request an emergency payment to avoid financial hardship. In these instances, the Employer will provide written information on these procedures
- C. To prevent over/underpayments of pay and to assure timely correction of payroll errors, employees are urged to review their bi-weekly Earnings and Leave Statements and notify their timekeeper and/or supervisor as soon as practicable of any discrepancy thereon.

## **SECTION 11**

- A. It is recognized that all employees are expected to pay promptly all just financial obligations.
- B. The Employer agrees that it will not otherwise disclose or discuss the employee's financial information without the explicit signed, written consent of that employee or either a court order or other mandatory operation of law. Nothing in this section may be construed to: prevent the Employer from verifying that an individual is an employee, or providing her/his grade and/or the gross amount of her/his pay, or both;
- C. Nothing in this section may be construed to: preclude the Employer from complying with an order from a court of competent jurisdiction instructing the Employer to comply with legal process brought for the enforcement of an employee's legal obligations to provide child support and/or alimony payments and other garnishments, in compliance with government- wide laws, including 5 U.S.C. 5520a, 42 U.S.C. 659, and such rules, regulations, and executive orders as may from time to time be promulgated there under.
- D. Nothing in this section may be construed to: inhibit the Employer from enforcing rules, regulations, or policies governing use of Government-issued travel or purchase charge cards, phone cards or equipment.

## **SECTION 12**

The Employer will generally not require an employee to submit to a polygraph examination. On rare occasions, such a test may be requested by law enforcement/special agents of the Department or the Federal Government. Employees who refuse to submit to a polygraph examination will not be disciplined or subjected to adverse action based on that declination.

## **SECTION 13**

Employees are accountable to the Employer for performance of their officially-assigned duties and responsibilities. In the performance of those duties and responsibilities, employees will be governed in their conduct by government-wide, HHS-wide standards of ethical conduct.

## **SECTION 14**

Employees may decorate their offices and individual work areas, but decorations may not

interfere with or violate the following:

- 1.the Employer's method of conducting business;
2. the rights of other employees and the public;
- 3.federal property, health and safety requirements and facility maintenance needs for government owned and leased space;
4. nothing can be posted in public spaces unless sanctioned by facility management;
5. commonly accepted standards of good taste; and
6. employees are expected to maintain an orderly office environment.

All employees that are certified to perform CPR may display symbols for CPR in their offices and individual work areas.

## **SECTION 15**

All employees will be given three (3) hours of duty time during the thirty days after implementation of this Agreement to read its provisions. This time must be used to read the Agreement at the employee's workstation and is subject to supervisory approval. At the Union's sole option, it can substitute these three (3) hours with a two (2) hour contract training session within the first thirty (30) days of implementation.

- A. All new employees to the bargaining unit who have not otherwise participated in an NEO will also be provided three (3) hours of duty time to read the Agreement, within the first two weeks of their start date as a bargaining unit employee, subject to supervisory approval. At the Union's sole option, it can substitute these three (3) hours with an Article 13 two (2) hour contract training.

## **SECTION 16**

The Employer has a legitimate work-related basis for monitoring employees' use of Government property and equipment, and employees have no right to privacy when using such property and equipment.

This section applies to such things as: employees' calls, messages, and other communications, whether by telephone, facsimile, e-mail, or any other media; and employees' desks, computers, files, furniture, and work spaces.

The Employer has the right to look in and through an employee's work area for official business purposes, such as looking for needed files or assignments when an employee is not in the office.

When the Employer exercises its right to search an employee's possessions at the work site in a non-criminal matter, the employee will be allowed to be present during the search if the employee is otherwise present at the work site. The employee shall, upon request, be given an opportunity to be represented by the Union during the search, provided that the supplying of such representation by the Union shall not unduly delay the search or impede the purpose for which the search is conducted. If advance notification is not possible, the Employer will timely send a follow-up email to the employee notifying him/her that the Employer went through his/her non-electronic material and identify any files or materials that were removed.

## **SECTION 17**

A. This section applies to every significant FDA decision on any matter under the laws administered by the Commissioner, whether it is raised formally, for example, by a petition or informally, for example, by correspondence. Under 21 CFR 10.70, FDA employees responsible for handling a matter are responsible for insuring the completeness of the administrative file relating to it. The file must contain:

- (1) Appropriate documentation of the basis for the decision, including relevant evaluations, reviews, memoranda, letters, opinions of consultants, minutes of meetings, and other pertinent written documents; and
- (2) The recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.
  - (a) The recommendations and decisions are to reveal significant controversies or differences of opinion and their resolution.
  - (b) An agency employee working on a matter and, consistent with the prompt completion of other assignments, an agency employee who has worked on a matter may record individual views on that matter in a written memorandum, which is to be placed in the file.
- (3) A written document placed in an administrative file must:
  - (a) Relate to the factual, scientific, legal or related issues under consideration;
  - (b) Be dated and signed by the author;
  - (c) Be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and show all persons to whom copies were sent;
  - (d) Avoid defamatory language, intemperate remarks, undocumented charges, or irrelevant matters (e.g., personnel complaints);
  - (e) If it records the views, analyses, recommendations, or decisions of an agency employee in addition to the author, be given to the other employees;

and

- (f) Once completed (i.e., typed in final form, dated, and signed) not be altered or removed. Later additions to or revisions of the document must be made in a new document.
- B. FDA employees working on a matter have access to the administrative file on that matter, as appropriate for the conduct of their work. FDA employees who have worked on a matter have access to the administrative file on that matter so long as attention to their assignments is not impeded. Reasonable restrictions may be placed upon access to assure proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.
- C. Employees will be notified in writing of their right to record their own individual views on the matter in a written memorandum, which shall be placed in the file. Where the Employee is in a concurrence chain (including situations where the employee would be the originator of the document), s/he will not be required to concur on any approval document with which s/he professionally disagrees.
- D. In accordance with 21 CFR 10.75, an employee may request a review of any decision made by any FDA employee, other than the Commissioner. The review will be made by consultation between the employee and the supervisor or by review of the administrative file on the matter, or by both. The review will ordinarily follow the established Agency channels of supervision or review on that matter.
- E. In accordance with 21 CFR 10.75, when an interested party outside the FDA requests internal Agency review of an employee's decision, including any complaint made orally or in writing, the employee will be notified of the request and will be directed to the appropriate administrative file on the matter.
- F. When another FDA employee requests internal agency review of an employee's decision, including any complaint made orally or in writing, the employee will be notified in writing of the request and will be directed to the appropriate administrative file on the matter.
- G. No employee will be penalized by the Employer for exercising his or her rights under this Section.

## **SECTION 18**

Upon request by the Employer, an employee must provide her/his home telephone, pager or cell phone number. This information will be safeguarded by the Employer and used for official business purposes only. Employees may provide an additional contact number.

## **SECTION 19**

- A. Nothing in this Agreement may be construed to preclude an employee from exercising

grievance or appellate rights established by law, rule, or regulation, except in the case of grievance or appeal procedures negotiated under this Agreement.

B. A grievance filed in good faith by any employee will not cause any adverse reflection in her/his standing with her/his supervisor or her/his loyalty or desirability to the organization. The Employer will not impose any restraint, interference, coercion, discrimination, or reprisal against any employee or Union representative for:

1. designating the Union for the purpose of presenting to the Employer or any government agency or official any matter of dissatisfaction, or
2. presenting any relevant information concerning any matter for which remedial relief is available under this Agreement. Nothing in this section may be construed to absolve an employee from responsibility for disclosing information which is not permitted by law, rule, or regulation to be disclosed.

## **SECTION 20**

The Parties agree that:

1. It is important for supervisors and employees to understand clearly their rights and responsibilities about the use of Union representatives; and
2. In addition to meetings which the Union has a statutory right to attend and meetings for which an employee has a right to request Union representation, an employee may request if a Union representative can participate in other types of Employer-initiated meetings. The Employer will seriously consider the employee's request, as a Union representative's presence may be useful in conducting a calm and objective discussion. However, a decision to permit Union presence at these meetings rests solely with the Employer.

## **SECTION 21**

In addition to salary direct deposit and allotments for Union dues, charity, and savings bonds, each employee may elect to have up to the maximum number of discretionary allotments (savings-type and/or for purposes other than savings) permitted by the capacity of the payroll system in use by the Employer at the time any allotment request is made.