



AGREEMENT

between the

BOARD OF IMMIGRATION APPEALS EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW  
UNITED STATES DEPARTMENT OF JUSTICE

and

LOCAL 3525  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES  
AFL-CIO



Local 3525

**BOARD OF IMMIGRATION APPEALS AND AFGE LOCAL 3525**

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## **PREAMBLE**

Pursuant to the policy set forth by the Federal Service Labor-Management Relations Statute, Pub.L. 95-454 (Title VII, § 701, Oct. 13, 1978, 92 Stat. 1191) the following articles of this basic agreement, together with any and all supplemental agreements and/or amendments which may be agreed to by both parties at later dates, constitute a total agreement by and between the United States Department of Justice, Executive Office for Immigration Review (EOIR), Board of Immigration Appeals, hereinafter referred to as MANAGEMENT, and the American Federation of Government Employees, Local 3525, hereinafter referred to as the UNION, for the employees in the unit described below, hereinafter referred to as the EMPLOYEES.

This agreement is entered into pursuant to the Certificate of Representation from the U.S. Department of Labor, dated July 22, 1974 (Case #22-5277(RO)).

WHEREAS the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and

WHEREAS the well-being of employees and efficient administration of the Government are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and

WHEREAS the participation of employees should be improved through the maintenance of constructive and cooperative relationships between the Union and Management; and

WHEREAS, subject to law and the paramount requirements of public service, effective labor-management relations within the Federal service require a clear statement of the respective rights and obligations of the Union and Management.

NOW, THEREFORE, the parties thereto, intending to be bound hereby, agree as follows:

## **ARTICLE 1 RECOGNITION AND UNIT DESIGNATION**

1.1 RECOGNITION: Management recognizes that the Union is the exclusive representative of all employees in the unit described in Section 1.2 below.

1.2 UNIT: The unit to which this agreement is applicable is composed of all employees of the Board of Immigration Appeals, except students employed on a part-time basis, employees engaged in Federal personnel work in other than a purely clerical capacity, management officials, confidential employees, supervisors, guards, and any other employees required to be excluded from

the unit under the provisions of 5 U.S.C. § 7112(b).

## **ARTICLE 2 MANAGEMENT RIGHTS**

**2.1 GOVERNING LAWS AND REGULATIONS:** In the administration of all matters covered by this Agreement, the Parties are governed by existing or future laws and government-wide regulations; by published Department policies and regulations in existence at the time this Agreement became effective; by subsequently published Department policies and regulations required by law or by the regulations of appropriate higher outside authorities; and by the terms of a controlling collective-bargaining agreement between the National office of the American Federation of Government Employees and the Department of Justice.

**2.2 RIGHTS OF THE EMPLOYER:** Subject to any controlling laws, regulations, or Executive Orders, management officials of the Agency retain all of the management rights set forth in the Federal Service Labor-Management Relations Statute. In exercising any authority under 5 U.S.C. § 7106, Management will notify the Union in advance of anticipated changes to terms and conditions of employment for bargaining unit employees. Management's exercise of its authority under this provision need not be delayed pending resolution of collateral issues where the only remaining issues to be resolved are non-negotiable proposals from the Union or where the changes to be effected are necessary to the functioning of the agency.

**2.3 FUTURE AGREEMENTS:** The requirements of this Article shall apply to all supplemental, implementing, subsidiary, or informal agreements between Management and the Union.

## **ARTICLE 3 EMPLOYEE RIGHTS**

**3.1 UNION MEMBERSHIP:** Employees in the Unit are protected by the Federal Service Labor-Management Relations Statute in the exercise of their right freely and without fear of penalty or reprisal, to form, join, and assist an employee organization, or to refrain from such activity. This agreement does not prevent an employee, regardless of employee organization membership, from bringing matters of personal concern to the attention of appropriate officials in accordance with applicable laws, regulations, or agency policies, or from choosing his or her own representative in a grievance or statutory appeal action, except when the grievance is covered under a negotiated procedure as provided in the Federal Service Labor-Management Relations Statute.

Nothing in this agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions. Management shall not discipline or otherwise discriminate against any employee because he or she has filed a complaint or given testimony under the Federal Service Labor-Management Relations Statute. The



Union and Management agree that no interference, restraint, coercion, or discrimination will be practiced to encourage or discourage membership in the Union.

**3.2 INFORMING EMPLOYEES:** Management shall take such action consistent with law or regulations, as may be required, in order to inform employees of their rights and obligations, as prescribed in the Federal Service Labor-Management Relations Statute.

**3.3 NON-DISCRIMINATION:** No employee will be discriminated against by either Management or the Union because of race, color, religion, sex, national origin, age, marital status, disability, lawful political affiliation, or Union membership or non-membership. In addition, the parties recognize their commitment to the policy of prohibiting discrimination on the basis of sexual orientation and family status.

**3.4 ACCESS TO OFFICIAL RECORDS:** It is agreed that to the extent it is not contrary to law, or to Agency or Office of Personnel Management regulations and policy, each employee shall, upon request and in accordance with applicable procedures, be allowed to review and/or request a photocopy of any document in his or her Official Personnel Folder which is maintained by the Personnel Section, the Office of the Associate Director (OAD), EOIR. The above also applies to any internal promotion file maintained by Management. In matters involving a grievance or an appeal by the employee, the employee and/or a representative designated in writing by the employee shall have the access described above.

#### **ARTICLE 4 UNION RIGHTS AND REPRESENTATION**

**4.1 RECOGNITION:** Management recognizes that the Union has the exclusive right to represent all employees in the unit in negotiations with Management with regard to personnel policies and practices or other matters affecting general working conditions of employees in the unit. Management agrees to respect the rights of the Union and to negotiate with the Union on such matters as described in the previous sentence.

a. Management will recognize national representatives of the Union, the duly elected Local Officers, and Stewards. The Union will supply Management in writing, and will maintain on a current basis, a list of the Union Stewards and Officers.

b. Management will recognize representatives of the AFGE National Office. The Union will provide reasonable advance notice of visits or representations to Management to be made by representatives of the National Office.

c. Management agrees to inform the Union orally or in writing prior to implementing or changing any policy or program pertaining to the above matters which are controlled by regulation or which Management considers non-negotiable. If possible, such information shall specifically reflect the potential impact on the work force. If Management informs the Union orally regarding

such information, Management will also inform the Union in writing if the Union so requests.

**4.2 REPRESENTATION:** The Union shall be given the opportunity to have a representative at formal meetings or discussions between management and employees or an employee representative concerning grievances, personnel policies and practices, or other matters affecting the general working conditions of employees in the unit. The Union shall be notified in advance of such a meeting or discussion and of its right to be present. The Union has the right to represent an employee or a group of employees in presenting grievances on the application or interpretation of the agreement under the negotiated grievance procedure. However, any employee or group of employees in the unit may present such grievances to the Agency and have them adjusted without the intervention of the exclusive representative, as long as the adjustment is not inconsistent with the terms of this agreement and the Union has been given an opportunity to be present at the adjustment. Management will notify the Union President before such an adjustment is made. See also Article 8.3.

**4.3 STEWARDSHIP:** The Union may designate a steward to represent employees in the unit. The steward will represent the employees on grievance activities as specified in this agreement. Upon request from either party, and with their mutual concurrence, the steward and the supervisor will informally discuss items of concern in the interpretation or application of this agreement to avoid misunderstanding and to deter grievances from either party.

#### 4.4 OFFICIAL TIME:

##### Section A. Definition of Official Time

For purposes of this Article, official time means time expended by bargaining unit employees as Union representatives during work hours, without charge to leave, and granted by Management in accordance with 5 U.S.C. § 7131. Reasonable amounts of official time may be used for the following purposes:

1. administration of this Agreement and any supplements,
2. attendance at formal meetings and meetings in which the employee reasonably believes the examination may result in disciplinary action and in which the employee requests representation,
3. investigating bargaining unit members' concerns over matters affecting work conditions, and receiving, investigating, preparing, and presenting grievances,
4. preparing for and attending labor-management meetings,
5. preparing for and attending third-party proceedings,

6. preparing for and participating in negotiations, including work related to the resolution of any negotiability question or any impasse, and
7. reviewing Management proposals concerning negotiations and changes in policies, practices, and matters concerning work conditions.

#### Section B. Use of Official Time

A Union representative planning to use official time will provide the official time form to his or her supervisor (See Appendix). The supervisor will promptly consider the request and will grant the request unless the Union representative's presence at his or her work site is necessary to meet work requirements. If the supervisor determines the Union representative's presence is necessary to meet work requirements, the supervisor will ensure that within one workday an alternate time will be permissible for use of official time. If the time requested and approved differs from the time actually used by the Union representative, the representative will complete Part B of the form.

Where the Union representative cannot reasonably submit the form in advance, the Union representative will make a good faith effort to locate the supervisor. If after a good faith attempt, the Union representative cannot locate the supervisor, the representative will use the official time. Upon completion of the use of official time, the Union representative will complete the official time form and leave it in the supervisor's office.

#### Section C. Prohibited Use of Official Time

Official time shall not be permitted, used, or granted for internal Union business (including the solicitation of Union membership, elections of labor organization officials, and collection of dues).

#### Section D. Amounts of Official Time for Representational Activities

The Union representative will use official time for representational purposes in amounts that are reasonably necessary to accomplish the purposes.

#### Section E. Official Time for Training

1. The Union will be authorized up to 120 hours of official time for training each fiscal year, except that the Union will be authorized up to 200 hours of official time for training in a year in which the contract is reopened.

2. A Union representative's request for official time under this Section must be made at least two weeks in advance of the scheduled training.

4.5 UNION ACTIVITIES: The Union will also be permitted reasonable opportunity to

conduct Union activities by employee Union members, such as solicitation of membership, dues collection, and distribution of literature. Such Union activities will be confined to the non-work time of the employees involved and may not interfere with the privacy of employees or any official work being carried out in the area.

4.6 RESTRAINT: Management shall not restrain, interfere with, coerce or discriminate against designated representatives of the Union in the lawful exercise of their functions as representatives for the purposes set forth in this agreement and pursuant to their rights under the Statute.

4.7 UNION MEETINGS: Management shall provide any office coverage that it deems appropriate during the period of scheduled Union meetings, subject to legitimate work demands during that period, which are to be communicated to the Union by the Executive Officer. The Union will provide the Executive Officer with notice of scheduled Union meetings at the earliest time possible where such coverage may be necessary. The Executive Officer will advise the Union at the earliest time possible of any legitimate work demands during that period that would prevent any employee, attorney or non-attorney, from attending a meeting during that period.

## **ARTICLE 5 USE OF OFFICIAL FACILITIES AND SERVICES**

5.1 Management will provide the Union with an office, two telephone lines, a telephone, office furniture, and reasonable technical support. The office shall be comparable in size to that provided to an individual attorney-advisor.

5.2 The Union may use the provided office space, furniture, and telephone services to conduct representational business.

5.3 Management will provide the Union with glass-enclosed, lockable kiosks for each floor in the various buildings where there are bargaining unit employees. The kiosks are intended for the transmittal of announcements and information of interest to bargaining unit employees. The Union is responsible for the upkeep of these kiosks and shall be the sole custodian of all kiosk keys. Only Union officers or their designees may place information or announcements in the kiosks, and any material included in the kiosks must be initialed by a Union officer. No notice containing personal attacks shall be posted.

5.4 Management will provide the Union use of photocopying equipment for representational business. The Union will provide its own copying paper for larger than de minimis tasks.

5.5 Management will maintain, in the Board library, current copies of volume 5 of the United States Code and volume 5 of the Code of Federal Regulations. Management will provide the Union with access to on-line research services at no cost to the Union and at no additional cost to Management. The Union will not be charged for any additional cost incurred by use of the on-line

services unless Management has provided prior notification that such additional costs would be incurred.

5.6 Management will provide the Union use of meeting rooms, including but not limited to the Board Conference Room and the Oral Argument Room, subject to the rooms' availability at the desired dates and times.

5.7 Management will provide the Union access to the Agency's internal mail system.

5.8 Management will provide the Union access to the electronic mail system to facilitate communications between the Union and the employees in the bargaining unit.

5.9 Management will provide the Union with the technical support and services necessary for the installation, in the office space provided by Management to the Union, of a Union-purchased facsimile ("fax") machine.

5.10 At the sole discretion of Management, other facilities and services may be made available to the Union if requested.

5.11 **DIRECTIVES:** Management will provide the Union with a copy of Management's directives relating to personnel policies, practices, and working conditions which affect employees in the unit. Management will make available for review by the Union a copy of directives of higher authorities relating to personnel policies, practices, and working conditions which affect the employees in the unit.

5.12 **DISTRIBUTION OF AGREEMENT:** This agreement shall be printed in booklet form at Management's expense. A copy shall be given to each employee currently in the bargaining unit and to each new employee in the bargaining unit. A list of the current Union officials indicating their location and telephone number shall be provided with each copy. Management shall also provide the Union with fifty (50) additional copies.

5.13 **NEW EMPLOYEE INFORMATION:** Upon the Union's request to Management, Management will provide the Union with a list of new employees assigned to positions in the bargaining unit. The list will include each employee's name, organizational unit, position title, and work location. The list will be provided to the Union no later than seven days from the date of request.

5.14 **ORIENTATION:** Whenever Management processes a new employee or holds an orientation program for its new employees in the bargaining unit, a Union representative will be provided up to 15 minutes during the processing of the employee or orientation program to conduct a presentation. No solicitation of membership is to be conducted during this presentation.

## **ARTICLE 6 GRIEVANCE PROCEDURE**

**6.1 COMMON GOAL:** Management and the Union recognize the importance of settling disagreements and disputes promptly, fairly, and in an orderly manner that will maintain the self-respect of the employee and be consistent with good management. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest level of supervision.

**6.2 SCOPE:** For the purpose of this agreement, a grievance means any complaint described in 5 U.S.C. § 7103(a)(9).

**6.3 APPLICATION:** Should any one or any group of the Employees or the Union initiate a grievance or complaint on matters other than those covered by the negotiated grievance procedure, such grievances or complaints must be presented under applicable procedures and shall not be resolved through the procedures established in this Article.

Regulations establishing the jurisdiction of the Merit Systems Protection Board can be found at 5 C.F.R. §§ 1201.2 and 1201.3. Regulations establishing the jurisdiction of the Federal Labor Relations Authority can be found at 5 C.F.R. § 2420.1.

Disputes of grievability or arbitrability shall, if desired by either party, be referred to arbitration as a threshold issue in the related grievance if that grievance goes to arbitration.

The employees may exercise the right to present their grievances as provided under the Federal Service Labor-Management Relations Statute without intervention of the Union, if they so elect. The decision cannot be inconsistent with the terms of this agreement and the Union must be given the opportunity to be present at the adjustment. Grievances under this subarticle are processed in the same manner as in subarticle 6.4 except the grievant is not entitled to representation.

**6.4 PROCEDURE:** Any one or any group of employees, the Union, or Management may initiate a grievance within fifteen (15) workdays either after the incident occurs or after the date when the party becomes aware of a decision about which he or she is aggrieved.

The following procedure shall apply in processing grievances under this article:

- a. **Step 1. Informal Procedure:** The grievant and his or her representative shall first present the matter orally or in writing to the immediate supervisor who shall meet with the grievant within five (5) workdays after receipt of a grievance to discuss the matter. If the supervisor is unclear as to the grievance involved, or the relief requested, the supervisor may request that the grievance be put in writing. The supervisor shall make whatever investigation is necessary and shall give his or her answer in writing to the grievant as soon as possible but not later than ten (10) workdays. Hopefully most grievances should be settled at this point.

- b. **Step 2. Formal Procedure:** If the grievant is dissatisfied with the solution arrived at through the informal procedure described, the grievant shall present the grievance in writing to the Vice Chairman, within ten (10) workdays after receipt of the informal decision. The written grievance shall contain: (a) identity of grievant; (b) specific nature of the grievance; (c) the corrective action desired; and (d) the identity of the Union representative. This management official or his or her designee will meet with the grievant and his or her representative within five (5) workdays from the date the formal grievance is received. This management official will make whatever additional investigation is necessary and will then give a written decision on the grievance to the grievant within seven (7) workdays after close of the grievance discussion. If the Union is dissatisfied with the decision in Step 2, the Union may, with the consent of the grievant, refer the matter to arbitration under the provisions of Article 7 of this Agreement.

Employee grievances can be initiated by the employees either singly or jointly. When several employees have an identical grievance (except as in 6.3), the Union will select an individual case for processing under this subarticle. The outcome of the case will be applied to all other identical cases.

**6.5 UNION OR EMPLOYER GRIEVANCES:** For Union or Employer grievances, a representative of the Union and of Management shall make an earnest effort to resolve the matter informally. The Union's grievances will be initiated only by the president of the Union and Management's grievances will be initiated by the Chairman. If the matter cannot be resolved, either the Union's president or the Chairman will submit the grievance, in writing, to be answered by the other party within ten (10) workdays. If it is not then resolved, it can be submitted to arbitration as provided in Article 7.

**6.6 TERMINATION OR ACCELERATION:** A grievant may withdraw the grievance at any time.

Failure of Management to observe the time limits for any step in the grievance procedure shall entitle the grievant to advance the grievance to the next step. Failure of the grievant to initiate the grievance on a timely basis as provided for in subarticle 6.4, or to furnish required information or to observe the time limits in the grievance procedure, shall terminate the grievance. Time limits may be extended only by mutual agreement; however, an extension will be approved if it is clear that the time limits could not have been met because of circumstances beyond the reasonable control of Management or of the grievant.

If an employee resigns, dies, or is separated from the unit by any action other than removal before a decision is reached on his or her grievance, and no compensation issue is involved, action will be stopped and all interested parties will be notified that the case is being closed without decision.

## **ARTICLE 7 ARBITRATION**

**7.1 RIGHT TO ARBITRATION:** Except as otherwise provided in Article 6, if the decision on a grievance processed under the negotiated grievance procedure is not satisfactory to the grievant, either Management or the Union (either as grievant or as representative of the concurring employee grievant(s)), may request to submit the issue to arbitration. The request to refer an issue to arbitration must be in writing, signed by the Chairman or the Union president, and submitted to the other party within ten (10) workdays following receipt of the decision by the aggrieved party.

**7.2 REQUEST FOR ARBITRATION:** The party requesting to initiate arbitration shall prepare the request for an arbitrator from the Washington metropolitan area and forward the request, with said written statement, to the Federal Mediation and Conciliation Service asking for a listing of seven available arbitrators. A copy of the request will be furnished to the other party.

**7.3 SELECTION OF AN ARBITRATOR:** Within three (3) workdays following receipt of the listing, the parties will meet to select an arbitrator. If agreement cannot be reached on a mutually acceptable arbitrator, then each party will alternately strike a name from the list until a single name remains; this person shall be the duly selected arbitrator. The first party to strike a name will be determined by a flip of a coin.

The Federal Mediation and Conciliation Service shall be empowered to make a direct designation of an arbitrator to hear the case in the event that either party refuses to participate in the selection of an arbitrator within the time limit specified above.

Prior to arbitration, the parties shall meet to attempt to draft a written statement setting forth the specific issue or issues involved and a brief summary of each party's positions.

**7.4 PROCEDURE:** In all cases the arbitration fee and any additional agreed-upon expenses, shall be shared equally by the parties in accordance with current regulations.

A. The process to be utilized by the arbitrator may be one of the following:

(1) "A stipulation of facts to the arbitrator" can be used when both parties agree to the facts of the issue and a hearing would serve no purpose. In this case, all facts, data, documentation, etc., are jointly submitted to the arbitrator with a request for a decision based upon the facts presented.

(2) A "submission of separate written statements" by the parties can be used in which case the arbitrator would render a decision based upon the written submissions.

(3) "An arbitrator inquiry" can be used when a formal hearing would serve no purpose. In this case, the arbitrator would make such inquiries as he or she deemed



necessary (e.g., inspecting work sites, taking statements).

(4) A submission to "arbitration hearing" should be used when a formal hearing is necessary to develop and establish the facts relevant to the issue. In this case, a formal hearing is convened and conducted by the arbitrator.

B. The parties may mutually agree on a process to be utilized by the arbitrator. If the parties do not agree on such a process, the arbitrator will resolve the issue through "an arbitrator inquiry" and/or the "submission of separate written statements."

**7.5 ARBITRATION HEARING SITE:** The arbitration hearing will normally be held on Management's premises and during regular work hours. The Union representative, the grievant(s), or any employee called as a witness will normally be excused from duty to the extent necessary to participate in the official proceedings.

**7.6 TIME FRAME:** The arbitrator will be requested to render his or her decision within thirty (30) calendar days following the conclusion of the procedure, unless the parties mutually agree to a different time frame.

**7.7 ARBITRATOR'S DECISION:** The arbitrator's decision is binding on the parties and the remedy shall be effected in its entirety. However, either party may file exceptions to an award with the Federal Labor Relations Authority under regulations prescribed by the Authority. An exception to the arbitrator's decision must be filed within the time limits set forth in 5 U.S.C. § 7122 and 5 C.F.R. § 2425.1. If no exception is filed, the arbitrator's decision and remedy will be effected as soon as possible. Prior to filing for an exception to the FLRA, written notification must be provided to the other party.

**7.8 ARBITRATOR'S AUTHORITY:** The arbitrator shall have the authority to interpret and define the explicit terms of this agreement. He or she shall have no authority to add or to modify any terms of this agreement.

## **ARTICLE 8 DISCIPLINARY AND ADVERSE ACTIONS**

**8.1 GENERAL:** Disciplinary and adverse actions against bargaining unit employees will be taken in accordance with appropriate Department of Justice and government-wide regulations. The Office of Attorney Personnel Management has authority for attorney disciplinary actions appealable to the Merit Systems Protection Board, including attorney suspensions of more than 14 days, demotions, and removals from federal service. Pursuant to 28 C.F.R. § 0.15, authority to impose discipline on attorneys, up to suspensions of 14 days or less is delegated to the Director, Executive Office for Immigration Review, or his or her delegate.

8.2 NOTIFICATION TO THE UNION OF DISCIPLINARY AND ADVERSE ACTIONS: In all cases of written disciplinary action taken or proposed against any bargaining unit employee, Management shall provide the employee with an extra copy of the written notice which the employee may provide to the Union if he or she so desires. The notice will inform the employee of his or her right to representation. In addition, Management will furnish the Union with a quarterly written report which sets forth the number of disciplinary and/or adverse actions taken, if any, the nature of each offense, and the nature of the disciplinary or adverse action imposed, by organizational unit.

8.3 UNION REPRESENTATION: The Union shall be given the opportunity to be represented at any examination of an employee in the bargaining unit by Management in connection with an investigation if the employee reasonably believes that the examination may result in disciplinary action against the employee and the employee requests Union representation.

## ARTICLE 9 OVERTIME

9.1 EXEMPT EMPLOYEES: Overtime must be officially ordered and approved in advance of the overtime worked in order for an exempt employee to be entitled to overtime pay or compensatory time. When an employee on his or her own initiative performs work for a period of time beyond the basic workweek without being officially ordered or authorized, such time is not regarded as overtime for pay or compensatory time off.

9.2 NON-EXEMPT EMPLOYEES: If a supervisor suffers or permits an employee to work beyond his or her normal tour, the employee is entitled to overtime pay. This includes even as minimal an amount of time as ten minutes. An employee who works overtime must be paid time and a half his or her regular hourly pay for all overtime work unless the employee requests compensatory time off in lieu of overtime pay. The request for compensatory time must be in writing, with approval also in writing. Earned compensatory time must then be used by the end of the year following the year in which it was earned; otherwise, the employee must be paid overtime (i.e. at the rate in which it was earned).

9.3 Management shall notify, as far in advance as possible, all employees who conduct work like that available for overtime of the availability of overtime.

9.4 Management shall schedule overtime as far in advance as possible and will notify affected employees promptly. In no case will overtime work be assigned to any employee as a reward or penalty. Management shall consider the interests of employees in scheduling overtime.

9.5 Where the overtime needs exceed the number of employees interested in working overtime, Management may order the employees to work overtime, pursuant to a reverse seniority method.

9.6 Overtime for bargaining unit employees will be distributed by seniority from a pool of eligible employees. Management will determine the qualifications for eligibility for the pool, including considerations of productivity and quality of workproduct. Management remains free to assign overtime work to non-bargaining-unit employees when it deems appropriate. Management will announce in writing the qualifications which it relied upon in determining employees' eligibility for the overtime pool. Upon written request from an employee determined to be ineligible for the pool, Management will identify in writing the qualifications he or she lacks. Management will redetermine eligibility for the pool no less than twice per year.

## **ARTICLE 10 LEAVE**

10.1 ANNUAL LEAVE: The accrual of annual leave is a right and not a privilege. Annual leave will be approved and scheduled so as to accommodate the normal and special fluctuations of the work of the activity. Management will periodically request the employees to submit requests for annual leave for vacation purposes. Unless otherwise directed, all requests for annual leave must be submitted to the immediate supervisor on a Standard Form 71 (Application for Leave) signed by the employee making the request. Management will make every reasonable effort to grant the employees their desired annual leave. However, in the event of conflicts, Management will consider the date of the request in resolving these leave conflicts. Exceptions to the foregoing may be made in the case of employees with a disability, employees with health problems, or employees with other compelling reasons. Normally supervisors will not require reasons for annual leave requests except when there are workload considerations or other extenuating circumstances.

10.2 SICK LEAVE: The parties recognize the importance of sick leave and the obligation of, and advantage to, each employee in its proper use. The employee who is ill and unable to report for duty is responsible for notifying his or her supervisor of the illness as soon as practicable. Failure of an employee to give such notification may result in the employee's being placed in an AWOL (absent without official leave) status. Upon return to duty or upon official notification, the employee will indicate the reason for the absence to his or her supervisor. If in the judgment of the supervisor the absence and failure to notify is justified, the status will be changed from AWOL to approved leave.

Management will normally not require medical certification to support an absence for sick leave not exceeding three (3) days. However, when absence from duty exceeds three (3) workdays, it must be supported by (a) a medical certificate or (b) a statement signed by the employee giving the reasons why he or she did not have a physician, in which case it should be supported by approval of his or her supervisor. Absences in excess of ten (10) workdays must be supported by a medical certificate. Supervisors may require, with prior notice, a medical certificate for absences not exceeding three (3) days in those instances in which a problem of excessive absenteeism or the possible misuse of sick leave is developing.

10.3 ADVANCED SICK LEAVE: Up to thirty (30) days of sick leave may be advanced

to employees when required by the exigencies of the situation, in cases of disability or serious illness. A request for advanced sick leave must be submitted to the supervisor in writing. The request must indicate the reason for the sick leave and be accompanied by a doctor's certificate. Decisions regarding advance sick leave shall be made in accordance with Department of Justice regulations.

**10.4 ADVERSE WEATHER AND OTHER EMERGENCY SITUATIONS:** In cases of adverse weather or other emergency situations as defined in Office of Personnel Management guidelines or regulations of other appropriate authority, Management will conform to their recommendations to the fullest extent possible.

**10.5 LEAVE UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993:** An employee with at least twelve (12) months of service is entitled to a total of twelve (12) weeks of leave per year under the Family and Medical Leave Act of 1993 for one or more of the following:

- (a) because of the birth of a child of the employee and in order to care for such child;
- (b) because of the placement of a child with the employee for adoption or foster care;
- (c) in order to care for the spouse, or child, or parent, of the employee, if such spouse, child or parent has a serious health condition; or
- (d) because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

Such leave is subject to all of the provisions of 5 U.S.C. § 6382.

**10.6 LEAVE FOR PREGNANCY AND ADOPTION:** Employees may be granted up to six months of any combination of annual leave, LWOP or sick leave (as appropriate) to care for an employee's newborn or newly-adopted child. Management will consider a request for six months of leave for the above purposes as a normal request.

**10.7 RELIGIOUS LEAVE:** An employee whose personal religious beliefs require the abstention from work during certain periods of time may elect to engage in compensatory overtime work for time lost meeting those religious requirements. Such compensatory time may be earned before or after the grant of compensatory time off and shall be credited to an employee on an hour for hour basis in fifteen-minute increments. A grant of advance compensatory time off for religious observances must be repaid within six pay periods.

**10.8 EXTENDED LEAVE WITHOUT PAY:** In considering requests for LWOP of more than thirty days, Management and the employee will be guided by the principles detailed in the LWOP provisions of DOJ Order 1630.1B (see Appendix).

**10.9 SICK LEAVE FOR FAMILY AND DEPENDENT CARE UNDER THE FEDERAL EMPLOYEE FAMILY FRIENDLY LEAVE ACT:**

- (a) The provisions of this section will no longer apply if the provisions of the Federal Employee Family Friendly Leave Act relating to them cease to be effective.
- (b) In addition to sick leave normally granted to employees who are ill, who are undergoing medical treatment, or who present a risk to others because of exposure to a communicable disease, employees may be granted sick leave under the provisions of the Federal Employee Family Friendly Leave Act in the following situations:
  - (1) to provide care for a family member as a result of physical or mental illness; injury; pregnancy; childbirth; or medical, dental, or optical examination or treatment;
  - (2) to make arrangements necessitated by the death of a family member or attend the funeral of a family member;
  - (3) when necessary, for purposes relating to the adoption of a child, including appointments with adoption agencies, social workers, and attorneys; court proceedings; required travel; and any other activities necessary to allow the adoption to proceed.
- (c) The amount of sick leave granted to an employee during any leave year for the purposes described in this section may not exceed a total of 104 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the number of hours of sick leave normally accrued by that employee during a leave year).
- (d) To be granted any sick leave for the purposes described in this section during any leave year in an amount exceeding a total of 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours in the employee's scheduled tour of duty each week), the employee concerned shall retain in his or her sick leave account a balance of at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, an amount equal to twice the average number of hours in the employee's scheduled tour of duty each week). No sick leave may be advanced under 5 U.S.C. § 6307(d) for the purpose of meeting the requirement to retain a minimum sick leave balance or for using additional sick leave for the purposes described in this section when such use would otherwise cause the employee's sick leave balance to fall below the minimum required.
- (e) When sick leave is granted to an employee under the condition specified in paragraph (d) of this section, the amount of sick leave retained in the employee's sick leave account shall, in each instance, be at least equal to the minimum prescribed by paragraph (d) of this section after deducting the amount to be used for the purposes described in paragraph (b).

- (f) If the number of hours in the employee's tour of duty is changed during the leave year, the employee's entitlement to use sick leave for the purposes described in this section shall be recalculated based on the employee's new tour of duty.
- (g) For the purposes of this section, "family member" means the following relatives of the employee:
  - (i) spouse, and parents thereof;
  - (ii) children, including adopted children, and spouses thereof;
  - (iii) parents;
  - (iv) brothers and sisters, and spouses thereof; and
  - (v) any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

10.10 REVIEWING TIME AND ATTENDANCE SHEETS: An employee shall have the option of reviewing his or her leave chart prior to submission of that leave chart for payroll processing (the leave chart shows hours worked, leave taken during the pay period, and beginning and ending leave balances). Those leave charts will be made available to the employees by their immediate supervisors and the employees will be given a reasonable time to review those charts. Any discrepancies in a leave chart should be resolved between the supervisor and the employee prior to returning the leave chart to the Personnel Office for transmission to the National Finance Center.

## ARTICLE 11 SAFETY AND HEALTH

11.1 GENERAL: Management shall conform to Department of Justice regulations dealing with the Occupational Safety and Health Act of 1970 (OSHA), Executive Order 11807, and Chapter XVII of Title 29, Department of Labor Rules and Regulations.

- A. Management will encourage employees to work safely and report any observed unsafe or unhealthy conditions to the employee's immediate supervisor. Management assures that no restraint, coercion, discrimination, or reprisal will be practiced as a result of an employee reporting an unsafe practice or condition. Management will notify the Union in a timely fashion of unsafe or unhealthy conditions that are not amenable to correction within the day.
- B. When an employee has reasonable cause to believe that conditions are so severe that even a short-term exposure to such conditions would be detrimental to his or her safety or health, the employee should report the circumstances to his or her

immediate supervisor. The supervisor shall then inspect the work area concerned to insure that it is safe before requiring the employee to continue his or her work assignment. If the supervisor has a reasonable doubt regarding the safety of the existing conditions, he or she shall seek an evaluation from an appropriate safety official. When such immediate relief is not deemed necessary or possible, the supervisor shall, if the employee(s) is still unsatisfied, provide a written rationale for his or her decision to the employee(s) in a timely manner.

**11.2 ON-THE-JOB INJURY OR ILLNESS:** An employee should immediately report all injuries or illnesses which occur on the job to his or her immediate supervisor or, in extenuating circumstances, to an available Management official.

- A. The injured employee's supervisor will within a reasonable period after the injury arrange to have the Office of the Associate Director, Division of Personnel and Employee Development, explain to the employee his or her rights and options under the Federal Employees' Compensation Act, and supply copies of the appropriate Office of Workers' Compensation Programs (OWCP) forms and assist in the completion of the forms. The injured employee will be supplied with a copy of the completed forms.
- B. Management will process and promptly forward to OWCP employee and Employer documentation required when an employee sustains an on-the-job injury or contracts an occupational disease and elects to file a claim.
- C. Employees who are temporarily unable to perform their regular assigned duties because of illness or injury but who are capable of returning to or remaining in a duty status, may be detailed for a reasonable period of time to work assignments compatible with their physical condition, where such alternative assignments are reasonably available, or their regular assigned duties may for a reasonable period of time be temporarily tailored to the employee's physical limitations.
- D. When an employee is physically or mentally unable to perform his or her normally assigned duties, Management in accordance with applicable Office of Personnel Management regulations can direct the employee to have a fitness for duty examination and, if necessary, file an Agency-initiated disability retirement. In accordance with applicable OPM regulations, he or she may participate in the selection of a qualified physician, and may elect to have a representative assist in the exercise of his or her rights.
- E. Management agrees that, as soon as practicable, the Union shall be notified of on-the-job illness, injury, or death of an employee in the unit so that the Union may extend Union benefits to which the employee and/or his or her

family may be entitled. In the case of serious on-the-job illness, injury or death of an employee, Management will attempt to notify the employee's next of kin prior to notifying the Union.

**11.3 SAFETY INSPECTIONS:** There will be an annual safety inspection of all areas occupied by the employees and a Union representative shall participate in the inspection. Management and the Union shall jointly seek at least every three (3) years an inspection of the activity's facilities by the Office of Federal Agency Programs, OSHA, DOL. When safety inspections are made pursuant to OSHA or other statutes or regulations in areas where unit employees work, the Union will be notified and a Union representative may accompany the inspector or inspecting team. Management agrees to provide the Union with a copy of all reports of safety inspections.

**11.4 EMPLOYEE SAFETY:** Recognizing that employee security is of paramount importance in the workplace, Management may take immediately whatever action is necessary in developing situations to minimize the risk of physical danger to employees. Management agrees to solicit the Union's views on safety matters prior to making any safety-related changes, if practicable.

Management will provide a security system at all doors leading from the elevator lobby on each floor occupied by bargaining unit members.

## **ARTICLE 12 PROMOTION AND DETAIL**

**12.1 GENERAL:** All personnel actions shall be consonant with the spirit and intent of the merit system. Management and the Union support the policy that all qualified people have equal opportunity for promotion regardless of race, color, religion, sex, national origin, age, union membership, marital status, disability, sexual orientation, political affiliation, or other non-merit factors. Management agrees to continue to follow all applicable Office of Personnel Management and Departmental policies and procedures in effecting promotions.

**12.2 VACANCIES:** Management agrees to timely notify the Union of all bargaining unit and threshold supervisory job openings at the BIA that it anticipates filling (including those for temporary and summer employment) and to post all BIA vacancy announcements on the official bulletin board(s). All qualified bargaining unit members shall be considered for any of these job openings for which they timely apply. Nothing in this provision shall interfere with Management's right to fill vacancies from any appropriate source; however, where Management, in the exercise of its discretion, determines that a vacancy will be filled under merit promotion procedures, vacancies in the unit shall be appropriately publicized to ensure that all employees have an equal opportunity to participate in the merit promotion program:

- a. When a position is to be filled under the provisions of the Merit Promotion Plan of the Department of Justice, it will be fully identified as to grade, title, organizational



location, and whether permanent or temporary. If a position is announced as temporary, and the announcement does not state that it may become permanent, the position will be re-announced if it does become permanent.

- b. The qualification requirements for positions to be filled by promotion shall be relevant to such positions.
- c. Except where otherwise provided by law or regulations, promotion procedures will apply to selection by transfer, reinstatement, or reassignment to positions with known promotion potential.

**12.3 SUPERVISORY APPRAISAL:** In the interest of providing for objectivity in a merit promotion supervisory appraisal, an employee should normally have been under his or her immediate supervisor for ninety (90) days. Supervisors shall keep employees regularly advised of weaknesses in job performance and of areas in which the employees may improve their chances for promotion.

**12.4 NON-SELECTED EMPLOYEE RIGHTS:** Following the selection under merit promotion, any employees considered and not selected shall receive, upon request, a statement of:

- a. the rating and ranking factors used for the position and the numbers assigned to his or her application for each rating and ranking factor used; and
- b. the areas, if any, in which the employee should improve to increase his/her chances for future promotion. Each employee who files an application and who does not meet the specified qualification requirements for the position announced will be given written notice within a reasonable time after such decision is made.

**12.5 DETAILS:** Details of employees will be effected in accordance with existing Office of Personnel Management regulations and Department of Justice guidelines. Details in excess of thirty (30) days will be recorded on a "Request for Personnel Action" (Standard Form 52 (SF-52)) unless this requirement is excepted by Office of Personnel Management regulations. When completed, Management will take steps to have the SF-52 filed in the employee's Official Personnel Folder. On details not exceeding thirty (30) days, an employee may submit a supplemental experience and qualifications statement to be included in his or her Official Personnel Folder. Should the requirements of management necessitate an employee's being detailed to a lower level position, this will in no way adversely affect the employee's salary or classification.

**12.6 TEMPORARY PROMOTION:** Temporary promotions, if effected, will be made in accordance with applicable Office of Personnel Management and Agency regulations.

12.7 TIME-IN-GRADE REQUIREMENTS FOR PROMOTION:

ATTORNEYS. The following summarizes the minimum time-in-grade for Attorneys before becoming eligible to be considered for promotion:

- a. *from GS-11 to GS-12: 6 months*
- b. *from GS-12 to GS-13: if hired at GS-12, 6 months; if hired at GS-11, 1 year*
- c. *from GS-13 to GS-14: 1 year*
- d. *from GS-14 to GS-15: 1 year with an Outstanding performance appraisal, otherwise 18 months*

OTHER MEMBERS OF THE BARGAINING UNIT. The following summarizes the minimum time-in-grade for non-attorneys before becoming eligible to be considered for promotion (unless waived under 5 C.F.R. § 300.603(b)):

- a. *Advancement to positions at GS-12 and above: Candidates for advancement to a position at GS-12 and above must have completed a minimum of 52 weeks in positions no more than one grade lower (or equivalent) than the position to be filled.*
- b. *Advancement to positions at GS-6 through GS-11: Candidates for advancement to a position at GS-6 through GS-11 must have completed a minimum of 52 weeks in positions:*
  1. *No more than two grades lower (or equivalent) when the position to be filled is in a line of work properly classified at 2-grade intervals; or*
  2. *No more than one grade lower (or equivalent) when the position to be filled is in a line of work properly classified at 1-grade intervals; or*
  3. *No more than one or two grades lower (or equivalent), as determined by the agency, when the position to be filled is in a line of work properly classified at 1-grade intervals but has a mixed interval promotion pattern.*
- c. *Advancement to positions up to GS-5: Candidates may be advanced without time restriction to positions up to GS-5 if the position to be filled is no more than two grades above the lowest grade the employee held within the preceding 52 weeks under his or her latest nontemporary competitive appointment.*

**ARTICLE 13**  
**EQUAL EMPLOYMENT OPPORTUNITY**

**13.1 COMMITMENT TO EQUAL OPPORTUNITY:** Management and the Union subscribe fully to the principle of equal employment opportunity and will adhere to all applicable laws, regulations and Department of Justice orders regarding discrimination on the basis of race, color, religion, national origin, age, disability, sex, or sexual orientation.

Management shall not act in any way at to unlawfully discriminate against an individual regarding employment or conditions of employment because of the individual's race, color, religion, sex, national origin, age, sexual orientation, or disability. Policy shall be in strictest adherence to both the letter and the spirit of the Equal Employment Opportunity Act, the Age Discrimination in Employment Act, and all other regulations affecting such.

**SEXUAL HARASSMENT:** Management and the Union recognize that sexual harassment is a form of misconduct that undermines the integrity of the employment relationship and adversely affects employee opportunity. All employees must be allowed to work in an environment free from sexual harassment by supervisors or co-workers. Sexual harassment is defined as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

29 C.F.R. § 1604.11.

Management shall notify all employees of Management's plan for the prevention of sexual harassment and of the formal and informal complaint procedures.

**13.2 EEO COUNSELORS:** Management will provide two EEO Counselors on-site at the Board. Management will solicit from the Union the names of employees interested in serving as EEO Counselors and will consider those names in appointing the on-site Counselors. The Counselors will be or will become well-versed in EEO complaint procedures and will function in consonance with the EEO complaint procedure. An employee who seeks the assistance of a Counselor shall have the prerogative to choose which Counselor will assist him or her, subject to the availability of the Counselor. Nothing in this provision shall preclude an employee from choosing one of the EEO Counselors available at the Department.

Management will publicize to all employees and post the names and telephone numbers and business addresses of the EEO Counselors assigned to the Board, a notice of time limits and

necessity of contacting a Counselor before filing a complaint, and the telephone numbers and addresses of the EEO Director, EEO Officer(s), and Special Emphasis Program Managers.

13.3 TRAINING: Nomination and selection of employees to participate in training and career enhancement programs and courses shall be made without regard to race, color, religion, sex, national origin, age, disability, or sexual orientation.

13.4 PROMOTION: Promotion nominations and selections shall be made without regard to race, color, religion, sex, national origin, age, disability, or sexual orientation.

13.5 RECOGNITION: Employees or officials actively contributing to the advancement of equal employment opportunity or to the repression of discriminatory practices shall be recognized for their actions pursuant to OPM and Departmental regulations and guidelines on awards and recognition.

13.6 ACCOMPANIMENT BY UNION REPRESENTATIVES: An employee pursuing an EEO (including a sexual harassment) complaint, whether through formal or informal complaint procedures, has the right to be accompanied by a representative of his or her choice at any stage of the process. An employee against whom an EEO (including a sexual harassment) complaint is filed shall have this same right to accompaniment by a representative of his or her choice. In either case, the representative may be a Union representative.

13.7 AFFIRMATIVE ACTION: Management shall make an effort to provide equal opportunity for all applicants and employees in the activity in accordance with merit principles.

13.8 UPWARD MOBILITY: Management agrees to establish an Upward Mobility program in consonance with applicable OPM and Departmental regulations.

13.9 COMPLIANCE: Management shall comply with the equal employment opportunity regulations found at Part 1614 of Title 29 of the Code of Federal Regulations. To that end, Management shall, on an annual basis, provide employees with information on equal employment programs and on all administrative and judicial remedial procedures available.

13.10 PROTECTION FROM DISCRIMINATION ON THE BASIS OF A DISABILITY: The Rehabilitation Act of 1973, Section 2, et. seq., 29 U.S.C. § 701, et. seq., its amendments and regulations promulgated thereunder, prohibit discrimination on the basis of a disability. Employees' special needs will be accommodated by Management as required by statute and regulations.

#### **ARTICLE 14 REDUCTION IN FORCE**

14.1 NOTICE: Prior to any reduction in force, the Union will be notified as to the extent of the reduction in force and the reasons therefor. Management shall provide any employee affected

by the reduction in force with a specific written notice and with an extra copy of the specific written notice which the employee may provide to the Union if he or she so desires.

**14.2 PLACEMENT ASSISTANCE:** Every effort will be made to place affected employees within the Department of Justice or other Federal agencies in the commuting area. Eligible employees will be placed on the Department of Justice's Priority Placement List and given priority consideration in filling Department of Justice vacancies in the commuting area.

**14.3 RETENTION REGISTERS:** In the event of a reduction in force, employees and former employees affected by the reduction in force have the right to review the retention registers used.

## **ARTICLE 15 DUES WITHHOLDING**

**15.1 WITHHOLDING AGREEMENT:** Management and the Union have established and will maintain as specified in this agreement a system for voluntary allotments by the employees for the purpose of paying their dues as members of the Union. The procedures, rules, and requirements contained in the dues withholding agreement, signed by both parties on January 20, 1975, are hereby incorporated into this agreement.

## **ARTICLE 16 POSITION DESCRIPTIONS**

**16.1 INTENT:** Position descriptions will be prepared so as to meet the standard of adequacy prescribed by the applicable standards and regulations. They shall contain the principal duties, responsibilities, and supervisory relationships for the purpose of classification.

**16.2 COPIES OF POSITION DESCRIPTIONS:** Management will furnish each employee a copy of his or her position description in a timely manner after entry on the job and upon assignment to a different position and when changes occur in his or her position that require the position description to be redescribed.

**16.3 POSITION CLASSIFICATIONS:** An employee who feels that his or her position is improperly classified is entitled to a timely review of that classification. The Personnel Office will review the duties of the position as described by the supervisor and the employee. Based upon that review, the Personnel Office will determine whether reclassification is necessary and will reclassify the job if it is.

**16.4 APPEAL RIGHTS:** In the event an employee's dissatisfaction concerning the classification of his or her position cannot be resolved informally, Management will inform the employee that he or she may file a classification appeal following pertinent regulations. Before a classification appeal is proposed, the employee and Management should attempt to obtain mutual agreement on the duties and responsibilities recorded in the position description.

16.5 ADVANCE NOTIFICATION OF DOWNGRADE ACTIONS: Management will notify the affected employee and the Union in advance before any bargaining unit employee is downgraded as a result of any classification action.

16.6 ADVANCE NOTIFICATION OF CHANGE IN DUTIES: Management will notify the affected employee and the Union in advance of any assignments that are expected to take the employee out of the bargaining unit, regardless of the length of time of the assignment. Management will notify the affected employee and the Union in advance of assigning an employee to work for a different supervisor for more than one week. Management will notify the employee and the Union in advance of any changes, other than minor (de minimis) changes, in an employee's duties that are expected to last more than 30 days.

16.7 NOTIFICATION OF SUPERVISION: Management shall notify each employee of who is responsible for his or her supervision and performance appraisals at the time the employee enters on duty or whenever a change in supervision occurs.

## **ARTICLE 17 PERFORMANCE EVALUATION**

17.1 PRIMARY OBJECTIVE: The Parties agree that the primary objectives of the annual performance evaluation are to: recognize job requirements and standards and keep employees aware of them; improve individual performance; make and keep employees aware of their supervisor's judgment of their work performance; acknowledge employee accomplishments and good work; and strengthen supervisor-employee relationships.

17.2 SUPERVISOR/EMPLOYEE DISCUSSION: Unless mutually agreed otherwise by the relevant supervisor and employee, all supervisors are required to discuss directly with the employee the annual performance rating.

## **ARTICLE 18 TRAINING**

18.1 GENERAL: Management and the Union agree that training and career enhancement for bargaining unit employees are important objectives of the Board.

Consistent with the Board's mission and budgetary constraints, Management agrees to develop and maintain progressive programs, policies, and strategies designed to provide adequate career enhancement, adequate job training for new bargaining unit employees, and on-going training as bargaining unit employees' duties change.

18.2 TRAINING INFORMATION: Management will make available to bargaining unit employees all information that is provided relevant to the availability of Government-sponsored or

Government-approved training and career enhancement programs and courses, the general scope of such programs and courses, and the application procedures required for such programs and courses, if applicable.

Management will inform the bargaining unit at the outset of each fiscal year of the amount of funds allocated in the initial operating plan intended for such training. In the event a request is denied, the Union will be notified of such denial, upon request.

**18.3 ADMINISTRATIVE LEAVE:** Administrative leave may be authorized for approved training or career enhancement when it is scheduled during the employee's basic work week.

## **ARTICLE 19 HOURS OF WORK**

**19.1 GENERALLY:** The regular business hours of the Board are 9:00 a.m. to 5:30 p.m., with a half-hour break for lunch, Monday through Friday. The hours for the intake and correspondence teams, which have initial public contact, are 8:00 a.m. to 4:30 p.m. All employees will be either on a compressed schedule or a flexible work schedule.

**19.2 COMPRESSED SCHEDULES:** Employees on compressed schedules may choose to work either four ten-hour days per week or a 5/4/9 compressed work schedule, Monday through Friday. Management reserves the right to limit the number of employees under these schedules in order to insure that the office has coverage during normal hours of work (9:00 a.m. to 5:30 p.m.) to the extent that voluntary preference does not result in such coverage. An employee's workday under a compressed schedule may not begin prior to 7:00 a.m. and must end by 6:30 p.m. An employee on a compressed schedule may select any workday as his or her regular day off, subject to the same Employer reservation regarding office coverage addressed above. An employee, upon giving three (3) days notice to Management, may change his or her day or days off for an alternate day or days off, within a given pay period, subject to the reservation regarding office coverage addressed above; an employee may not switch his or her day(s) off more than once a quarter.

**19.3 FLEXIBLE WORK SCHEDULES:** Employees on flexible schedules may set their workdays to start as early as 7:00 a.m. or end as late as 6:30 p.m., Monday through Friday, as long as each day is eight (8) hours long and the starting time is the same each day, and subject to the same Employer needs regarding office coverage detailed under compressed schedules, above. Employees on flexible work schedules may occasionally choose, with supervisory approval, to work credit hours (within the same 7:00 a.m. to 6:30 p.m., Monday through Friday limits) to shorten a subsequent work day or work week. Up to twenty-four (24) credit hours may be carried over to a subsequent pay period.

**19.4 APPROVAL:** An employee must obtain approval for his or her requested schedule from that employee's immediate supervisor on the approved DOJ form. The employee's schedule, once established, remains fixed for three (3) months and may only be changed at that time by

approval of his or her immediate supervisor.

**19.5 MODIFICATIONS:** An employee may request a modification of his or her schedule during the fixed three (3) month period. The decision on a request for a modification will be at Management's sole discretion. Circumstances under which a modification is appropriate include, but are not limited to, a change in the availability of dependent care providers, the necessity to take care of the employee or family for health-related reasons, the educational needs of the employee, and the transportation needs of the employee.

**19.6 PART-TIME EMPLOYMENT:** Consistent with the Federal Employees Part-Time Career Employment Act of 1978, the Board will continue to maintain a program for part-time employment. Part-time employees may work flexible work schedules under the same terms as full-time employees, except that the length and number of work days in a work week may be less, and they may only carry over credit hours in the amount of one fourth the number of hours that they are regularly scheduled to work during any pay period. Part-time employees may work no less than 20 hours and no more than 32 hours per week, and no less than two days per week. Upon request, Management shall inform part-time employees and full-time employees requesting part-time employment of the various adjustments in pay, benefits, the effect on promotions, and other related matters that result from part-time employment.

## **ARTICLE 20 AWARDS**

**20.1 GENERAL:** The parties agree that it is of mutual benefit to encourage employees to actively participate in and contribute to the Board's efficiency, effectiveness, and service to the public. Management agrees to promote and maintain an awards program that motivates employees and recognizes excellence in performance, exceptional achievement, service to the public, and constructive ideas.

**20.2 INFORMATION:** Management will inform the Union and employees, at least annually, of the types of awards available during the fiscal year and the criteria for each award.

**20.3 NOTIFICATION:** Management shall notify the Union in writing on a quarterly basis of the amount (if applicable), type, and recipient of each award during the preceding quarter, to the extent not prohibited by Federal law.

## **ARTICLE 21 AUDIO DEVICES**

An employee may use an audio device in his or her work area, unless shown by Management to be disruptive of others. The audio device may not be audible to the public.



**ARTICLE 22  
USE OF OFFICE WORK SPACE**

An employee may engage in any activity in his or her work area that is not shown by Management to be disruptive of others, unless that work area is a public window or the Board reception area.

**ARTICLE 23  
TELEPHONE AND E-MAIL ACCESS**

Management shall provide individual telephone access, personal voice mail service, and access to e-mail for each employee.

**ARTICLE 24  
EMPLOYEE ACTIVITIES**

Upon reasonable request from a work unit, but no more often than once a month, Management shall provide office coverage for that work unit during the lunch period, subject to legitimate work demands during that period.

**ARTICLE 25  
MEETINGS**

Management shall ensure that periodic meetings are held as needed with employees (such as Legal Technicians, docket and appeals processing staff) and their supervisors. A Union representative may also attend such meetings. Management will notify the Union President of the meeting when it notifies the employees.

**ARTICLE 26  
VISION PROGRAM**

An employee who believes that his or her vision has been adversely affected by the use of a video display terminal during the course of employment with the Board shall give written notice of the condition on Form CA-2 to his or her supervisor. If it is impractical to give written notice to the employee's supervisor, it may be given to any official of the employing agency or directly to the Office of Workers' Compensation Programs. The Form CA-2 is available in the Personnel Office. The employee will then be reimbursed for any eye examinations and corrective lenses approved by the Office of Workers' Compensation Programs pursuant to 20 C.F.R. Chapter I, Part 10.

**ARTICLE 27  
LEGISLATIVE INFORMATION**

Management will provide the Union, through the Union Legislative Liaison, or the Local

President, with the dates and times, immediately upon notification to EOIR of such dates and times, of all Congressional hearings in which an EOIR representative will appear or testify on any matter of concern to EOIR. Management will also provide the Union with copies of all submissions made to Congress (committees and subcommittees), including testimony, budgetary information and statistical information. Those submissions are to be provided to the Union as soon as possible. Management will also provide the Local with copies of all EOIR-related appropriation legislation enacted by Congress, when available.

## **ARTICLE 28 SOLICITATION OF FUNDS**

Except as provided in 5 C.F.R. § 2635.304, an employee may not: (1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or (2) Solicit a contribution from another employee for a gift to either his or her own or the other employee's official superior.

Except as provided in 5 C.F.R. § 2635.304, an employee may not directly or indirectly, accept a gift from an employee receiving less pay than himself or herself unless: (1) The two employees are not in a subordinate-official superior relationship; and (2) There is a personal relationship between the two employees that would justify the gift.

Notwithstanding any exception, an official superior shall not coerce the offering of a gift from a subordinate.

## **ARTICLE 29 EQUIPMENT AND TECHNOLOGY**

Before Management implements new technology that will significantly impact the responsibilities of ten or more bargaining unit employees, Management shall first give the Union the opportunity to bargain over the impact and implementation of the new technology, as required under 5 U.S.C. § 7106(b).

Management agrees to provide, to the greatest extent possible, equipment (chairs, workstations, computers, keyboards, worktables) that provide comfort to the user.

Before Management puts into use a new type of equipment or furniture for ten or more bargaining unit employees, Management shall first give the Union the opportunity to bargain over the impact and implementation of the proposed new equipment or furniture, as required under 5 U.S.C. § 7106(b).

Management shall properly illuminate work spaces to reduce glare and ensure visual comfort to computer users while providing adequate lighting for traditional clerical tasks.

**ARTICLE 30**  
**NOTIFICATION OF SPECIAL WORK OPPORTUNITIES**

Where there is a special work opportunity and Management has determined there may be more than one qualified employee to perform the assignment, Management will solicit volunteers for that work opportunity, unless due to a short deadline such solicitation cannot be accomplished. The ultimate decision as to which employee will be assigned to the work opportunity is Management's. It is understood that Management can direct and assign the work opportunity to an employee who did not volunteer. Upon request, Management shall provide the basis for the decision to an employee who volunteered or to the Union.

**ARTICLE 31**  
**LABOR-MANAGEMENT COMMITTEES**

Management will meet bi-weekly with the Union president (or designee) and one other Union representative to discuss anticipated Management-initiated changes to terms and conditions of employment for bargaining unit employees and other issues affecting bargaining unit employees. Management and the Union will work together to establish a cooperative labor-management process for sharing information and considering changes to existing policies and procedures as well as new policies and procedures.

The Labor-Management Committee may establish sub-committees or task forces, of equal numbers from each party, when the Committee determines it would be helpful to the furtherance of good labor-management relations. Either party may invite a subject matter expert to participate in the sub-committee or task force.

**ARTICLE 32**  
**FLEXIPLACE**

32.1 This Article establishes a Pilot Program to test the effectiveness of a flexiplace program at the Board of Immigration Appeals, in order to determine the feasibility of establishing a program on a permanent basis.

32.2 Unless specifically changed by the terms of this Article, all other terms and conditions of employment will affect employees participating in this Pilot Program to the same extent as other members of the bargaining unit.

32.3 The Pilot Program will last 12 months from the implementation date of this Agreement. At the end of the 12 months, the Parties will have 90 days to analyze the Pilot Program, and the Parties will negotiate over whether to continue, terminate, or modify the program. During the negotiation period the Pilot Program will remain in effect.

32.4 A key component of this Pilot Program is a comprehensive evaluation of the program's

effectiveness. The standard for determining whether to continue the flexiplace program will be a "demonstrable benefit to the agency." Criteria for judging the effectiveness of the program will include the impact of the program on performance of the organization's mission; productivity of the organization; employee leave usage; supervisory assessment of the program; employee assessment of the program; and overall cost.

32.5 Data gathered from the evaluation, including the raw data collected by Management, will be shared with the Union and will be used by the Parties in evaluating the program. Such data should be shared with the Union as it is collected by Management.

32.6 Eligibility: The following criteria will be used in determining eligibility for participation in the Pilot Program:

- a. The employee's duties must be portable;
- b. The employee's most recent summary rating must be Outstanding;
- c. The employee must have 1 year of experience in his or her position at the Board;
- d. Up to 15% of the bargaining unit attorneys at the Board may participate in the Pilot Program. Attorney-advisors currently working under a flexiplace arrangement will remain working under those arrangements during the Pilot Program, but are subject to the 15% limit. At the conclusion of the Pilot Program, all employees will be subject to the same conditions for participating in any flexiplace program. If total attorney-advisor interest in participating in the Pilot Program exceeds 15%, the eligibility of those attorney-advisors not currently in a flexiplace arrangement will be determined by seniority (as defined elsewhere in this Agreement);
- e. Up to 15% of the non-attorneys may also participate in the program, if it is established that the jobs in question are portable.

32.7 Conditions: The following are conditions for those participating in the Pilot Program:

- a. Employees participating in the Pilot Program agree to adhere to the "Agreement Governing Removal of Records of Proceedings from BIA Offices" distributed by the Chairman on April 15, 1996;
- b. Employees participating in the Pilot Program will sign a flexiplace work agreement prior to commencing work at home;
- c. Employees participating in the Pilot Program must be available by telephone during duty hours;

- d. Employees participating in the Pilot Program may not use flexiplace as a substitute for child or elder care;
- e. The employee must be available in the office at the need of the Board Members or Board Management, such as for Panel meetings, en banc conferences, and staff meetings;
- f. Employees participating in the Pilot Program may not work more than 1 day a week at the flexiplace site, except that, pursuant to No. 6, those currently working under a flexiplace arrangement will remain working under their current arrangements.

32.8 Management reserves the right to terminate the participation in the Pilot Program of an employee who has demonstrated disregard for the security of government records or an employee whose work demonstrably declines while in the Pilot Program.

32.9 Nothing in this Article shall prevent Management, at its sole discretion, from allowing an employee, who demonstrates that he or she has a compelling, temporary need, to work in another type of arrangement involving a flexiplace site.

### **ARTICLE 33 WORK SPACE PROVISIONS**

33.1 GENERAL: Management recognizes that the quality of the workplace has a significant impact on the efficiency of the Board's operations. In any design or redesign of the workplace, Management will focus on improving the quality of the workplace. A quality workplace requires the efficient use of office space and attention to those factors that provide employees adequate space to do their respective jobs to the best of their abilities. Space occupied by employees within the bargaining unit shall be arranged and maintained so as to ensure a quality workplace.

Management agrees that work space configurations must conform with applicable safety, fire and health codes.

When a space change is to occur that will have an impact on bargaining unit employees, Management will notify the Union before a final decision is rendered on the proposed change. Upon request, Management will consult with the Union on all aspects of the proposed changes, including the blue prints and such issues as size; design; location of offices and work stations; access to windows; common use space (e.g., break rooms, conference rooms); furniture; carpeting; paint; lighting; location of common use equipment; and storage or file space.

Management shall allocate workspace of bargaining unit employees in such a way as to set order of preference in accordance with an employee's seniority status, as defined in section 33.3 of this Article, within the employee's panel for the attorneys, paralegals, and legal technicians who support the attorney panels. The parties recognize that, if Management acquires suitable space, it may

choose to seat attorneys, paralegals, and legal technicians by seniority within teams. -

**33.2 WORK SPACE GUIDELINES:** In designing or redesigning the workplace, Management will use the following guidelines:

(a) Management agrees that, to the greatest extent possible, it shall ensure the privacy of bargaining unit employees. Where open space office arrangements are used, Management shall make available partitions of at least 4 1/2 feet in height to all bargaining unit employees unless Management and the Union otherwise agree. Management shall also make available to bargaining unit employees assigned to work stations or cubicles in an open space area a means of securing personal items within their respective work station or cubicle for purposes of ensuring security and privacy.

(b) Management agrees that it will work toward the goal of providing private offices to attorneys.

**33.3 DEFINITION OF SENIORITY:** Seniority is measured by time employed by the Board, beginning on the date of entry on duty at the Board, regardless of whether the employment was in full-time or part-time status and regardless of any approved leave taken during the period of employment. Where two or more people have the same entry on duty date at the Board, seniority will be determined by entry on duty date at the Executive Office for Immigration Review (EOIR). Where two or more people have the same entry on duty date at the Board and at EOIR, seniority will be determined by entry on duty date at the Department of Justice. Where two or more people have the same entry on duty date at the Board, EOIR, and the Department, seniority will be determined by entry on duty date in federal government service. Where two or more people have the same entry on duty date at the Board, EOIR, the Department and in federal government service, seniority will be determined by drawing names, with the first name drawn being the most senior. Such drawings will take place on each occasion when seniority is a factor, e.g., for overtime the drawing will be each time eligibility for the overtime pool is determined.

#### **ARTICLE 34 DURATION AND MODIFICATION OF AGREEMENT**

**34.1 DURATION AND EXTENT OF AGREEMENT:** This Agreement shall become effective May 1, 1998, and shall remain in full force and effect for a period of two (2) years from the date of final approval and thereafter may be automatically renewed for equivalent periods unless either Party requests reopening by the 60th day prior to its termination date. If either Party wishes to renegotiate or modify this Agreement, it shall notify the other in writing within a period of no more than 90 days and no less than 60 days prior to the termination date of this Agreement.

Negotiations to establish a new agreement or to modify the prevailing agreement shall begin no later than 45 days prior to the termination date. This Agreement shall remain in full force and effect during negotiations and until a new contract takes effect.

**34.2 AMENDMENTS:** This Agreement may be supplemented by the mutual consent of the Parties with regard to matters not covered by the Agreement or after the enactment of a new law which negates any provision of this Agreement. A request by either Management or the Union for mutual consent to negotiate amendments to this Agreement shall indicate the Articles to be amended. When a proposal is submitted as a result of the enactment of a new law which negates any provisions of this Agreement, or when the Parties mutually consent to negotiate amendments to the contract, representatives of Management and the Union shall meet to negotiate the amendments. Such negotiations when agreed to or required, must be entered into if either Party gives notice to the other in writing at least thirty (30) calendar days in advance of their proposed negotiating date. Any agreement reached as a result of such a negotiation shall be first ratified by the Union members in a manner prescribed by the Union and upon ratification signed by Management and the Union in the same manner as this Agreement. No amendment may be put into effect without the written approval of the Department's Assistant Attorney General for Administration, or his or her designee. Upon its approval, an amendment shall remain in effect until modified.

APPENDIX TO ARTICLE 10.8: EXTENDED LEAVE WITHOUT PAY

DOJ 1630.1B  
Jul. 22, 1991

CHAPTER 6. LEAVE WITHOUT PAY (LWOP).

41. GENERAL INFORMATION.

- a. Leave without pay, commonly referred to as LWOP, is a temporary nonpay status and approved absence from duty granted upon an employee's request. LWOP is an approved absence and is not to be confused with absence without leave or AWOL, which is an unauthorized absence from duty (see paragraph 46).
- b. An employee cannot be placed on LWOP without his or her consent.
- c. LWOP may not be imposed as a penalty nor is it to be used for periods of unauthorized absence.

42. LWOP CHARGES. The minimum charge for LWOP in the Department is fifteen (15) minutes; additional charges are in multiples thereof.

43. REQUESTING LWOP.

- a. An employee must submit a request for LWOP as far in advance of the requested period of absence as possible. When LWOP cannot be requested in advance because of illness, injury, or other personal emergency, LWOP may be approved after the fact provided the employee submits any required documentation within the time frame established by the Department component or the approving official.
- b. An employee requesting LWOP for 30 days or less must submit the following:
  - (1) A Standard Form 71, Application for Leave.
  - (2) Such additional documentation as the Department component or approving official may prescribe.
- c. An employee requesting extended LWOP of more than 30 days must submit the following:
  - (1) A Standard Form 71, Application for Leave.
  - (2) A memorandum to the approving official detailing the reason(s) for the absence. If the employee is requesting LWOP for medical reasons, he or she must submit a medical certificate or other administratively acceptable evidence substantiating the reason(s) for the absence.
  - (3) Such additional documentation as the Department component or approving official may prescribe.

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44. GRANTING LWOP.

- a. Administrative Discretion. The authorization of LWOP is at the discretion of the approving official. Even though an employee has a legitimate reason for requesting LWOP, e.g., sickness, injury, or personal emergency, the request may be denied if the employee's services are required or the employee has not followed prescribed leave procedures. Employees are not entitled to be granted LWOP as a matter of right unless the employee is:
- (1) A disabled veteran who is entitled to LWOP, if necessary, to undergo medical examination or treatment in connection with the disability [see paragraph 30b(6)].
  - (2) A reservist or National Guardsman who is entitled to LWOP, if necessary, for military training.
- b. Guidance for Granting LWOP.
- (1) Where the granting of LWOP is discretionary, the circumstances surrounding each request tend to differ from case to case. Initially, an approving official must:
    - (a) Decide whether the employee's services are required.
    - (b) Determine how long the employee can be absent before the component's need for his or her services becomes critical, e.g., the need for the services of an employee in a key position generally becomes critical in a much shorter time than it does for an employee who is not in a key position.
  - (2) Each request for LWOP should be examined carefully to assure that the value to the Department or the serious needs of the employee are sufficient to offset the loss of the employee's services and the costs and administrative inconveniences that result when an employee is retained in a LWOP status. Before granting LWOP, approving officials should consider the following:
    - (a) Encumbrance of the employee's position.
    - (b) Loss of services that may be vital to the organization.

- (c) Obligation to provide employment at the end of the LWOP.
  - (d) Six (6) months of LWOP in any calendar year is creditable service for such benefits as retirement and severance pay.
  - (e) Eligibility for continued coverage (without cost to the employee) for up to 1 year for life insurance and continued coverage (with payment of employee's portion of the premiums by the employee) for up to 1 year for health insurance benefits.
- c. LWOP of More Than 30 Days. Before a request for extended LWOP of more than 30 days is approved, there should be a reasonable expectation that the employee will return to duty at the end of the LWOP. In addition, it should be apparent that AT LEAST ONE of the following benefits would result:
- (1) Fulfillment of parental or family responsibilities (see Chapter 8).
  - (2) Increased job ability.
  - (3) Protection or improvement of an employee's health.
  - (4) Retention of a desirable employee.
  - (5) Furtherance of a program of interest to the Government.
- d. Approving LWOP of More Than 30 Days. Approval of extended LWOP is proper, all other factors being favorable, to allow an employee to:
- (1) Attend to parental or family responsibilities.
  - (2) Continue his or her education, when the course of study or research is in line with a type of work performed by the Department component and would contribute to the component's mission.
  - (3) Serve temporarily in a non-Federal or private enterprise when there is a reasonable expectation that the employee will return to duty and the employee's service will contribute to the public welfare and/or the experience gained will serve the interests of the Department component.
  - (4) Recover from illness or disability not of a permanent or disqualifying nature, when continued employment or

immediate return to duty would threaten the employee's health or the health of other employees.

- (5) Protect his or her status and benefits during the period pending an initial decision by OPM on a disability retirement application.
- (6) Protect his or her status and benefits during any period pending action by the Office of Workers' Compensation Programs (OWCP) on a claim resulting from a work-related illness or injury.
- (7) Avoid a break in the continuity of service when he or she must relocate to accompany a family member who is employed by the Federal Government or who is a member of the military to a new post of duty.
- (8) Serve as an officer or employee of a union representing Federal employees.

e. Documenting LWOP.

- (1) When an initial request for extended LWOP of more than 30 days is approved, or when consecutive grants of LWOP of less than 30 days exceed 30 days in the aggregate, a Standard Form 52, Request for Personnel Action, MUST BE SUBMITTED to the servicing personnel office.
- (2) A separate Standard Form 52 MUST BE SUBMITTED to the servicing personnel office when the employee returns to duty.

45. DURATION OF EXTENDED LWOP.

- a. Legal/Regulatory Time Limits. There are no limits prescribed by law or regulation on the amount of LWOP that can be granted.
- b. Departmental Time Limits. Department components may not authorize an initial period of LWOP in excess of 52 calendar weeks except in extraordinary or unusual circumstances, or in furtherance of a program of interest to the Department or the Federal Government when it is known in advance that the initial period of absence will exceed one year.
- c. Approval of LWOP in Excess of One Year. Heads of Department components must approve any initial request for extended LWOP which exceeds 52 calendar weeks, and any request for additional LWOP which would cause the employee's LWOP to exceed 52 consecutive calendar weeks.

APPENDIX TO ARTICLE 4.4: OFFICIAL TIME

**Request for Official Time for Representational Purposes**

Union Representative: \_\_\_\_\_  
Organization: \_\_\_\_\_

**Part A: Request for Time (Includes preparation time at the representative's work site or off-site)**

I hereby request use of official time on \_\_\_\_\_ from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm.  
(This is an estimate of the official time required.)

Purpose of official time: \_\_\_\_\_

Location: (Complete only if leaving work site.)

Building \_\_\_\_\_

Telephone Number \_\_\_\_\_

Date of Request \_\_\_\_\_

Union Representative Signature \_\_\_\_\_

\_\_\_\_ Approval of Authorizing Official

\_\_\_\_ Disapproval of Authorizing Official: Due to necessity of meeting work requirements, this request must be denied.

Date \_\_\_\_\_

Authorizing Official Signature \_\_\_\_\_

**Part B: Record of Time Actually Used (If different from Part A)**

*The Union representative is responsible for returning to work as soon as possible and for promptly completing Part B.*

I used \_\_\_\_\_ hours and \_\_\_\_\_ minutes of official time from \_\_\_\_\_ am/pm to \_\_\_\_\_ am/pm for representational duties.

Date \_\_\_\_\_

Union Representative Signature \_\_\_\_\_

*Original copy of the completed form should be sent to authorizing official.*

**Chapter 6. Leave Without Pay (LWOP)**

**41. General Information**

- a. Leave without pay, commonly referred to as LWOP, is a temporary nonpay status and approved absence from duty granted upon an employee's request. LWOP is an approved absence and is not to be confused with absence without leave or AWOL, which is an unauthorized absence from duty (see paragraph 46).
- b. An employee cannot be placed on LWOP without his or her consent.
- c. LWOP may not be imposed as a penalty nor is it to be used for periods of unauthorized absence.

**42. LWOP Charges.** The minimum charge for LWOP in the Department is fifteen (15) minutes; additional charges are in multiples thereof.

**43. Requesting LWOP**

- a. An employee must submit a request for LWOP as far in advance of the requested period of absence as possible. When LWOP cannot be requested in advance because of illness, injury, or other personal emergency, LWOP may be approved after the fact provided the employee submits any required documentation within the time frame established by the Department component or the approving official.
- b. An employee requesting LWOP for 30 days or less must submit the following:
  - (1) A standard form 71, Application for Leave.
  - (2) Such additional documentation as the Department component or approving official may prescribe.
- c. An employee requesting extended LWOP of more than 30 days must submit the following:
  - (1) A standard form 71, Application for Leave.
  - (2) A memorandum to the approving official detailing the reason(s) for the absence. If the employee is requesting the LWOP for medical reasons, he or she must submit a medical certificate or other administratively acceptable evidence substantiating the reason(s) for the absence.
  - (3) Such additional documentation as the Department component or approving official may prescribe.

#### 44. Granting LWOP

- a. Administrative Discretion. The authorization of LWOP is at the discretion of the approving official. Even though an employee has a legitimate reason for requesting LWOP, e.g., sickness, injury, or personal emergency, the request may be denied if the employee's services are required or the employee has not followed prescribed leave procedures. Employees are not entitled to be granted LWOP as a matter of right unless the employee is:
  - (1) A disable veteran who is entitled to LWOP, if necessary, to undergo medical examination or treatment in connection with the disability [see paragraph 30b(6)]
  - (2) A reservist or National Guardsman who is entitled to LWOP, if necessary, for military training.
- b. Guidance for Granting LWOP.
  - (1) Where the granting of LWOP is discretionary, the circumstances surrounding each request tend to differ from case to case. Initially, an approving official must:
    - (a) Decide whether the employee's services are required.
    - (b) Determine how long the employee can be absent before the component's need for his or her services becomes critical, e.g., the need for the services of an employee in a key position generally becomes critical in a much shorter time than it does for an employee who is not in a key position.
  - (2) Each request for LWOP should be examined carefully to assure that the value to the Department or serious needs of the employee are sufficient to offset the loss administrative inconveniences that result when an employee is retained in a LWOP status. Before granting LWOP, approving officials should consider the following:
    - (a) Encumbrance of the employee's position.
    - (b) Loss of services that may be vital to the organization.

- (c) Obligation to provide employment at the end of the LWOP.
  - (d) Six (6) months of LWOP in any calendar year is creditable service for such benefits as retirement and severance pay.
  - (e) Eligibility for continued coverage (without cost to the employee) for up to 1 year for life insurance and continued coverage (with payment of employee's portion of the premiums by the employee) for up to 1 year for health insurance benefits.
- c. LWOP of More Than 30 Days. Before a request for extended LWOP of more than 30 days is approved, there should be a reasonable expectation that the employee will return to duty at the end of the LWOP. In addition, it should be apparent that AT LEAST ONE of the following benefits would result:
- (1) Fulfillment of parental or family responsibilities (see Chapter 8).
  - (2) Increased job ability.
  - (3) Protection or improvement of an employee's health.
  - (4) Retention of a desirable employee.
  - (5) Furtherance of a program of interest to the Government.
- d. Approving LWOP of More Than 30 Days. Approval of extended LWOP is proper, all other factors being favorable, to allow an employee to:
- (1) Attend to parental or family responsibilities.
  - (2) Continue his or her education, when the course of study or research is in line with a type of work performed by the Department component and would contribute to the component's mission.
  - (3) Serve temporarily in a non-Federal or private enterprise when there is a reasonable expectation that the employee will return to duty and the employee's service will contribute to the public welfare and/or the experience gained will serve the interests of the Department component.
  - (4) Recover from illness or disability not of a permanent or disqualifying nature, when continued employment or immediate return to duty threaten the employee's health or the health of other employees.

- (5) Protect his or her status and benefits during the period pending an initial decision by OPM on a disability retirement application.
  - (6) Protect his or her status and benefits during any period pending action by the office of Workers Compensation programs (OWCP) on a claim resulting from a work-related illness or injury.
  - (7) Avoid a break in the continuity of service when he or she must relocate to accompany a family who is employed by the Federal Government or who is a member of the military to a new post of duty.
  - (8) Serve as an officer or employee of a union representing Federal employees.
- e. Documenting LWOP.
- (1) When an initial request for extended LWOP of more than 30 days is approved, or when consecutive grants of LWOP of less than 30 days exceed 30 days in the aggregate, a Standard Form 52, Request for Personnel Action, **MUST BE SUBMITTED** to the servicing personnel office.
  - (2) A separate Standard Form 52 **MUST BE SUBMITTED** to the servicing personnel office when the employee returns to duty.

**45. Duration of Extended LWOP**

- a) Legal/Regulatory Time Limits. There are no limits prescribed by law or regulation on the amount of LWOP that can be granted.
- b) Departmental Time Limits. Department components may not authorize an initial period of LWOP in excess of 52 calendar weeks except in extraordinary or unusual circumstances, or in furtherance of a program of interest to the Department or the Federal Government when it is known in advance that the initial period of absence will exceed one year.
- c) Approval of LWOP in Excess of One Year. Heads of Department components must approve any initial request for extended LWOP which exceeds 52 calendar weeks, and any request for additional LWOP which would cause the employee's LWOP to exceed 52 consecutive calendar weeks.



Appendix to Article 4.4: Official Time

**Request for Official Time for Representational Purposes**

The form contains the following text and form fields:

- Form field: Union Representative
- Form field: Organization
- Text: Part A, Request for Time (Includes preparation time at the representative's work site or off-site)
- I hereby request use of official time on (Blank) from (Blank) am/pm to (Blank) am/pm. (This is an estimate of the official time required.
- Form field: Purpose of official time
- Text: Location: Complete only if leaving work site.
- Form field: Building
- Form field: Telephone Number
- Form field: Date of Request
- Form field: Union Representative Signature
- Form checkbox field: Approval of Authorizing Official
- Form checkbox field: Disapproval of Authorizing Official: Due to necessity of meeting work requirements, this request must be denied.
- Form field: Date
- Form field: Authorizing Official Signature
- Text: Part B: Record of Time Actually Used (If different from Part A)
- Text: The Union representative is responsible for returning to work as soon as possible and for promptly completing Part B.
- I used (Blank) hours and (Blank) minutes of official time from (Blank) am/pm to (Blank) for representational duties.
- Form field: Date
- Form field: Union Representative Signature
- Text: Original copy of the completed form should be sent to authorizing official.