

Labor News & Views

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COSTS OF AN UNFAIR LABOR PRACTICE CHARGE

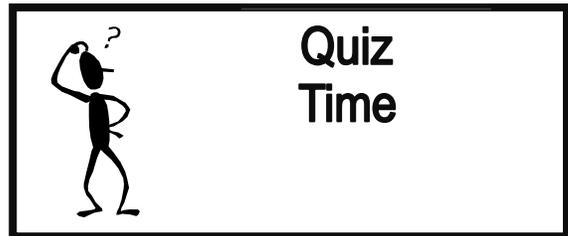
The downsizing of Navy and budget reductions place great emphasis on costs reductions and efficiency of operations at the activity level. One area where we can achieve cost savings, or more correctly, achieve cost avoidance, is in the elimination of unfair labor practice charges (ULP). We eliminate them by complying with our obligations.

A study in the early 90's by GAO found that salary and expense costs of \$925 for a ULP which was either dismissed or withdrawn, \$1,450 for a ULP that is settled in the pre-complaint stage, \$3,600 for a ULP resolved by settlement prior to a hearing, and \$7,250 when a hearing is held. This doesn't include the cost of lost productivity.

Ultimately this is reflected in your Command's overhead. Notifying and negotiating with your unions is far more efficient. Besides, it means you're complying with the law.

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One of your subordinates informs you that she intends to join the local union and wants to know how to initiate the procedure for having union dues withheld from her paycheck. You inform her that the forms are available from the union's treasurer, but that she exercises certain supervisory authorities and is not entitled to have union dues withheld (since she's not in the bargaining unit). She disagrees, stating that she is only a supervisor for one employee and the Classification Act requires that a person supervise at least three people before a supervisory classification is appropriate.

How would you respond to her statement?

- a. I would inform her that as long as she is performing any of the supervisory duties listed in 5 USC 7103, she is a supervisor for labor relations purposes.
- b. I would agree she is not a supervisor because a person has to be the head of a section to be a supervisor.
- c. I would agree that she is not a supervisor because she does not supervise at least three people.

See "Definition of a Supervisor," Page 2

WHISTLEBLOWER REPRISAL

The Merit Systems Protection Board (MSPB), in 1992, issued the following Department of Agriculture whistleblower reprisal case. The U.S. Court of appeals reviewed the decision and confirmed MSPB's decision in 1992.

Mr. Levin, a probationary employee, became concerned about smoking in certain office areas where he worked and began to complain. He complained to the head of that office, and then to the Administrative Officer, Mr. Eidmann, that the smoking violated the GSA and Agriculture's regulations. As Administrative Officer, Mr. Eidmann was responsible for the direction of personnel administration within the State Office. He was not a part of Mr. Levin's supervisory chain.

Mr. Eidmann sent Mr. Levin a letter advising him that a new employee could "ill afford to direct (his) energies and attention on matters unrelated to the duties of the position." Mr. Levin, however, pursued his complaint further, to the Safety Officer and his union Vice President.

Mr. Eidmann and Mr. Gouryeb, the Director, jointly drafted a letter to terminate Mr. Levin during his probationary period. (As Director, Mr. Gouryeb was, at least, Mr. Levin's third level supervisor. Mr. Gouryeb later stated that he had completely relied on Mr. Eidmann for most of the facts on which he had based the action.). They reconsidered this action when Mr. Levin's first and second level supervisors advised them that his performance and conduct were satisfactory. Then when Mr. Eidmann learned of the complaint to the Safety Officer, he *recommended* that Mr. Gouryeb terminate Mr. Levin after all. Mr. Gouryeb agreed and Mr. Eidmann personally delivered the letter.

Mr. Levin filed a complaint with the Office of Special Counsel. When the dust finally settled, Mr. Levin had been reinstated, Mr. Gouryeb had left federal service, and MSPB ordered that Mr.

Eidmann be *demoted* by two grades to a nonsupervisory position for two years.

MSPB found that Mr. Levin's complaints about smoking in the office area were protected disclosures because they reflected his reasonable belief that the Command violated government regulations. MSPB directed Mr. Eidmann's demotion because it found that he had *acted in concert* with Mr. Gouryeb in reprisal for Mr. Levin's making protected disclosures.

Supervision should note the serious consequences of the Whistleblower Protection Act (WPA) and seek advice from your HR Advisor in any contemplated personnel action that could be reviewed under the WPA.

Got Ideas? You can contact us at nwlabor_nw@nw.hroc.navy.mil. We would enjoy hearing your ideas for our newsletter.



DEFINITION OF A SUPERVISOR

This is a series of quiz articles covering basic entitlements under the Federal Labor Management Relations Statute (5 USC 71). This article is 2 of 10.

Being a "supervisor" for labor relations purposes and a "supervisor" under the Classification Act are two different things. Under the Statute, a supervisor is a person authorized, with respect to employees, to do at *least one* of the following:

- | | |
|-------------------|------------------|
| Hire | Transfer |
| Assign | Recall |
| Promote | Furlough |
| Remove | Lay off |
| Discipline | Direct employees |
| Suspend | Reward |
| Adjust grievances | |

Now, those responsibilities sound a lot like a supervisor. However, under the Statute there is a twist. If you *effectively recommend* any such actions, if the exercise of such authority requires the use of independent judgment, you are a supervisor under the Statute.

You don't get the title of "supervisor." You don't get the pay of "supervisor." But you are not a bargaining unit employee. The number of employees supervised is not a relevant factor in determining supervisory status. This is why some "lead" positions are considered as supervisors under the Statute and are not bargaining unit positions.

You mean, I'm a supervisor?



On to our quiz. Do I really need to talk about why answers "b" and "c" are incorrect? I heard a resounding "no" so I won't waste your time.

The amount and scope of supervisory responsibilities necessary to earn the title of "supervisor," pursuant to the Classification Act, has no relevance with respect to the Federal Labor Management Relations Statute. As long as at least one employee is being supervised (i.e., the use of independent judgement is required), a person is considered a supervisor for labor relations purposes. The correct answer is "a."

Next issue's quiz: "Union Rights."

LEAVE FOR MILITARY SERVICE

Federal employees, who are members of the National Guard, or any of the military reserve components, are entitled to leave for the purpose of performing military duty. They must be in a position that is not limited to one year.

Regulations provide for fifteen (15) calendar days per *fiscal* year for three purposes: active duty,

active duty training (more often referred to as drills) or inactive duty training. If an employee doesn't use all of these days, they may carry over a maximum of 15 days into the next fiscal year.

Inactive duty training is authorized training performed by members of a Reserve component not on active duty and performed in connection with the prescribed activities of the Reserve component. It consists of regularly scheduled unit training periods, additional training periods, and equivalent training.

Military leave should be credited to a full time employee on the basis on an 8-hour workday. The minimum charge to leave is 1 hour. No matter what, an employee may be charge military leave *only* for hours that the employee would otherwise have worked and received pay.

Now here's something that's a little different than it use to be. Are you paying attention? Employees who request military leave for inactive duty training (which generally is 2, 4, or 6 hours in length) will now be charged only the amount of military leave necessary to cover the period of training and necessary travel. Members of the Reserves and the National Guard will no longer be charged military leave for weekends and holidays that occur within the period of military service.

You may have a part-time employee or an employee who is on an uncommon tour of duty who is also eligible for military leave. Part-time employees have their military leave prorated and employees on uncommon tours of duty are based proportionally to the number of hours in the employee's regularly scheduled biweekly pay period. Sounds complicated? I agree. If you have this situation, contact your Human Resources Advisor so they can step you through it.

So what happens to their civilian pay during their military leave? Good question.

If it is for active duty, active duty training or inactive duty training, the pay remains the same,

including any premium pay (except Sunday premium pay), as it would be if they were not on military leave.

However, if military leave is used for emergency duty (we'll talk about this in a little bit), then their pay is reduced by the amount of military pay for the days of military leave. Now this can be avoided if the employee chooses to use annual leave rather than military leave.

An employee is only entitled to use military leave if he or she has been ordered to active duty or active duty for training under appropriate legal authority. Once the employee has used up all accumulated military leave, the employee is entitled to be carried on annual leave or leave without pay.

Should a reservist or National Guardsman be called to duty for the purpose of enforcing the law, as in a riot, or to prevent looting following a natural disaster, the employee is entitled to up to 22 work days of leave per *calendar* year. Pay entitlement for law enforcement leave are computed differently than military leave (yes, nothing is easy in this world we call human resources!).

Should a law enforcement emergency require the employee's absence for more than 22 workdays, the employee is then entitled to use any unused military leave still in his or her account. Once all military leave is used up, the employee is entitled to request annual leave or leave without pay.

An employee's required absence to perform military duties may sometimes cause problems for the Command. There have been occasions in which employees have attempted to manipulate the system, shocking as that might be. Should an employee's military duty obligations interfere with the needs of the Command, we do have the option of contacting the employee's military command. The command may be willing to make adjustments in the employee's duty obligation or modify its procedures. However, if the employee is required by proper military authority to be absent from work to fulfill his or her military obligation, management is required by law to authorize that employee's absence from work.

OTHER HELPFUL RESOURCES

Past Issues of Labor News and Views
www.donhr.navy.mil/HRSC/NewsItem.asp?ItemID=67&ItemArea=5

General Human Resources information:
<http://www.donhr.navy.mil/Employees/cpp.asp>

Training information:
www.donhr.navy.mil/Employees/training.asp

THIS NEWSLETTER IS INTENDED TO PROVIDE GENERAL INFORMATION ABOUT THE MATTERS DISCUSSED. THEY ARE NOT LEGAL ADVICE OR LEGAL OPINIONS ON ANY SPECIFIC MATTERS. FOR FURTHER INFORMATION REFER TO YOUR HUMAN RESOURCES ADVISOR.

Training Opportunity for Northwest Supervisors: Labor Relations for Supervisors

What: This course is designed to provide supervisors and managers an overview of labor relations in the federal sector. Upon completion you will have a basic concept of what labor relations means; the rights of management, employees and union; union representation; what's an unfair labor practice; administering the collective bargaining agreement; and the basics of the grievance procedures and arbitration. **Cost:** Free. **When:** April 30 - May 2, 2002, 0800 - 1600 hours. **Who:** Managers and supervisors with bargaining units. **Where:** Jackson Park, Bremerton Washington. **How:** To register contact your training coordinator or go to <http://www.donhr.navy.mil/Employees/training->