



INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS AFL-CIO & CLC

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2019 IFPTE Issue Brief

116th Congress

Federal Employees are in the public interest

IFPTE 2019 Legislative Request: IFPTE calls on House and Senate lawmakers to reject all attempts to eviscerate the worker due process protections of federal workers, as well as efforts to erode or otherwise diminish the ability of management and labor to negotiate the appropriate use of official time consistent with current statutory limitations. This includes Executive Orders (EOs) 13836, 13837 & 13839, free standing bills, and any other legislative efforts such as defunding amendments to appropriations measures.

Overview: The merit system principals of due process and fairness are the critical foundation that guarantee taxpayers a federal government free of political patronage, with a workforce whose number one objective is to serve the best interest of the American public. In addition, official time is negotiated between management and federal labor unions and allows for elected federal employee union representatives to engage in representation responsibilities on behalf of employees in their agency collective bargaining units.

Official Time (EO 13837): By law, federal employee unions are required to provide representation for all employees in units that have elected union representation, even those who choose not to pay dues. Federal employee unions are also forbidden from collecting any fair-share payments or fees from non-members for the services which the union must provide by law. In exchange for the legal obligation to provide the same services to those who pay as well as those who choose not to pay, the Civil Service Reform Act of 1978 allows federal employee unions to bargain with agencies over official time. Under this law, federal employees who serve as union representatives are permitted to use official time to engage in negotiations and perform representational activities on duty status.

These legally permitted representational activities are limited to:

- Providing federal workers with a voice in determining their working conditions;
- Promoting efficiency and productivity by bringing critical rank-and-file issues directly to the attention of agency leadership for resolution;
- Providing an independent pathway for critical information to reach the attention of Congressional members and committees to assist in oversight responsibilities;
- Creating fair promotion procedures that ensure that selections be based on merit, so that employees may advance their careers based on objective criteria;
- Setting processes that protect employees from on-the-job hazards, such as those arising from working with dangerous chemicals, munitions, or radioactivity;
- Enforcing protections from unlawful discrimination in employment;
- Protecting whistleblowers from management harassment or retaliation; and
- Participating in improvement of work processes that save the American taxpayers hundreds of millions of dollars.

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The finer points of the law: The law provides that the amount of official time that may be used is limited to that which the labor organization and employing agency agree is reasonable, necessary, and in the public interest. As pointed out in a Congressional Research Service report, “(a)ny activities performed by an employee relating to the internal business of the labor organization must be performed while in a non-duty status.”

Activities which may not be conducted on official time include:

- solicitation for membership;
- internal union business;
- elections of officers;
- any partisan political activities.

Official Time = More Efficient and More Effective Government: Through official time, union representatives are able to work together with managers to use their time, talent, and unique in-the-trenches perspective to make our government work even better. Gains in quality, productivity, and efficiency, year after year, in department after department, simply would not have been possible without the reasonable and sound use of official time. Here are just a few examples of how official time results in taxpayers savings:

- When workers and managers have a formal yet cooperative process by which to communicate, workplace problems that would otherwise escalate into costly litigation can be dealt with more promptly, more efficiently, and more effectively.
- When official time is used to bring closure to workplace disputes between the agency and an employee or group of employees, agencies avoid more costly and disruptive legal processes, such as EEOC complaints, Merit Systems Protection Board cases, or even litigation in federal courts.
- When official time is used for joint labor-management activities that enhance operational mission-enabling issues, including activities like designing and delivering joint training of employees on work-related subjects or introducing new and better work methods, the implementation is smoother and faster. A case in point is the Department of Defense (DOD), where labor and management worked together to develop a performance management system that will result in significant increases in productivity and efficiency throughout the DOD.

Due process protections for federal workers (EOs 13836, 13839) –These EOs signed by President Trump on May 25th, 2018 directs agencies to reopen collective bargaining agreements and impose unfavorable terms on federal workers, while encouraging agencies to adopt policies that erode fairness concepts such as progressive discipline, performance improvement plans, seniority, and grievance filings for performance appraisals. After legal challenges by over ten labor unions (including IFPTE), U.S. Federal District Court Judge Ketanji Brown Jackson issued a judgement halting nine key provisions of the executive orders on the grounds that they violate the Title 5 of the Civil Service Reform Act of 1978.

Conclusion: While the ruling is a victory for federal workers, effectively halting the OPM guidance and agency directives to implement, many agencies continue to try to implement the EOs. Therefore, IFPTE continues to believe that legislation is necessary to overturn all three EOs.