



Transportation Security Administration

Office of Human Capital

An Overview of Interim Guidance Regarding the Administrator's Determination

- ✓ Rights and Responsibilities Under the Determination
- ✓ Official Time
- ✓ Personal Representation During Investigations
- ✓ Formal Discussions



Transportation
Security
Administration

Effective Date: October 31, 2011

Overview of Interim Guidance

This presentation provides an overview of Interim Guidance that implements the Administrator's Determination in four areas:

- Rights, roles, and responsibilities of covered employees, AFGE, and TSA management.
- Official time for collective bargaining and new union responsibilities.
- Personal representation during examination or investigation.
- Right of AFGE to be present at formal discussions.

Overview of Interim Guidance

This Interim Guidance becomes effective October 31, 2011. The Interim Guidance has the full force of official TSA policy and will be incorporated into applicable TSA Management Directives. All management personnel and covered employees must comply with these new rules.

Overview of Interim Guidance

Who are covered employees?

- The following full-time and part-time non-supervisory personnel:

TSOs


LTSOs

Master and Expert TSOs, including Behavior Detection Officers, Security Training Instructors, and Equipment Maintenance Technicians

Overview of Interim Guidance

Who are management employees?

- Any employee in a covered employee's chain of supervision, including Supervisory Transportation Security Officers and Transportation Security Managers.



**INTERIM GUIDANCE
ON
RIGHTS, ROLES, AND RESPONSIBILITIES**

Overview of Interim Guidance

Covered employees have the right to:

- Use and participate in a new Resolution System (currently under development by TSA) for raising and resolving issues and concerns, including interest-based and rights-based processes.
- Have personal representation during an examination or investigation that the employee reasonably believes may result in disciplinary or adverse action.
- Serve as or designate a personal representative.
- Vote to support or not support any collective bargaining agreement negotiated by TSA and AFGE.
- Request official time to engage in union activities pursuant to TSA policy and guidance.

Overview of Interim Guidance

Covered employees may freely and without fear of interference, coercion, or retaliation:

- Join or not join, support or not support, request or not request representation by AFGE.
- Pay or not pay dues or fees to AFGE.

Overview of Interim Guidance

AFGE has the right to:

- Engage in good faith, interest-based collective bargaining.
- Enter into a collective bargaining agreement with TSA.
- Request and receive information from TSA HQ needed to understand subjects within the scope of bargaining.
- Represent a covered employee.
- Have a representative present at formal discussions.
- Be notified of any changes to Government-wide rules or regulations affecting covered employees.

Overview of Interim Guidance

All covered employees and management must:

- Comply with the Determination and all applicable TSA policies and guidance.
- Maintain respectful and constructive communication on work issues with co-workers, subordinates, and managers.
- Utilize cooperative and collaborative problem solving methods.

Overview of Interim Guidance

TSA management must not interfere, coerce, retaliate, or threaten to retaliate against any covered employee for:

- Participating in the Resolution System or any other TSA process to raise and resolve issues and concerns.
- Joining or supporting AFGE or engaging in union activities or refusing to do so.
- Selecting personal representation at examinations and investigations.

Overview of Interim Guidance

TSA management employees must:

- Promptly review and act upon requests for official time.
- Permit AFGE to be present at formal discussions.
- Permit covered employees to be represented at certain investigatory interviews.
- Permit covered employees to select personal representatives consistent with TSA policy and guidance.

The background features a large, faint sunburst graphic with a central circle and radiating lines. Overlaid on this is a stylized illustration of three human figures of varying heights with their arms raised in a celebratory gesture. The text is centered over these graphics.

**INTERIM GUIDANCE
ON
OFFICIAL TIME**

Overview of Interim Guidance

What is “Official Time”?

Official Time is time during an employee’s **regular duty hours** to participate in activities for which official time is permitted, provided that the employee’s use of time for these activities has been requested and approved in accordance with TSA policy.

- Official Time does not include time devoted to internal union business.
- TSA policy does not permit overtime or compensatory time for Official Time beyond the employee’s regular duty hours.

Overview of Interim Guidance

Currently, all employees may use Official Time to serve as a designated representative in particular matters pursuant to MD 1100.63-3, Employee Representation:

- Responding to an adverse or disciplinary action;
- Participating in the EEO process;
- Participating in an approved mediation or facilitation activity;
- Participating in Peer Review;
- Participating in appeals to the Office of Professional Responsibility Appellate Board (OAB) and the Merit System Protection Board (MSPB); and
- A reasonable period to prepare for these activities.

Overview of Interim Guidance

Section IV.A.6 of the Administrator's Determination states that covered employees may use Official Time for new union-connected activities related to:

- Collective bargaining;
- Representing the union in certain situations; and
- Representing employees in certain situations.

Overview of Interim Guidance

What are the new activities for which covered employees may use Official Time to perform?

- (1) Serving as a union representative in formal meetings/discussions;
- (2) Serving on AFGE's collective bargaining team;
- (3) Serving as the representative of an employee being interviewed in connection with an examination or investigation which the employee reasonably believes will result in discipline.

Overview of Interim Guidance

Process for Requesting Official Time

Covered Employees

Submit TSA Form 1160-5 to Supervisor
NLT 24 hours in advance of time requested
(NLT 48 hours if more than 8 hours is
requested)

Wait to receive approval **in writing** prior to
using Official Time

Supervisors

Promptly review request and respond.
If more than 8 hours is requested per matter,
refer to FSD, or designee, for approval

Consider operational needs to determine
reasonableness of request and suggest
alternatives, if necessary

Overview of Interim Guidance

What information will a covered employee need to include on a request for Official Time via submission of TSA Form 1160-5 to their supervisor?

- Employee's Name
- Date of Activity
- Timeframe
- Number of Hours
- Purpose
- Location of Activity

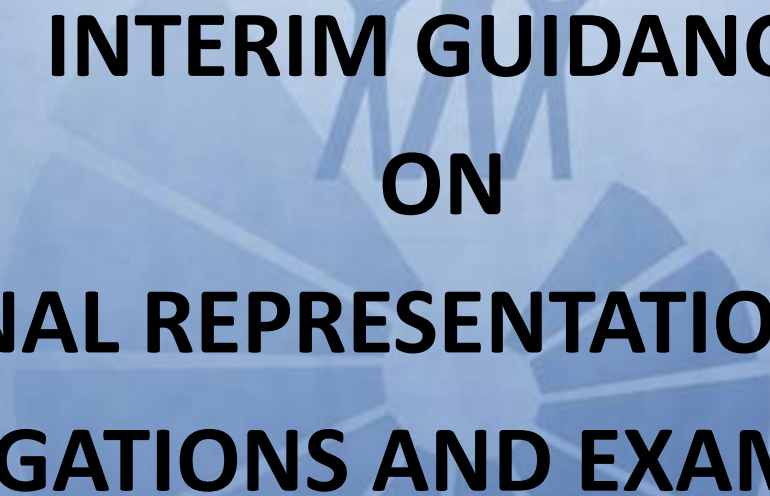
What about travel expenses for Official Time?

- Employees who are authorized to serve as the personal representative of a colleague at another location are authorized reasonable Official Time to travel to the location as well as time for the representational activity, **BUT** they may not be paid (either overtime or compensatory time) for time that exceeds their regular duty hours.
- Employees traveling for representational purposes may not be reimbursed for travel expenses.

Overview of Interim Guidance

Where are Official Time request forms and other Official Time documents maintained?

- TSA Form 1160-5, Official Time Request, will be located on iShare on the forms page.



**INTERIM GUIDANCE
ON
PERSONAL REPRESENTATION DURING
INVESTIGATIONS AND EXAMINATIONS**

Overview of Interim Guidance

Who has the right to personal representation during certain investigations and examinations?

- The Administrator's February 4, 2011 Determination gives covered employees the right to personal representation during certain investigations and examinations.
- TSA MD 1100.63-3, which authorizes personal representation in other situations, remains in effect for all TSA employees.

Overview of Interim Guidance

What is an investigation or examination that is subject to this guidance?

- An investigation or examination is fact-finding by TSA supervisors, the TSA Office of Inspection, or any other authorized TSA employee or agent looking into TSA operations and activities or its employees' conduct.

Overview of Interim Guidance

Who can serve as a covered employee's representative and when?

- Covered employees may ask another person (including an AFGE representative) who meets the requirements of MD 1100.63-3 to be present and assist the employee during an investigation or examination that **the covered employee reasonably believes may result in disciplinary or adverse action.**

Overview of Interim Guidance

Who can serve as a covered employee's representative and when? (cont.)

- The question of whether there is a reasonable belief that the investigation or examination may result in disciplinary or adverse action is based on the objective facts, not on the covered employee's subjective view.
- Management decides whether a covered employee's belief that the investigation or examination may result in disciplinary action is reasonable.

Overview of Interim Guidance

Are there exceptions to this right?

- Yes, the Determination does not permit representation during investigations or examinations that relate to a security incident or concern at a screening location where resolving the incident or concern requires immediate action.
- The decision whether these conditions exist is solely within the discretion of TSA management.

Overview of Interim Guidance

How does the covered employee assert the right to representation?

- The covered employee must request the right to representation. The person conducting the inquiry is not required to inform the covered employee about the right or ask if the employee wants to invoke it.
- The covered employee may request representation orally or in writing either before or during the investigation or examination.

Overview of Interim Guidance

What is the role of the covered employee's representative during the investigation or examination?

- Consult with the covered employee prior to the investigation or examination.
- Ask questions reasonably related to the issues being discussed.
- Suggest other employees who may have knowledge of relevant facts.
- Not disclose to management statements made by the employee to the representative during any private conference regarding the subject of the interview.

Overview of Interim Guidance

What is the covered employee's representative not permitted to do?

- Contest the scope of the interview.
- Interrupt questioning of the employee.
- Interfere with the employee's responses.
- Answer for the employee.
- Instruct the employee to refuse to answer questions or refuse to answer questions fully.
- Disrupt or try to break up the interview.

Overview of Interim Guidance

What happens if the covered employee's representative engages in prohibited actions?

- The supervisor or official conducting the investigation or examination should stop the interview.
- The supervisor or official should inform the covered employee that the investigation or examination will be recessed for a reasonable time determined by the supervisor or official to allow the employee to arrange for a replacement representative.

Overview of Interim Guidance

What happens if the covered employee's representative engages in prohibited actions?

- The representative's misconduct must not be attributed to the covered employee or negatively affect consideration of whether to propose or impose disciplinary or adverse action against the employee.

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**INTERIM GUIDANCE
ON
FORMAL DISCUSSIONS**

Overview of Interim Guidance

Section IV.B.4 of the Administrator's Determination states that AFGE representatives have the right to:

- Be notified of formal discussions;
- Be present at formal discussions; and
- Provide information and state the interests of AFGE and/or covered employees in formal discussions between TSA management and covered employees.

Overview of Interim Guidance

What is a formal discussion?

Any meeting that is:

- Prearranged between one or more representatives of TSA management and one or more covered employees and on a specific topic(s) concerning personnel policies, practices, or other conditions of employment.

Overview of Interim Guidance

Formal discussions are not:

- Impromptu discussions between management and unit employees.
- Routine staff meetings (e.g., shift briefs).
- Discussions during regularly scheduled office hours when employees can voluntarily meet with a manager.
- Meetings to provide information concerning new and revised security policies or procedures, including SOPs, directives, or instructions.

Overview of Interim Guidance

Formal discussions are not (cont.):

- Meetings occurring before or after security operations to discuss the operations (e.g., before or after carrying out a VIPR action or a playbook play).
- Individual counseling sessions involving a covered employee's performance and/or conduct.
- Training.
- Meetings at which a covered employee has a right to a personal representative.

Overview of Interim Guidance

Formal discussions are not (cont.):

- Informal, scheduled town halls conducted by management to convey information to employees and/or for employees to ask questions at which attendance is voluntary and open to all employees or employees in a specific category (e.g., all TSOs) or specific work unit (e.g., a specific shift).

Overview of Interim Guidance

Formal discussions are separate and distinct from bargaining unit employees' right to personal representation.

- A meeting at which a unit employee has a right to a personal representative is not a formal discussion.

Overview of Interim Guidance

An AFGE representative attending a formal discussion may not:

- Raise topics outside of the scope of the established discussion topics.
- Disrupt, hinder, or seek to end the discussion.
- Require that the discussion not be held because the AFGE representative is not available IF reasonable efforts have been made to accommodate the AFGE representative's scheduling requests.

Overview of Interim Guidance

Questions? For more information:

- Consult your supervisor or TSM.
- Consult your local HR Specialist.
- Review the Interim Guidance documents.