

CONDITION OF EMPLOYMENT

CHANGES IN WORKING CONDITIONS

1. When do management and unions interact?

- Contract Negotiations
- Representation (Formal Meetings, Weingarten Meetings)
- Ongoing Labor Management Initiatives (Partnership Activities)
- Reviewing Policy Changes and Management Proposals

2. When we must bargain?

- Contract negotiations (term and mid-term bargaining)
- Management exercises a right under 5 USC 7106(a) and the Union invokes their right to bargain procedures and appropriate arrangements under 7106(b) (2) and (3)
- When management wants to change conditions of employment, the unions have a right to bargain those conditions

3. What are “conditions of employment?”

Legal Definition

5 USC 7103(a)(14) “conditions of employment” means personnel, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(A) relating to political activities prohibited under subchapter III of 5 USC Chapter 73;

(B) relating to the classification of any position; or

(C) to the extent such matters are specifically provided for by Federal statute;

Practical Definition

“Conditions of employment” is the term used to refer to the physical, environmental and operational features affecting employees’ daily work lives. Conditions of employment encompass “working conditions” which can range from the size of an employee’s work cubicle to the system for calculating employee incentive awards. Other conditions of employment take the form of “fringe benefits.” Conditions of employment can be established through agency policies, collective bargaining agreements or unwritten workplace practices that develop over time. Matters “specifically provided for” in Federal law fall outside the definition of conditions of employment and are therefore not subject to bargaining.

4. Making Changes In Conditions of Employment

A. Recognition of Obligation

Does the decision produce a change or will the decision continue to use an existing way of doing things?

Does the change affect bargaining unit employees?

Does the change affect conditions of employment?

Is the change significant? De minimis?

B. Management’s Role

When management wants to make a change that affects conditions of employment of bargaining unit employees, the union must be given reasonable advance notice of the proposed change. A notice of a change in conditions of employment must be adequate, i.e. sufficiently specific and definitive to provide the union with a reasonable opportunity to request bargaining. To be adequate, it must advise the union of the planned timing of the change.

Not every event, policy or practice qualifies as a condition of employment. To qualify, there must be a direct link or nexus to the “work situation” or “employment relationship.”

Management has no duty to bargain when exercising a management right that results in an impact that is no more than de minimis. In determining if no impact or nor more than de minimis, consult with your HR Specialist.

5. Past Practices as Conditions of Employment

What is a past practice?

Past practice is the term used to describe a pattern of workplace behavior that is sufficiently clear, of long enough duration, and well enough known to both management and union officials to constitute an unwritten rule or policy.

To qualify as a bona fide past practice, such a pattern of behavior must also involve a condition of employment of bargaining unit employees, and must not conflict with applicable laws or government-wide regulations. Once established, essentially by unwritten consensus or silent toleration, a past practice becomes just as enforceable as a formally negotiated workplace rule that is placed in writing by the parties.

Prolonged failure to enforce a policy may result in the creation of a practice that cannot be changed without first bargaining.

Benefits extended to union officials in connection with their representational functions can become established past practices.

Example: The provisions of bottled drinking water for employees for an extended period of time became a condition of employment through past practice.

Example: The prices charged in VA cafeterias affected the conditions of employment of bargaining unit employees and were therefore subject to bargaining.