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USPTO Coaches Supervisors to Dupe Employees into Admissions

The USPTO is instructing its supervisors in ways to trick their employees into admitting unauthorized absence and phone use without informing employees of their rights under the law and their labor contract. An employee is entitled to union representation when being questioned on any matter that can result in a disciplinary action, even if the supervisor says that it won't.

While POPA in no way condones unauthorized, personal, long-distance phone use or unauthorized absences by employees, the organization upholds employees' rights to be treated with dignity and respect. The USPTO, however, is deliberately directing supervisors to tell employees that supervisors have a right to request answers from employees without telling employees of their rights.

Sticky Tricks

The USPTO is detailing to supervisors methods for keeping close tabs on their employees. Some specifics include:

- Leave an adhesive note on an employee's desk or door telling the employee to see you (the supervisor) right away. Keep track of the time you left the note, but don't record the time on the note. Record the time the employee reports to you. Contrive a real work-related question to ask so the employee doesn't know you really want to know about his whereabouts. Casually ask the employee about the time away and then check up on the answer, even if it means contacting customers.
- Use your key to your employees' offices and check the offices and employees' work at any time.
- Arrive at work outside of your normal work hours to note employees' attendance. If you can't, team up with other supervisors to keep tabs on each other's employees.

The agency also confirmed that it is, indeed, using the computerized "badge-in, badge-out," time-clock-punching data to monitor and catch employees.

Phone Monitoring

Supervisors are acting innocent when asking employees about their phone use and later using the information against the employees, thereby directly denying employees' contractual rights. In almost a dozen instances, a supervisor had approached an individual employee with a short log of the employee's phone calls. The supervisor asked in a seemingly harmless way if a few of the phone numbers were for business or personal reasons. When the employee acknowledged that some were personal, the supervisor implied that it wasn't a big deal. Later, usually months later, the supervisor notified the employee that he or she was required to attend an investigatory interview with Employee Relations staffers that could result in discipline. Then during the interview, representatives from Employee Relations presented one-and-a-half to

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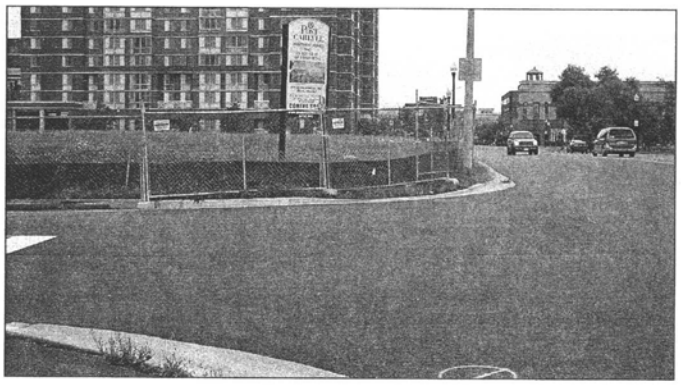
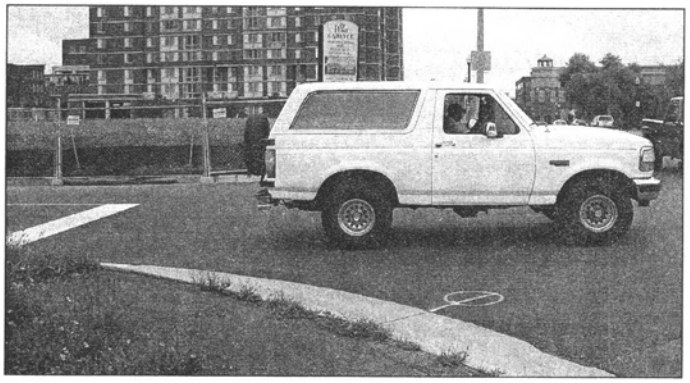
An Accident Avoided





A construction fence at the intersection of Holland St. and Emerson St.—which leads out of the main entrance of the only current parking garage at the USPTO Carlyle campus—had blocked the view of drivers on Emerson approaching Holland. The first photo shows the white stop line at the left on Emerson St., far back from the corner. The second photo illustrates how a vehicle had to pull forward almost into the intersection with Holland St. to see oncoming traffic. USPTO employees and POPA felt the situation was an accident waiting to happen. The City of Alexandria had the construction company move the fence back considerably from the street after POPA representatives worked with Alexandria City Engineer Emily Baker and Office of Traffic Control Director Bob Garbacz to find solutions to the visibility problem.

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just under three years' worth of long-distance phone data and asked the employee to identify personal calls..

Carlyle Employees Beware

In addition to long-distance calls, the USPTO records all employee local calls into and out of Carlyle, including at least the first 23 digits—likely more—keyed in for each outgoing call. This applies to all personal security and identification codes, including the numbers of calling-cards, home answering machines, and PINs for banking by phone. All incoming local phone call numbers are also recorded.

Not all personal use of government phones is improper or unauthorized, but the USPTO doesn't distribute the details of authorized personal phone use to its employees. The Federal Property Management Regulations state that personal phone use may be authorized if: 1) it doesn't adversely affect the performance of official duties; 2) it's of reasonable duration and frequency, and 3) it reasonably could not have been made at another time. For example, some calls deemed "in the interests of the government" include calls: to notify family or a doctor of illness on the job; to notify family of overtime work; to speak daily and briefly to a spouse, children or their care providers within the commuting area to see how they are; to contact briefly local individuals who can only be reached during business hours.

The moment that a management representative or supervisor asks if a phone call was for business or personal reasons, even if it sounds like a friendly exchange, that is the moment when you are involved in an investigatory interview and you are entitled to union representation. It's unwise to continue the interview without requesting representation first and then immediately calling the union.

Penalties for such first-time infractions used to be a letter of counseling entered in an employee's file. Now the USPTO is proposing unpaid suspension.

Protect Yourself

Title 5 Section 7114 (a)(2) of the U.S. Code, the statute that grants federal employees' rights, states:

"An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at—

(A) any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment; or

(B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if—

(i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and

(ii) the employee requests representation."

The agency has a statutory obligation to notify employees of these rights at least once a year.

The USPTO-POPA collective bargaining agreement also gives employees the right to counsel. Very specifically, Article 4, Section 8 (A) of the agreement states that a management representative "...shall notify the employee of the general nature of the meeting and of his/her right to have a union representative present prior to commencing the meeting." Section 8 (B) adds that the USPTO is "...obligated to wait a reasonable time to allow the employee the opportunity to secure representation, before proceeding with the meeting." [To view all of your rights as a bargaining unit employee, go to *www.popa.org*, click on "Useful Info," scroll down to "POPA Documents," click on "Collective Bargaining Agreement," and go to Article 4, Employee Rights.]

Employees can feel empowered to tell their managers or supervisors that they will not answer any questions immediately even if the supervisor: says that they must; implies that the agency won't use the information against the employee; says that the POPA-USPTO collective bargaining agreement isn't valid; or threatens action against the employee at that moment. Any management representative who engages in these practices is deliberately violating employees' rights under the agreement.

The agency is entitled to question employees, but only after the USPTO management representative allows time for the employee to contact and consult with a union rep. Therefore, all employees should contact POPA as soon as possible after being questioned by a supervisor or manager.

Examiners who maintain outstanding quality and production are just as subject to these agency subterfuges as those who produce less. The USPTO is instructing its supervisors to track and take action against any employee, even one who is performing well.

An obvious way to protect yourself is to never make unauthorized personal calls on USPTO phones and to abide by all USPTO time and attendance rules. Understand which kinds of personal calls are authorized. However, if an agency representative is asking you any questions about your leave or phone use that you believe could be used against you, you may state that you will answer the questions after contacting the union. Ask for a union representative to be present when you are questioned.

For a more detailed explanation of authorized personal use of the government telephone system, see the *2004 Federal Personnel Guide*, available free to dues-paying POPA members. If you haven't yet received your copy, please see your POPA delegate.

Number of Slots for Part-Time Work Increases

POPA bargaining unit members now have more part-time slots available for childcare/eldercare since POPA and the USPTO recently agreed to raise the number of those slots to 90 from the previous 80 slots.

Part-time work at the USPTO for POPA bargaining members is covered by an agreement reached with the agency. The program consists of two components—childcare/eldercare and retention.

The childcare/eldercare component allows an employee to go on a part-time schedule to meet the demands of caring for a child or elderly parent. Employees can apply for a 3-month to 18-month term. Under this component, employees work a regular, set schedule of between 32 and 64 hours per biweek. The schedule must include at least two days per week (one of which must be Tuesday or Thursday) and between four hours and 10 hours each day. Employees with preschool children are guaranteed a place in the program even if the 90 slots are filled at the time they apply.

The retention component allows an employee to go on a part-time schedule for any other reason, which does not need to be disclosed. Twenty slots are now available under this component. Employees can apply for a 3-month to 18-month term. This component is only available to employees who are at least a GS-11, have been at the USPTO for at least three years, have a current rating of record of at least fully successful and current performance of at least fully successful. Under this component, employees work a regular schedule of between 40 and 64 hours per biweek. The schedule must include at least three days per week including both Tuesday and Thursday and between four hours and 10 hours each day with at least four hours falling between 8:30 a.m. and 6 p.m.

Part-time employees earn annual and sick leave at a pro-rated amount. As a part-time employee you are also responsible for paying a larger portion of your health care premiums. Part-time employees are eligible to earn awards, attend training and maintain their seniority. This last item is important for employees. When it comes time for office selection, employees choose offices in line of seniority, including part-time employees.

Part-time employees receive a full year's service credit for each year worked—without proration—for most federal benefits, such as retirement and within-grade eligibility, but not for career ladder promotions. To qualify for a promotion the part-time employee must have work experience equivalent to that of a full-time employee. This USPTO policy began within this administration.

Several questions occur frequently:

How do I apply?
The application is available at www.popa.org or in the Public Folders in Outlook (under "Patents News" and "Administrative Policy"). Complete the application and give it to your supervisor, who will forward it to the director of the program, Janice Falcone (Director, Technology Center 2800). Director Falcone will send you a response.

Are slots currently available?
Slots are currently available under both the childcare/eldercare and retention components of the program.

Can I continue on part-time after my 18-month term expires?
Yes, but you need to reapply for another term.

Can I work overtime and compensatory time as a part-time employee?
Yes, but the overtime and comp time rules are the same for full-time and part-time employees. You can earn overtime and compensatory time only after working 40 hours in a week or eight hours in a day.

Can I work extra regular paid hours, and is there a limit?
Extra regular paid hours can be worked with supervisory approval to meet the needs of the Office or employee. An increase in the number of hours worked above 32 hours per week is not allowed for more than two consecutive pay periods.

Are there restrictions on when a part-time employee can start work each day?
Workday hours must be within the established work hours of 5:30 a.m. and 8 p.m. Retention component employees must also meet the restriction of at least four hours of each scheduled workday falling between 8:30 a.m. and 6 p.m.

Does a part-time employee get paid for holidays?
Yes, but only if the holiday falls on a scheduled workday.

You can read the full agreement at *www.popa.org*. If you have any other questions about the part-time program, please contact Kathy Duda at (571) 272-1383.

USPTO Allows Prescribed Rest for Pregnant Employee

For years the USPTO followed its standard practice of allowing up to one hour of administrative leave per day for employees who are medically prescribed rest during the workday. This summer the agency broke with its own past practice by telling an 8-months-pregnant examiner that such administrative leave requests would be denied, but reversed itself when the employee presented evidence received from POPA on the agency's past practice.

The employee, who had supplied the signed doctor's order, had used the rest time as needed and okayed by her supervisor. After several months, management notified the employee that as long as her pregnancy was normal and without complications, the administrative leave would not be allowed, whether prescribed or not.

The agency's practice of allowing prescribed rest was

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USPTO Allows Prescribed Rest

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long ago established by the Department of Commerce. A memo to POPA from the USPTO Office of Human Resources in 2002 stated, "… any pregnant woman whose attending physician/health care provider prescribes a rest period is entitled to and will be granted up to one hour of administrative leave per work day. …the agency will not inquire further into the medical details of an employee's pregnancy if she presents a document from her physician 'prescribing rest.'"

When the employee gave the supervisor the information supplied by POPA about this policy, he agreed to abide by the agency's past practice and granted the requested leave.

Millennium Agreement "Safety Net" Holds for a Former Paper File User

The USPTO recently withdrew an oral warning given to an employee when it heeded a provision of its own Millennium Agreement, which provides a "safety net" for examiners who are predominantly paper file users when they switch to full electronic searching.

In late July the agency rescinded an oral warning it had issued to an examiner who had less than 90 percent production during the second fiscal quarter after switching to electronic searching. The employee previously had been predominately a paper searcher.

During discussions on the employee's behalf, POPA reminded USPTO management of Section D.4 of the Millennium Agreement, which states:

"If an employee's SPE verifies that the employee is predominantly a paper files searcher, and the employee makes a bona fide attempt to make the transition to electronic searching when paper files are removed, the employee will not be subject to an oral warning or other performance based action based on the production element of the PAP for either of the 2 quarters after the paper files are removed."

Subsequently, the agency rescinded the oral warning, which had triggered a performance improvement period for the employee. With the rescission, the performance improvement period ceased to exist, thereby making the employee eligible to work overtime, compensatory time, and the Increased Flexible Work Schedule.

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USPTO Guidance Could Help Employees on a PIP

After POPA won reinstatement with backpay for an employee, the USPTO issued guidance to its managers and supervisors to improve their assistance to employees on performance improvement periods (PIPs).

The guidance states in essence that the agency is responsible for proving that it offered an employee a fair improvement period, that supervisors and managers actually provided the assistance promised in the PIP warning letter, and that they did so without disparaging the employee. The guidelines also specify that the supervisor must inform the employee of his or her responsibilities.

The USPTO's most important advice to managers and supervisors: Keep detailed notes about *all* interactions with the employee, verbal or written.

This is equally good advice for the employee on the PIP.

Generally, the agency guidance should improve communication between an employee and his or her supervisors, which should help improve performance.

Unfortunately, the agency guidance also suggests that supervisors document all problems exhibited by the employee and how they can be remedied, future expectations, and goals, but does not require the supervisor to actually communicate those with the employee. As an employee can only improve perceived deficient performance when the employee is made aware of it, this appears to be placing the employee in an impossible situation. The agency knows from past experience that supervisory silence is improper and it may lead to more reversals of agency removal actions. If the agency assures that supervisors communicate effectively with employees, it will benefit employees and the agency.

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