



INSIGHTS

The CNRSW Human Resources Office Employee & Labor Relations Newsletter

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Introducing...Navy Region Southwest's Employee & Labor Relations Team



MEET THE TEAM:



John L. Di Filippo, Program Manager

In 1999, John came to the Navy by way of the U.S. Postal Service. He has extensive E&LR experience in third-party representation, contract negotiations, training, and mediation. He has served as the Foreign National Program Manager for Navy Region Europe, attaining international E&LR experience through responsibilities involving the United Kingdom, Iceland, Spain, and Greece.



Tom Avey, Senior E&LR Specialist

Tom has 35 years experience in the field of E&LR, including union vice-president, entry level supervisory assignments, and management of Labor Relations departments for the U.S. Postal Service and the DoN. He has been with NRSW's E&LR team since 2003 and is the senior litigator, instructor, and mentor to the junior team members. His litigation experience encompasses arbitrations, EEOC discrimination complaints, Merit System Protection Board appeals, National Labor Relations Board petitions and Federal Labor Relations Authority appeals. Tom is also a Department of the Navy Headquarters' certified instructor for their negotiations and management representative courses. Tom is a recipient of the Navy's prestigious Office of Civilian Human Resources (OCHR) Employee & Labor Relations Program, Director's Award.



Janessa Inong, E&LR Specialist

Janessa earned a Bachelors Degree in Communication from the University of California San Diego in 2005. While in college, she spent two and a half years as a Student Aide for the Department of Homeland Security's Citizenship and Immigration Services. Janessa has been on the E&LR Team since November of 2005, initially as the Team's assistant serving as a technical representative in third-party litigation and sole representative in processing Unemployment Compensation claims for the region. Less than a year later, she was promoted to E&LR Specialist.



Brian Brillo, E&LR Specialist

Brian joined the NRSW E&LR Team in January 2007 and has recently received certification as a DoN Mediator. Prior to coming on board he spent six years as a paralegal for two San Diego based law firms specializing in employment law and class action corporate securities law, respectively. Brian received his Bachelors Degree in English Literature from San Diego State University in 2001 and his American Bar Association Certificate in Paralegal Studies from the University of San Diego in 2002.

Right to Question, Right to Direct an Answer by Janessa Inong

MANAGEMENT'S RIGHTS DURING ADMINISTRATIVE INVESTIGATIONS

When it comes to administrative investigations, managers and PMAs should never lose sight of the agency's rights.

Employees are required to cooperate in administrative investigations and must be put on notice that failure to do so could result in disciplinary action. A charge of "Failure to Cooperate During an Official Investigation" would be appropriate.

If an employee refuses to cooperate, a manager should attempt to compel cooperation by giving a direct order to answer the question(s). If the employee still refuses, an additional charge of "Failure to Follow an Order" would be in order.

In fact, pursuant to *Kalkines v. United States*, 473 F.2d 1391 (1973), an employee may be removed for not replying to questions raised in an agency investigation, so long as the employee is adequately informed both that:

(1) he or she is subject to discharge for not answering; and

(2) the replies will not be used against him or her in a criminal proceeding.

Additionally, the agency has the right to discipline an employee who knowingly gives false or inaccurate information during an investigation (*Cogman v. Defense Logistics Agency*, 82 FMSR 5343 (MSPB 1982); *LaChance v. Erickson*, 522 U.S. 262 (1998)).

Thus, management must hold employees to the requirement that they will truthfully cooperate in administrative investigations and take appropriate action when an employee fails to do so.

Question: What affect does a guarantee that information disclosed during an interview will not be used in a criminal proceeding have, if an employee is being charged criminally?

Answer: Check out the next issue of *INSIGHTS* to find out.

Probationary Employees With Continuous Service

By Brian Brillo

Generally speaking, when it comes to probationary employees, management can terminate their employment prior to the conclusion of the probationary term, should it be felt that the employee is just not working out. But what if you discover that your probationer was already on probation for a previous position, but didn't complete the probationary period? And what if that employee is serving the same position that he/she had before at the other federal job? Does that service count? This can be so confusing!

Basically, when dealing with a probationary employee who has had two or more previous Federal civilian service positions, we look to 5 CFR 315.802(b) to look at "Length of Probationary Period; Crediting Service." In looking into this regulation we find the following requirements:

(b) Prior Federal civilian service (including non-appropriated fund service) counts toward completion of probation when the prior service:

- (1) Is in the same agency, e.g., Department of the Army;*
- (2) Is in the same line of work (determined by the employee's actual duties and responsibilities); and*
- (3) Contains or is followed by no more than a single break in service that does not exceed 30 calendar days.*

While the Agency will have to determine whether the employee fits within the definition of an "employee" pursuant to pivotal cases *Van Wersch v. Dept. of Health and Human Services*, 197 F.3d 1144 (Fed. Cir. 1999) and *McCormick v. Department of the Air Force*, 307 F.3d 1339, 102 LRP 24759 (Fed. Cir. 2002), your probationary employee with prior Federal civilian service must have had service with the same Agency, in the same line of work and hasn't taken more than 30 calendar days between the jobs.

E&LR TEAM CONTACT INFORMATION:

John L. Di Filippo	john.difilippo@navy.mil	619-532-1249/DSN 522-1249
Tom Avey	thomas.avey@navy.mil	619-532-1258/DSN 522-1258
Janessa Inong	janessa.inong@navy.mil	619-532-1269/DSN 522-1269
Brian Brillo	brian.brillo@navy.mil	619-532-1263/DSN 522-1263

Fax: 619-532-2738

COMING UP...

- **Administrative Investigations, the Short Course**
- **Just Because or Just Cause?**