

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
U.S. DEPARTMENT OF LABOR
AND THE
NATIONAL COUNCIL OF FIELD LABOR LOCALS

I. INTRODUCTION

This is a Memorandum of Understanding (MOU) entered into between the U.S. Department of Labor (DOL) and the National Council of Field Labor Locals (NCFLL), AFGE, AFL-CIO, in accordance with the applicable provisions of the master DOL-NCFLL Agreement.

II. SUBJECT

This MOU covers the agreement reached between the parties over the impact and implementation of the OSHA physical and medical requirements.

III. TERMS OF THE AGREEMENT

1. All bargaining unit employees who do not meet the physical requirements of the position, will be reasonably accommodated at their current grade and pay or be offered a position at retained pay.
2. A bargaining unit employee who is offered a position at retained pay outside their commuting area, will have relocation expenses paid according to appropriate government regulations.
3. If an employee fails to meet the physical requirements, that employee may have at his/her option another examination, limited to the area of disqualification, by a physician of choice. This examination will be conducted by the nearest qualified physician from the employee's official duty station. The cost of the medical examination will be paid for by the Department and will be conducted on official time.

If there is a dispute between the results of the two examinations as to whether an employee has failed to meet the physical requirements and management takes a personnel action and the employee grieves the action in a timely manner, the action will be stayed for 180 days or until an arbitrator makes a decision, whichever comes first. In this case the NCFLL may take the dispute to arbitration bypassing Steps 1 and 2 of the grievance procedure.

4. Medical information provided by an employee's physician of choice may be supplied by the employee and will be utilized by management and the Office of Occupational Medicine in the decision to grant an accommodation. This information must be provided within 30 days of the employee's notice of failure to meet the physical qualifications.
5. A bargaining unit employee tentatively selected, subject to meeting the physical requirements but not appointed due to failure to meet a physical standard and through appeal or litigation is determined to be qualified, will be afforded an appropriate remedy in accordance with the Master Agreement.
6. Management will comply with maintenance of records in accordance with 29 CFR 1910.20.
7. Consistent with law, rule or regulation the Office of Occupational Medicine will notify an employee when a copy of their medical records are requested.
8. During the medical examination to determine medical qualification for OSHA compliance officers, no tests for drugs or the HIV virus will be conducted.
9. All physical examinations shall be scheduled during the basic workweek of the employee.
10. Subject to the provisions of the Privacy Act and the Freedom of Information Act, the President of the NCFLL shall be provided annually the number of employees who were examined, number of employees who received accommodations and type of accommodations. Such data shall also include the dates, regions, age and sex.
11. A bargaining unit employee will be given 30 days written notice of the upcoming exam in writing. It is the responsibility of the employee to notify management of a conflict that would prevent him/her from taking the exam as soon as possible. An employee who does not take the exam will be notified orally or in writing of their new examination date.
12. Employees who are required to take a mandatory medical examination will be examined by a physician experienced in occupational health, selected, provided by and paid for by the Agency.
13. Any dispute over the implementation and interpretation of this program will be handled in accordance with Articles 15 and 16 of the DOL-NCFLL Master Agreement.

14. Consistent with law or rule or regulation, the examining physician will not reveal diagnosis or condition unrelated to employment to any party. The examining physician shall inform the employee directly of the diagnosis or conditions unrelated to employment.

15. OSHA Medical Program Forms shall include the wording "The release of this information may be subject to the Privacy Act."

16. Temporary conditions will not disqualify an employee (i.e., pregnancy, surgery, mononucleosis, etc.). Temporary conditions will be handled in accordance with the procedures described on Page 5. A temporary accommodation is for those conditions that can be corrected or controlled within a reasonable time.

17. The on-site union representative at each locality where OSHA logs for on-the-job injury and illness are posted will be given a copy of such posting.

18. As a part of the mandatory medical examination program and to provide data, all OSHA employees may document any exposure to chemical hazards contacted on the job by utilizing CA forms.

19. OSHA employees, as specified by OSH Instruction PER 8-2.5, will be covered by this program.

20. No OSHA employee will be required to provide a POV to take a medical examination.

21. A copy of this MOU will be provided to all bargaining unit employees.

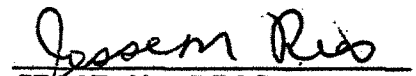
22. This MOU supersedes the MOU on the same subject dated August 26, 1988.

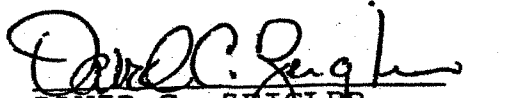
Effective the 28th day of September, 2000

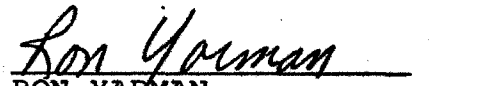
FOR THE DEPARTMENT


R. DAVIS LAYNE
Deputy Assistant Secretary

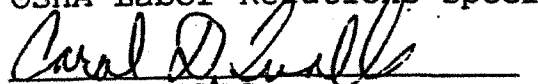
FOR THE NCFL


JESSE M. RIOS
President
NCFL, AFGE, AFL-CIO


DAVID C. ZEIGLER
Director, Administrative
Programs

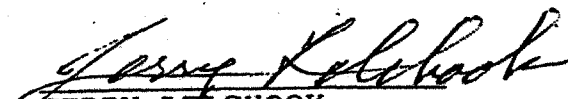

RON YERMAN
Executive Vice-President


FRIEDA L. MALONE
OSHA Labor Relations Specialist

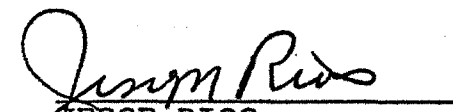

CAROL QUALLS
Labor Relations Specialist

APPROVED:

FOR THE DEPARTMENT:


JERRY LELCHOOK
Director of Labor
Management Relations

FOR THE NCFL:


JESSE RIOS
President, NCFL



Reply to the Attention of:

JAN 20 1 09 PM '01

JAN 19 2001

OFFICE

MEMORANDUM FOR: REGIONAL ADMINISTRATORS
CHERYLE GREENAUGH, DIRECTOR, INFORMATION
TECHNOLOGY
BRUCE SWANSON, DIRECTOR, CONSTRUCTION
PAULA WHITE, DIRECTOR, FEDERAL STATE
OPERATIONS
STEVEN WITT, DIRECTOR, TECHNICAL SUPPORT
RICHARD TAPIO, DIRECTOR, OFFICE OF REINVENTION

A handwritten signature in black ink, appearing to read "R. Davis Layne".

FROM: R. DAVIS LAYNE
Deputy Assistant Secretary

SUBJECT: Memoranda of Understanding Regarding CSHO Physicals and
IMIS Form 31/55

Attached are Memoranda of Understanding (MOU) for the Compliance Officer (CSHO Physical Program and the recently finalized IMIS Web Forms OSHA 31/55 and Consultation Forms 60/66/10. The CSHO Physical MOU supersedes the MOU of the same subject dated August 26, 1988. This revision finalizes an effort begun in 1997. There are two substantive changes to this MOU:

- removal of the grandfather clause regarding employees hired on or before August 26, 1988, which stated "A bargaining unit employee hired on or before (E.O.D.) who does not meet the physical requirements of the position, will either be waived or be offered a position at retained pay."
- removal of the provisions/procedures for obtaining a waiver, which stated "in the event a bargaining unit employee hired after the signing of this MOU fails to meet the physical requirements based upon the medical examination, a waiver will be considered by the Department. In the event that a waiver is not granted to an employee an accommodation will be considered". The waiver provision was never used; reasonable accommodations have been and continue to be the norm for addressing post-employment failures to meet physical requirements.

The MOU regarding the deployment and implementation of the IMIS Form OSHA 31/55 was concluded to ensure that there was complete understanding between OSHA management and the NCFLC that the form is a program planning document and is not to be used for "... either individual performance evaluation or time and attendance reporting."

Please ensure that bargaining unit employees receive a copy of each of these Memoranda of Understanding. If you have any questions concerning these documents, please call Frieda Malone on 202-693-1800. Thank you for your cooperation.

Attachments