

11-25-20

**MEMORANDUM OF UNDERSTANDING
REGARDING THE RELEASE OF FECA RECORDS**

BETWEEN

**THE DEPARTMENT OF LABOR'S OFFICE OF WORKERS'
COMPENSATION PROGRAMS,
THE UNITED STATES POSTAL SERVICE AND
THE NATIONAL LABOR RELATIONS BOARD**

This Memorandum of Understanding between the Department of Labor's Office of Workers' Compensation Programs (OWCP), the United States Postal Service ("Postal Service") and the National Labor Relations Board (Board) addresses unfair labor practice cases in which the Postal Service is the charged party and the charge arises from a refusal to release records compiled or maintained pursuant to the Federal Employees' Compensation Act (FECA). The parties believe that it would be mutually beneficial to seek the assistance of the appropriate Board Regional Office and General Counsel's Office, as outlined herein, where OWCP and the Postal Service are unable to reach agreement on the release of FECA records in response to a union information request. Nothing in the agreement will obligate OWCP to participate as a party in any unfair labor practice cases in which the Postal Service is the charged party.

Background

OWCP is responsible for administering the FECA. OWCP has established a government-wide system of records that contains all records created in the process of filing and resolving FECA claims, including those held by other agencies, and provides

that these records will generally be kept confidential. The Postal Service is the largest federal agency whose employees are covered by the FECA.

OWCP maintains that it has the authority to control and limit the disclosure of FECA records held by the Postal Service and that the Department of Labor's ("DOL") FECA regulations prohibit the Postal Service from disclosing FECA records in a manner inconsistent with DOL's Privacy Act routine uses. There may be situations, however, in which the balance between a union's need for relevant information and the privacy interests of covered employees will favor disclosure of FECA records. Detroit Edison Co. v. NLRB, 440 U.S. 301, 317 (1979).

Pre-Charge Process

OWCP agrees that the Postal Service may disclose certain FECA records during the pre-charge process consistent with DOL's Privacy Act routine uses, without prior consultation with OWCP under the following circumstances (the "Safe Harbor" List):

- It is permissible to disclose relevant FECA records where the employee has explicitly challenged Postal Service actions in connection with filing or administration of a FECA claim involving the employee;
- It is permissible to disclose relevant FECA records relating to the timing of the submission of paperwork to OWCP if the employee is contending that the Postal Service impermissibly delayed or refused to submit paperwork;
- It is permissible to disclose relevant FECA records to establish that an employee filed a false FECA claim;
- It is permissible to disclose relevant FECA records to establish that an employee filed a false claim for compensation for disability for particular periods;

- It is permissible to disclose relevant FECA records to establish that an employee submitted false statements regarding the facts surrounding the FECA claim itself;
- To the extent a claimant is alleging a Rehabilitation Act violation arising from a modified work assignment s/he was granted due to a condition accepted as compensable under the FECA, medical evidence from the FECA record that is relevant to that assignment may be disclosed. Further, to the extent a claimant with a condition accepted as compensable under the FECA is alleging that s/he failed to receive a work assignment as a result of that condition, medical evidence from the FECA record that is relevant to the denial of the assignment may be disclosed; and
- It is permissible to disclose aggregate statistics compiled from FECA records, where the aggregate statistics involve at least 7 employees.

In all of the above circumstances, disclosure of an entire FECA case record is neither authorized nor contemplated. Furthermore, the discretion exercised in this paragraph by OWCP to permit release of FECA records does not allow the Postal Service to disclose FECA file information relating to psychiatric conditions, injuries resulting from sexual assault that are indicated in the FECA records, or HIV status, without prior approval of OWCP pursuant to the pre-charge process described below. Further, if an NLRB unfair labor practice charge is filed and the Postal Service defends its refusal to disclose FECA file information relating to psychiatric conditions, injuries resulting from sexual assault that are indicated in the FECA records, or HIV status based upon this provision, the FECA records issue will be handled in accordance with the post-charge process, described below.

The Postal Service may also release FECA records without OWCP authorization where it has obtained a signed Privacy Act release from the employee or a court order from a Federal court of competent jurisdiction authorizing such disclosure. In all other circumstances, the Postal Service agrees to establish a process whereby it will first

seek authorization from OWCP before releasing any FECA records in response to a union request for information. Such requests shall include: (1) the employee's name; (2) the case number; (3) the specific reason for the disclosure request; and (4) the specific documents requested. OWCP, in turn, agrees to provide a dedicated FAX number or email address for the receipt of such requests and will provide a response within seven work days, unless a longer period is necessary based upon the complexity of the request or the number of requests received. In that circumstance OWCP will provide the Postal Service with an explanation of why a longer period is necessary and an estimated response date. The Postal Service will also provide a dedicated FAX number or email address at which to receive OWCP's responses. The Postal Service agrees that it will not disclose FECA documents in such circumstances without prior OWCP approval. If OWCP or USPS experiences problems with the process above, the parties will discuss the problems as they arise to design workable solutions for both parties.

Post-Charge Process

If an unfair labor practice charge is filed, despite the best efforts of OWCP and the Postal Service to resolve the matter, the Postal Service will raise the FECA records issue to the Board Regional Director handling the charge within five (5) calendar days of receipt of the charge. The Regional Director will investigate the charge. If the charge is found to be meritorious, within five (5) calendar days of such finding the Regional Director will inform the Board's General Counsel of the issue relating to the disclosure of FECA records. Thereafter, for thirty (30) calendar days after the General Counsel has been so advised, representatives of the Board's General Counsel, the General Counsel

of the Postal Service and the Solicitor of Labor will attempt to resolve the issue. Upon the expiration of the thirty (30) calendar day period, unless the parties agree to an extension, the Regional Director will issue a complaint unless instructed to hold the case in abeyance by the Board's General Counsel.

This MOU will be effective for a period not to exceed three (3) years from the date of execution; however, it may be reviewed annually to ensure that the business process and details remain current. One year from the date of the execution of this MOU, any party may opt out of this MOU by advising the other parties in writing of the intention to withdraw. The effective date of the withdrawal shall be thirty (30) calendar days from the date of the notice to the other parties.

Resolution Mechanism

Should disagreements arise concerning the interpretation of any provision of this agreement, each party shall provide the other parties to the agreement with its interpretation of the provision at issue. In the absence of a resolution of the dispute, each party is free to refer the matter to higher officials within their respective organizations for appropriate resolution.

AGREED

UNITED STATES POSTAL SERVICE

Doug A. Tulino Digitally signed by Doug A. Tulino
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DOUGLAS A. TULINO
Chief Human Resources Officer and
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DATE: _____

**OFFICE OF WORKERS'
COMPENSATION PROGRAMS**

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ANTONIO RIOS
Director, Division of Federal
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DATE: _____

NATIONAL LABOR RELATIONS BOARD

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PETER SUNG OHR

Acting General Counsel
National Labor Relations Board
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