

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.

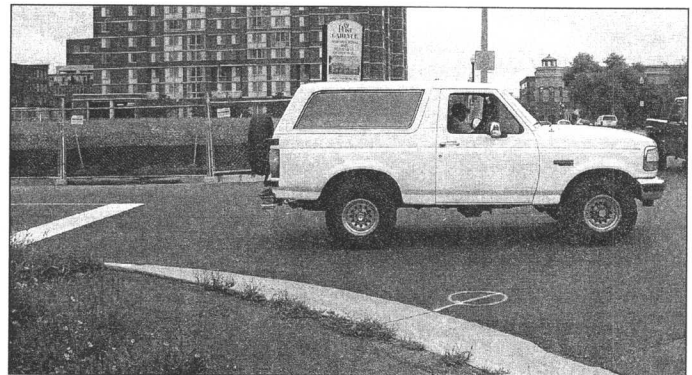
The agency also confirmed that it is, indeed, using the computerized "badge-in, badge-out," time-clock-punching data to monitor and catch employees.

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 Averted



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.

