



NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

MEMORANDUM

TO: AFGE Union Representatives

DATE: July 20, 2021

FROM: AFGE National VA Council

SUBJECT: VA/NVAC Global Settlement

The AFGE National VA Council is proud to announce the execution of a global Settlement Agreement resolving several disputes that arose during the previous administration, including: **VA/NVAC contract negotiations, Trump EO 13837 claims, and Title 38 official time.**

Case History

For the past several years, AFGE/NVAC has been fighting to protect the rights of VA employees and the union officials who represent them. During the previous administration, we witnessed unprecedented attacks on collective bargaining rights and federal sector labor unions. Examples included the following:

VA/NVAC Contract Negotiations: In December 2017, the VA notified AFGE/NVAC that it would **reopen and renegotiate** the 2011 Master Agreement. Following a long dispute on the parties' ground rules, substantive bargaining commenced in May 2019. AFGE/NVAC filed and **prevailed in several national grievances** concerning the VA's **bad faith bargaining** at the table. In November 2020, the Federal Service Impasses Panel issued a decision imposing forty-five contract articles on the parties. But AFGE/NVAC continued to fight back, and currently, the 2011 Master Agreement remains in effect.

Trump Executive Orders: On May 25, 2018, former President Trump issued three Executive Orders targeting federal employees and unions. Specifically, Executive Order 13837 restricted AFGE's free access to **government equipment and office space**. It also drastically limited our ability to use **official time**. The VA implemented EO 13837 despite the fact that our 2011 Master Agreement was in full force and effect. Later, AFGE/NVAC filed and **prevailed in several national grievances** challenging the VA's unlawful implementation of EO 13837.

Title 38 Official Time: In November 2018, and with respect to pure Title 38 employees, VA officials from the previous administration **repudiated** several provisions of the 2011 Master Agreement concerning the use of official time by claiming that official time "negatively impacted **direct patient care**." Former VA Secretary Wilkie later issued a determination under 38 U.S.C. §7422(d) excluding most official time for Title 38 employees from collective bargaining. AFGE and other national labor unions filed a **federal lawsuit** against VA.

On January 22, 2021, President Biden rescinded the May 2018 Executive Orders. However, this action did not restore Title 38 official time or remedy the harm caused by the VA's implementation of EO 13837.

Summary of Settlement Agreement

On July 20, 2021, AFGE/NVAC and VA executed a Settlement Agreement resolving the following: VA/NVAC contract negotiations, Trump EO 13837 claims, and Title 38 official time.

VA/NVAC Contract Negotiations: The Parties have agreed to erase all bargaining history since December 2017 and start over with a “**limited reopener**” of the 2011 Master Agreement. We have executed new Ground Rules, and each side has selected 6 articles to reopen and renegotiate. With limited exceptions, the Parties have agreed to **roll over 55 articles** from the 2011 Master Agreement. We expect to return to the bargaining table by early next year.

Trump Executive Orders: The Parties have established a claims submission procedure where AFGE representatives may submit claims for two types of corrective action: (1) **compensation for representational duties performed** in a leave status or non-duty status due to limitations on official time, and (2) **reimbursement of out-of-pocket expenses** for costs incurred for office space, storage space, equipment, and technology because of EO 13837. Lastly, the VA will **rescind personnel actions** taken against AFGE representatives under EO 13837.

Title 38 Official Time: The VA has agreed to **rescind** the 7422 determinations from 2018-19 concerning the use of Title 38 official time. This means that AFGE representatives in Title 38 positions will, once again, have the **same rights to official time** as other employees. These representatives may also submit **claims for compensation** under the claims procedure.

Frequently Asked Questions

For more information, please sign into your AFGE account and visit www.afge.org/VAclaims. We encourage you to review the Settlement Agreement and guidance listed on that webpage, as well as the list of frequently asked questions included below.

VA/NVAC Contract Negotiations

Q1. What is a limited reopener?

- A. A limited reopener is when the parties agree to “roll over” and forego negotiations on certain subjects already addressed by the current collective bargaining agreement, and instead, focus their efforts on renegotiating a smaller number of articles.

Q2. Which articles will be renegotiated from the 2011 Master Agreement?

- A. Please see the chart below.

AFGE/NVAC Proposed to Reopen:	VA Proposed to Reopen:
Article 12 (Details and Temporary Promotions)	Article 14 (Discipline and Adverse Action)
Article 16 (Employee Awards and Recognition)	Article 23 (Merit Promotion)
Article 22 (Investigations)	Article 27 (Performance Appraisal)
Article 29 (Safety, Health, and Environment)	Article 46 (Local Supplement)

Article 39 (Upward Mobility)	Article 47 (Mid-Term Bargaining)
Article 66 (Technology for Administering, Tracking, and Measuring VBA Work)	Article 48 (Official Time)

Q3. What about the other articles in the 2011 Master Agreement?

- A. With limited exceptions, the remaining 55 articles will be rolled over, plus the Preamble and Duration of Agreement. For a list of rolled-over articles, please see the Ground Rules.

Q4. Where can I view the Ground Rules?

- A. Please visit www.afge.org/VAclaims and see Exhibit 1 to the Settlement Agreement.

Q5. When will bargaining start?

- A. Under the Ground Rules, bargaining must commence within 180 days of the date of the Settlement Agreement. The Chief Negotiators will schedule the start date by mutual agreement.

Q6. Will bargaining be in-person or virtual?

- A. All bargaining will be in-person unless the Chief Negotiators agree to virtual bargaining.

Trump EO 13837 Claims

Q7. What is the claims submission procedure?

- A. The Parties established an electronic claims submission procedure that will allow AFGE to request, and the VA to provide, the corrective action set forth in the Settlement Agreement. You may file a claim under the claims submission procedure by accessing Formstack.

Q8. What is Formstack?

- A. Formstack is an online platform that helps to streamline and organize data collection. It has been used by AFGE in the past.

Q9. Am I required to opt-in and file a claim to receive corrective action?

- A. Yes, you **MUST OPT-IN** and comply with the terms of the Settlement Agreement to be eligible for correction active (i.e. compensation for representational duties or reimbursement of expenses).

Q10. What types of claims may be submitted under the claims submission procedure?

- A. There are three types of claims. For the requirements for each claim, please review the Settlement Agreement. A summary of each claim type is included below.

1. Claim Form #1: Compensation (Flat Payment – 66 Hours)

- **WHO CAN SUBMIT:** Designated AFGE Representatives who have been a VA employee at some point since July 17, 2018 and performed representational duties

while not on official time because of Trump EO 13837 or 7422 determinations. You MUST opt-in and submit a complete claim to be eligible.

- **DOCUMENTATION**: You do NOT need to submit time records or supporting documentation to substantiate your claim.
- **ENTITLEMENT**: If approved, you will receive 66 hours of straight pay.
- **DEADLINE**: **60 calendar days from the date of the Settlement Agreement.**

2. Claim Form #2: Compensation (Additional Payment (66+ Hours))

- **NOTE**: You MUST have first timely submitted Claim Form #1.
- **WHO CAN SUBMIT**: Designated AFGE Representatives who have been a VA employee at some point since July 17, 2018 and performed representational duties while not on official time because of Trump EO 13837 or 7422 determinations. You MUST opt-in and submit a complete claim to be eligible.
- **DOCUMENTATION**: You DO need to submit time records and supporting documentation to substantiate your claim for representational duties performed since July 17, 2018 while in a leave or non-pay status.
- **ENTITLEMENT**: If approved, you will receive additional hours of straight pay.
- **DEADLINE**: **180 calendar days from the date of the Settlement Agreement.**

3. Claim Form #3: Reimbursement (Out-of-Pocket Expenses)

- **WHO CAN SUBMIT**: Each AFGE VA Local (and NVAC Officials listed in Article 51, Section 1(C) of the 2011 Master Agreement) may submit ONE claim for reimbursement for out-of-pocket expenses incurred since November 15, 2019 as a result of the VA's implementation of Trump EO 13837.
- **DOCUMENTATION**: The following supporting documentation is REQUIRED.
 - Office Space and Storage Space: executed lease or similar agreement (if applicable) and proof of payment (receipts).
 - Equipment and Technology: proof of payment (receipts).
 - VA-FSC Vendor Form (VA Form 10091): you must upload a completed and signed VA Form 10091 for the VA to process payment.
- **ENTITLEMENT**: If approved, the VA will reimburse eligible expenses.
- **DEADLINE**: **90 calendar days from the date of the Settlement Agreement.**

Q11. I want to submit a claim. How can I do so?

- A. Please sign into your AFGE account and visit www.afge.org/VAclaims. Then follow the links to access our step-by-step instructions and the claims submission procedure through Formstack.

Q12. What happens after I submit my claim(s)?

- A. After submitting your claim(s), you will receive a confirmation email. AFGE/NVAC will then compile all claims submitted through Formstack and provide them to VA consistent with the deadlines set forth in the Settlement Agreement.

Q13. What if I am currently a separated or retired VA employee?

- A. You may still file a claim so long as you were a Designated AFGE Representative and a VA employee at some point since July 17, 2018 and performed representational duties while not on official time because of Trump EO 13837 or 7422 determinations.

Q14. What is the significance of the July 17, 2018 and November 15, 2019 dates listed above?

- A. July 17, 2018 was the date on which the VA first implemented restrictions on official time under EO 13837. November 15, 2019 was the date on which VA first implemented restrictions on the use of government facilities and equipment under EO 13837.

Q15. What types of representational duties are eligible for compensation?

- A. Internal union business is not appropriate for official time. Under the Settlement Agreement, there are 9 categories of representational duties appropriate for official time. The 9 categories include:
1. Grievances and arbitration hearings;
 2. Weingarten investigations, formal discussions, and fact-findings;
 3. Proceedings before the Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB), Occupational Health and Safety Commission (OSHA), Office of Workers' Compensation Programs (OWCP), Office of Special Counsel (OSC), Office of Inspector General (OIG), Office of Accountability and Whistleblower Protection (OAWP), and the Federal Labor Relations Authority (FLRA), and Administrative Investigation Boards (AIB);
 4. Alternative dispute resolution (ADR);
 5. Mid-term bargaining and local supplemental agreements;
 6. Title 38 Board and Hearings, such as Summary Review Boards, Professional Standards Boards, and Disciplinary Appeals Boards;
 7. Local committees and labor-management relations forums;
 8. Training for labor relations and collective bargaining; and,
 9. Representational assistance to bargaining unit employees.

Q16. I performed representational duties while on leave. Can I submit a claim for compensation?

- A. Yes, the eligible leave categories are Annual Leave, Compensatory Time, or Leave Without Pay.

Q17. If I performed representational duties while in a leave status, will that leave be restored?

- A. No, leave will not be restored. If approved, you will receive straight pay compensation consistent with the terms of the Settlement Agreement.

Q18. In Claim Form #2, what must I provide for time records and supporting documentation?

- A. For claims for compensation while in a leave status, you must submit VATAS **time records** showing that you were in an approved leave status on the date in question. Instructions on how to request this information from VATAS is included in Exhibit 2 of the Settlement Agreement. Contact information for all local payroll offices is available at www.afge.org/VAclaims.

- A. AFGE/NVAC strongly encourages you to also submit **supporting documentation** to prove that you performed the representational duty claimed. It will depend on the type of the duty performed, but for example, this could include work product, emails, calendars, meeting minutes, etc. It is the burden of the AFGE representative to prove that the representational duty was performed.

Q19. In Claim Form #3, what must I provide for proof of payment (receipts)?

- A. You must submit actual receipts that show the payment date, amount paid, and purpose/subject of payment.

Q20. What if my claim is denied?

- A. If claims are denied and disputes cannot be resolved informally, AFGE/NVAC may proceed to arbitration.

Q21. Can I later submit additional documents to support my claim(s) at arbitration?

- A. No, the only documents that can be used at arbitration are those submitted through the claims submission procedure. AFGE/NVAC may only present new testimonial evidence at arbitration.

Q22. What if my Local filed a local grievance on EO 13837?

- A. Local grievances and arbitrations concerning EO 13837 have been placed in abeyance while the Parties work to implement this Settlement Agreement.

Title 38 Official Time

Q23. Who is a Title 38 employee?

- A. Title 38 employees include physicians, dentists, podiatrists, chiropractors, optometrists, registered nurses, physician assistants, and expanded-function dental auxiliaries. *See* 38 U.S.C. §7401(1).

Q24. When will Title 38 official time be restored?

- A. The VA will rescind the administrative 7422(d) determinations within 10 days of the effective date of the Settlement Agreement.

Q25. Because of the limitations on Title 38 official time, I performed representational duties in a leave status or non-pay status. Can I seek compensation for this time?

- A. Yes, AFGE representatives in Title 38 positions must use the claims submission procedure set forth in the Settlement Agreement.