

MEMORANDUM OF UNDERSTANDING
BETWEEN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
NATIONAL TREASURY EMPLOYEES UNION

This memorandum of understanding (MOU) between the Department of Health and Human Services, (HHS, or Agency), and the National Treasury Employees Union (NTEU or Union) (the “parties”) is in response to HHS’ Gender Identity Non-Discrimination and Inclusion Policy (“Policy”). The parties agree that this MOU will govern the procedures for implementing the new guidance. The parties agree that the implementation of the updated guidance will be in accordance with this MOU and the procedures set forth in the 2023 National Agreement (“NA”) between the Department of Health and Human Services and the National Treasury Employees Union.

The Parties agree to the following provisions:

Section 1 – Informing Employees of the Policy

Prior to the implementation of this policy at any location, the Agency will apprise all bargaining unit employees of the implementation *via* email. The email will include a copy of this MOU, as well the contact information for a designated point of contact, per Division, for employees to raise any questions, or concerns. Employees will be provided a reasonable amount of duty time to review the email and attachments.

Section 2 – Implementation of the Gender Identity Non-Discrimination and Inclusion Guidance

If HHS intends to implement subsequent changes to this guidance, consistent with Article 3 of the 2023 HHS/NTEU National Agreement notice will be provided to NTEU, and an opportunity to bargain these changes to the extent required by 5 U.S.C. Chapter 71.

If local offices implement changes to conditions of employment related to the guidance, not covered by this MOU, or if the local union becomes aware of changes to conditions of employment related to the guidance not covered by this MOU, and such variations are limited to one location, the agency will notify the Union and engage in local bargaining consistent with this MOU, the NA, and to the extent required by 5 U.S.C. Chapter 71.

The parties agree to a virtual (e.g., Microsoft Teams) meeting after the guidance has been in effect for a minimum of six (6) months to address implementation status.

Section 3 – Sanitary and Related Facilities

HHS will provide prompt access to bathroom facilities for employees. HHS will avoid imposing unreasonable restrictions on restroom use, and ensure restrictions (e.g., locking doors that require a key) do not cause extended delays. The Parties agree that this guidance and MOU do not terminate or modify any existing reasonable accommodations, an employee may already have, related to restroom use. Also, the parties agree that when the Department plans to utilize open multi-user restrooms in its facilities then the Department will provide NTEU with notice consistent with Article 3 of the 2023 HHS/NTEU National Agreement.

The Agency promotes acceptance of all individuals using restrooms and personal care spaces of their choice. HHS will provide safe and appropriate restroom facilities on each floor of HHS operated facilities (e.g., facilities where HHS has the discretion to alter the restrooms), for employees to use. If the Agency is unable to permanently alter existing restrooms to an open multi-user and/or single-user restroom on each floor, because of budgetary or other reasons, the Agency will designate existing restrooms, on each floor, as open multi-user and/or single user restroom. The Agency will place temporary placards, which will plainly state that the restroom is an open multi-user and/or single-user restroom, over any existing signage. These temporary placards may also be used to designate other personal care spaces (e.g., locker rooms, lactation rooms) as open multi-user and/or single user. The new placards may be supported by further signage in the restroom explaining the need for the change. The Agency agrees that employees will be given adequate time to use an open multi-user/single-user restroom if needed. Employees will not be disciplined or required to take leave for the time needed to access a restroom when an acceptable alternative is not located in close proximity to their immediate work area.

Within thirty (30) calendar days after execution by the parties, the Agency agrees to send an All-Hands email communication that explains that HHS has completed its negotiation with NTEU and signed an MOU on the Gender Identity Non-Discrimination and Inclusion Policy, and that this policy is now slated to go into effect. The email will convey that 1) this policy is in compliance of an OPM directive to all Departments 2) that it consolidates existing employee protections, including those from OSHA and EEOC, and 3) that it outlines the process whereby employees can address concerns or request accommodations.

Employees who work at an alternate duty station (not their residence) that is controlled by HHS, will have access to a restroom that corresponds with their gender identity.

If an employee believes that a sanitary facility does not suit their needs, an employee may discuss arrangements with their supervisor. A supervisor will report and reach out to Human Resources Service Center or the OS Gender Identity Resources Coordinator for guidance to ensure the information and arrangements given to the employee are consistent with the guidance and MOU.

Section 4 –Workplace Flexibility Agreement for Medically Necessary Healthcare

Employees who are seeking relocation, and therefore remote work for medically necessary healthcare, may elect to discuss the process of applying for remote work and relocation with their supervisor, agency head, or the OS Gender Identity Resources Coordinator.

A. Pursuant to Article 26, Section 3 (H) of the parties' National Agreement, an employee may be eligible for remote work if:

1. The employee's duties require less than 16 hours per bi-weekly pay period at the agency worksite;
2. The employee has a performance plan in place and is performing at least at the fully successful level or its equivalent and participation is not expected to cause an adverse impact on organizational productivity; and
3. The employee has not been officially disciplined for being absent without permission for more than 5 days in any single calendar year or for viewing, downloading, or exchanging pornography, including child pornography, on a Federal Government computer or while performing official Federal Government duties.

Eligible employees may submit a completed Workplace Flexibilities Agreement (WFA) for telework or remote work through their Office or OpDiv system to their immediate supervisor or management official designated by their Office or OpDiv. If an employee wishes to make the deciding official aware that their request for a WFA is connected to policy Section VI. g. "Job Assignments" then the employee may send an email with the information to the deciding official along with the WFA application.

1. Within ten (10) calendar days of submission, the employee's supervisor will approve or disapprove the employee's request in writing.
2. If an employee's request for a remote work arrangement is approved, the Agency will complete an SF-52 and notify the employee if a change in duty station may impact the employee's locality pay.
3. The employee will be given five (5) workdays from the date of notification to advance or withdraw the WFA for remote work.
4. If an employee's request is disapproved, within five (5) workdays of disapproval, the employee will be advised in writing with the reason(s) for disapproval.
5. Managers shall not unreasonably or arbitrarily deny an employee's request.
6. The Union may file a grievance in accordance with Article 45 of the parties' National Agreement.
 - a. Upon the request of the employee requesting remote work, a request for WFA under this section may undergo a secondary review conducted by the OS Gender Identity Resources Coordinator before the filing of a grievance.

- B. Terminations or Modification of remote work applications under this section will follow Article 26, Section 8(B) of the parties' 2023 National Agreement.

Section 5 – Reporting and Contact Information

If NTEU or employees become aware of any working conditions that cause employees to feel unsafe, employees should make HHS immediately aware. HHS will research the issue and promptly respond to the Union. If an employee wishes to report a case in which the employee feels unsafe, the employee should contact their supervisor, manager, or OS Gender Identity Resources coordinator. HHS will provide employees the contact information and hours of availability for a point-of-contact to report unsafe working conditions.

The Parties recognize that employees may have specific questions and concerns related to this guidance. To that end:

- A. For allegations of harassment/bullying, employees should follow their division's anti-harassment policies and procedures.
- B. For concerns regarding facilities, employees should contact their supervisors and/or building maintenance within the staff or operating division.
 - 1. The supervisor will locate/identify the appropriate point of contact who can address the employee's concerns.
- C. For allegations related to a violation of Title VII and/or other civil rights protections, employees should contact their division's Equal Employment Opportunity office.
- D. For questions related to a reasonable accommodation or hardship transfer, employees should contact their divisions appropriate point of contact.
 - 1. The supervisor will the appropriate point of contact who can address the employee's concerns.

HHS will provide contact information for all committee members and coordinators found in Section VI (a) of the policy. When possible HHS will notify NTEU when an employee files a concern for any of the referenced issues above.

Section 6– Training

Employees in each OpDiv will be provided with three (3) opportunities to register for and attend a webinar which shall provide relevant information regarding changes found in the guidance. Training sessions will be voluntary and will also be recorded for anyone who is unable to participate.

Recorded video trainings will be accessible to all employees.

Training will be completed on duty time (e.g., during employee work hours). As appropriate, employees should seek supervisory approval prior to taking the training(s).

Section 7 – Adverse Impact

The Employer does not anticipate any adverse impact on terms and conditions of employment of impacted bargaining unit employees as a result of this guidance, aside from that which is addressed herein. However, if either Party identifies any adverse impacts on terms and conditions of employment of covered bargaining unit employees at some point in the future, which is not covered in this MOU, that party will inform the other and the parties will discuss the resolution of such issues as soon as possible.

Section 8– Duration and Approval

This MOU will be approved or disapproved by the Agency within thirty (30) calendar days after execution by the parties. If approved within that time period, its effective date will be the date on which it is signed by the Agency so long as that date is within the same thirty (30) calendar day period. If the MOU is not approved or disapproved by the Agency within the thirty (30) calendar days after being executed, it will become effective, as a matter of law, on the thirty-first (31st) calendar day after its execution.

Consistent with the procedures in Article 3 of the HHS/NTEU 2023 National Agreement, either party may request to reopen this MOU for negotiations after the MOU's first year anniversary.

This Memorandum of Understanding (MOU) will remain in effect for the duration of the 2023 HHS/NTEU National Agreement.

For HHS:

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