

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

**I. INTRODUCTION**

The U. S. Department of Labor (DOL), Mine Safety and Health Administration (MSHA) (hereinafter "MSHA", "the Agency", or "the Department") and the National Council of Field Labor Locals (NCFLL), American Federation of Government Employees (AFGE), AFL-CIO (hereinafter "the NCFLL" or "the Union"), (collectively "the Parties") enter into this Memorandum of Understanding concerning the impact and implementation of MSHA's Individualized Assessment (IA) Process and Medical Standards Process.

MSHA notified the NCFLL of its intention to review and address the backlog of MSHA employees who have failed their medical standards on August 7, 2017. This MOU is the result of the parties' negotiations on appropriate arrangements and procedures.

**II. SUBJECT**

MSHA NCFLL bargaining unit employees (hereinafter "BUEs") who are subject to medical standards in accordance with 5 CFR 339. These standards are further outlined by MSHA's Administrative Policies and Procedural Manual (APPM) Volume IV, Chapter 1000. This MOU includes appropriate arrangements and procedures to address the impact to employees who fail those medical standards and who, following the individualized assessment (IA) process, are medically disqualified from their existing positions.

**III. TERMS OF THE AGREEMENT**

**A. Initial Medical Exam**

1. The parties agree that the Agency will utilize medical providers that meet the requirements of 5 CFR 339.
2. As part of the mandatory medical examination program and to provide data, all MSHA bargaining unit employees may document any exposure contacted on the job by utilizing CA forms.
3. Management will not require a BUE to take his/her POV for an Agency-directed Medical examination.

4. Generally, all physical examinations shall be scheduled during the employee's regular duty time.
- B. Individualized Assessment following Failure to Meet Medical Standards
1. All bargaining unit employees who do not meet the physical requirements of the position may request a reasonable accommodation in accordance with applicable rule, law or regulation.
  2. When a bargaining unit employee is management direct reassigned to a position outside their commuting area, relocation expenses will be paid according to appropriate government regulations.
  3. If an employee or applicant challenges the findings made in an MSHA-paid examination and has a similar examination made by his or her physician, the cost of the examination made by the private physician is borne by the individual. However, if the examination or a portion thereof, paid for by the employee proves the MSHA-paid examination to be in error, MSHA will reimburse the employee for the cost of the portion of the erroneous examination, which will include travel expenses and time to obtain the information.
  4. Additional medical testing or examinations required to support the employee's continued ability to safely and effectively perform the full duties required by their position in connection with the physical exam will be borne by the Agency. The Agency will pay for all out-of-pocket medical expenses for any additional requested medical information relating to the physical examination not paid for by the employee's insurance coverage.
  5. Corrected hearing will not be considered solely as a disqualifying condition except in mines requiring permissible equipment until such time as permissible hearing aids may be available.
  6. Management will not disqualify employees for work while navigating through the MSHA Medical Exam Program. Generally, until the employee receives notification of final medical disqualification from the Individualized Assessment determination, he/she will remain in pay status.
  7. The Agency will provide assistance in the filing of Worker's Compensation claims for those employees who request assistance.
  8. The Agency will make best efforts to timely submit claims for Worker's Compensation benefits.
  9. In accordance with 5 CFR 339.305(c), the Agency will forward to the Office of Workers' Compensation Programs (OWCP), a copy of all medical documentation and reports of examinations of employees who are receiving or have applied for injury compensation benefits under 5 U.S.C. chapter 81, including continuation of pay.
  10. If the Agency determines it can no longer accommodate an employee's bona fide work related condition, the Agency will provide to the employee and OWCP a statement that the agency can no longer accommodate the employee's work related condition.


C. Recordkeeping and Information Sharing


1. Management will comply with maintenance of records in accordance with applicable regulations.
2. Consistent with law, rule or regulation the Agency will notify an employee when a copy of their medical records is requested from an entity outside of the Agency.
3. 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 bargaining unit employees who were examined, number of employees who were medically disqualified, and who received waivers.
4. Any form created for use in the MSHA MEDICAL PROGRAM will include Privacy Act information.
5. MSHA will provide training on this policy and processes through any of a variety of methods including but not limited to: WEBEX, VTC, video, (excluding LearningLink) etc. to all bargaining unit employees. The Agency will send the training out annually by email to all staff.
6. Once completed, MSHA management will provide an advance copy of the training to the NCFLL signatories to this MOU with seven calendar days' notice prior to rolling the training out to the bargaining unit employees. During the seven calendar days or shortly thereafter but prior to the rollout of the training, Management and NCFLL signatories to this agreement will hold a conference call with MSHA NCFLL stewards to discuss the training.
7. APPM will be updated to reflect the changes in this MOU.
8. A copy of this MOU will be provided to all bargaining unit employees and posted on LaborNet.

This MOU in no way sets precedent for future negotiations.

This MOU will become effective upon the date of the final signature.


**FOR THE DEPARTMENT**

  
\_\_\_\_\_  
KEVIN STRICKLIN  
Administrator, Coal Mine Safety and Health  
MSHA

  
\_\_\_\_\_  
STEPHEN ROBY  
Director, Human Resources Division  
Administration and Management, MSHA


**FOR THE NCFLL**


  
\_\_\_\_\_  
NANCY NOLAN  
Executive Vice President, NCFLL

  
\_\_\_\_\_  
BRAD ALLEN  
Vice President, NCFLL

  
\_\_\_\_\_  
JANE TARR  
Management Officer  
Coal Mine Safety and Health, MSHA

  
\_\_\_\_\_  
MICHAEL WELLS  
Vice President, NCFLL

  
\_\_\_\_\_  
NANCY WILSON  
Management Officer  
Metal/Nonmetal Mine Safety and Health  
MSHA

  
\_\_\_\_\_  
RICHARD WHITT  
Vice President, NCFLL

  
\_\_\_\_\_  
SHEILA DEMARTINO  
Labor Relations Officer, OELMR

  
\_\_\_\_\_  
ANTHONY M. FORTINO  
NCFLL Representative

9/14/2017