**DOD USE OF MILITARY PERSONNEL FOR CIVILIAN EMPLOYEE WORK**

**SAMPLE LETTER – FORMAL 7114**

THIS SAMPLE LETTER IS DESIGNED TO MEET THE STATUTORY REQUIREMENTS OF AN INFORMATION REQUEST ESTABLISHED BY THE FLRA AT 5 U.S.C. §7114(b)(4), ALTHOUGH THERE IS NO GUARANTEE THAT THE AGENCY WON’T ARGUE OTHERWISE.

THIS SAMPLE REPRESENTS A **MORE FORMAL** APPROACH TO MANAGEMENT.  CONSIDER USING THIS LETTER IF:

* YOU DID NOT RECEIVE THE INFORMATION YOU REQUESTED USING THE LESS FORMAL LETTER;
* YOU HAVE A DIFFICULT RELATIONSHIP WITH MANAGEMENT; OR
* YOU ARE NOT INTERESTED IN PURSUING A CONGRESSIONAL INQUIRY OR A HIGH LEVEL ADMINISTRATIVE INQUIRY.

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**USE OF MILITARY PERSONNEL FOR CIVILIAN EMPLOYEE WORK**

**SAMPLE LETTER – FORMAL 7114**

Date: \_\_\_\_\_\_\_\_\_\_

[Name of Agency Official RFI normally submitted to]

[Title]

[Installation]

[Address]

[Email]

Subject: Request for Information on the Use of Military Personnel to Perform Work Performed by/Designated for Civilian Employees

Dear \_\_\_\_\_\_\_\_\_\_\_\_: [name of agency official]

I write on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Local/Council and number] of the American Federation of Government Employees, AFL-CIO, which represents \_\_\_ [estimated number] civilian employees at \_\_\_\_\_\_\_\_\_\_\_\_\_ [DoD installation] in \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_ [city, state]. I am concerned that work normally performed by/designated for civilian employees, \_\_\_\_\_\_\_\_\_\_\_\_, [name of function] is or will be performed by military personnel. I urge you to ensure that such uses of military personnel are consistent with federal law and Department of Defense (DoD) guidance *(see attached summary of laws and guidance)*.

[Insert evidence here. For example: “Management official \_\_\_\_\_\_\_\_ stated on \_\_\_\_ (date) that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.] Currently, \_\_\_\_\_ [add number] civilian employees perform these functions.

Federal law prohibits DoD from using military personnel to perform work normally performed by/designated for civilian employees solely because of a cap on civilian personnel. DoD functions should be performed by civilian employees unless DoD can show that military personnel should perform them instead for reasons of military readiness, risk management, cost, or in other certain narrow exceptions (outlined below).

According to a **February 21, 2013 memo** from the USD P&R, there are only three occasions when military personnel can perform work designated for civilian employee performance, all of which must be documented and the cost of military performance calculated in accordance with the July 3, 2013 DOD Instruction 7041.04, “Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support”, (<http://www.dtic.mil/whs/directives/corres/pdf/704104p.pdf>). (Before July 3, 2013, DTM 09-007 provided the cost comparison rules.)

1. **Military Essential per Operational Orders** (Limited and Temporary). Except in extraordinary, and typically temporary, circumstances, individual military personnel or units should not perform functions or work that is not military essential. During this period of budgetary uncertainty, military units may perform work previously performed by civilian employees or contracted support as part of a rotation base for an operational capability (if this has been reflected in Operational Orders), provided this is done on a limited and temporary basis.
2. **Extraordinary and Temporary Circumstances**. As noted in 1, military personnel may perform work that is not military essential and not reflected in Operational Orders only in extraordinary, and typically temporary, circumstances.
3. **Short-Term Emergency Basis During Sequestration**.In the event of sequestration, there may be instances where military personnel can be used on a short-term, emergency basis to satisfy a demand that is of mission critical importance."

Please see the attached information request. I ask that the agency respond to this inquiry [within 10 business days or date specified by the contract in the Collective Bargaining Agreement] and rectify any use of military personnel in violation of federal law or DoD guidance. I look forward to working on this issue together.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_

President

AFGE Local/Council \_\_\_\_\_\_\_\_

Cc:

Head of Component or DoD Agency

J. David Cox, AFGE National President

**REQUEST FOR INFORMATION**

Date: [ ]

[Name of Agency Official RFI normally submitted to]

[Title]

[Installation]

[Address and email]

**Subject: Request For Information on the Use of Military Personnel to Perform Work Performed by/Designated for Civilian Employees**

Dear \_\_\_\_\_\_\_\_\_\_\_ [name of agency official]:

I write on behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Local/Council and number] of the American Federation of Government Employees, AFL-CIO, which represents \_\_\_ [estimated number] civilian employees at \_\_\_\_\_\_\_\_\_\_\_\_\_ [DoD installation] in \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_ [city, state]. I am concerned that work normally performed by/designated for civilian employees, \_\_\_\_\_\_\_\_\_\_\_\_, [name of function] is or will be performed by military personnel. I urge you to ensure that such uses of military personnel are consistent with federal law and Department of Defense (DoD) guidance *(see attached summary of laws and guidance)*.

This request is being made under 5 U.S.C. §7114 (b) (4) and serves as the union’s interest in this matter. This notice thus preserves the right of the union to bargain changes in working conditions of represented employees and to pursue a grievance should it be determined such action is necessary in representing bargaining unit employees or in policing and enforcement of the collective bargaining agreement.

The following information is requested:

1. Facts: Please describe the planned and actual use of military personnel for the work described above for FY2013 and FY2014, including the number of civilian employee positions/FTEs/labor hours that will be performed by military personnel. Please provide supporting material, such as manning documents. *This information is necessary to determine if military personnel are being used to accomplish work previously performed by represented employees and to what extent this work is being performed by military personnel.*
2. Decision Factors:
   1. Was the decision to use military personnel for this work based to any extent on an unavailability of civilian employees due to the cap on civilian personnel, hiring freezes, furloughs, or any other reason? If so, please explain.  *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   2. What other factors contributed to the decision to use military personnel? *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
3. DoD Guidance: Is the use of military manpower consistent with federal law and the relevant DoD guidance? Please explain. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
4. Military Essential: Is the work “military essential” so that it meets exception 1 summarized above? If so, please provide documentation of this characterization (such as the relevant Operational Orders). *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
5. Mission Critical Importance: Is the work of “mission critical importance” so that it meets Exception 3 summarized above? If so, please provide the documentation of this characterization. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
6. Cost:
   1. Is performance of this work by military personnel more cost effective than civilian employee performance? *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   2. Was that determination made in accordance with DoD policies regarding the full cost of manpower in DODI 7041.04 (formerly DTM 09-007)? Please provide the analysis. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
7. Ending Use of Borrowed Military Manpower:
   1. What actions are being taken to ensure that civilian performance is being pursued and that military performance is temporary in nature? Please provide documentation. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   2. Did the installation seek an exemption from the hiring freeze to fill the position? Please provide documentation. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   3. Was the exemption from the hiring freeze granted? Please provide documentation. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   4. When does the agency intend to return this work to civilian employee performance? Please provide documentation. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   5. Is the agency currently undergoing the hiring process to fill the position?  Please provide documentation. *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
8. Benefit to Military:
   1. How do the functions support the military members’ career development and occupation specialty requirements?  *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   2. Do they support their training, operational unit readiness, or overseas rotational requirements?
   3. Do the functions require military unique skills or knowledge?  *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*
   4. Based on these criteria, how is military member performance of these functions consistent with DoD policies regarding appropriate military member utilization? *This information is necessary to determine if the agency acted outside of instructions by the department or if the agency acted within prescribed measures for use of military personnel.*

The following particularized need applies to each of the items requested above, in addition to the specific need for this information stated with each numbered item above. This information is necessary to determine:

* If the agency has met its obligation for specific notice to the union of a mid-term change.
* What impact may be appropriate for bargaining and may be necessary for the union to fulfill its obligation in the representation of covered employees.
* If the agency is in compliance with the collective bargaining agreement [date of last contract].

I ask that you provide the requested information within [10 business days or date specified in CBA]. If you have any questions concerning this request, please contact the undersigned.

Sincerely,

[President]

[AFGE Local/Council]