**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.

**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 in the future. I urge you to ensure that such uses of military personnel are consistent with federal law and Department of Defense (DoD) guidance.

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

Federal statutes 10 U.S.C. §129 and 10 U.S.C. §129a prohibit DoD from using military personnel to perform work normally performed by/designated for civilian employees due to a cap on the allowable number of civilian personnel. DoD cannot use military personnel to compensate for a shortage in civilian employees or civilian employee positions.

The Under Secretary of Defense, Personnel & Readiness, (memorandum dated February 21, 2013) requires military personnel to be used only to perform “military essential” functions. These functions are narrowly defined in DoD Instruction 1100.22, “Policy and Procedures for Determining Workforce Mix.”

There are two occasions when military personnel can perform work designated for civilian employee performance: (1) if there is a demonstrated and documented need to do so; or (2) if extraordinary, and typically temporary, circumstances exist. Under the first exception, DoD must determine that a function has become “military essential” and document that determination in Operational Orders. Under the second exception, DoD can only use military personnel for non-“military essential” functions if DoD can demonstrate and document extraordinary circumstances and show that the use of military personnel will be temporary. Under both exceptions, DoD must first calculate the full cost of military performance in accordance with DoD Instruction 7041.04, “Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support.”

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 Agency

Thomas Hessel, Office of the Under Secretary for Personnel & Readiness

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Senator’s Name)

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Senator’s Name)

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Member of US House of Representative’s Name)

The Honorable \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Member of US House of Representative’s Name)

**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 in the future. I urge you to ensure that such uses of military personnel are consistent with federal law and Department of Defense (DoD) 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 the previous, current, and next fiscal years, including the amount of work to be performed by military personnel (as expressed in civilian positions, FTEs, or labor hours). 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: What factors contributed to the decision to use military personnel? Was the decision based to any extent on an unavailability of civilian employees? 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.*
3. Federal Law and 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. 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 calculation of the full cost of manpower in DODI 7041.04? Please provide any information gathered about the cost of civilian employee and/or military manpower performance of these functions, including information gathered to comply with DODI 7041.04 regarding the full cost of manpower. *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. Ending Use of Borrowed Military Manpower:
   1. Does the agency intend to return this work to civilian employee performance? If so, when? 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. Is the agency in the process of securing enough civilian employees to perform this work in the future? For example, is the agency hiring new civilian employees to fill vacant positions? Is the agency funding additional positions if necessary? 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. Did the installation or any entity in the chain of command seek an exemption from a civilian personnel cap or hiring freeze to avoid using military manpower? If so, was the exemption 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.*
7. 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 the functions support military members’ training, operational unit readiness, or overseas rotational 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.*
   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] and rectify prohibited use of military personnel. I look forward to working on this issue together.

Sincerely,

[President]

[AFGE Local/Council]