



*To enhance mission performance, TSA is committed to promoting a culture founded on its values of Integrity, Innovation and Team Spirit.*

*NOTE: Pursuant to Section 101 of the Aviation and Transportation Security Act (49 U.S.C. 114(n)), this directive and all related Handbooks, Attachments, and Appendices establish Transportation Security Administration (TSA) policy and must be applied accordingly.*

**REVISION:** This revised directive supersedes TSA MD 1100.63-3, *Employee Representation*, dated June 8, 2011.

**SUMMARY OF CHANGES:** Section 3, Authorities, added the Administrator's Determination on Transportation Security Officers and Collective Bargaining (Determination), and 49 C.F.R. Part 1520, Protection of Sensitive Security Information (SSI); Section 4, Definitions, added definitions; Section 5, Responsibilities, revised; Sections 6, Policy, added reference to the Unitary Dispute Resolution System (UDRS); added applicable policies to Bargaining Unit Employees (BUEs); and added information concerning Sensitive Security Information (SSI); and Section 7, Procedures, added and clarified the procedures employees and management officials must follow in regards to employee representation.

1. **PURPOSE:** This directive provides TSA policy and procedures for designating personal representatives to assist employees in certain matters as described in Section 6, as well as the policy and procedures that apply to such personal representation.
2. **SCOPE:** This directive applies to all TSA organizational elements and to all TSA employees. Select provisions herein apply exclusively to Bargaining Unit Employees.
3. **AUTHORITIES:**
  - A. The Aviation and Transportation Security Act, Pub. L. 107-71 (ATSA)
  - B. 49 C.F.R. Part 1520, Protection of Sensitive Security Information
  - C. [Decision Memorandum, Determination on Transportation Security Officers and Collective Bargaining](#) signed and dated February 4, 2011 by TSA's Administrator
4. **DEFINITIONS:**
  - A. **Bargaining Unit Employees (BUEs):** The following full- and part-time non-supervisory personnel carrying out screening functions under 49 U.S.C. § 44901, as that term is used in the Aviation and Transportation Security Act of 2001, § 111(d). BUEs, as defined in Section II of the Determination, include Transportation Security Officers (TSOs), Lead Transportation Security Officers, and Master and Expert Transportation Security Officers, including Behavior Detection Officers, Security Training Instructors, and Equipment Maintenance Technicians.

**NOTE:** Coordination Center Officers and Supervisory Transportation Security Officers are not BUEs.

- B. Investigation or Examination: Any fact-finding process, including verbal and/or written questioning, conducted by TSA supervisors or other management officials, TSA's Office of Inspection (OOI), or any other TSA employee, agent, or office authorized by TSA management to conduct an interview/inquiry concerning TSA operations and activities or TSA employee conduct.
- C. Management Official: Any TSA employee who is a higher-level official in the employee's chain of supervision, such as a supervisor or a manager (e.g., Office Director, Assistant Administrator, Federal Security Director, Supervisory Air Marshal in Charge, etc.).
- D. Official Time: For the purposes of this directive, time authorized by a TSA manager (including supervisors) to allow an employee, when otherwise in a duty status, to participate in certain authorized activities that are not related to the employee's official duties. For BUEs, refer to [TSA MD 1100.61-7, Official Time For Bargaining Unit Employees](#), for additional information.
- E. Personal Representative: An individual properly designated by an employee to assist the employee in preparing and/or presenting a grievance, responding to an adverse or disciplinary action, or participating in a representational activity that is within the scope of this directive.

## **5. RESPONSIBILITIES:**

- A. Management officials, including supervisors, are responsible for reviewing an employee's designation of personal representative to assess whether there is a conflict, or potential conflict of interest or position, with the requested representation.
- B. Personal representatives are responsible for adhering to TSA's instructions for receiving, handling, and safeguarding SSI materials against unauthorized disclosure. (Ref. Sections 6M and 7G)

## **6. POLICY:**

- A. It is the policy of TSA to allow an employee to receive reasonable official time for engaging in certain authorized activities, and to have personal representation in connection with those activities, as follows:
  - (1) Responding to an adverse or disciplinary action;
  - (2) Participating in the Equal Employment Opportunity (EEO) process;
  - (3) Participating in EEO mediation or facilitation or other agency approved mediation or facilitation activity;
  - (4) Participating in the UDRS, including completing necessary forms, participating in mediation and arbitration, if applicable, and preparing and presenting a grievance or Request for Review to management officials in accordance with applicable TSA policies;

- (5) Participating in appeals to the Merit Systems Protection Board or the Office of Professional Responsibility Appellate Board, as appropriate; and
  - (6) Engaging in representational activities and meetings when authorized by appropriate TSA management officials in the employee's chain of supervision or in accordance with other TSA policies.
- B. In addition to the applicable activities listed in Section 6A of this policy, BUEs have the right to personal representation during interviews in connection with investigations or examinations that the employee reasonably believes may result in disciplinary or adverse action, provided that such personal representatives are not disallowed under this directive or other applicable law, regulation, or policy. Refer to [TSA MD 1100.63-4, \*Personal Representation During Examination or Investigation\*](#), for additional information.
- C. An employee may designate a personal representative as long as that individual is willing and available to serve in that capacity and is not otherwise disallowed based on this or other applicable policy or regulation.

**NOTE:** While BUEs may designate any individual as a personal representative, if not otherwise disallowed in accordance with TSA policy, they may not select any union, other than the American Federation of Government Employees (AFGE), to provide personal representation in matters for which TSA policy permits such representation.

- D. Management may disallow an employee's choice of personal representative for operational and/or conflict of interest reasons, such as:
- (1) Operational Needs of TSA: Management officials shall consider whether the individual's proposed absence is likely to create an operational hardship for the office or airport based on workload considerations for the time the representation is needed and/or for the amount of time required for requested representation. This determination shall be made using criteria similar to that used to determine if discretionary leave would be approved for the time requested.
  - (2) Conflict of Interest or Position: This refers to an incompatibility between the chosen personal representative's official duties or position and the employee's position or duties. If management must disallow a personal representative because of conflict of interest or position, management shall notify the employee, in writing, of the reason after receiving the designation of representation. Generally within 48 hours, the employee must provide the name of a new personal representative. Some examples of conflict of interest or position include, but are not limited to:
    - (a) A supervisor or manager serving as an employee's personal representative because that would undermine the employer/employee relationship;
    - (b) An employee serving as a personal representative for a supervisor or manager as that would similarly undermine the employer/employee relationship;
    - (c) An AFGE representative serving as a personal representative for a supervisor or manager, as that would create a conflict between the responsibilities of the supervisor

or manager as part of the management team to maintain objectivity and independence in overseeing the workforce represented by AFGE and the primary responsibility of AFGE to represent the interests of BUEs;

- (d) A situation where a chosen personal representative has a schedule conflict and cannot represent the employee within the time period provided or a reasonable time thereafter;
  - (e) A Human Resources or EEO specialist serving as a personal representative in a matter relating to the specialist's areas of responsibility; and
  - (f) A TSA employee chosen to serve as the personal representative of a BUE during an agency investigation if the personal representative may also be a witness or subject in the same investigation as the BUE. This would include all investigations and examinations conducted by TSA management, OOI, or the Department of Homeland Security, Office of the Inspector General.
- E. An employee, as well as the employee's designated personal representative, if also a TSA employee, may request reasonable official time for activities authorized by this directive. The employee and his or her personal representative may each be granted, if necessary, up to eight (8) hours for the entire activity, which may consist of several components occurring at different times. Official time must be requested and approved before taken.
- NOTE:** It is expected that most representational activities will typically require substantially less than the maximum eight (8) hours of official time. If the time requested appears disproportionate for the specific activity, the requestor may be asked to provide information to support the request.
- F. In limited circumstances, additional official time may be granted upon sufficient written justification to management addressing why additional time is necessary and why the activity cannot reasonably be conducted during non-duty time. Written approval for any additional time must be obtained from the employee's FSD/division director or designee.
- G. Approval of official time requests for representational purposes made in connection with a statutory or regulatory complaint or appeal process shall be considered in accordance with any requirements of the applicable complaint or appeal process.
- H. Travel time in connection with the representational activity is included in the official time computation. There is no separate authorization for travel time in connection with personal representational activities.
- I. Time spent performing representational duties that exceeds the total amount of approved time shall not be considered official time unless approved by management in accordance with this policy. Such excess time that occurs during the employee's or the personal representative's scheduled duty time shall be charged to an appropriate leave category, such as annual leave, compensatory time off, or Leave Without Pay, unless unanticipated circumstances would justify approval of all or part of the excess time.

- J. Representational activities for which official time has not been approved may be conducted during non-duty time.
  - K. A TSA employee who serves as a personal representative is not eligible to receive premium pay for serving in that role if the employee would not otherwise have been eligible to receive such premium pay for the shift or scheduled duty hours during which the representation occurred.
  - L. Management has an unrestricted right to communicate directly with an employee except in matters where there is a statutory or regulatory requirement to inform the employee's personal representative regarding a pending matter such as certain adverse or disciplinary actions or EEO complaints.
  - M. A personal representative for a TSA employee is a covered person, authorized to receive information designated as SSI for which he or she has a need to know. Any personal representative is therefore obligated to safeguard SSI against unauthorized disclosure, in accordance with [TSA MD 2810.1, SSI Program](#) and its accompanying [TSA SSI Policies and Procedures Handbook](#).
- NOTE:** A personal representative, who is not a TSA employee, in receipt of SSI will be required to sign a non-disclosure agreement. Additional information may be found at [SSI Resource Overview](#) .
- N. Management is not required to change an employee's or designated personal representative's work schedule or incur overtime pay to accommodate an employee's preference for a specific personal representative or to allow the employee and personal representative to confer.

## 7. PROCEDURES:

- A. An employee will provide the name of his or her personal representative, in writing, to his or her supervisor or other appropriate management official. An employee may designate only one personal representative, per matter or activity, at a time and must indicate the specific matter or activity for which the personal representative is authorized to serve. The employee will also provide the personal representative's title and contact information, and if employed by TSA, the personal representative's work location. [TSA Form 1163-1, Personal Representative Designation](#), may be used for this purpose.
- B. The employee will submit his or her designation of personal representative before the expiration of any reply period, if applicable, and sufficiently in advance of the activity to allow for supervisory review and approval, or as otherwise designated by management.
- C. An employee seeking to act as a personal representative must request permission from his or her supervisor to perform the representational function, as far in advance as possible. The request will include the date, time, and expected duration of the representational activity. The employee must also comply with any additional TSA requirements regarding the approval and documentation of the absence.

- D. Management should approve the request unless there is a conflict of interest or position or the employee cannot be spared for the specific time or the duration of time necessary for the representation because of the operational needs of TSA.
  - (1) If the denial is due to operational needs, management should inform the employee of an approximate time or date when the employee may be allowed to leave the worksite to perform the representational activity.
  - (2) If the denial is due to a management determination that representation would present a conflict, or potential conflict of interest or position, management must inform the employee of the conflict, or potential conflict, and provide additional time for the employee to obtain alternative representation. Generally within 48 hours, the employee must provide the name of a new personal representative.
- E. If an employee changes his or her personal representative, he or she must notify management, in writing, of the change as far in advance as reasonably possible, before the representational activity is scheduled to take place in order to avoid delays in reviewing and approving the new representation.
- F. Employees are responsible for the payment of any expenses related to their personal representatives' activities, which include, but are not limited to, travel expenses and any costs associated with mailing documents to their representatives.
- G. A designated personal representative must adhere to TSA instructions for receiving, handling and safeguarding SSI materials, and is forbidden from disclosing SSI to persons without a need to know the information. The personal representative shall sign the SSI acknowledgment on TSA Form 1163-1 confirming his or her understanding of TSA's instructions regarding SSI, including the process for requesting and receiving SSI from TSA, execution of a non-disclosure agreement, and return or destruction of SSI at the conclusion of the representational matter.

**8. APPROVAL AND EFFECTIVE DATE:** This policy is approved and effective the date of signature unless otherwise specified.

**APPROVAL**

***SIGNED***

March 5, 2014

\_\_\_\_\_  
Karen Shelton Waters  
Assistant Administrator for Human Capital

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Date

**EFFECTIVE**

March 21, 2014

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Date

Distribution: Administrator, Deputy Administrator, Assistant Administrators, Regional Directors, Federal Security Directors, Supervisory Air Marshals in Charge, Business Management Division Directors, Administrative Officers, and Human Resources Specialists

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