

# Fort Knox CPAC...



## HR Tip of the Week

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### Things You Should Know about Past Practice

Past practice, in labor law, refers to a practice that has been recognized and accepted by the parties and used several times in the past. It is sometimes the last resort for dealing with a grievance by considering the manner in which a similar issue was resolved before the present grievance was filed. Past practice is to be used as a definition of accepted behavior only by arbitrators to resolve a grievance when contract language is ambiguous or contradictory, or when the contract doesn't address the matter in dispute.

Such practice does not have to be written down in the labor agreement, but can arise on the basis of regular, repeated action, or inaction. Once established, essentially by unwritten consensus or silent toleration, a past practice becomes just as enforceable as a formally negotiated workplace rule that is placed in writing by the parties. Any dispute of a past practice may be enforced through application of the Unfair Labor Practice procedures of the statute and the negotiated grievance procedure of a labor agreement. In order to change a past practice affecting a condition of employment for bargaining unit employees, the same notification requirements used to implement a change in current working conditions is required. The CPAC Specialist will also prepare and submit any required notifications.

Generally, the existence of the four following factors will indicate that a "past practice" exists:

1. The practice was clear and applied consistently.
2. The practice was not a special, one-time benefit or meant at the time as an exception to a general rule.
3. Both the union and management knew the practice existed and management agreed with the practice or, at least, allowed it to occur.
4. The practice existed for a substantial period of time and it had occurred repeatedly.

It is always best to contact your servicing MER/Labor Specialist in the CPAC for specific guidance.