

Management's continuing crack down on sick leave usage is resulting in an increase in leave disapprovals and discipline.

The Region continues to provide updates on Attendance issues. Locals who desire to receive the comprehensive Regional Guidebook on Attendance Control and Discipline for Cause may contact Regional Coordinator Omar Gonzalez at (650) 685-7402 or email ogonzalez@apwu.org and request the material.

Sick Leave Control Is Out of Control

WESTERN REGION– The HQ mandated crack down on sick leave usage is escalating throughout the Pacific and Western Areas with wayward managers harassing employees who use sick leave or emergency annual leave.

“While management has the right and obligation to discuss employee attendance when warranted, they do not have the right to harass employees who need to exercise their contractual right to use leave,” said Omar Gonzalez the Western Regional Coordinator.

The Regional Coordinator has conducted several training sessions on combating improper Attendance Control practices preparing local unions to fight back against abuses, including in San Francisco, Oakland, California Area, San Fernando Area, Denver, Seattle, Portland, Salt Lake City, Phoenix Metro locals, as well as, the 2018/19 State Conventions and published an article in the Union's National Magazine entitled *Is the Postal Service Sick?*

Employee Welfare Consideration Required

Management's rights are not absolute. The law and the contract restrict management and in addition USPS regulations also require compliance with official rules.

One of the often ignored regulations is found in the Employee and Labor Relations Manual (ELM) Chapter 511.1. This regulation requires your supervisor to administer the leave program on an equitable basis (e.g., fair and justly) considering *not just* the needs of the service but also your individual welfare. When it comes to your



So called Welcome Back Meetings are grievable depending on what is discussed, what forms are used and how the employee is treated

leave usage management cannot be “arbitrary” (i.e., at will, not following standards) or “capricious” (i.e., impulsive, not supported by rules). “A key factor that members and stewards must remember is that there is **no** set number of absences by which a supervisor has an automatic right to issue employees discipline,” explains Coordinator Gonzalez. “The so called policies that 3 absences in 90 days calls for discipline violate the contract and our joint contract interpretation manual (JCIM) and must be challenged,” declared Omar.

“Welcome Back We Messed With You”

The harassment begins with a forced meeting for any employee who has an unscheduled absence regardless of the reason. Both the contract (Article 10) and postal regulations (ELM. 513.11 and 511.32) allow sick leave

Tips On Countering Abusive Control



ELM 511.43 states that employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences and provide acceptable evidence for absences when required.

The rules provide exceptions which are unexpected illness or injury for sick leave and emergencies for annual leave. All the rules are found in ELM Chapter 510 per CBA Article 10.

Sick leave ensures employees against loss of pay if they are incapacitated for the performance of duties. SL may also be used for medical, dental and optical appointment. [Note: PSEs do not yet earn SL they accrue Annual Leave]. Here are some tips to help protect yourself from supervisor attendance abuse:

- **Come to work as scheduled except for legitimate unexpected illness or injury or emergencies.**
- **Call in as much in advance to your reporting day as possible. Record your call in confirmation number.**
- **Call in only once if you will be out sick for more than one day and state the expected duration. Calling multiple times can be recorded as multiple absences,**
- **Upon returning to duty the PS 3971 must be completed on the clock. If directed to report to an ACO off the clock file a grievance to ensure you are properly paid.**
- **If the Welcome Back Meeting delays you from reporting on time or otherwise impedes your duties file a grievance,**
- **Make sure you sign and date the 3971 (do not back date)**
- **Write your general reason for absence in the PS 3971 remarks column. eRMS remarks are often not accurate.**
- **If the supervisor does not allow you to make corrections of the 3971, or does not give you a copy of the signed form; or does not give reason for disapproval or AWOL contact your steward and file grievances.**
- **Challenge Unscheduled Leave designations if you gave sufficient advance notice of your absence to warrant your supervisor making staffing adjustments.**
- **Be careful when responding to leading or misleading questions during an Investigative Interview. Be truthful but thoughtful. Always seek union representation.**

If you want more comprehensive information on leave or attendance contact the Coordinator ogonzalez@apwu.org

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to be earned and used, USPS at the HQ level has ordered the Areas and Districts to crack down claiming more than 330,000 employees are absent every day. (this includes managers).[Note: PSEs do not earn SL]

Welcome Back Meetings, called by various names, are intended to be “attendance conversations” or so the bosses claim. In reality they serve as a tiresome hoop employees have to go through to get back to work.

“But, it can go beyond that,” warns Coordinator Gonzalez “If at any time the supervisor threatens to take discipline now or in the future or is recording the meeting using an unauthorized local form or to sign anything other than a PS 3971 the employee MUST insist on seeing a Shop Steward and fight back” said Omar.

Interviews that can lead to discipline fall under the Supreme Court Weingarten rule, as well as, Article 17 of the Joint Contract Interpretation Manual (JCIM) and Postal Handbook EL 921. The use of unauthorized forms violates the Administrative Support Manual and Article 19 of the contract.

Likewise, if the supervisor is demeaning, intimidating or making inquiries into personal medical information such conduct is considered unprofessional misconduct and must not be tolerated pursuant to ELM 665.24. This type of misconduct by supervisors violates the anti-harassment policy of the Postmaster General.

These meetings may also violate Title 29 of the Code of Federal Regulations which contain the principal set of rules and regulations issued by various federal agencies regarding labor. It depends on what the supervisor does that may trigger a violation of federal law.

“One example of this is the harassment of a disabled employee who is absent related to a disability or a veteran absent due to a service connected condition covered under Executive Order 5395,” said Regional Coordinator Omar Gonzalez. *continued on page 3*

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While many courts have concluded that attendance is a requirement of a job there has been litigation over the issue of whether unplanned leave usage accommodation is a requirement of the Americans With Disabilities Act. The key to a challenge over violations of Article 2 (Non-Discrimination and Civil Rights) under the contract and Article 3 restrictions on management's rights is the manner in which management considers attendance to be an essential job function.

"Disability discrimination issues under the Rehabilitation Act related to the Americans With Disability Act can be complicated," said Coordinator Gonzalez. The Region provides training for locals on that subject when requested.

FMLA Absences

According to the official USPS Attendance Control Employee Availability training program absences related to the Family Medical Leave Act are NOT supposed to be made subject to these types of so called Welcome Back Meetings.



Supervisors are not to ask any questions that may solicit medical information about the employee or family member. If you believe you are covered by FMLA, or have FMLA certification and you are subjected to inquiries you must challenge the supervisor conducting these meetings. You may do so by filing a grievance with the steward or take other avenues.

"Most employees do not know that they can also file a complaint directly with the **US Department of Labor** by letter or by phone," revealed Omar. "Employees who suspect FMLA violations can **call 1-866-487-9243** or visit www.dol.gov/whd and they will be directed to their nearest DOL office that handles complaints," he explained.

You should be prepared to give your personal ID info, location of postal installation, your facility's phone number, the manager's name, the type of work you do and your pay info. "These services are free and confidential. An investigation will be launched. Don't be discouraged if you do not get instant satisfaction remember you are dealing with another federal agency," advised Coordinator Gonzalez. **Take advantage of your right to file a DOL complaint whenever any manager violates your FMLA rights, be it deliberate delays, refusal to accept medical documents,**

harassment, denials or illegal discipline on covered absences.

ATTENDANCE CONTROL OFFICERS (ACOs)

Specific individual managers are being appointed as ACOs to monitor Unscheduled Absences and implement HQ/Area or District Attendance policies. They are the so called Gatekeepers of the Dashboard technology designed to bring down absences.

ACOs are not employee immediate supervisors. They are appointed pursuant to Handbook EL 312 Sec 740. Their roles are being extended, in some cases, to be the boss that reviews discipline packets often prepared by USPS Labor Relations managers.

When challenged the ACOs may claim they are only serving as some kind of dependability coach. There is policy on this which may be violated by the ACOs depending on how they interact with employees. ACOs should not be approving or disapproving leave. They should not be altering any PS 3971s.

Stewards should determine if management is violating Article 10 Section 1 and 2 of the JCIM that requires a review of the **supervisor** and that it is the supervisor who determines (not a directive) action after having considered all relevant evidence and ALL circumstances on a case-by-case basis. The Union's position is that JCIM 16.8 states it is normally the responsibility of the immediate supervisor to initiate disciplinary action.

AWOL IS SERIOUS

An AWOL is a management determination that no kind of leave can be granted. ELM 513.342 and 512.422 require that if a supervisor disapproves your leave and issues an AWOL he/she **MUST** annotate the "reason" for AWOL on the PS 3971. They often fail to do so!

AWOLs are dangerous to your career. A single AWOL can result in the removal of a Vet (see Executive Order for criteria). AWOLs are seen as indications, by many arbitrators, that employees are unreliable. Grieve this failure!

"Any and all AWOLs must be challenged," declared Regional Coordinator Gonzalez. "The Handbooks F21, F401 and the ELM have varied applications of AWOL. Grievances must be filed so as to protect the record of an employee," said Omar. "Remember the supervisor cannot be arbitrary or capricious nor unreasonable." he advised.

Locals Are Asked to Mobilize Now

When RMD eRMS was first rolled out in 2001 it was challenged by the Union. I issued a guide called *RMD Guidelines for Stewards* as well as *RMD-Release the Mad Dogs* Guidebook on how members and stewards should challenge any misapplication of attendance regulations.

Hundreds of grievances were filed over the application of the “new attendance” program and the Interactive Voice Response (IVR) system. The National Union also filed Class Action Step 4 grievances that were eventually settled in 2003 and incorporated into the JCIM in June of 2004.

Since then there have been periodic management whipped crack downs on leave usage through various side bar programs and applications of RMD/eRMS. And through it all the Western Region has taken up the challenge to protect employee rights.

The bottom line— ***RMD/eRMS or similar system of records may NOT alter or change existing rules, regulations, the National Agreement (CBA), law, local memorandum of understanding and agreements, or grievance settlements or arbitration awards. Any rule setting a fixed amount or percentage of sick leave usage after which an employee is automatically disciplined is inconsistent with the CBA and Regulations.***

Locals must educate the membership on how to protect themselves and train stewards how to be proactive in defending the rights of employees when they use their earned sick leave and also their earned annual leave.

The Western Region has conducted training on the Attendance Control Employee Availability which many locals and states in the Region have scheduled and taken advantage of.

The training is still available to those locals that have not taken advantage of this comprehensive training to safeguard employee jobs. Simply contact me at ogonzalez@apwu.org

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DEMANDS FOR MEDICAL DOCUMENTATION

The rules on supervisory demands for medical slips have long been established. Supervisors do not have an absolute right to demand medical substantiation for sick leave absences of 3 days or less.

If a supervisor deems it desirable to require medical slips for SL absences of 3 or less days they must have a reasonable justifiable and legitimate business reason.

“These reasons are called ‘threshold business reasons’ and must not be arbitrary or capricious” advised Coordinator Omar Gonzalez. Unreasonable demands must be challenged and grieved. The remedy to request is pay for all time spent at doctor’s, travel, gas, parking and remuneration for co-pay especially if there is no evidence of abuse or the employee is not on the Restricted SL list. For SL absences of more than 3 days medical documentation is needed.

“In no case may a supervisor require submission of a diagnosis or prognosis on a medical slip. Only sufficient information of incapacitation to indicate the employee was or will be unable to work is needed,” warned the Regional Coordinator. Fight unreasonable demands !!

DISCIPLINE FOR ATTENDANCE

Management’s right to take disciplinary action for “irregular attendance” is not absolute. Although ELM 665.41 requires employees to be regular in attendance and failure to do so may result in disciplinary action including removal, management MUST have just cause to impose discipline. Management must pass all six tests for just cause and must prove the charge. Employees must be alert during Investigative Interviews (see Tips on page 2) and challenge every instance of unjust attendance discipline.

At the Investigative Interviews watch out for leading questions:

“*You are aware you are required to be regular in attendance correct.*” This is not only a leading question but a misleading one. Most employees will answer yes. But, what is regular? There is no official definition of regular attendance? The employee should ask for a definition.

“*Do you consider your attendance to be good?*” There is no official definition of what is a good, fair or bad record per Article 16, page 2 of the JCIM. Leave issues are to be considered on a case-by-case basis and all evidence including relevant factors must be considered by the supervisor.

A Letter of Warning is a serious disciplinary action. A Suspension is a disciplinary lay-off that tarnishes your record. PROTECT YOURSELF !

Medical Excuse for Work 05-12-19
Patient: Irma Sik Date: _____
Under Care from: 5-7-19 to: 5-12-19
Return TO Work on: 5-13-19
Follow Up Appointment Schedule: _____ Time: _____ Am/Pm
Illness / Injury: *back pain*
Comments: *unable to work, Desi Nate Sawbone*
Practitioner Signature: _____
(Hospital Logo) Bedside Medical Group 1313 Mocking Bird Lane
Anytown USA 231-456-7891