American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

July 22, 2009

Via Facsimile & First-class Mail
Mr. Alan S. Moore, Manager
Labor Relations Policy and Programs
United States Postal Service
475 L'Enfant Plaza SW, Room 9318
Washington DC 20260-4110

Re: Family and Medical Leave (FMLA) Certification Format

Dear Mr. Moore:

I am writing in response to your letter of June 9, 2009, in regard to the above-referenced subject. In your letter, you state that you have determined that there are "omissions that render the union's forms not equivalent to the Department of Labor (DOL) forms." Attached to your letter is a line-by-line comparison of the APWU forms with the DOL forms, including such minuscule items as the failure of the APWU forms to include language found in the "Paperwork Reduction Act Notice and Public Burden Statement".

As you know, the DOL WH-380 forms are *optional* forms. While the DOL created the WH-380 forms as a sample format, the law expressly allows employees to submit their medical certifications in any format, provided it contains the same basic information required under 29 C.F.R. 825.306. Although the APWU forms do not mirror the WH-380 forms word-for-word, the APWU forms do reflect the same basic FMLA medical certification requirements so as to permit the health care provider to furnish appropriate medical information in accordance with the law. Even a note from the health care provider in narrative format would suffice as acceptable medical certification under the law if it contains the same basic required information.

Enclosed for your review are the following sample documents: (1) a sample completed APWU Form 1 - certification for an employee's own serious health condition; (2) a sample completed APWU Form 2 - certification for a family member's serious health condition; (3) a sample certification for an employee's own serious health condition in narrative format; and (4) a sample certification for a family member's serious health condition in narrative format. Each of these completed sample documents constitutes a complete and sufficient

medical certification that is fully acceptable under the law. If upon your review, you decide that you disagree with our position, please specify for each enclosed sample document what additional information is required pursuant to the FMLA.

Additionally, regardless of what format an employee uses for medical certification, if a medical certification is incomplete or insufficient, the Postal Service is required to explain to the employee in writing what additional information is necessary to make the certification compete and sufficient, and give the employee an opportunity to submit the additional required information.

Moreover, once an employee has submitted an APWU form for FML documentation, or a certification in any other format, there is no need or requirement to use a different form/format to submit any additional required information. The employee may, for example, have their health care provider write the additional required information on their original certification, or have the health care provider attach a note containing the additional required information.

Thank you for your cooperation in this matter. Should you have any questions concerning this matter, please contact me at (202) 842-4273.

Sincerely,

Greg Bell

Greg Bell, Director
Industrial Relations

Enclosures

cc: William Burrus
John W. Dockins

GB/PH:jm
OPEIU #2
AFL-CIO

CERTIFICATION BY EMPLOYEE'S HEALTH CARE PROVIDER FOR EMPLOYEE'S SERIOUS ILLNESS – FMLA

This form is to be completed by employee's Health Care Provider when employee is requesting FMLA and ***medical documentation is required*** *pursuant to 512.41, 513.36 and 515.5 of the ELM.* ***Form PS 3971 must be completed by employee.***

Employee's name JOHN SMITH

Description of serious health condition *(On the back of this form is the description of a "serious health condition" under FMLA. Does the patient's condition qualify under any of the categories described? If so, please check the applicable category. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.*

(1) _____ (2) _____ (3) _____ (4) X (5) _____ (6) _____ None of the above _____

Describe the medical facts and/or treatment that meet the criteria of the serious health condition checked above (Medical diagnosis/prognosis is not required): THE PATIENT IS BEING TREATED FOR A CHRONIC PULMONARY CONDITION WITH RX MEDS AND VISITS EVERY 3 MONTHS

Date condition commenced: 2005

Probable duration of condition: LIFETIME

Probable duration of present incapacity (if different): APRIL 1 - APRIL 3

Will the employee require leave on an intermittent or reduced schedule basis for planned medical treatment (e.g. follow-up treatment) of the employee's serious health condition, including pregnancy? X **Yes** _____ **No**

If so, please provide an estimate of the dates and duration of such treatment and any period(s) of recovery:

Dates: JULY 17, 2009 AND OCT. 9, 2009

Duration: 2-4 **hour(s) or** _____ **day(s) per episode.**

Period of Recovery: IMMEDIATE

Will the employee require leave on an intermittent or reduced schedule basis for the employee's serious health condition, including pregnancy, that may result in unforeseeable episodes of incapacity (e.g. flare ups)? X **Yes** _____ **No**

If so, please provide an estimate of the frequency and duration of such episodes of incapacity (e.g. 3 times per 1 month lasting 1-2 days):

Frequency: 1 **times per** 4 **week(s)** 6 **month(s):**

Duration: 8-40 **hour(s) or** 1-5 **day(s) per episode.**

Is the employee able to perform the essential functions of employee's position? YES **If no, describe the physical restrictions placed on the employee, including the duration of such restrictions.**

_____

_____

Health Care Provider's Name (Please print): JEFF JONES

Health Care Provider's Signature: S/ JEFF JONES **Date:** 4/5/09

Address: 123 MAIN STREET, DALLAS TX 78220

Phone number: 123-456-7890 **Fax number:** 456-789-1234

Specialty/Type of Practice: INTERNAL MEDICINE

HEALTH CARE PROVIDER CERTIFICATION OF EMPLOYEE'S FAMILY MEMBER SERIOUS ILLNESS – FMLA

Employee's name DAVID STARK

Patient's name MARY STARK

Relationship to employee __X__ Spouse ____ Parent ____ Child (under age 18 or if older and incapable of self care due to a mental or physical disability)

Description of serious health condition *(On the back of this form is the description of a "serious health condition" under FMLA. Does the patient's condition qualify under any of the categories described? If so, please check the applicable category. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.*

(1) _____ (2) __X__ (3) _____ (4) _____ (5) _____ (6) _____ None of the above _____

Describe the medical facts and/or treatment that meet the criteria of the category checked above (Medical diagnosis/prognosis is not required). THE PATIENT WAS SEEN BY ME TODAY AND TREATED FOR A LEG FRACTURE. SHE WILL BE ON PRESCIBED MEDICATION FOR 10 DAYS. FOLLOW UP VISIT IN 6 WEEKS.

Date condition commenced: MAY 3, 2009 **Probable duration of condition:** 6-8 WEEKS

Probable duration of present incapacity (if different): MAY 3-8, 2009

Does the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation? __X__ **Yes** _____ **No**
If no, would the employee's presence to provide psychological comfort be beneficial to the patient's recovery? _____
Note the probable duration of the need. _____

Will the employee require leave on an intermittent or reduced schedule basis for planned medical treatment of the family member's serious health condition (e.g. follow-up treatment)? __X__ **Yes** _____ **No**
If so, please provide an estimate of the dates and duration of such treatment and any period(s) of recovery:
Dates: JULY 19, 2009
Duration: 4-8 **hour(s) or** 1 **day(s) per episode.**
Period of Recovery: 1 DAY

Will the employee require leave on an intermittent or reduced schedule basis for the family member's serious health condition, that may result in unforeseeable episodes of incapacity (e.g. flare ups)? __X__ **Yes** _____ **No**
If so, please provide an estimate of the frequency and duration of such episodes of incapacity (e.g. 3 times per 1 month lasting 1-2 days):
Frequency: 1-2 **times per** 4 **week(s)** 2 **month(s):**
Duration: 4-8 **hour(s) or** _____ **day(s) per episode.**

If the employee requires leave on an intermittent or reduced schedule basis to care for a covered family member with a serious health condition, briefly explain why such care is medically necessary (this can include assisting in the family member's recovery).
MR. STARK WILL NEED TO STAY HOME WITH HIS WIFE FOR THE FIRST WEEK AS SHE WILL NOT BE VERY MOBILE AND WILL NEED HIS ASSISTANCE.

Health Care Provider's Name (Please print): JEFFREY MARTIN, MD

Health Care Provider's Signature: S/ JEFFREY MARTIN, MD **Date:** MAY 3, 2009

Address: 65 WASHINGTON AVE CAMBRIDGE, MA 02138

Phone number: 772-999-9999 **Fax number:** 772-999-8888

Specialty/Type of Practice: ORTHOPEDIST

Joe Jones, M.D.
Internal Medicine
29 Main Street
Dalas, TX 78220
Office # 235-555-1111
Fax # 235-555-1112

April 5, 2009

FMLA Supervisor USPS
Postal Facility
Anywhere, USA 01230

To Whom It May Concern:

Please be advised that today I treated your employee John Smith. I have been treating John since 2005 for a chronic pulmonary condition that he will have for the rest of his life. I am currently treating him with prescription meds and follow up visits every 3 months. Accordingly, John will need to be off from work for 2-4 hours on 7/17/09 and 10/9/09 to receive these treatments.

While he is expected to recover from this latest episode within the next three days, John's condition is prone to cause periodic episodes of incapacity. These flare ups can last 1-5 days each time they occur. Based on his history, these incidents may occur on a monthly basis over the next 6 months. Despite these occasional periods of incapacity, John can fully perform his job duties. Thank you for your understanding.

Very truly yours,

Joe Jones, MD

Jeffrey Martin, M.D.
Orthopedist
65 Washington Ave.
Cambridge, MA 02138
Office # 772-999-9999
Fax # 772-999-8888

May 3, 2009

FMLA Supervisor USPS
Postal Facility
Anywhere, USA 01230

To Whom It May Concern:

Please be advised that today I treated Mary Stark, the wife of your employee David Stark. Mary was seen by me today and treated for a leg fracture. She will be on prescribed medication for 10 days and she will return to my office for a follow-up visit in 6 weeks.

Mary's leg fracture occurred this morning and it will take a total of 6-8 weeks to heal. Mary requires complete bed rest for the next 5 days. She will require assistance from her husband during that time for basic medical, hygiene, nutritional needs, etc.

David will also need to be off from work for 4-8 hours on July 19, 2009 to take Mary to her follow up visit. He will also require intermittent leave 1-2 times per month over the next 2 months to further assist with her recovery as her leg fracture may cause flare ups of pain lasting 4-8 hours per episode. Thank you for your understanding.

Very truly yours,

Jeffrey Martin, M.D.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
(202) 842-4273 (Office)
(202) 371-0992 (Fax)

July 7, 2009

Via Facsimile and First Class Mail
Mr. John W. Dockins, Manager
Contract Administration
The United States Postal Service
475 L'Enfant Plaza SW, Room 9146
Washington DC 20260-4125

Re: Family and Medical Leave (FMLA) Certification Forms/Formats

Dear Mr. Dockins:

I am writing in response to your letter of June 26, 2009, in regard to the above-referenced subject. Thank you for calling to my attention the following sentence on the APWU website, "The Postal Service has stated that these forms (APWU forms) are acceptable for use by managers to approve or disapprove FMLA leave requests." As written, the sentence could be misinterpreted, specifically, since APWU forms are used by employees for FML documentation, not by managers.

In addition, regardless of what forms or format an employee uses for medical certification, if the certification is incomplete and insufficient, the Postal Service is required to explain to the employee in writing what additional information is necessary to make the certification compete and sufficient, and give the employee an opportunity to submit the additional required information. Moreover, once an employee has submitted an APWU form for FML documentation, or a certification in any other format, there is no need or requirement to use a different form/format to submit any additional required information. The employee may, for example, have their health care provider write the additional required information on their original certification, or have the health care provider attach a note containing the additional required information.

For your information, at a previous meeting between the parties, the APWU specifically asked, whether the Postal Service was instructing their field representatives and managers to reject APWU forms submitted by employees for FML certification. The Postal Service stated that they are not telling their managers to reject APWU forms submitted by employees for FML certification; however, FML documentation would be returned regardless of what forms or format is used if the certification is incomplete or insufficient.

Enclosed you will find a copy of the Postal Service's revised "Service Talk for Craft Employees" that was provided to the APWU and given to employees. Please note that the following revision (highlighted in red) was made by the Postal Service at the request of the APWU to address the fact that it is an employee's right to use any format, including an APWU form, for FML certification: *"If information is received in support of a request or designation of FMLA which is not on the DOL Forms, it will be evaluated. If the information is found to be incomplete or insufficient; it will be returned to the employee for additional information."*

Accordingly, we have revised the APWU's website to reflect the fact that the APWU forms are used by employees for FML documentation, not by managers. We also made it clear that employees may submit their FML documentation in any format, including APWU FMLA Forms. If the employee's medical certification is incomplete or insufficient, the Postal Service is required to explain to the employee in writing what additional information is required. Once an employee has submitted an APWU FMLA form, or a FML certification in any other format, there is no need or requirement to use a different form/format to submit any additional required information.

During our recent telephone discussion regarding this matter, the APWU expressed a concern in regard to a statement made in your June 26, 2009 letter to APWU President William Burrus – specifically that, "APWU FMLA forms are not acceptable." We believe that your statement may inadvertently result in management refusing to accept APWU forms submitted as FML documentation , instead of reviewing FML documentation submitted on APWU forms, or in any format, as reflected in your revised service talk. You stated during our discussion that it was not your intent for managers to refuse to accept APWU FMLA forms, and that you would clarify your comment. We have subsequently received several complaints from our local unions that management has stated that they will not accept FML documents submitted on APWU forms based on your statement in your June 26, 2009 letter. As such, we again request that you clarify that statement in order to avoid further problems in the field.

Thank you for your cooperation in this matter. Should you have any questions concerning this matter, please contact me at (202) 842-4273.

Sincerely,

Greg Bell

Greg Bell, Director
Industrial Relations

Enclosure

GB/PH:jm
OPEIU#2
AFL-CIO

Service Talk for Craft Employees

The U.S. Department of Labor (DOL) final rule to update the Family and Medical Leave Act (FMLA) regulations was effective January 16, 2009. The text of the final FMLA rule is available on the Department of Labor website.

Examples of these changes include:

Employer Notice Requirement – The final rule requires employers to notify employees of the amount of FMLA leave being charged and the employee's paid leave status.

Employee Notice – The new regulation requires employees to follow the employer's usual and customary call-in procedures for reporting an absence, absent unusual circumstances.

Employer Notice – The new regulation requires employers to notify employees if their certifications are incomplete or insufficient and give them the opportunity to cure any deficiency.

Employee Notice – The new regulation requires employees who have approved FMLA cases to specifically reference their FMLA case at the time of a subsequent need for leave for that case.

Health Care Providers – A Physician's Assistant is included in the list of Health Care Providers.

The DOL has prepared new, user-friendly forms for employees to document their need for both FMLA medical leave and qualifying exigency leave. The DOL forms meet the FMLA's certification requirements and the Postal Service will require employees to provide all the information sought on those forms. If information is received in support of a request or designation of FMLA which is not on the DOL Forms, it will still be evaluated. If the information is found to be incomplete or insufficient; it will be returned to the employee for additional information.

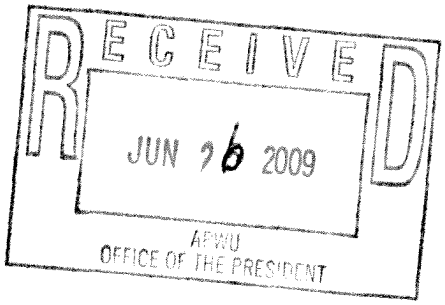
In order to ensure the Postal Service's compliance with newly imposed regulatory requirements and streamline the FMLA designation process, the fulfillment center discontinued the use of the PUB 71 and the WH-380 within the FMLA packet as of January 16, 2008. The WH-380 was replaced by the WH-380-E, "Certification of Health Care Provider for Employee's Serious Health Condition" or WH-380-F, "Certification of Health Care Provider for Family Member's Serious Health Condition," whichever is appropriate for the FMLA request. The PUB 71 was replaced by the DOL WH-381, "Notice of Eligibility and Rights & Responsibilities." However, due to technical issues, we will not be able to include the WH-381 in the FMLA packet until some time in late March. Consequently, we have notified the FMLA coordinators that they will be responsible for mailing out the WH-381 to employees during this interim period. The Coordinators will also mail out DOL Form WH-382, "Designation Notice" to comply with DOL's requirements to notify employees of their FMLA designation.

The WH-381, WH-382 as well as the WH-384, "Certification of Qualifying Exigency for Military Family Leave" and WH-385, "Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave" will be mailed directly from the local FMLA Office until eRMS and the Fulfillment Center are upgraded to provide the new forms.

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 26, 2009



Mr. William Burrus
President
American Postal Workers Union,
AFL-CIO
1300 L Street NW
Washington, DC 20005-4128

Dear Bill:

It has come to my attention that the American Postal Workers Union (APWU) website contains incorrect information regarding Family and Medical Leave Act (FMLA) forms. Specifically the website contains the following language, "The Postal Service has stated that these forms (APWU forms) are acceptable for use by managers to approve or disapprove FMLA leave requests." That statement is incorrect.

As expressed in a June 9 letter (enclosed) to Greg Bell, the Postal Service has "determined that there are omissions that render the union's forms not equivalent to the Department of Labor (DOL) forms."

Please correct your website as the APWU FMLA forms are not acceptable. Also, please identify which Postal Service communication the website refers to in the sentence "The Postal Service has stated . . ."

Thank you for your cooperation in this matter.

Sincerely,

John W. Dockins
Manager
Contract Administration (APWU)

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100