

Attendance & Staffing

Members' Guide

WESTERN REGION

2017

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THE OLD PERVERBIAL ATTENDANCE WHIP
PROMISES TO BE EXTRAORDINARY WITH
THE CUTS IN STAFFING

ATTENDANCE CRACK DOWN HAND IN HAND WITH REALIGNMENTS

Along with the major work floor disruptions caused by management's realignments and involuntary reassignments the bosses have directed a crack down on leave usage using discipline as a whip.

Most computer staffing modules used by management to cut staff factor in a percentage of leave usage. The resulting abolishment's, reversions and realignments leave little room for coverage in the event of absenteeism. Termination of employees for attendance related matters will no doubt help management reduce the workforce, but also places an undue burden on all postal workers.

CONTROLLING EMPLOYESS

Management's intent is clear... *"postal facilities are staffed on an installation basis. Inasmuch, as staffing levels are predicated on the operational needs ...to the goals expected to [be] attained, each position should be viewed as a **needed** position. The absence of any individual employee may mean decreased efficiency. Although all employees absences contribute to scheduling difficulties, unscheduled absences cause considerable greater difficulty than those which have been approved in advance."* [EL 501 Guide to Attendance Improvement]

NOT SO FAST

Postal workers, by regulation, are "expected" to maintain their assigned schedule and must make every effort to avoid unscheduled absences and when required provide acceptable evidence for absences. "Yes, those are pretty strong requirements," said Regional Coordinator Omar Gonzalez. "However, management by regulation is obligated to administer the leave policy on an *equitable* basis considering not just the needs of the Postal Service but also the **welfare of the individual employees**," added the Coordinator.

"Management must follow their own regulations, the contract and the law", said Gonzalez.

LEAVE POLICY & PROTECTIONS

Under the contract, management must continue to fund the leave program and leave regulations fall under the Employee and Labor Relations Manual (ELM) Chapter 510. Under the Article 19 Handbooks and Manual contract provision, in ELM Chap 6 Code of Conduct, employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the postal service.
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LEAVE POLICIES AND PROTECTIONS

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No doubt the conduct regulations related to attendance are imposing. However, those regulations do not supersede the rules found in:

ELM 511.1 on "Employee Benefits and Leave" *Administrative Policy*. *The Postal Service policy is to administer the leave program on an EQUITABLE basis for all employees, considering (a) the needs of the Postal Service (b) the WELFARE OF THE INDIVIDUAL EMPLOYEE* (emphasis added).

Attendance control is nothing new, but this crack down will add misery to the disruptions of the work floor and home life caused by the massive realignments nationwide. Arbitration history has shown that the EMPLOYER has a right to expect acceptable levels of attendance. And that were such attendance is unsatisfactory, discharge is appropriate. Arbitrator Gamser long established that "excused sick leave cannot be considered a grant of immunity."

However, the same arbitrator declared that such a "broad and misleading" generalization may obscure the fundamental consideration that the true issue, under Article 16 (DISCIPLINE) is a fact question which may be determined ONLY after ALL THE RELEVANT FACTORS IN A CASE HAVE BEEN WEIGHED CAREFULLY. Some of those factors are:

- Length of employee's service, the type of job involved
- The origin and nature of the claimed illness/illnesses
- The types and frequency of all the employee's absences,
- The nature of the diagnosis
- The medical history and prognosis
- The type of documentation,
- The possible availability of other suitable USPS jobs or disability pension
- The employee's personal characteristics and similarly situation employees
- And many other factors all may be relevant to any given case.

The above factors were established in the 1970s but are still relevant today. The 2017 Joint Contract Interpretation Manual (JCIM) makes that very clear:

JCIM 10.5 - Bargaining unit employees apply for sick leave by submitting a PS Form 3971, either in advance of the absence or after returning to work. An employee with an UNEXPECTED need for sick leave must notify the appropriate supervisor or IVR as soon as possible of the illness or injury and the expected duration of the absence.

- ◆ **Upon returning to work, the employee must, WHILE ON THE CLOCK, sign and complete the required sections of PS Form 3971.** [members are cautioned to make sure the RMD generated 3971s are accurate. If not, the employee must get a new 3971 and revise it and ensure it is dated. If management refuses to change it file a grievance]
- ◆ **The conditions required for sick leave authorization are outlined in Section 513.32 of the ELM. When a request for sick leave is DISAPPROVED, the supervisor MUST check the "disapproved" block, STATE THE REASON(S) for disapproving the leave, and note any alternative type of leave granted on the PS Form 3971 .. If the leave is disapproved and the absence is nonetheless WARRANTED, the supervisor may approve, at the EMPLOYEE's option, annual leave or LWOP...**
- ◆ **If the employee does not have sufficient sick leave to cover an approved absences, at the option of the employee, the difference may be charged to annual leave. Likewise, if the employee does not have ANY sick leave or annual leave for an approved absence, the approved absence may be charged to LWOP.**
- ◆ **A copy of the PS Form 3971 is provided to the employee.** [If such a copy is not provided file a grievance]

JCIM Article 10 Sec 1 and 10.2

- **RMD/eRMS (or similar system of records) MAY NOT alter or change existing rules., regulations, the National Agreement, law, local memorandums of understanding, agreements, or grievance settlements and awards.** [Often, Local Unions have LMOUs that govern leave usage, submission of leave slips and AWOL. Those LMOUs are enforceable. Violations of LMOU provisions should be grieved. Local Unions need to educate their members of such provisions during the crack down.]

LEAVE POLICIES AND PROTECTIONS *continued for page 2*

- **RMD/eRMS enables local management to establish a SET number of absences used to ensure that employee attendance records are “reviewed” by their supervisor. HOWEVER:**
- **It is the supervisor’s review of the attendance records and the supervisor’s determination ON A CASE BY CASE bases, in light of ALL RELEVANT EVIDENCE and CIRCUMSTANCES, NOT ANY SET NUMBER OF ABSENCES that determine whether corrective action is warranted.** [There is no such thing as 3 absences in a month or quarter or any period will automatically result in discipline. Any such criteria MUST be grieved.]
- **Any rule setting a FIXED amount or percentage of sick leave usage after which an employee will be, as a matter of course, automatically disciplined is INCONSISTENT with the National Agreement and applicable handbooks and manuals.** [such a rule violates Article 3, 5, 10, 16, and 19 of the CBA and must be grieved each and every time.]
- **Any corrective action that results from the attendance reviews MUST be in accordance with Article 16 of the National Agreement.** [Management cannot issue discipline except for Just Cause. Management’s right to discipline is NOT absolute. There are SIX TESTS for Just Cause. These criteria are the BASIC consideration that the supervisor MUST use BEFORE initiating disciplinary action. Contact your Local Union to ensure the texts were applied to any discipline issued. If not file a grievance]
- **....once an employee provides the expected duration of his or her absence , such employee IS NOT required to call in AGAIN for the same absence. However, if the duration changes, the employee should notify management.** [any local rule or order by a supervisor to call in every day of an absence is likely harassment and should be grieved.]
- **Management may ask questions necessary to make FMLA determinations and to determine if an absence is due to an on-the-job injury or a condition which requires ELM 865 return-to-work procedures, BUT MAY NOT OTHERWISE REQUIRE employees to DESCRIBE THE NATURE OF THEIR ILLNESS/ INJURY.** [If you are asked to state the nature of your illness that is not FMLA or OJI you must file a grievance]
- **When an employee requests sick leave for absences of three (3) days OR LESS, medical documentation or other acceptable evidence of incapacity to work or need to care for a family member IS ONLY required when an employee is on Restricted Sick Leave (see ELM 513.39) OR when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.**
- **A supervisor’s determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interests of the Postal Service MUST be:**
 - ⇒ **Made on a CASE BY CASE basis**
 - ⇒ **Must not be arbitrary, capricious or unreasonable.** [Just because a supervisor demands medical documentation or other substantiation for the absence does not automatically require an employee to submit documentation. Verbal certification is acceptable (Art 10 Sec 5.D). There can not be an automatic requirement to have an employee submit documentation for a 3 day or less absence. It is based on a case by case situation. It can not be arbitrary (whim, impulse, because I said..) nor capricious (changing all the time, unpredictable...) or unreasonable (not fair, not sensible, not sound). If such a demand is made by the supervisor FILE a grievance, ask for reimbursement of medical bill, travel, parking etc. and to have the absence leave approved.]
- **For absences of MORE than three days, an employee MUST submit “medical documentation or other acceptable evidence in support of an application for sick leave (three days means three scheduled work days)**
- **The ELM contains NO PROHIBITION against the submission of a preprinted form, from authorized staff member, including a nurse., completing and signing the document under instruction of the attending physician or practitioner. Such documentation may be subject to verification on a CASE BY CASE basis. .The parties agree that a rubber stamp/facsimile signature on medical documentation IS ACCEPTABLE, subject to verification on a case by case basis.**



Leave Policy & Protections

Continued from page 3

- ◆ **Local attendance or leave INSTRUCTIONS, guidelines, or procedures directly related to wages, hours or working conditions of employees covered by the National Agreement MAY NOT be inconsistent or in conflict with Article 10 or the ELM Subchapter 510.** [Local management cannot just come up with their own rules on attendance. They can establish policy but that policy MUST NOT conflict with the CBA or ELM. Any rule that does must be grieved. Likewise, a supervisor can not give an order or instruction about attendance or leave that is in conflict with the CBA, or official postal leave regulations. Any such instruction must be grieved.]
- ◆ **The Postal Service is prohibited from interfering with, restraining, or denying the exercise of any rights provided by FMLA (Family Medical Leave Act). Employers cannot use the taking of FMLA leave as a NEGATIVE factor in employment actions such as....disciplinary actions. Likewise, FMLA covered absences may not be used towards ANY disciplinary actions. Employees cannot waive, nor may employers induce employees to waive, their rights under FMLA.**
- ◆ **Employers must post and keep posted Wage and Hour Publication 1420, Your Rights Under the Family Medical Leave Act of 1993.**
- ◆ **The employer is also required to notify the employee within TWO BUSINESS DAYS of learning the reason for the employee's need for leave, whether the absence is designated as FMLA leave, the type of leave charged (annual, sick, LWOP), and/or any additional documentation the employee needs to furnish.**
- ◆ **In the Postal Service, this notification notice is met by PROVIDING the employee a COPY of the completed PS Form 3971 accompanied by a copy of Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act.**
- ◆ **The employee may, BUT NEED NOT, ask for the absence to be covered by FMLA, rather it is the supervisor's responsibility to designate the leave based on information provided by the employee.**

Welcome Back Meeting

Some managers have a "come to me" meeting with employees who called in sick or did not report for work on time.

The supervisor pulls the time card, has a prepared PS 3971 for employee signature, issues the employee a "leave packet" with all kinds of postal policies on attendance. Supervisor reinforces attendance expectations, updates the PS 3972 (Analysis), determines the appropriate next action and documents the meeting on a tracking form for submission to the District.

Such a program may violate Article 10, 16.2, 19, ELM 510, JCIM 10 and CFR 29. A local developed policy may not vary from the nationally established Handbook/Manual Provisions. Additionally, locally developed forms must be approved pursuant to Section 325 of the ASM and may not conflict with nationally developed forms found in Handbooks and Manuals.

PSE Attendance Rules Vary

PSEs do not earn sick leave they accrue annual leave based on the number of hours in which they are in a pay status in each pay period.

General. *Except for emergencies, annual leave for PSE employees must be requested on Form 3971 and approved in advance by the appropriate supervisor.*

Emergencies and illness or injury. *An exception to the advance requirement is made for emergencies and illness or injury; however, in these situations, the PSE must notify appropriate authorities as soon as possible as to the emergency or illness/injury and the expected duration of the absence. As soon as possible, after return to duty PSE must submit Form 3971 and explain the reason for the emergency or illness/injury to the supervisor. Supervisors approve or disapprove the leave request. When a request is disapproved, the absence may be recorded as AWOL at the discretion of the supervisor as outlined in Section IV.B :*

- A. *Definition. Unscheduled absences are any absences from work that are not requested and approved in advance.*
- B. *PSES employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences, in addition, PSEs must provide acceptable evidence for absences when required. (Continued on page 5)*

Day In Court



Before a supervisor can impose discipline for attendance (or anything else for that matter) the contract (Article 16), the JCIM (Article 16) and postal regulations (EL 921) require the supervisor to conduct an Investigative Interview often called - "A Day In Court."

Too often these so called Investigations turn into witch trials where the supervisor has already determined guilt but is simply going through the motions of an investigation. A targeted employee is issued a Notice of Investigative Interview or "summoned" to an office with a warning that compliance is mandatory.

The supervisor opens the "session" with a warning that if questions are not answered by the employee action will be taken based on the record. Then the interrogation begins. Something like:

- ◆ Explain your failure to submit documents/follow instructions about being regular in attendance.
- ◆ Explain why you were absent on ___
- ◆ Explain your work schedule.
- ◆ Are you aware of the rules of the leave program?
- ◆ What are those rules? *
- ◆ What medical substantiations can you provide?
- ◆ Are you willing to write a statement?

In addition to the Investigative script above, the Attendance Control Manager may also use a "Day In Court Worksheet" that asks the supervisor pertinent questions such as: Date employee was informed of the investigation into the misconduct. Dates/times of absences/tardiest; what forms and rules were shown to the employee? ; What were the employee's responses to the supervisor's questions? What did the supervisor do to investigate the explanation for the absences? Why weren't the employee's explanation acceptable? Who is the review and concur manager? ** Who was the steward in the session? ***

* Employees targeted will likely be issued copies of the F21 Time & Attendance excerpts. Chap 510 ELM Leave Policies, Chap 6 ELM Code of Conduct. This is an apparent effort to ensure they "pass" the Just Cause test required in Article 16 of the JCIM. *Is there a rule? Is the rule consistently and equitably enforced?* Of course these rules should have been issued and discussed with the employee long before the Investigative Interview. An employee should have the supervisor explain all the rules, how they apply and when they apply! If they won't provide a full explanation file a grievance!

** In disciplinary suspensions/removal a supervisor must have their "proposed" discipline reviewed by a higher official and concurred with. That official CAN NOT also be the manager who meets on the grievance appeal at Step 2. That violates Art 16 Section 8. Cases involving reviewing and concurring officials who have subsequently acted as the Step 2 designate for the same discipline is a substantive violation of employee due process rights. Such situations must be grieved!

*** Under the CBA and postal rules (EL 921) each employee has a right to be represented by a union steward during an investigatory interview. If before or at any time during the interview an employee requests a steward, the steward **MUST** be provided or the interview is ended. The supervisor **MUST** tell the employee and steward the purpose AND subject of the meeting **BEFORE** the meeting begins. If the steward requests, adequate time must be given for employee/steward private talk. The supervisor **MUST** permit the steward to participate and ask questions, clarify employee answers, comment on questions, discuss favorable facts and advise the employees. If the EL 921 is violated a grievance should be filed.

PSE Attendance Rules *continued from page 4*

Application for annual leave is made in writing, in duplicate, on Form 3971. The supervisor is responsible for approving or disapproving the application for annual leave by signing the Form 3971, a copy of which is given to the PSE. If a supervisor does not approve and application for leave, the disapproved block on the 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the reasons for disapproval must be noted. AWOL determinations must be similarly noted.

PSEs may only be disciplined for just cause. This includes progressive discipline.

A.W.O.L. is serious

*Per regulations, an absence that is disapproved is charged as LWOP and may be administratively considered AWOL. An employee who is absent without permission or who fails to provide satisfactory evidence that an actual emergency existed will be placed on a nonpaid status for the period of such absence. The absence may be the basis of disciplinary action. **There is NO such thing as an automatic AWOL! Each absence is acted upon on an equitable case by case basis, considering not only the needs of the service but the welfare of the "individual" employee. GRIEVE EVERY AWOL!***

LAST CHANGE TO DANCE.....a word on Last Chance Agreements

Far too often employees, for various reasons, do not fight back when their leave is disapproved or they go through the gambit of discipline until they are facing removal from the postal service.

The reality of losing their postal career, compounded by their real life issues causing the attendance problems, makes them think they have to try to negotiate and accept a Last Chance Agreement. These LCAs are often laced with a lot more stringent stipulations that are not related to attendance. And management seeks to draw blood with restrictions that will result in immediate termination is not complied with.

Local's are cautioned stipulations that are not realistic or add to pressure the employee should be challenged and not readily agreed to. (.e.g., 12 months of perfect attendance, 2 years probation, No more than 3 absences (with each day out counting as a separate absence etc.). The goal is to assist the employee in the quest to be regular in attendance and get that LCA over and done with. The best guide is the ELM 510 with the consideration not just to the needs of the service but the welfare of the individual employee. ALSO, even discharge resulting from a LCA must be for JUST CAUSE. Although just cause may be narrowly defined in LCA cases management still has to prove the LCA was actually violated. Remember a LCA is a "contract" and all sides must abide by it.



OVERTIME TO BE AUTOMATED

In addition to all the disruptions of the clerk craft, USPS is deploying an OT Administrator program designed, they say, to assist with the assignment of OT and administer the OT Desired List.

Involved in the computerized scheduling of OT will now be the supervisor, the installation head, District OT Administrator and Labor Relations. The system is suppose to determine how local unions have set up their Overtime Desired Lists and then match needed employees to those sections.

" In reality the reduction of work hours and controlling overtime is the goal of management," said Regional Coordinator Omar Gonzalez. Every Automated Impact Report issued claiming to justify excessing declares an intent to reduce Overtime. However, after employees are excessed/reassigned all OT hour usage can be used to force management to return (retreat) the employee.

The OT Admin System has built in by-pass reasons and also identifies employees who decline to work OT. "Locals are forewarned to be extra vigilant to enforce Art 8 of the CBA and their LMOUs", warned Coordinator Gonzalez.

The OT Admin System also has a "Forced OT-Non OTDL" module that rotates lists, moves next person up by juniority and gets ready for the next time forced OT is required. The system edits scheduling , interfaces with Labor Relations and tracks OT grievances.