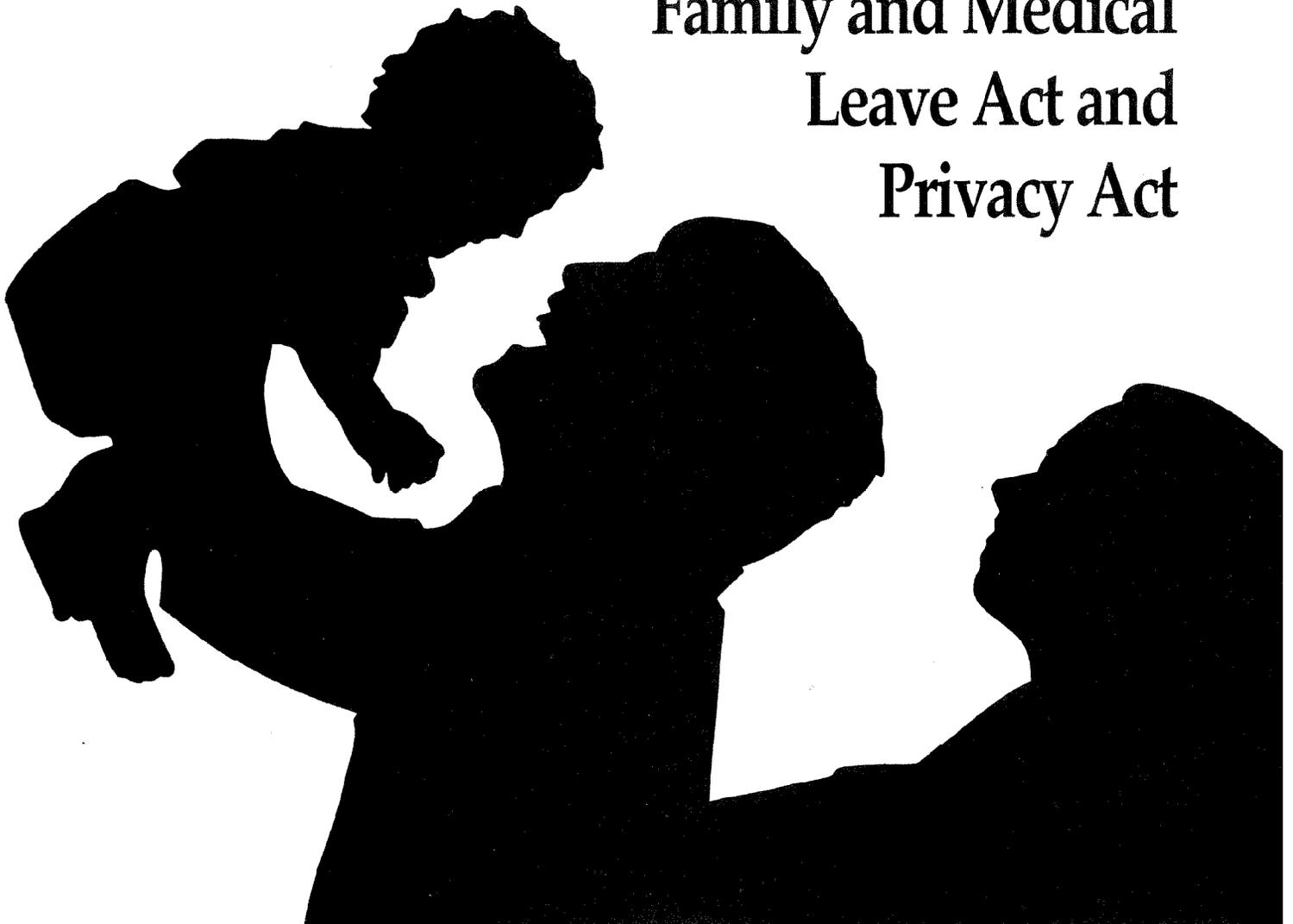




How to Apply Your Rights Under the Family and Medical Leave Act and Privacy Act



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Introduction: Applying Your Rights/Use of Forms

All of the information in this booklet is for you to use in applying your rights under the Privacy Act and the Family and Medical Leave Act. Also enclosed is the exchange of correspondence between the APWU and postal management on the application of these laws. In addition, I have included copies of APWU forms that may be used when requesting Family and Medical Leave or other absences not covered by FMLA but which require documentation. These forms were reviewed by postal management at the headquarters level, and I have included management's written acknowledgement that they meet the requirements of FMLA and are acceptable documentation.

Employees are cautioned that the Family and Medical Leave Act is intended to assist employees when they or a family member have a serious health condition. This right should not be abused.

Absences that do not qualify as "serious health conditions" are not covered by the Family and Medical Leave Act. Absences that do qualify under the Family and Medical Leave Act must be approved by postal management and cannot be used as a basis to take any action against an employee.

If you are disciplined (or were disciplined after January 1994) for an absence that qualifies as a serious health condition and you made management aware at the time of your absence that it was for a serious health condition (yours or your immediate family) as defined in the Act, the discipline is in violation of the law. You should consult with your local union officials for an investigation of the facts and possible appeal, as explained in the box, right.

When management questions an employee's medical certification, the law permits them to require a second medical examination by a physician who is not normally retained by the Postal Service. If a second medical opinion is not requested, the certification of the employee's physician must be accepted. The employee's physician cannot be contacted by postal management; however, the postal physician may contact the employee's physician for clarification, but only with the approval of the employee.

When an employee's physician completes the required form, the employee should inquire of the physician whether or not the information provided constitutes a "restricted medical record." If the physician informs the employee that the information provided is restricted, the doctor should note "restricted" on the form. Upon return to duty, the employee should inform their supervisor that the information is restricted and that it will be transmitted in person or mailed "by the employee" directly to the custodian of medical records (postal physician). If the supervisor demands receipt of the documents, the employee should comply and notify their local union representative.

William Burrus
Executive Vice President

Resolution of FMLA Disputes

Following is the process that will be implemented by the APWU in resolving disputes over employee requests for Family and Medical Leave, and for all violations of the Privacy Act. **The procedures, including retaining the services of an attorney to enforce employee rights, will be limited to APWU members.**

Nonmembers within the APWU bargaining unit will be represented in the grievance procedure or may exercise their FMLA rights to file complaints with the Department of Labor; however, the union will not retain legal counsel on their behalf. Grievances of nonmembers over violations of the Privacy Act will be pursued by the union through the contractual grievance procedure.

Excerpts From the Employee and Labor Relations Manual and Postal Bulletin 21847, 8-5-93

515.5 Documentation

515.51 General. An employee must provide a Form 3971, *Request for or Notification of Absence*, together with documentation supporting the request, at least 30 days before the absence if the need for the leave is foreseeable. If 30 days notice is not practicable, notice must be given as soon as practicable. Ordinarily at least verbal notification should be given within 1 or 2 business days of when the need for leave becomes known to the employee. The employee will be provided a notice detailing the specific expectations and obligations and consequences of a failure to meet these obligations. Additional documentation may be requested, which must be provided within 15 days or as

soon as practical under the particular facts and circumstances. During an absence, the employee must keep his or her supervisor informed of intentions to return to work and of status changes which could affect his or her ability to return to work. Failure to provide documentation can result in the denial of family and medical leave under this section.

515.52 New Son or Daughter. An employee requesting time off because of the birth of the employee's son or daughter and to care for the son or daughter, or because of the placement of a son or daughter with the employee for adoption or foster care, **may be required to provide the birth or placement date.** [emphasis added]

515.53 Care of Others for Medical Reasons. An ➡

APWU to USPS: 'Change Policy on Restricted Information'

APWU

American Postal Workers Union, AFL-CIO

February 2, 1995

1300 L Street, NW, Washington, DC 20005

Dear Tony:

In compliance with the Privacy Act the Postal Service has published in the Federal Register a listing of personnel who are authorized access to restricted medical information. Pursuant to Section 221.3 "Files Maintenance", "All correspondence and other records containing restricted medical information must be marked RESTRICTED-MEDICAL (rather than confidential) and filed in locked cabinets. Keys must be kept by medical personnel only. Only medical personnel may have access to these files."

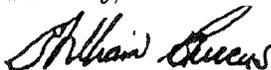
Due to the reduction of medical personnel in postal facilities there are few postal officials authorized to access restricted medical records. Postal supervisors and Compensation Specialists routinely access and demand for their use and evaluation restricted medical information, including "physician diagnosis and prognosis" and "employee medical history". Compensation Specialists and designated supervisors are not "medical personnel" as defined by the Privacy Act and USPS official designation and are not authorized to have access to the information contained in such restricted medical information. In addition, the published regulations require that such restricted medical information be maintained only in the "office of the contract physician" where on-site postal medical personnel are not available.

It is the position of the Union that supervisors, non-certified managers and specialists may not review or maintain medical information in any form that includes prognosis and/or diagnosis, and may not insist that such information be provided to them as a condition for approved absence from work. If such information is required as a condition for approval for absence from work, to modify job assignment or request a reduced schedule, the restricted medical information must be transmitted directly from the employee or physician to the postal official who is certified for access to restricted information.

This is to determine the USPS' interpretation of the right of supervisors, Compensation Specialists and other non-designated postal officials to receive, access, review and maintain restricted medical records and information of postal employees.

Please respond at your earliest opportunity that the union can evaluate its response as appropriate.

Sincerely,



William Burrus
Executive Vice President

Mr. Anthony Vegliante, Manager
Grievance and Arbitration Division, USPS

ELM and PB Excerpts, Continued

employee requesting time off to care for a spouse, parent, son or daughter who has a serious health condition may be required to provide documentation from the health care provider stating the date the serious health condition began, probable duration of the illness, appropriate medical facts, and when the employee will be needed to provide such care or psychological support. When the request is to care for someone other than a biological parent or child, appropriate explanation of the relationship may be required.

515.54 Additional Medical Opinions. A second medical opinion by a health care provider who is designated and paid for by the Postal Service may be required. In case of a difference between the original and second opinion, a third

opinion by a health care provider may be required. The third health care provider is jointly designated or approved by management and the employee, and the third opinion is final. The Postal Service pays the health care provider for the third opinion. A health care provider selected for the second or third opinion may not be employed by the Postal Service on a regular basis. Recertifications of a medical condition may also be required during absences.

515.55 Employee Incapacitation. An employee requesting time off under this section because of his or her own incapacitation must satisfy the documentation requirements for sick leave in 513.31 through 513.38 or for leave without pay in 514.4. If absence exceeds 21 calendar days, evidence

USPS to APWU: 'You're Right! We're Changing Our Policy'



Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4138

Dear Bill:

This letter is in further response to your correspondence of February 7 concerning the nature of medical documentation needed by supervisors to approve leave.

The enclosed memorandum from Dr. David H. Reid, III, National Medical Director for the Postal Service, serves to distinguish between a diagnosis or medical prognosis, and medical facts, as they relate to Section 513.36 of the Employee and Labor Relations Manual (ELM). It is intended to clear up any confusion which may exist in the field.

As noted by Dr. Reid, medical information which contains a diagnosis and a medical prognosis constitutes a restricted medical record as defined in Section 214.3 of Handbook EL-806.

Dr. Reid observes that restricted medical records are not necessary to support a request for approved leave when required by Section 513.36 of the (ELM): "A health care provider can provide an explanation of medical facts sufficient to indicate that an employee is, or will be, incapacitated for duty without giving a specific diagnosis or medical prognosis."

It is additionally the Postal Service's position that this application is consistent with the documentation requirements attendant to a request for leave under the Family and Medical Leave Act (FMLA).

If you have any questions on the foregoing, please contact Charles Baker of my staff at (202) 268-3842.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

ELM and PB Excerpts, Continued

of ability to return to work with or without limitations must be submitted. If additional medical opinions are required, they are administered as described in 515.54.

512.4 Authorizing Annual Leave 512.41 Application.

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

512.412 *Emergencies.* An exception to the advance approval requirement is made for emergencies; however, in these situations, the employee must notify appropriate postal authorities as soon as possible as to the emergency

and the expected duration of the absence. As soon as possible after return to duty, employees must submit Form 3971 and explain the reason for the emergency to their supervisor. Supervisors approve or disapprove the leave request. When the request is disapproved, the absence may be recorded as LWOP or AWOL at the discretion of the supervisor as outlined in 512.422.

513.36 Documentation Requirements.

513.361 *3 Days or Less.* For periods of absence of 3 days or less, supervisors may accept the employees' statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work is required ■

USPS to Field: Comply With New 'Restricted Information' Policy



MANAGERS, HUMAN RESOURCES (ALL AREAS)
MANAGERS, HUMAN RESOURCES (ALL DISTRICTS)
SENIOR AREA MEDICAL DIRECTORS

SUBJECT: Documentation Requirements

It has recently come to my attention that there is some confusion in the field concerning the substance of medical information needed by a supervisor to approve leave pursuant to Section 513.36 of the Employee and Labor Relations Manual. The following restates the Postal Service's position.

When employees are required to submit medical documentation to support a request for approved leave, such documentation should be furnished by the employee's attending physician or other attending practitioner, with an explanation of the nature of the employee's illness or injury sufficient to indicate that the employee was or will be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation.

In order to return to duty when medical documentation is required, an employee must submit to the supervisor information from the appropriate medical source which includes:

1. Evidence of incapacitation for the period of absence.
2. Evidence of the ability to return to duty with or without limitations.

Medical information which includes a diagnosis and a medical prognosis is not necessary to approve leave. A health care provider can provide an explanation of medical facts sufficient to indicate that an employee is, or will be, incapacitated for duty without giving a specific diagnosis or medical prognosis. If medical documentation is received by an employee's supervisor that provides a diagnosis and a medical prognosis, it must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806.

In order to facilitate operational scheduling and planning, supervisors may request medical information relative to the duration of an absence, future absences, or an employee's future ability to perform the full duties of a position or duty assignment. Such information may be given to a supervisor by an employee or health care provider without divulging restricted medical information.

A handwritten signature in black ink, appearing to read "David H. Reid, III".

David H. Reid, III MD
National Medical Director
Office of Employee Health and Services

ELM and PB Excerpts, Continued

only when the employee is on restricted sick leave (see 513.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

513.302 Over 3 Days. For absences in excess of 3 days, employees are required to submit documentation or other acceptable evidence of incapacity for work.

513.363 Extended Periods. Employees who are on sick leave for extended periods are required to submit at appropriate intervals, *but not more frequently than once per pay period*, satisfactory evidence of continued incapacity for work unless some responsible supervisor has knowledge of the employee's continuing incapacity for work.

513.364 Medical Documentation or Other Acceptable

Evidence. When employees are required to submit medical documentation pursuant to these regulations, such documentation should be furnished by the employee's attending physician or other attending practitioner. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.

USPS Approves Use of APWU Forms



AREA MANAGERS, HUMAN RESOURCES

SUBJECT: Documentation for FMLA Request

The attached APWU Forms 1 through 5, dated June 26, 1995 provide supporting documentation for leave requests covered by the Family and Medical Leave Act (FMLA). These forms have been reviewed by the appropriate Headquarters functional areas and are acceptable for usage by managers to approve or disapprove FML leave requests.

The Postal Service does not require a specific format for FML documentation. Information provided by the employee is acceptable as long as it is in compliance with Publication 71, Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act IV, Section IV.

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

Note: APWU Forms #1 through #5 can be found on pages 11-19 of this booklet. Photocopies of them can be used (copy sides 1 and 2 of #1-#4) or copies can be obtained from APWU stewards and/or officers.

Excerpts From Privacy Act, Chapter 5, Administrative Procedure

§ 552a. Records maintained on individuals

(a) Definitions.—For purposes of this section—

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, **medical history**, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph; [emphasis added]

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13 . . .

(i)(1) Criminal penalties.—Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) **Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000.** [emphasis added]

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

(j) General exemptions.—The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) . . .

Note: The USPS is required to provide the information on this form to every employee who requests FMLA leave.



Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Policies

I. Qualifying Conditions

The Postal Service family and medical leave policies provide that employees meeting the eligibility requirements must be allowed to take time off for up to 12 workweeks in a leave year for the following conditions:

1. Because of the birth of a son or daughter (including prenatal care), or to care for such son or daughter. Entitlement for this condition expires 1 year after the birth.
2. Because of the placement of a son or daughter with you for adoption or foster care. Entitlement for this condition expires 1 year after the placement.
3. In order to care for your spouse, son, daughter, or parent who has a serious health condition. Also, in order to care for those who have a serious health condition and who stand in the position of a son or daughter to you or who stood in the position of a parent to you when you were a child.
4. Because of a serious health condition that makes you unable to perform the functions of your position.

II. Eligibility

To be covered by these policies, you must have been employed by the Postal Service for a total of at least 1 year and must have worked a minimum of 1,250 hours during the 12-month period before the date your absence begins.

III. Type of Leave

Time off taken under these policies is counted toward the 12 workweeks allowed by the Family and Medical Leave Act; however, this is not a separate type of leave, but is charged to annual leave, sick leave, and/or LWOP in accordance with current leave policies. Note that sick leave is available only for your own health condition and for exposure to, or caring for, a family member with a contagious disease ruled as requiring isolation, quarantine, or restriction of movement of the patient for a particular period by the health authorities having jurisdiction. Sick leave cannot be used to care for others except under these conditions.

IV. Documentation

Supporting documentation is required for your leave request to receive final approval. Documentation requirements may be waived in specific cases by your supervisor.

- For condition (1) or (2), you must provide the birth or placement date.

- For condition (3), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, and appropriate medical facts. You must also provide documentation of when you are needed to provide the care or psychological support.
- For condition (4), you must provide documentation from the health care provider stating the date the serious health condition began, probable duration of the condition, and appropriate medical facts.
- If the time off requested is to care for someone other than a biological parent or child, appropriate explanation of the relationship may be required.

Supporting information that is not provided at the time the leave is requested must be provided within 15 days, unless this is not practical under the circumstances. If the Postal Service questions the adequacy of a medical certification, a second or third opinion may be required and the Postal Service will pay for these opinions.

If the absence is due to your own health condition and exceeds 21 calendar days, you must submit evidence of your ability to return to work before you will be allowed to return. Also, during your absence, you must keep your supervisor informed of your intentions to return to work and status changes that could affect your ability to return. Failure to provide information can result in the denial of family and medical leave under these policies.

V. Benefits

Health Insurance – To continue your health insurance during your absence, you must continue to pay the “employee portion” of the premiums. This continues to be withheld from your salary while you are in a pay status. If the salary for a pay period does not cover the full employee portion, you are required to make the payment. If this occurs, you will be advised of the procedures for payment.

Life Insurance – Your basic life insurance is free and continues. If you are in a LWOP status for more than a year, this coverage is discontinued; in this case, you have the option to convert to an individual policy. If you have optional life insurance coverage, it continues. Your premium payments continue to be withheld from your pay check. If you are in a nonpay status, your optional insurance coverage continues without cost for up to 12 months. Thereafter you can convert this coverage to an individual policy.

Flexible Spending Accounts (FSAs) – If you participate in the FSA program, see your employee brochure for the terms and conditions of continuing coverage during leave without pay.

VI. Return to Duty

At the end of your leave, you will be returned to the same position you held when the absence began (or a position equivalent to it), provided you are able to perform the functions of the position and would have held that position at the time you returned if you had not taken the time off.

Note: The USPS is required to provide the information on this form to every employee who requests FMLA leave.

**Employer Response to Employee
Request for Family or Medical Leave**
(Optional use form - see 29 CFR §825.301(c))

**U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division**

(Family and Medical Leave Act of 1993)

(Date)

TO : _____
(Employee's name)

FROM: _____
(Name of appropriate employer representative)

SUBJECT: Request for Family/Medical Leave

On _____, you notified us of your need to take family/medical leave due to:
(date)

- the birth of your child, or the placement of a child with you for adoption or foster care; or
- a serious health condition that makes you unable to perform the essential functions of your job; or
- a serious health condition affecting your spouse, child, parent, for which you are needed to provide care.

You notified us that you need this leave beginning on _____ and that you expect leave to continue until on or about _____.
(date)

Except as explained below, you have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FMLA leave for a reason other than: (1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.

This is to inform you that: *(check appropriate boxes; explain where indicated)*

1. You are eligible not eligible for leave under the FMLA.
2. The requested leave will will not be counted against your annual FMLA leave entitlement.
3. You will will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by _____ *(insert date)* (must be at least 15 days after you are notified of this requirement) or we may delay the commencement of your leave until the certification is submitted.

(Continued)

Form WH-381
December 1994

4. You may elect to substitute accrued paid leave for unpaid FMLA leave. We will will not require that you substitute accrued paid leave for unpaid FMLA leave. If paid leave will be used the following conditions will apply: *(Explain)*
- 5(a). If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FMLA leave. Arrangements for payment have been discussed with you and it is agreed that you will make premium payments as follows: *(Set forth dates, e.g., the 10th of each month, or pay periods, etc. that specifically cover the agreement with the employee.)*
- (b). You have a minimum 30-day *(or, indicate longer period, if applicable)* grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work. We will will not pay your share of health insurance premiums while you are on leave.
- (c). We will will not do the same with other benefits (e.g., life insurance, disability insurance, etc.) while you are on FMLA leave. If we do pay your premiums for other benefits, when you return from leave you will will not be expected to reimburse us for the payments made on your behalf.
6. You will will not be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.
- 7(a). You are are not a "key employee" as described in §825.218 of the FMLA regulations. If you are a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us.
- (b). We have have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us. *(Explain (a) and/or (b) below. See §825.219 of the FMLA regulations.)*
8. While on leave, you will will not be required to furnish us with periodic reports every ____ *(indicate interval of periodic reports, as appropriate for the particular leave situation)* of your status and intent to return to work *(see §825.309 of the FMLA regulations)*. If the circumstances of your leave change and you are able to return to work earlier than the date indicated on the reverse side of this form, you will will not be required to notify us at least two work days prior to the date you intend to report for work.
9. You will will not be required to furnish recertification relating to a serious health condition. *(Explain below, if necessary, including the interval between certifications as prescribed in §825.308 of the FMLA regulations.)*

Form WH-381
December 1994

EMPLOYEE CERTIFICATION OF OWN SERIOUS ILLNESS—FMLA

This form is to be used by employee when requesting FMLA and medical documentation is not required pursuant to Sections 513.36 and 515.5 of the ELM.

Employee's name _____

Description of serious health condition *(On the back of this form is a description of what is meant by a "serious health condition" under FMLA. Does your condition qualify under any of the categories described? If so, please check the applicable category.)*

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

Date condition commenced _____

Probable duration of condition _____

The employee must provide a completed Form PS 3971 for each pay period, noting type of leave requested.

Employee's Signature _____

Date _____

FMLA DESCRIPTION OF SERIOUS HEALTH CONDITION¹

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment² in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

A period of incapacity of *more than three consecutive calendar days* (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- (a) *Treatment two or more times* by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (b) *Treatment* by a health care provider on *at least one occasion* which results in a *regimen of continuing treatment*³ under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to *pregnancy*, or for *prenatal care*.

4. Chronic Conditions Requiring Treatments

A *chronic condition* which;

- (a) Requires *periodic visits* for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (b) Continues over an *extended period of time* (including recurring episodes of a *single underlying condition*); and
- (c) May cause *episodic* rather than a continuing period of incapacity⁴ (e.g., *asthma, diabetes, epilepsy*).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity⁴ which is *permanent or long term* due to a condition for which treatment may not be effective. The employee or family member must be *under the continuing supervision of, but need not be receiving active treatment by, a health care provider*. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of *absence to receive multiple treatments* (including any period of recovery therefrom) by a health care provider or by a *provider of health care services under orders of, or on referral by, a health care provider*, either for *restorative surgery* after an accident or other injury, or for a condition that *would likely result in a period of incapacity⁴ of more than three consecutive calendar days in the absence of medical intervention or treatment*, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

² *Treatment* includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

³ A *regimen of continuing treatment* includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

⁴ "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

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 _____

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.)

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

Without giving a specific diagnosis or prognosis, briefly note how the medical facts meet the criteria of the category checked above. _____

Date condition commenced: _____
Probable duration of condition: _____
Probable duration of the present incapacity (if different): _____

Will the employee be required to be off from work intermittently or work on a reduced schedule as a result of this condition and /or treatments? _____ Note the probable time and duration. _____

If the condition is chronic (#4) or pregnancy (#3), note if the employee is presently incapacitated and the likely duration and frequency of episodes of incapacity.

If additional or continuing treatments are required for the condition, provide the nature and regimen of the treatments, an estimate of the probable number of treatments, the length of absence required by the treatments, and the actual or estimated dates of the treatments, if known.

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

Health Care Provider's Signature _____

Date _____

Address _____

FMLA DESCRIPTION OF SERIOUS HEALTH CONDITION¹

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. Hospital Care

Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment² in connection with or consequent to such inpatient care.

2. Absence Plus Treatment

A period of incapacity of *more than three consecutive calendar days* (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- (a) *Treatment two or more times* by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
- (b) *Treatment by a health care provider on at least one occasion* which results in a *regimen* of continuing *treatment*³ under the supervision of the health care provider.

3. Pregnancy

Any period of incapacity due to *pregnancy*, or for *prenatal care*.

4. Chronic Conditions Requiring Treatments

A *chronic condition* which;

- (a) Requires *periodic visits* for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
- (b) Continues over an *extended period of time* (including recurring episodes of a *single underlying condition*); and
- (c) May cause *episodic* rather than a continuing period of incapacity⁴ (e.g., *asthma, diabetes, epilepsy*).

5. Permanent/Long-term Conditions Requiring Supervision

A period of incapacity⁴ which is *permanent or long term* due to a condition for which treatment may not be effective. The employee or family member must be *under the continuing supervision of, but need not be receiving active treatment by, a health care provider*. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. Multiple Treatments (Non-Chronic Conditions)

Any period of *absence to receive multiple treatments* (including any period of recovery therefrom) by a health care provider or by a *provider of health care services under orders of, or on referral by, a health care provider*, either for *restorative surgery* after an accident or other injury, or for a condition that *would likely result in a period of incapacity⁴ of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis)*.

¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMLA leave.

² *Treatment* includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

³ A *regimen of continuing treatment* includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

⁴ "Incapacity," for purposes of FMLA, is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom.

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

Employee's name _____

Patient's name _____

Relationship to employee _____

____ Spouse ____ Parent ____ Child

(under age 18 or 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.)*

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

Without giving a specific diagnosis or prognosis, briefly note how the medical facts meet the criteria of the category checked above. _____

Date condition commenced: _____

Probable duration of condition: _____

Probable duration of the present incapacity (if different): _____

Will the employee be required to be off from work intermittently or work on a reduced schedule as a result of the patient's condition and /or treatments? _____ **Note the probable time and duration.** _____

If the condition is chronic (#4) or pregnancy (#3), note if the patient is presently incapacitated (inability to perform regular daily activities) and the likely duration and frequency of episodes of incapacity. _____

If additional or continuing treatments are required for the condition, provide the nature and regimen of the treatments, an estimate of the probable number of treatments, the length of absence required by the treatments, and the actual or estimated dates of the treatments, if known. _____

Does the patient require assistance for basic medical, hygiene, nutritional needs, safety, or transportation? _____ **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.** _____

Health Care Provider's Signature _____

Date _____

Address _____

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NOTICE OF NEED FOR INTERMITTENT LEAVE OR FOR A REDUCED WORK SCHEDULE—FMLA

The Employer must approve absences needed for intermittent leave or a reduced work schedule to care for a sick immediate family member or for an employee's own serious health condition that has been properly certified by a health care provider when required pursuant to 513.36 and 515.5 of ELM. Intermittent or reduced schedule for birth or placement of a child may be scheduled only if the Employer agrees.

If the need is for a seriously ill family member: Attach Medical Documentation APWU Form 3, when required pursuant to Section 513.36 and 515.5 of the ELM. **If the need is for the employee's own serious health condition:** Attach Medical Documentation APWU Form 3.

Name

Relationship to employee

Required reduced or intermittent schedule, including duration: _____

The employee must provide a completed Form PS 3971 for each pay period noting type of leave requested.

Employee's Signature

Date

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- (b) *Treatment* by a health care provider on *at least one occasion* which results in a *regimen of continuing treatment*³ under the supervision of the health care provider.

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¹ Here and elsewhere on this form, the information sought relates only to the condition for which the employee is taking FMI A leave.

² *Treatment* includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

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DESIRED OR NEEDED ABSENCES FOR BIRTH OR PLACEMENT OF SON OR DAUGHTER UNDER FMLA

Note: Entitlement to Family and Medical Leave because of (1) birth, (2) placement for adoption or (3) placement for foster care of a son or daughter expires 12 months after the birth, placement or adoption. Employees may use up to 12 weeks each postal leave year as long as the leave is continuous and the absence is within the first year of the birth, placement or adoption.

An absence due to care for a new son or daughter or the placement of a son or daughter is not a serious medical condition and does not require certification by a health care provider, but it may require documentation.* Intermittent leave or a reduced schedule for this purpose requires approval by the employer. FMLA leave for birth, placement or adoption must be continuous unless an intermittent or reduced schedule is approved by the employer.

Employee's name

Date of birth, placement or foster care of this son or daughter*

Schedule desired or needed (employee is entitled up to 12 weeks)

From: _____ To: _____

The employee must provide a completed Form PS 3971 for each pay period, noting type of leave requested.

* Documentation may be required of the father if unmarried or not living with spouse, or of employee for adoption or placement under foster care.

Employee's Signature

Date



1300 L Street, NW, Washington, DC 20005



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

July 1995

Dear APWU Member:

Among your many rights APWU fights to uphold are the right to take leave under the Family and Medical Leave Act (FMLA) and the protection of the confidentiality of your medical records by the Privacy Act.

After lengthy negotiations with the Postal Service, Executive Vice President William Burrus has won management's agreement on important areas of interpretation concerning your rights, including:

- o the forms management will accept from employees requesting FMLA leave,
- o the specific kind of medical information that may be required to justify a medical absence, and
- o the precise legal constraints on access to restricted medical records, strictly limiting third parties' access to your restricted personal medical information.

I want to commend Brother Burrus for his persistence and determination in winning postal management's agreement in these important areas. Please review the forms and other information he has assembled for you in this booklet. Keep the booklet handy and use it to help you exercise your FMLA and Privacy Act rights to the fullest extent.

Yours in union solidarity,

Moe Biller
President

MB:kad
opeiu #2
afl-cio

