

RMD GUIDE FOR MEMBERS

5

Steward Edition



RESOURCE MANAGEMENT DATABASE
TOOL OR TORMENT?

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MEMBERS' GUIDE TO RMD by Omar M. Gonzalez



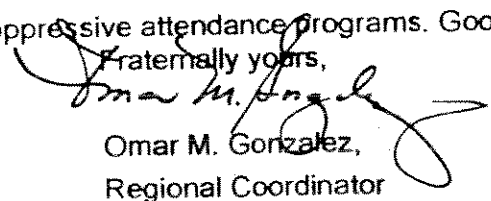
Time and Attendance control is nothing new in the Postal Service. Ever since the Employee and Labor Relations Manual (ELM) did away with the old Chapter 7 of the Postal Manual management has tried many different programs affecting your ability to use sick and annual leave.

Management claims that on any given day 7% of the workforce calls in sick for unscheduled leave. The bosses have implemented a computerized time and attendance program Resource Management Database (RMD) they claim will track and manage attendance. By manage they mean reduce costs by detecting absence abuse identifying attendance problems. Your headache begins when abusive Attendance Control Supervisors make RMD worse for an already ill employee.

This managerial abuse compounds the problems of the ill or injured employee. While the Union recognizes the expectation of employees to be regular in attendance we have also negotiated sick and annual leave provisions in the contract to ensure your protection should you ever need leave.

This booklet is a very basic tool you may use to defend yourself against RMD abuse. It is the companion to "Time & Attendance RMD Guidelines For Shop Stewards". * It is intended for you to understand the attendance system and your basic rights. When applying your rights I strongly recommend you contact your steward for application of your Local leave program and Local Memorandum of Understanding (LMOU).

By knowing your rights you will assist your Union fight abusive and oppressive attendance programs. Good luck and thank you for your support.

Fraternally yours,

Omar M. Gonzalez,
Regional Coordinator

* THE RMD STEWARD'S GUIDE CAN BE FOUND IN THE DISC ISSUED BY THE INDUSTRIAL RELATIONS DEPARTMENT AS PART OF A REVIEW OF SEVERAL LOCAL RESPONSES TO RMD AND IN THE DISC ISSUED BY PRES. BURRUS. ENTITLED- STEWARD TRAINING

TIME AND TIME AGAIN

Management's attempts to control attendance is an old and tried effort and in fact nothing new to most postal workers. Since 1978 when management introduced the ELM Chapter 510 on Leave, which our Union challenged in court, the bosses have been trying different programs to crack down on workers who are absent.



"Supervisor's Guide To Attendance Improvement" was another effort to "guide" your supervisor on how to crack the whip and force you to give up your contractual leave rights and privileges.

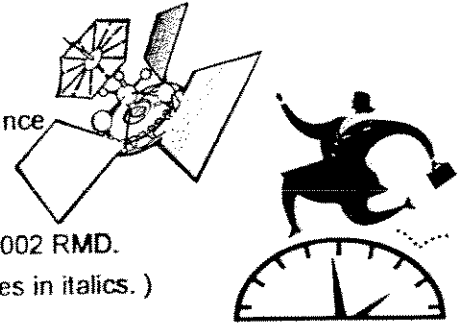
In 1983 management issued instructions EL-510-83-9 yet another effort on attendance control. This program was used to identify potential and continuous attendance problems using Absence Information System (AIMS) for PSDS.

In September 2000 USPS initiated IRM (Integrated Resource Management) an effort to upgrade and computerize all their human resource and operations methods. RMD is a by product of IRM. Recently management upgraded RMD and is poised to fully implement eRMS (Enterprise Resource Management) to identify attendance problems.

BACK TO THE FUTURE

As I previously stated- attendance control is nothing new. In effect RMD is An upgraded intergraded computerized version of a nearly 20 year old Attendance Control policy which has not yet been revoked.

The following is a comparative of the 1983 Attendance Control policy and the 2002 RMD. You will see how much they are similar. (I have highlighted significant changes in italics.)



1983 ATTENDANCE CONTROL

PURPOSE- provides guidelines for analyzing employee absences to identify potential and continuous attendance problems and introduces Absence Information Management Systems (AIMS).

RESPONSIBILITY - Installation Head (Postmaster) establishes central monitoring point and assigns manager to review absence data and ensure proper action is taken by supervisors to correct employee deficiencies.

ATTENDANCE FILES - All 3971s, 3972s and documents supporting leave request required by ELM 513 located in convenient location available to attendance control managers and supervisors. Log kept of any data withdrawn. Alpha files maintained by groups or categories of employees maintained for calendar year, retained for 2 years except when used for discipline.

ABSENCE CONTROL - Each supervisor responsible for controlling absence whether scheduled or unscheduled.

RECORDING ABSENCES- PS 3971 modified to document scheduled vs. unscheduled. Supervisor checks appropriate box and approves or disapproves the leave request.

REVIEWS- Selected manager reviews attendance control performance of supervisors. Installation head reviews AIMS reports determines problem areas. Guidance given to supervisors but not to indicate any disciplinary action. Employees with valid reasons exempt unless excessive. Completed PS 3972 reviewed for appropriate action.

CODES/REPORTS - Various absence codes are developed for easy reference. Some absences are not separate categories but are identified for analysis only (e.g., AWOL, AOT etc). Reports issued showing leave usage year to date, same period last year, identifies negative impact on operations. Local management can waive review process or lessen frequency of review.

RMD ATTENDANCE CONTROL

PURPOSE- tracks attendance, identifies problems and evaluates attendance trends and incorporates Time & Attendance Collection System (TACS).

RESPONSIBILITY- Installation Head establishes a central Attendance Control Office (ACO) and designates Attendance Control Supervisors (ACS), *FMLA Coordinator and RMD Site Coordinator*. ACS takes all call ins, *FMLA Coordinator oversees USPS implementation of the law*, *Site Coordinator has overall responsibility for Attendance Control*.

ATTENDANCE FILES - All attendance files are computerized, *RMD Web page gives policy application, keeps automatic logs and cross reference reports, maintains and displays all employee data including phone numbers, address, schedule, seniority date, leave used in pay period, monthly, quarterly, and yearly including FMLA*.

ABSENCE CONTROL - ACS takes call making inquiries, demanding documentation, logging absence and issuing data to supervisor. *FMLA Coordinator makes decisions on FMLA*. Supervisor is issued Take Action Notices. Supervisor responsible for approving or disapproving leave.

RECORDING ABSENCES- Computer generated PS 3971 modified to record *FMLA info, reason for absence, denial of FMLA, estimated eligibility dates*. ACS generates form. Supervisor suppose to approve or disapprove. Computer prints reason for denial.

CODES/REPORTS - 56 basic codes plus multiple acronyms. Attendance Review Notification and Take Action Message generated by computer, Reconciliation Reports compares leave record with payroll record, displays Virtual Computer report of all employee activity, provides attendance analysis and administrative (Discipline) history. May be set to local parameters but cannot override business thresholds.

Management Instruction



Date issued 10-1-83	Filing Number EL-510-83-9
Effective Date 10-1-83	Obsolescence N/A
Organizing Organization & OCC Code Employee & Labor Relations Group LR 100	
Signature <i>Joseph F. Morris</i>	

Title ATTENDANCE CONTROL

I. Purpose

To provide management with guidelines for analyzing employee absences to identify potential and continuous attendance problems; and to provide information concerning the identification and monitoring of absences and to introduce the Absence Information Management System (AIMS) for PSDS offices.

Absence, Form 3972, Absence Analysis, and related documents submitted in support of a leave request, such as medical documentation required by Employee and Labor Relations Manual (ELM) 513.36. (Also see EL-806, Section 214, Health and Medical Services.)

II. Responsibility

A. Installation heads are responsible for establishing a central monitoring point to review selected absence data and ensure that proper action is taken by supervisors to correct employee deficiencies relative to attendance. In facilities with a Director or Manager, Employee and Labor Relations/Support, this responsibility will be assigned to that person. In other facilities, the installation head may designate a manager to be responsible for administering this activity or assumes this responsibility personally.

B. Each supervisor continues to have direct responsibility for ensuring the regular and dependable attendance of his subordinate employees.

B. Location

Files must be in convenient locations and available at all times to managers and supervisors responsible for attendance control. Locations are determined locally, based on security, accessibility, and space.

C. Security

Because of the sensitive nature of this file, it must be made available only to authorized personnel. To maintain proper control, any record withdrawn must be accounted for by inserting a charge record in the file. This charge record must show the name of the person whose record is withdrawn, the type of record, and the name of the individual withdrawing the record. Upon return of the record(s) to the file, the charge record is removed.

III. Absence File

A. Contents

This file consists of all Forms 3971, Request for, Or Notification Of,

D. Arrangement of File

Files must be arranged alphabetically by employee name. Forms for each employee must be in chronological order with the most recent form in front. Depending on local conditions, it may be desirable for the primary

Distribution

Headquarters, Headquarters administrative support, regions, districts, management sectional centers, postmasters CAG A through J, and classified stations and branches.

Special Instructions

Do not paraphrase or distribute this instruction in any other form. Organizations listed under Distribution may order additional copies. Use Form 7380, Request for Supplies; specify the filing number; and submit to the Eastern Area Supply Center.

arrangement of the file to be by groups or categories of employees, by sub-units (e.g., pay location or tour) within the organizational unit.

E. Retention Period

The absence file is maintained on a calendar year basis. All forms prepared during the calendar year are retained for two years after the end of that year. When any documents in the file become part of a disciplinary or administrative proceeding, the document(s) will be retained in accordance with Administrative Support Manual Appendix B (p. 57-58), USPS 120.190.

IV. Absences

A. Management Responsibility

Each supervisor is responsible for controlling absences, both scheduled and unscheduled. However, because of the effect that unscheduled absences (and sometimes scheduled absences) have on the operational efficiency of the Postal Service, as well as the financial implications that result (i.e., overtime and replacement costs), it is essential that supervisors exercise their responsibility in this area. This instruction should be used in conjunction with EL-501, Supervisor's Guide to Attendance Improvement.

B. Definition

An unscheduled absence is defined as: An absence from work which is not requested and approved in advance. (ELM 511.41)

C. Scheduled vs. Unscheduled

All absences are either unscheduled as defined above or scheduled. A scheduled absence usually involves the completion, submission, and approval of PS 3971 prior to the actual absence; however there could be situations, as indicated in the examples below where it is not possible to have a 3971 submitted in advance — yet the absence could be "scheduled." In these situations, there still must be a request in advance, and it must be the supervisor who decides that the

employee will not have to come to work. In any event, the determination of whether an absence is scheduled or unscheduled must be made by the supervisor.

EXAMPLE 1 - An employee scheduled to report for duty at 0700 calls his supervisor at 0600 and requests annual leave for personal business. The supervisor reviews the operation and after considering other relevant factors, determines that he can operate without the services of the employee on that day. He approves the request. This is a scheduled absence because it was requested and approved in advance. While a PS 3971 was not submitted in advance, there was an advance request and the supervisor decided the employee need not come to work.

EXAMPLE 2 - An employee scheduled to report for duty at 0700 calls his supervisor at 0600 and informs him that he is unable to report for duty because of illness and is requesting sick leave. This is an unscheduled absence because, although requested in advance, and while the supervisor was made aware that the absence was going to occur, it was not approved in advance. The call from the employee merely alerted the supervisor that the employee would not be coming to work, but the supervisor did not decide that the employee need not come to work. Instead, it was the employee who decided he was not coming to work, and the call to the supervisor simply advised of this decision. In accordance with procedures, the supervisor does not approve or disapprove this request for sick leave until the employee returns to work.

EXAMPLE 3 - Because mail volume is light, a supervisor asks her clerks who are on their regular scheduled workday, if any of

them would like to go home early - using annual leave or leave without pay. Two clerks take 2 hours annual leave with the supervisor's approval. These are scheduled absences because the supervisor solicited the requests and approved the absences in advance.

EXAMPLE 4 - An employee scheduled to report for duty at 0700 calls his supervisor at 0630 and states that he will be late due to car problems. He reports at 0800. After a discussion with the employee, the supervisor approves 1 hour of annual leave. This is an unscheduled absence because the request was not approved in advance.

EXAMPLE 5 - An employee requests 2 hours sick leave to attend a dental appointment 2 days from now. The supervisor approves the request and notes it on the schedule. This is a scheduled absence because it was requested and approved in advance.

EXAMPLE 6 - Extended Illness - An employee suffers a heart attack and provides documentation from his physician indicating that the employee will need 2 months to recover. Once valid documentation is received and accepted consistent with ELM 513.363, the remainder of the absence should be recorded as scheduled.

D. Recording Scheduled and Unscheduled Absences

Form 3971, Request For, Or Notification Of Absence, (Exhibit 1) has been modified to document information concerning scheduled and unscheduled absences. Every supervisor who approves or disapproves a request for leave is also responsible for determining whether the absence is scheduled or unscheduled (see IV.C). Once a decision has been made, the supervisor must check the appropriate block on Form 3971 showing the absence as either scheduled or unscheduled. When a single leave request includes

both scheduled and unscheduled absences, allocation of hours should be made as indicated in Exhibit 3. Personnel completing Form 3972 or inputting leave information thru PSDS, will assume that the unscheduled portion occurred at the beginning of the period of absence unless directed by the supervisor to record it otherwise.

Remember -- the determination to approve or disapprove a leave request is independent of determining if an absence is scheduled or unscheduled. Supervisors must be very careful to apply established principles and regulations when acting upon leave requests.

V. Review Procedures

The manager selected as the central monitoring point has the overall responsibility for reviewing the attendance control performance of supervisors and managers.

A. Organizational Unit Reviews

The installation head or designated manager (central monitoring point), reviews the appropriate documents (e.g., Quarterly listing, PSDS Sick Leave Report, PS 3972) and/or the AIMS Reports (see VII), to determine possible problem areas. The reviewing manager makes appropriate comments on the overall performance of each work unit, to provide guidance to supervisors. Such comments will not indicate any corrective or disciplinary action for specific employees.

B. Detailed Review

1. Upon receipt of the Quarterly Listing, (or AIMS Reports), each supervisor reviews the attendance record of each employee listed to determine the reason for the individual's absences.
2. It is important that the employee's immediate supervisor conduct these reviews, since that particular supervisor has first-hand knowledge of the employee.
3. A low sick leave balance or high

number of absences does not automatically indicate abuse (e.g., long-term illness, etc.). Line out the name of any employee for whom you know there was valid reason to be absent unless such absences, while legitimate, are nonetheless excessive and warrant further attention or corrective action.

code identifying the specific type of absence.

Absence Code **

Annual Leave	AL
Annual Leave in Lieu of Sick	SAL*
Sick Leave	SL
LWOP In Lieu of Sick	SWOP*
Emergency Annual Leave	EAL*
Holiday Leave	H
Leave Without Pay	LWOP
Military Leave	ML
Court Leave	CL
Absence Without Leave	AWOL*
Administrative Leave	ADL
Absence from Scheduled Overtime 1/	AOT*
Continuation of Pay	COP*
Late Reporting	L*

** Absence codes are listed on PS 3972 for easy reference.

* These are not separate categories of leave. The distinction is made for Form 3972 analysis purposes only.

1/ Supervisors should complete a Form 3971 for those employees who are absent from scheduled overtime. The remarks section of Form 3971 should be annotated accordingly. The completion of this form is not an official request for leave (employee's signature is not required) but is for recordkeeping purposes only.

VII. Absence Information Management System(AIMS)

A. Data Entry

A future Transmittal Letter to Handbook F-22, PSDS, Time and Attendance, will provide instructions concerning data entry of unscheduled absence information into the PSDS system.

B. AIMS Reports

1. The Postal Data Centers will provide AIMS reports each pay period to all PSDS offices. These reports show leave usage information in terms of scheduled and unscheduled absences. Leave usage information is provided by type of leave for the current and prior periods, year-to-date and same period last year. The information provided is in greater detail and is

Names remaining on the list are included in a memorandum to the central monitoring point, requesting that a Form 3972, Absence Analysis, (Exhibit 2) be prepared for each employee. If the request is approved, it must be forwarded to the Director of Finance or other official responsible for custody of the timekeeping records for completion. Using the codes listed in Section VI, Form 3972 must be completed using timekeeping records, PSDS clock ring history microfiche, AIMS report microfiche, and/or Forms 3971. Post all leave charged for the current and preceding quarter, beginning the current quarter with the most recent 3971, timecards, or PSDS information as available. Post additional quarters if conditions warrant. If Form 3972 is maintained on an ongoing basis for each employee, the procedures in this section may be deleted.

5. Forward the completed Form 3972 thru the central monitoring point to the requesting supervisor, who reviews the form and takes appropriate action. The action taken is recorded on the reverse of the Form 3972, which is returned to the central monitoring point for inclusion in the absence file. (n.b., Records of discussions must be maintained consistent with the various collective-bargaining agreements.) For maximum benefit, reviews and recommendations should be completed as quickly as possible and each installation head should establish an appropriate schedule to ensure timely analysis.

VI. Absence Codes.

Use the codes indicated below to post absences on Form 3971. If the absence has been reported as unscheduled on Form 3971 or PSDS clock-ring histories, a "U" should precede the applicable code

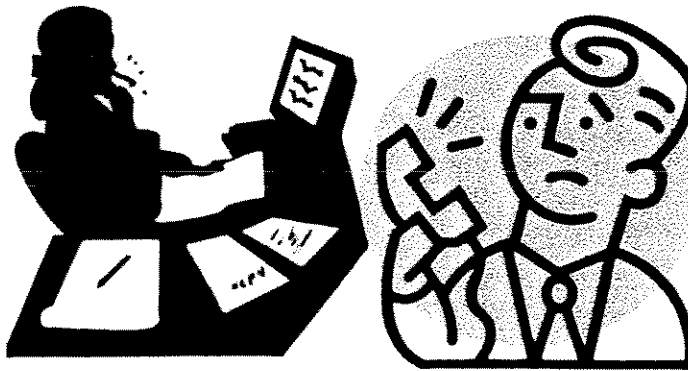
identifying and controlling absences which have a negative impact on Postal operations. The frequency of these reports provides management the opportunity to more quickly identify potential problems and prevent them from occurring.

2. Because of the frequency and detail of these reports, MSCs may determine the review procedures listed in Section V need not be conducted upon receipt of each report. MSCs may establish a lesser frequency of review based on local needs, but it is not to be less than once every third report. In any event, all reports should be distributed upon receipt even when review procedures are not required.

A BAD SCRIPT

As you can see RMD and the old Absence Information System have a similar intent.

The difference is the computerization of the attendance program and the assignment of indifferent managers to take your calls.



RMD has a built in "script" or "dialogue" the Attendance Control Supervisor (ACS) is suppose to follow when receiving your call. The script is bad enough but it is made worse when over zealous and/or downright rude ACS deviates from the script.

The ACS initial inquiry is intrusive and often cold. Some Locals advise their membership to simply call in, give the essentials and hang up. My advise is for you to follow the reasoned advise of your Local's leadership. Absent such an official position I recommend you understand what the ACS is asking and how you can respond without exposing yourself to unjustified discipline.

The following dialogue is from a typical RMD call in scenario (your locale may differ slightly):

You wake up and feel sick, too sick to work. You decide to call in:

- Most RMD instructions require that you personally call in , unless you are physically unable to do so. The key word is "physically" . The instruction (make sure you read it carefully) does not usually state "medically unable". So if you can't get to the phone and have to have someone else call for you be prepared to challenge an AWOL or discipline for not personally calling in.
- Employees are directed to call a centralized number in the Attendance Control Office (ACO). Most employees are use to calling in and reporting an absence. However, nothing in the official Employee and Labor Relations Manual (ELM) rules require a call in. *What is required is notification to postal officials and the submission of a PS 3971.* Perhaps you can get the ACO Fax Number and send in your completed PS 3971 to the ACS and not have to talk to him/her. Check with your Local.
- Reports indicate that some ACS are using *69 to call employees back or logging the numbers on caller ID to determine if the call came from the employee's home. *There is nothing in any manual that requires an employee to pick up a phone.* Most cell phones, by the way, do not allow *69 calls. Your Caller ID also can signal that USPS is calling.

OK you decided to call in yourself. When the ACS answers , according to Appendix A of RMD Manual he/she will

- Ask you for some form of ID (SSN, Name, License Plate Number etc.) When you give it your employment information will be displayed on the RMD video screen. It will contain your P/L S/L & A/L balance, Sick leave used for dependent care, FMLA used during the year, how many hours you worked in the last 26 pay periods, the last day you had an unscheduled absence, how many unscheduled absences you have had in the last 90, 180 and 365 days and FMLA information.

The ACS will then begin a series of questions.

- Do not get angry. The ACS is supposedly "coached" to handle your anger and not be surprised by you uncooperativeness. They are trained to expect mean words and accusations. They are schooled to apply the 4 Cs- 1) choice, 2) consequences, 3) consistency, 4) calmness. The ACS is taught you may

be placed on emergency placement in an off duty status if you refuse to do what you are told and/or you curse at a supervisor. ACS is taught that 10% of the workforce do not come to work with the intent of doing a job or cooperating. The ACS is taught they have a right to set expectations and manage assertively.

They are coached that Article 3 and Article 19 of the Contract outline management's right to direct employees in the performance of their official duties,...the right to maintain the efficiency of operations entrusted to it and the right to expect appropriate work behaviors. ²



Of course you can review Article 3 of the Contract and you will not find a written right to expect appropriate work behaviors. Their coaching handbook tells them they are to communicate expectations and consequences. The expectations must be understood, must not violate your rights, are limited to 5 or less, are to be communicated clearly, calmly and with confidence.

The ACS is instructed there are certain times you don't have to follow instructions: 1) when you are asked to do something that is unsafe. 2) when you are asked to do something that is against the law. 3) you are asked to do something against your personal moral conviction. ³

- Listen to what the ACS is asking you. When they hold this conversation with you they are suppose to clarify expectations, provide instruction as needed, ask for your commitment to those expectations and provide consequences if you chose not to comply. If the ACS is rude, angry, confusing, evasive or otherwise not clear you should file a grievance with your steward. ⁴

ACS will then ask- "Is this leave related to an on the job injury?"

- **If YES**— the ACS will ask if you filed a CA-1 and PS 1769 and is suppose apply the standard procedures for reporting an On Duty Injury (OID in RMD jargon). The ACS is suppose to notify the Injury Compensation Control Office. If you were injured at work you should have filed a CA-1 Report of Traumatic Injury. A CA-1 is used to report a condition of the body caused by external force, including stress or strain and must be identifiable as to time and place of occurrence and member of function of the body affected. The injury must be caused by a specific event or incident or series of events or incidents, within a single day or work shift. ⁵

BE CAREFUL when calling in for a traumatic injury. Normally, you should have reported it on the day it happened or at least the following day to your immediate supervisor and filed a CA-1, secured a CA-16 Authorization for Examination Medical Treatment and at least submitted a CA-17 Duty Status Report from the Doctor. You may request Continuation of Pay for 45 days.

If you **did not report** the injury to your immediate supervisor nor filed and secured the proper forms. **Consider responding in the following manner:**

1. "I was injured on (date). Please send me the proper forms to fill out and I am requesting COP." ⁶
2. "Do I need medical authorization to see a doctor? Please send me the forms." ⁷

Make sure you check [x] COP on the PS 3971 before signing the form and be careful that the "computer" has not stated something on the Remarks column you do not agree with. **Write down what the ACS says.**

WARNING: An Occupational Disease is different from a work injury and can be an illness or disease produced by a systemic infection, or continued repeated stress or strain, or exposure to toxins, poisons, fumes or other continued and repeated exposure to conditions of the work environment over a longer period of time than a single day or work shift. »

If you are calling in for an Occupational Disease accepted by the US Department of Labor Office of Workers Compensation Programs (DOL,OWCP) let the ACS know this. If the disease has not been reported or accepted inform the ACS that you want a CA-2 Form (Notice of Occupational Disease) sent to you. Make sure you secure medical treatment and that your doctor makes a comprehensive report as indicated on the attachment to the CA-2. **Reporting On The Job Injuries and seeking compensation is serious business and you should get assistance from your Union Representative. DO NOT TRUST MANAGEMENT will do the right thing in assisting you.**

If your absence is NOT related to an on the job injury simply state "NO" and the ACS will go to the next series of questions.

The ACS will then ask.. " Is this leave FMLA?"

- You should ask for an explanation of FMLA. "What is FMLA?" "How do I secure FMLA?" The ACS has been directed to simply ask you.. "Is this leave FMLA?" not "Is this covered by FMLA?" You see it is suppose to be your supervisor who determines if the illness is covered by FMLA. Although the Family Medical Leave Act has been with us for almost ten (10) years we continue to struggle with management over interpretation of the law. Even our own members often don't know what FMLA is or how they can apply it.

[In general FMLA entitles you (if you have been employed by USPS for at least one year and worked at least 1250 hours during the previous 12) months to be absent for up to 12 workweeks per year for the birth or adoption of a child, to care for your spouse, son, daughter or parent with a serious health condition, or when you are unable to work because of a serious health condition without loss of your job or health benefits. You apply for FMLA coverage by submitting a PS 3971 (FMLA is not a separate leave category or type of leave you still have to request sick , annual leave or leave without pay). A call, telegram etc will suffice until you submit the paperwork. » (You can use Form WH-380, UNION FMLA FORM (2) and 3 or PS Form 3971) «

There are literally hundreds of related issues on FMLA. I recommend you read Publication 71, visit the Union's web page and become familiar with your rights under FMLA. The Union has several informational booklets on your FMLA rights. **Usually FMLA absences incapacitate you for more than three (3) calendar days but even one day absences related to continuous illness may be covered.]**

- The RMD FMLA Coordinators are not there to help you. In fact they often interfere with your legal rights and make your bad situation even worse. They have several ready made forms to issue you. One form is entitled "Incomplete FMLA Certification" wherein the FMLA Coordinator checks off what they say is either missing, incomplete or confusing on your forms. Secure the Union's FMLA Form 7 which is a response to management's intrusions. **When ever you submit anything to management make copies. If at all possible send your responses via certified mail or secure a date stamp on your copies. If your FMLA rights are interfered with file a grievance.** 11
- If you are in doubt simply state "It could be FMLA." or if you say "YES" the ACS will access your video screen to see if you worked at least 1250 hours within the last 26 pay periods and have not used 480 hours of FMLA leave. If management claims you are not eligible the ACS is to tell you... **"Your records indicate you do not qualify for FMLA because (and states the reason)."** On the PS 3971 RMD should state when you will become eligible for FMLA.
- If RMD indicates you are eligible it will also indicate if you have FMLA documentation. The ACS will ask ... **"Is this absence directly related to your pre-approved FMLA condition.** If you say YES the ACS should hit the approval button. But, don't be surprised if they refer you to the FMLA Coordinator. **If you are not sure if the absence is related simply state... "I believe it could be."** The ACS is suppose to be able to determine from RMD data which FMLA claim is relevant. If the ACS determines the absence is FMLA but not related to a pre-approved FMLA condition the pending box of the PS 3971 is suppose to be checked. **DO NOT RELY ON MANAGEMENT. REVIEW YOUR RECORDS AND CONTACT YOUR STEWARD.**

PLAIN OLE' SICK LEAVE

If you are not requesting FMLA the ACS will ask "Are you requesting sick leave?"
If you say YES:

- The ACS will check your leave balance and if you have sick leave RMD will reveal patterns coinciding with your rest days, holidays etc.
- The RMD will flag 3 unscheduled absences within the previous 90 days. The ACS will state... **"You have to provide medical substantiation when you return to duty."** The ACS will read the following to you: **"Your documentation must state the nature of your illness or emergency. It must also state that you were incapacitated from duty for the duration of the absence. This documentation must be provided upon your return to duty. If you fail to provide acceptable documentation upon your return to duty, the absence may be changed to Absence Without Leave (AWOL). Do you understand that?"**
- If you do not have 3 unscheduled absences within the last 90 days and you are requesting more than 8 hours the ACS will ask... **"Have you seen a doctor?"** If you say yes the ACS will direct you to bring a medical substantiation (slip). If you say NO the ACS will state... **"You must call in each subsequent day to the ACO. Your failure to do so will result in you being considered AWOL. Do you understand that?"**



Now is when the mess gets messier. **You are going to have to stand up for your rights and fight back!**

When you return to duty (more on this later) if you believe you have a grievance here are some things to consider:

ELM 666.81 requires you to be regular in attendance but does not declare that 3 absences in 90 days requires a medical slip.

ELM 668.82 provides for AWOL when you fail to report for duty except in actual emergencies that prevent you from getting permission to be absent. Satisfactory evidence of that emergency is to be furnished later. BUT it does not state what satisfactory evidence is or when later is. That falls under ELM 510.

ELM 511.23 requires you to request leave by COMPLETING A PS 3971. It does not require you to schedule medical appointments on your rest days or pre/post tour.

ELM 511.43 requires you to make every effort to come to work. It does not require perfect attendance.

ELM 513.331 requires you to request sick leave on Form 3971 and get it approved in advance except for unexpected illness or injury situations.

ELM 513.332 requires you to notify appropriate postal authorities of your illness or injury and expected duration of absence as soon as possible. If sufficient information is provided to determine absence is covered by FMLA your supervisor is suppose to complete a PS 3971 and mail it to your address along with Publication 71 on FMLA. If there is not enough information provided to determine FMLA coverage you are required to submit a request for sick leave on Form 3971 and applicable medical or other certification upon returning to duty and explain the reason for the absence. It does not require you to call in every day.* 12

ELM 513.341 declares that requests for sick leave are to be made in writing , in duplicate, on Form 3971. Section 342 requires the supervisor to give you a copy of the PS 3971. If the supervisor does not approve the leave the reason is to be given in writing on the form. If your supervisor does not state a reason for disapproval or does not issue your copy **FILE A GRIEVANCE**.

ELM 513.361 declares that for absences of 3 DAYS OR LESS , supervisors may accept your statement explaining the absence. Medical documentation is required only when you are on RSL or supervisor deems it necessary for protection of USPS.

ELM 513.362 states that for absences in excess of 3 days, you are required to submit medical documentation or other acceptable evidence of incapacity for work or a need to care for a family member including, if requested substantiation of the family relationship

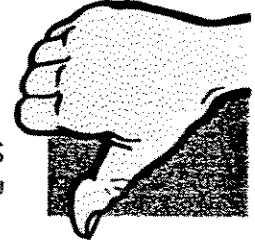
* If you call in every day you may wish to contest this as a violation of the ELM. If you don't call every day and get AWOL or discipline you must file a grievance immediately upon return to duty and upon receipt of discipline notice. Make sure you give the ACS the expected duration of your absence. **MAKE NOTES OF WHAT THE ACS TELLS YOU AND WHAT YOU SAY TO THEM!**

If you do not have sick leave the ACS will check your annual leave balance and inform you.. **"You do not have sufficient sick leave do you still want to take leave?"** If you say YES the ACS determines what leave to input and enters it into RMD.

If you do not have enough sick or annual leave the ACS will ask.. **"You do not have sufficient sick or annual leave do you still want to take leave?"** If you say YES the ACS determines type of leave and inputs it. If you say NO the ACS tells you... **"Then you are required to come to work."**

ANNUAL LEAVE

If you request Annual Leave when calling in be prepared to be challenged by the ACS since annual leave is to be requested in advance except for an emergency. ¹³ You may be required to substantiate your emergency.



LWOP

The ACS may try to get you to request LWOP. Be aware that a request for LWOP leave gives total discretion to the supervisor to approve or disapprove. (An argument for some valid reasons for LWOP can be made).¹⁴ But I suggest to you LWOP requests should be avoided. Make sure when you return to duty the PS 3971 is not marked requesting or granting LWOP by RMD unless you desire the LWOP.

SUPERVISOR'S ACTION

Your supervisor is suppose to review the PS 3971 at the ACO and sign the notification block. RMD fills in the rest. When you return to duty MAKE SURE the PS 3971 is accurate. DO NOT SIGN THE FORM if it contains wrong information. If the ACS asks for documentation ask for a steward and file a grievance since you should be giving it to your supervisor. The ACO will present the PS 3971 you signed to your supervisor for his/her signature. **If your supervisor did not make the decision on your leave request file a grievance.**

RMD will issue your supervisor a Log showing all call ins and the action taken by RMD on your leave request. Sometimes these logs are left in the open. If you discover your call in was exposed for other employees to see file a grievance.

RMD will issue your supervisor a message called **Attendance Review Notification** that he/she must respond to. If your supervisor does not respond after a number of days RMD sends a message to his/her boss of the failure to respond. The boss



is forced to take action on your supervisor. If no action is taken or the boss does not respond the top manager is automatically notified by RMD.



Eventually your supervisor is forced to respond or face discipline. He/she will click on the **RMD Administration Action**. This screen shows your discipline history, your attendance record, leave balances, notes and other data on you.

Your supervisor will be prompted to submit a **Request for Administrative Action** on you to Labor Relations. It may be your supervisor will note to the Labor Relations Manager your reasons for absence and no further action is warranted (don't bank on it).

Usually an RMD Administrative Action message to Labor Relations Management means your supervisor intends to take disciplinary action and is requesting concurrence (OK) from Labor Relations. These higher level bosses review your record and the proposed disciplinary action and give a thumbs up or down by clicking on the screen and adding any additional comments. If Labor Relations does not concur the supervisor is prompted to make changes to the recommended actions and resubmit to upper management.

If your supervisor does not respond to a message to correct a proposed administrative action RMD notifies the next level manager automatically. Does this force your supervisor to take action against you? YOU BET!

DISCIPLINE AND THE CONTRACT

Although the Union Contract allows management to take discipline on you it also requires the discipline to be for just cause. 15

RMD does not supercede the contract. Article 10 of the union contract states chapter 510 of ELM remains in effect for the life of the contract. This means management is required to live up to the official leave policies of the ELM.

Article 16 of the union contract governs the discipline procedure. In order for your supervisor to take disciplinary action against you the following basic steps should have been taken:



- **Progressive Action** - usually discussions are held with you as a first step. These are not considered discipline and can not be cited on disciplinary notices. They are private and may not be recorded in RMD or supervisor official pay location books or on PS 3972. The usual progression (may vary due to AIMS enforcement in your District. Check with your steward) is- 1) discussions 16 2) Placement on Restrict Sick Leave List 17, 3) Letter of Warning, 4) 7 day suspension, 5) 14 day suspension, 6) Removal.
- **Corrective Purpose**- discipline imposed is suppose to be corrective in nature and not punitive. RMD generated discipline may not be corrective especially if Labor Relations gets involved.
- **Just Cause**- the industrial principle of just cause according to Handbook EL 921 must be complied with. This means there has to be a rule, you have to have knowledge of it, management is obligated to make a real effort to find out if you violated that rule BEFORE taking disciplinary action, the investigation has to be fair (you have to be provided a chance to tell your side of the story before action is taken), management has to enforce the rules consistently and equitably and consider your past record.
- **Review & Concurrence** - Your supervisor can not suspend or terminate you. He/she can propose but the proposed action must first be reviewed by his/her superior and concurred. Labor Relations is not your supervisor's superiors. RMD generated discipline , if you can document the messages and take action reviews, may violate this part of the contract.
- **Past Record** - Your past disciplinary record is cleared after two years if there has been no discipline during that time or if through a grievance settlement the discipline was taken out of your record. RMD may not have accurate information. Check with your steward to ensure your record is accurate.

OTHER CONTRACT VIOLATIONS:

Article 2- prohibits management from discriminating against you based on race, color, sex, etc.

Article 3 - requires management to comply with the law, the contract and their own rules on leave.

Article 5- prohibits management from changing local leave policies and past practices.

Article 10- calls for substantiations after a 3 day absence.

Article 17 & 31- requires management to give info/ documents to the union to process your grievance.

Article 30- requires management to comply with your Local's negotiated Leave Program.

ELM 513.32 gives the conditions for authorization of sick leave. The ELM is very specific in that sick leave, annual leave, or LWOP is granted as may be necessary for any of the conditions outlined in accordance with normal leave policies AND COLLECTIVE BARGAINING AGREEMENTS.

Under Article 10 of the CBA the ELM 510 regulations are recognized, career employees are given preference on annual leave over non-career, employees are allowed to take annual leave at other times other than vacations, grants protections to employees on advance commitments for granted annual leave, requires management to continue the administration of the present sick leave program, gives sick leave credit to employees, allows for employee option to charge an absence to annual leave when there is insufficient sick leave, permits employee who becomes ill



while on annual leave to charge the leave to sick leave, permits the employee to give verbal certification for periods of absence of three (3) days or less, allows for sick or annual leave to charge a minimum unit of .01 hour, allows for a mixture of LWOP, annual and sick leave to be used,

In addition Article 10 CBA MOUs allow for annual leave exchange, allows sick leave for dependent care, established additional annual leave carry over, provides for PTF court leave, requires local attendance and leave instructions to be in accordance with the contract, allows use of LWOP even if employee has a sick and/or annual leave balance, and permits employees to have Leave Sharing and donate leave.

CONTRACT CITATIONS

Let me pause here and review the contract citations stewards are to use when challenging Leave Policy Violations: (You must develop all contractual arguments ! The following is a "review")

ARTICLE 1 - APWU is the exclusive representative of Maintenance, Clerks and MVS employees.

ARTICLE 2- if management shows any discriminatory preference for or against an employee related to attendance based on race, sex, color, creed, religion, national origin, sex, age or marital status. Also, if management fails to accommodate a disabled employee and forces the use of leave.

ARTICLE 3 - management does not have absolute rights over employees on attendance and leave. Management violates Article 3 if it violates any laws governing the leave program including the FMLA, Rehab Act etc., if it violates any of its own rules, regulations, SOP, handbooks related to attendance, if it violates any contract provision related to attendance and leave.

ARTICLE 5 - management can not unilaterally change past practices established in an office related to attendance or leave, or change locally negotiated policies, LMOU, MOUs, or practices.

ARTICLE 6 - management must recognize court leave, military leave, COP, LWOP related to OWCP, paid annual and sick leave, Union Leave as work for the purposes of lay-off protections.

ARTICLE 7- sending PTFs home early without the use of leave while keeping TEs or Casuals on the assignment. PTFs are entitled to leave equal to hours worked by other PTFs in the same work location. (ELM 513.421.b)

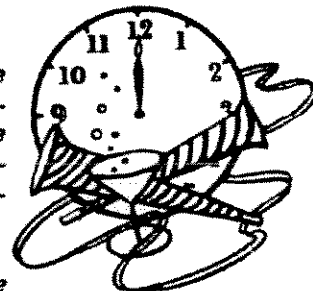
ARTICLE 8- the employee's work week must be adhered to as well as overtime and work guarantees and scheduling.

Overtime can be excused on an equitable basis for occasions such as birthdays, deaths, anniversaries AND ILLNESS. (8.5.E)

ARTICLE 9 - when AWOL is imposed wages are lost.

ARTICLE 10- when management denies leave, violates their own regulations, refuses to comply with dependent care, denies scheduled vacation and any other type of absence or leave situation.

ARTICLE 11 - when management claims employee must be at work the last hour prior to holiday and the first hour after the holiday. An employee must be on a pay status the last hour before the holiday OR the first hour after this can be approved S/L,A/L. An employee can be excused for holiday work when the absence is based on an extreme emergency.



ARTICLE 13- when management sends an employee home claiming there is no light duty and forces the employee to use leave when in fact there was work the employee was qualified to do within restrictions. (see Guide On Light and Limited Duty In The USPS published March 2001).

ARTICLE 14 - when management created a hostile work environment or placed an employee in a serious hazardous condition of imminent danger which forced the employee to take leave.

ARTICLE 15 - allows you to file grievances on Leave and contract violations , as well as, appeal to arbitration grievances related to LMOU violations and Leave Requests, AWOLs , etc under the MOU. Also used when management violates Step 4 decisions/settlements.

ARTICLE 16 - when RMD and Attendance related discipline is issued without just cause, and not reviewed and concurred by higher official and for restitution. (see DISCIPLINE AND RMD). All attendance related discipline can be appealed. Management's rights are subjected to this and all other articles of the CBA.

ARTICLE 17& 31- when management refuses to issue any RMD Report, Message, Review Notice, Attendance Form or data pertinent to a grievance related to attendance or necessary to determine if a grievance exists. (See DOCUMENTATION REQUESTS & RMD).

ARTICLE 19- when management violates any of their regulations related to leave or attendance contained in a Handbook or manual.

ARTICLE 21- when management violated COP and other injury related attendance regulations or denies leave based on a job related injury or fails to restore leave or allow an employee to buy leave back.

ARTICLE 25- when management fails to pay an employee at the higher level rate depending on term of detail, when he/she has an absence.

ARTICLE 28 - when management issues a demand for over payment of leave ,benefits or when an employee on extended leave is billed for health plan coverage.

ARTICLE 29 - when management improperly revokes driving privileges and the employee is forced to use leave.

ARTICLE 30 - when management violates the LMOU negotiated leave policies.

ARTICLE 35 - when management refuses to give favorable consideration on discipline to an employee who attends a self help program (EAP)s to deal with addictions that causes absences.

YOUR RETURN TO DUTY



After going through the craziness of calling in under RMD and feeling better or at least trying to feel better it is time for you to return to work. [Note: Not all employees calling in under RMD agree that the system is all bad. Some even claim they are glad everyone else is treated the same and it is about time management clamped down on the abusers. If you are one of those employee great and good luck .]

Under RMD you will be required to first report to the Attendance Control Office. If you are required to report before your reporting time you may file a grievance for out of schedule premium pay. If you are required to fill out the PS 3971 off the clock you may file a grievance for out of schedule premium pay.¹⁸

When you report to the ACO and are told to sign the PS 3971 review carefully (see page 9 for more on your PS 3971). Understand what the rules are for medical substantiations and releases.

The Medical Handbook list seven circumstances that require a medical release detailing the ailment, duration and statement you can return to work without hazard to yourself or others:¹⁹

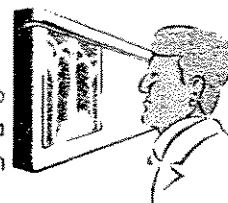
1. Absences for illness wherein you were absent for 21 days or more.
2. Any absence for which you were hospitalized.
3. Absences related to seizure disorders.
4. Cardiovascular diseases
5. Mental or nervous conditions (be careful when claiming you are stressed . Must state treatment given and officially discharged if hospitalized for mental or nervous condition)
6. Diabetes (must state disease under control and treatment given to control it)
7. Communicable or contagious diseases.

The above 7 situations also require the doctor state any restrictions that are applicable. (You may be sent for a Fitness For Duty Exam. If you feel it is harassment or discriminatory you may file an EEO complaint.)

When you return from an extended absence it should normally take a day after you turn in your medical documents to be released by management to return to duty. Management and/or medical officer should review the documents on the date submitted and return you to duty the next day.²⁰

MEDICAL SUBSTANTIATION

RMD, ACO, ACS or your supervisor may require you to submit a medical certificate to cover your absence. While emergency annual leave may not normally be covered by a medical slip (unless caring for a family member)²¹ a demand for such documentation for less than three days of sick leave should be grieved.



ELM 513.364 states a medical slip should provide an explanation of the nature of your illness sufficient to indicate to management you were unable to perform your normal duties for the period of absence. (As a minimum the certificate should contain your doctor's name and address, your name, statement you were incapacitate for work, period of incapacitation and your doctor's or nurse practitioner's signature.)

TIME & ATTENDANCE RMD GUIDELINES FOR STEWARDS

- **RETURN TO DUTY** Employees are being directed that upon returning to duty after any scheduled absence (sick leave, emergency annual, late reporting, etc.) they must report to the ACO. The employee's card is to be attached to the PS 3971.

The SOP issued to the employees is silent on what happens at the ACO. { *Information from other parts of the country reveals that management is requiring employees to report as early as 30 minutes before BT to the ACO. { This is a violation of the Fair Labor Standards Act. Also, there are several Step 4 decisions (challenged by management no doubt on occasion) that the PS 3971 should be filled out on the clock. Also, some employees may be made late by having to wait in line at the ACO. If any employee is forced to come in early to fill out /complete a PS 3971 or are made late due to the lines at the ACO grievances MUST BE FILED requesting payment and/or leave restoration. }* }

Absences Requiring Medical Release . The SOP lists seven (7) circumstances that always require a medical release (ELM 865.2 and 865.3):

- 1) Absences for illness of 21 days or longer { *this is if the employee is sick not just absent* }
- 2) Any absence that involved hospitalization
- 3) Seizure disorders
- 4) Cardiovascular diseases
- 5) Diabetes
- 6) Mental or nervous conditions { *please see the Local News letter Article on Stress* }
- 7) Communicable or contagious disease.

{ *Basically what management is demanding for the absences above is a medical certificate (report) that has details not just a statement of return to work. There has to be enough information for USPS medical officer/contract doctor to determine if an employee can return to work without hazard to him/herself or others.* }

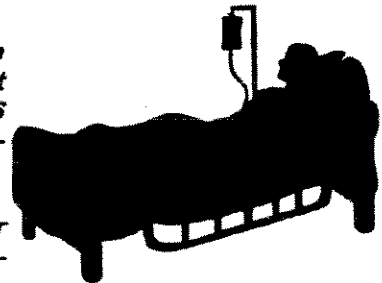
When there is an absence requiring hospitalization for a mental or nervous condition , the doctor also has to state on the medical substantiation that the employee was officially discharged from the hospital.

For diabetic or seizure disorders the substantiation must state that the condition is under control and describe the method of treatment used to control it.

All medical certificates for the 7 cases above must state that the employee is fit for full duties without hazard to the employee OR an indication of restrictions that need to be considered for accommodation before returning to duty.

Stewards are reminded that there is a National Step 4 decision as to the amount of time management can take before returning an employee back to duty after an extended absence or hospitalization. In any situation wherein management delays the return of an employee who has submitted a proper medical certificate more than one (1) day A GRIEVANCE MUST BE FILED.

There may also be Locally negotiated criteria for medical substantiations and the time limits for submission of the medical certification. FAX Medical substantiation per Step 4 is permissible!}



NOTE: The medical certificate DOES NOT have to state a prognosis or diagnosis.²² If your supervisor or ACS demands a diagnosis file a grievance.

You may FAX over your medical certificate to the ACO, your supervisor or medical unit.²³

YOUR PS 3971

The PS 3971 submitted requesting your leave is YOUR PS 3971 even if generated by RMD.

CHECK the PS 3971 make sure the **Date Submitted Box** is when you made your request. If not cross out the date and insert the correct date and initial the form.

REMEMBER: The fine and/or jail time for falsifying a PS 3971 is real and still in effect.

The number of hours is what you requested not what RMD put on the form. Check the **time of call or request** to make sure the date is correct.

Type of Absence issued by RMD may not be the type of leave you want. Change it if necessary and initial.

REMARKS COLUMN is now being used by RMD to put all kinds of entries here. This is for you to use to give the reason for your absence. Do not be afraid to state your sickness (not prognosis). If you do not agree with the RMD info line it out. State your reasons and initial the column. **FILE A GRIEVANCE IF YOUR SUPERVISOR OR ACS OBJECTS**

Do not forget to sign and DATE the form. Look at the reverse side of the form (now on one page) and see what has been checked off by RMD. If you do not agree file a grievance. You **MUST** be given a copy of the form after it is approved or disapproved if not issued **FILE A GRIEVANCE!**

DO NOT SIGN THE PS 3971 if you discover deficiencies, errors or mis-information. Line out errors and initial or fill out another PS 3971. If your supervisor objects file a grievance. **IT IS YOUR PS 3971, YOUR JAIL TIME, YOUR FINE!**

AWOL should be grieved! AWOLs accumulate and are used to discipline you. Seek your steward's advice.

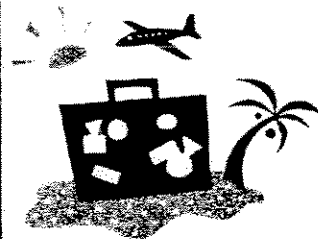
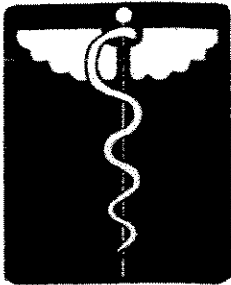
UNITED STATES POSTAL SERVICE		Request for or Notification of Absence	
Employee's Name (Last, First, Middle Initial)	Job Title	Supervisor's Name	Supervisor's Title
Los Angeles PDC			
Time of Call or Request	Schedule Requesting Time	Employee's Last Date of Absence (if known)	Time of Call or Request
Type of Absence	Documentation (if applicable)	Supervisor's Signature	Date
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Official Action on Application (Return copy of signed request to employee)		Signature of Supervisor and Date	
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PS Form 3971, February 2001 (Page 1 of 2)		Warning: The falsifying of this information is a crime under 18 U.S.C. 1001.	

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SAMPLE GRIEVANCE LANGUAGE

The following is sample language for certain leave type issues a steward can utilize when appealing grievances.

In each grievance, the language should be modified to fit the particular fact circumstances. There are many more situations that may develop not covered by these sample sentences.



Article 10

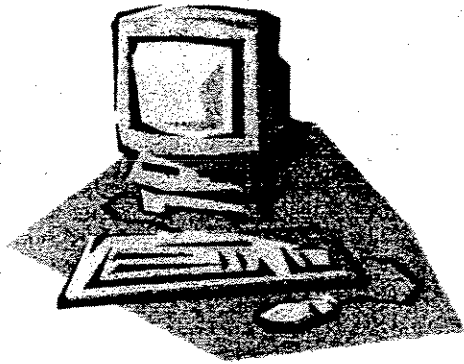
- Management has not properly credited the grievant with sick (annual) leave credit based on (seniority, years of credible service, hours worked.)
- The Employer improperly deducted (sick,annual leave) from the grievant's leave balance.
- The unilateral imposition of LWOP for the time requested was improper.

- Management circumvented the grievant's contractual right to annual leave when the casual (TE) was granted the time off.
- The supervisor has unilaterally changed the grievant's scheduled annual leave as provided for in the CBA(& LMOU).
- Management is failing to comply with the amount of workers permitted to be off as provided for in the LMOU.
- The grievant was unreasonably denied LWOP for vacation purposes (other purposes per ELM 510).
- The grievant's request for emergency annual leave was denied based on the supervisor's position that annual leave must be approved in advance. According to regulations emergencies are the exception for advance requests.
- The AWOL determination is improper the grievant provided substantiation for the absence.
- The grievant's over all attendance profile (record) does not demonstrate an abuse of leave or leave deficiencies.
- The AWOL is unwarranted.
- The supervisor's reasons for denying the leave are unreasonable (are not supported by the record).
- The AWOL appears to be automatic and therefore a violation of the (CBA, LMOU, ELM, Step 4 Decisions).
- The absence was for less than three days (yet the supervisor refused to accept the grievant's verbal certification, supervisor refused to listen to the grievant's verbal certification, the verbal certification was ignored).
- The supervisor refused to allow the grievant to exercise the (10 day, 2 day,5 day etc.) period (per LMOU, past practice, Labor-Mgt Committee, Step 2 decision, etc) to submit the substantiation.
- The supervisor unilaterally and improper refused to accept the grievant's medical documentation which appears within the criteria of the ELM.
- There was no reason stated on the PS 3971 for the supervisor's (AWOL determination, denial of leave as requested)
- The grievant was unavoidably late but the supervisor refused to allow him(her) to make up the time.
- There was no basis for the supervisor to simply charge AWOL for the tardy (the grievant's record does not warrant this action, there was no previous discussion, the grievant was only six minutes late,)
- The grievant was charged with Absent Overtime (AOT). The AWOL is improper(was improper) (there are established policies for recording AOT, AOT is not a reason for denying leave, the OT was not properly scheduled, the grievant was unaware of the mandate to work OT, the grievant misunderstood the supervisor).
- The grievant was charged AWOL for short rings. However, the time clocks were not (working, synchronized with the wall clocks, accepting the grievant cards, functioning properly since TACS was introduced, cross footed property).
- The grievant was sent home by management (by nurse, doctor) and therefore the AWOL determination is improper.
- Management did not properly apply the regulations as provided in ELM 510 , the particulars will be fully developed at the Step 2 meeting.
- The grievant appears to be eligible for administrative leave under the fact circumstances, including

- The grievant was improperly scheduled in. He/she was on jury duty.
- The grievant called in for leave during his/jury duty.
- The grievant made reasonable efforts to comply with the jury duty practice(policy). Apparently management improperly granted the grievant leave (improperly paid the grievant for time wherein the grievant asked to be excused).
- The grievant applied for military service leave but management misapplied the provisions (ignored the orders, demanded an improper request of the grievant. Deliberately ignored the provisions of the ELM).
- The grievant applied for maternity leave and was denied.
- The grievant informed management of her maternity status and requested leave in units to insure protected status pursuant to Article 6. Management unreasonably denied request.
- The grievant provided substantiation for her maternity status. The denial of such leave was improper.
- The grievant should not have been charged with the leave used for maternity purposes.
- The grievant requested leave for paternity reasons which were unreasonably denied by the supervisor.
- The basis for denial of the paternity leave appears to be prohibited discriminatory action on the part of supervisor.
- The denial of sick leave to care for the grievant's (son, daughter, spouse, parent) was improper and contrary to the intent of the parties as to dependent care.
- The supervisor's definition of serious health condition varied from those agreed to by the parties in the CBA/MOU.
- The time off for stress was related to the grievant's (spouse, parent, etc.) and not the employee therefore he/she does not need clearance.
- The supervisor's definition of health care provider for this instance is improper.
- LWOP may be discretionary , how ever the arbitrary and capricious denial of LWOP violates the spirit and intent of the CBA and ELM.
- Forcing the grievant to use his/her leave involuntarily only compounded the situation.
- Forcing the grievant to be on a LWOP status for such a long period of time in effect is disciplinary lay off (constructive suspension, tantamount to a removal action).
- The grievant was improperly placed on RSL.
- The grievant is not on RSL and the demand for medical documentation is improper.
- There is no evidence of the Service's need to protect its interests. The supervisor (manager) is using this as an excuse to improperly demand medical certification.
- The absence was for less than three (four) days and therefore the grievant's verbal certification should suffice.
- The manager(Postmaster, MDO, SDO, District Manager) had imposed a blanket AWOL policy which was improper.
- The blanket policy demanding employees to provide medical certifications for call ins (on Saturdays, Holidays, drop day OT etc.) is improper and violates the long standing Step 4 decision executed in 1982.
- The rejection of the medical certificate simply because the word(s) (under my care, seen in my office) was improper all the other necessary elements of the substantiation are on the form.
- The demand for a diagnosis is improper and violates the grievant's privacy.
- The supervisor improperly rejected the medical slip because it had a stamped signature. It has long been understood by the parties at Step 4 that a rubber stamp signature is acceptable; was faxed. Pursuant to a Step 4 decision reached in 1985 a facsimile signature is acceptable; it was signed by a nurse practitioner , [nurse, other attending practitioner] . Pursuant to the understanding of the parties the medical document is valid.)
- There was no justification for rejecting the medical document because it looked altered. The grievant gave a reasonable explanation for the change. If management questioned the propriety of the document it could have validated it through the normal procedures.
- The grievant's request for advance sick leave was unreasonably denied. There was evidence that the grievant would return to duty as supported by the medical document(s).
- The grievant's pay for leave taken was improperly modified. The grievant should have been paid at the higher rate of pay.
- The denial of military leave for a PTF was improper. ELM Chap 517 allows PTFs to take military leave.
- Management's imposition of a maximum 15 days of military leave was improper since the grievant can also take his (her) own annual leave (or take LWOP).
- The requirement that the grievant call in twice on a given day is improper and was long settled at Step 4 of the grievant-arbitration procedure.
- The grievant submitted a PS 3971 in advance . The unscheduled determination is unwarranted. The supervisor purposely delayed the approval of the leave requested.
- The grievant (mailed, hand delivered) the PS 3971 for the absence and therefore should not have been charged AWOL No Call.
- The supervisor altered the PS 3971.
- The grievant has a right to change the PS 3971 to comport with his/her true intent.

ARTICLE 10-RMD TIME & ATTENDANCE

- Facility management has violated their own SOP on RMD Attendance Control by.....
- ELM 666.81 does not define "regular" the unilateral imposition of local management's criterion without negotiation with Union violates past practice.
- The ELM 666.82 requires only satisfactory evidence be provided later. The grievant rendered evidence (in the form of verbal certification, in the form of a written medical document, in the form of a written memo from his/her spouse[parent, pastor, teacher, social worker etc.] , in the form of a receipt, voucher, tow slip etc).
- There is no official requirement in the ELM that the grievant schedule the medical appointment before or after tour of duty. The grievant is subject to the availability of the practitioner.
- The grievant did not deliberately put him(herself in a situation knowingly that created the reason for not being able to report for duty.
- The grievant was a victim of circumstance(s) and was therefore unable to be available for duty. He(she) did however, notify management of the absence and request to be absent.
- The grievant's attendance profile does reveal that he/she is regular in attendance.
- The grievant did have an actual emergency and was unable to secure advance permission, but did notify the proper official as soon as able and therefore should not be considered absent without leave.
- The grievant was tardy through no real fault of his/her own.
- The supervisor has in effect falsified a report of absence by making unwarranted alterations to the PS 3971 (after it was signed by the employee, after it was issued to the grievant, after the grievant made corrections to his/her request)
- The disciplinary measure taken against the grievant is not appropriate for the amount of leave used and violates ELM 666.86 and ignores the welfare of the employee undermining the USPS Administrative policy enumerated in 511.1 of the ELM.
- The designated union official is not properly recording leave in accordance with the F-22(F-21) and is using RMD in a counter productive manner altering the local business rules and substituting unknown, (unwarranted, non negotiated) local parameters.
- The imposition of RMD regulations on the TE is prohibited by postal regulations.
- The grievant was not unscheduled and such designation violates regulations since the absence was in deed requested in advance but not acted upon by the supervisor.
- The supervisor did not inform the grievant of the leave regulations but assumed that the employee should know. There is no evidence that the grievant was made aware of the RMD process or for that matter informed of the ELM provisions or local leave policies.
- The supervisor has not discussed the grievant's attendance records but merely relied on the ACS's dialogue as an assurance that the grievant was informed of the alleged attendance irregularities,
- The grievant was unable to physically call and therefore another individual called in.
- There is nothing that states the grievant was be medically unable to call in. Apparently the scope of the emergent condition was not what kept the grievant from personally calling.
- The grievant made written notification by faxing the PS 3971 to the (MDO's Office, Mgrs. Supt.'s ACO, ASC, Supervisor).
- The grievant readily concedes that the call(s) was not made from his(her) home. Nothing in the official leave regulations mandates a call from home.
- The grievant was under no obligation to answer a phone call from management.
- Management can not provide evidence that the grievant knew the return call *69 was from management.
 - The grievant became ill out of town and was not required to call from home.
 - The grievant's (spouse, child, parent) made the call because the grievant was unable to.
 - The grievant gave the duration of the absence clearly.
 - The demand to make a second call for the same absence was contrary to the Step 4 grievance decision reached in 1985.
 - It is a violation of accepted past practice to force the grievant to call in every day thus exposing him/her to unscheduled determinations.
 - Requiring a daily call in if the grievant has not seen a doctor in effects is unilateral RSL.



RMD Step 2 Language continued....

- Nothing in the nature of time and attendance has changed for management to impose a daily call in when past practice has not warranted such a call. RMD was proclaimed as not changing past practice, office policy and local attendance procedures.
- In effect management is forcing the grievant to go to a doctor for an absence wherein verbal certification could have sufficed, especially given the grievant's regular attendance profile.
- Management can not show that the past practice of calling in once with the request and duration have been an economic hardship on the Employer.
- Efficiency is not a concern of the Employer since there is no evidence to show that the past practice of calling in once and stating the duration was inefficient.
- Management claims that RMD did not change the leave regulations of the USPS therefore the unilateral imposition of a second call in is improper and volatile of past practice.
- RMD was not implemented during a negotiation period. Article 10 was still in full force and effect.
- The grievant complied with the requirement that he/she notify management of the emergency and the expected duration of the absence. He/she should not have been charged AWOL No Call for _____.
- In effect the grievant gave the ACS sufficient information to determine the absence was FMLA covered, but the failure of the ACS (FMLA Coordinator, Supervisor) to issue a "completed" PS 3971 along with Pub.71 was a direct violation of ELM 513.323 (for S/L), ELM 512.412(for A/L).
- The oppressive manner in which RMD is applied in the office violates the normal leave policies in violation of ELM 513.32
- The grievant was [ill, due for a physical exam related to her pregnancy, seen for a medical (dental, optical) exam (treatment) during regular scheduled tour of duty, caring for a dependent individual, treated at the VA] but was not fully aware of a demand for medical documentation since the absence was not more than three days.
- The grievant suffered from an unexpected illness (injury) and did request sick leave and signed a PS 3971 which the supervisor acknowledges receiving. However, leave was not granted and no reasonable reason given for the denial.
- The supervisor did not give the employee a copy of the PS 3971(s) as required by postal regulations. The employee assumed the absence would not result in an adverse action.
- The grievant was under the impression that the leave was approved after discussing the issue with the supervisor since the supervisor did not issue the grievant his/her copy of the PS 3971(s).
- The supervisor gave AWOL as a reason for granting AWOL in violation of the ELM.
- The supervisor did not properly note the reason for disapproving the leave but merely determined AWOL.
- The supervisor did not give a reason for the AWOL undermining the intent of official leave regulations on the disapproval of sick leave requested.
- The grievant offered other evidence of incapacity yet the supervisor ignored it in violation of ELM 513.361.
- Simply because the medical document contained the verbiage "Under my care" is no reason for the supervisor to reject the document. All the other essential information is contained in the document.
- The demand for a prognosis in the medical substantiation violates the CBA and the long stated policy that it is not a criterion for the approval of leave.
- The absence was for less than three days and the verbal certification was ignored when in fact the grievant's overall regular attendance record gives credence to the explanation.
- The grievant realized the absence was for more than three days and provided medical substantiation. The imposition of more demand was inappropriate.
- The grievant requested leave properly, informed of a prolonged absence of an extended period and provided medical documentation every thirty days of his/her incapacity to work.
- The medical document stated the grievant was able to return to duty (work) and there was no limitations listed therefore the rejection of the document violates ELM 513.365.
- There was no apparent need for a Fitness For Duty Exam since a complete report to support the request was not (issued, supplied, established, submitted) by the supervisor.
- The grievant was forced to complete the PS 3971 off the clock.
- The grievant was not allowed to complete the PS 3971 on the clock in violation of (FLSA, Step 4 decision, past practice, ELM 513.332)
- The failure to allow the grievant to complete the PS 3971 on the clock only compounded the matter and made the grievant use up more leave.



Time & Attendance Article 10 continued

- The supervisor is making a distinction of the absence code as a separate category of and thereby making an erroneous determination on the leave request.

RSL

- The grievant is not on Restricted Sick Leave List (SLR)
- The grievant was improperly placed on RSL in violation of ELM 513.391.
- The grievant's sick leave balance is being used as a meter for placement on RSL.
- The prerequisite discussion(s) were not given to the grievant prior to placement on RSL.
- The grievant was not placed on RSL as per the Local Leave Policy.
- The PS 3972 is not accurate and therefore not a basis for placing the grievant on RSL.
- There was actually an improvement of the number of hours charged to S/L after the discussion given.
- The grievant's name was not properly placed on RSL in writing with the expectations established.
- There is no evidence, other than the supervisor's hearsay information, that the grievant is actually on RSL.
- There has been a substantial decrease in absences charged to sick leave and the grievant's names should be removed from the Restricted Sick leave Listing.

CALL IN / NO CALL

- The grievant did call but the system apparently failed to make the proper recording.
- The grievant (sent in, faxed, e-mailed) a PS 3971 and therefore did not have to call in.
- The supervisor made an improper assumption when he/she turned the grievant's time card and executed a PS 3971 for no call, no show.
- The supervisor misread the RMD Messages generated and took improper action against the grievant.
- The supervisor did not properly complete action on the early check out request of the grievant but instead waited for the end of tour to turn in the data to the ACO.
- There is no requirement per official policy to call in. The grievant submitted his/her request for leave in writing.
- The PS 3972 (hard copy) is inconsistent with the RMD 3972 and therefore a violation of the SOP and Regulations.
- The ACS violated the SOP and deviated from the RMD dialogue (confusing , agitating, abusing) the grievant.
- The ACS violated the Coaching For Performance Handbook in that (s)he was sarcastic and disrespectful when taking the grievant's call and was acting in an irresponsible manner.
- The ACS did not clarify or properly state expectations and was remiss in the instructions given.
- The ACS did not give the grievant a choice nor calmly state the consequences.
- The ACS gave too many expectations (more than 5) which confused the grievant.
- The grievant did not threaten the ACS but was merely attempting to state his/her moral conviction on the issue.
- The ACS was intrusive in violation of the SOP and management directive issued to employees.
- The ACS did not allow for the proper response of the grievant in regard to (On the job injury, FMLA, sick leave, duration of absence, annual leave, LWOP) thereby creating a situation exposing the grievant to (improper leave denial, improper discipline, improper FMLA determination).
- The grievant sustained an on the job injury, however, it has been some time since the supervisor updated the grievant on the procedures for reporting an injury, The grievant called in and reported an injury had occurred, and in effect the inaction of the ACS tried to waive the employee's right to report and/or claim compensation under FECA.
- The grievant was not advised by the ACS of his/her right to elect COP.
- Although the grievant initially requested leave for an on the job injury the ACS failed to inform him that he could request COP in lieu of previously requested sick (annual) leave as per ELM 543.42.c
- The grievant's immediate supervisor did not provide the grievant with a CA-1 (CA-2).
- The ACS either did not report the injury related absence to the Control Office or the Control Office was remiss in complying with ELM 544.12 thereby causing the grievant to suffer and be adversely affected.
- The absence was related to a recurrence but not properly reported or recorded by the ACS.
- The ACS's inaction or the failure of the Control Office to properly act based on RMD information caused an unreasonable delay in medical treatment after it was reported.
- The call in to the ACS in effect was a report of the injury by the employee and it was USPS that failed to issue a CA-1 promptly.

Article 10 Time & Attendance continued

- The grievant was not absent on sick leave over 21 days. There is no criteria for medical clearance.
- The medical certification was sufficiently detailed. Management could have reasonably made a determination the grievant could return to work without hazard to self or others.
- Management violated Chap. 865 by improperly applying the return to duty regulations.
- The medical certification contained information that the grievant was fit for duty without hazard to him(her)self or others.
- The medical certification contained information indicating restrictions that should have been considered for accommodation (but were ignored , but were rejected, but were distorted) by the (manager, nurse, supervisor, medical unit, medical consultant).
- In accordance with ELM 865.4 management should have reassigned the grievant away from the environment and/or situation that had a direct bearing on the condition which caused the inability to work.
- Management insisted that the grievant perform full duties that the employee stated (s)he could not perform in violation of ELM 865.52 and compounded the situation (causing a need to take further leave, creating a situation that exposed the grievant to further injury, ignoring the welfare of the grievant).
- The Employer (supervisor, medical unit, manager) unreasonably delayed the grievant's return to duty although the grievant had submitted proper medical information/documentation within sufficient time for review.

PS 3971

- The supervisor failed to (allow the grievant to correct the PS 3971, sign the PS 3971, give grievant a copy of the PS 3971, make necessary changes on the 3971, allow the employee to change the type of leave (s)he was actually applying for, make a determination of scheduled vs. unscheduled, give a valid reason for the disapproval, give a valid reason for the AWOL, take timely action on the leave application, make a notation on reverse side as indicated for documentation required)
- The grievant was not permitted to make use of the Remarks column of the PS 3971.
- The grievant stated his/her reason on the Remarks column.
- The grievant was not allowed to acknowledge the AWOL as per the LMOU in the remarks column of Ps 3971.
- The date submitted and (the time of call or request, date of person recording absence) thereby indicating an in accurate document (that was not allowed to be corrected, that altered the grievant's(record, leave, status.)
- The PS 3971 indicated that the request was approved in advance therefore the charge date should not be used to the detriment of the grievant.
- The supervisor took no action on the leave request.
- The dates on the PS 3971 clearly show that there were (inconsistencies, errors, managerial manipulation of the record, detrimental determinations made.)
- The reverse side of the PS 3971 is blank.
- The reverse side of the PS 3971 as filled out by the supervisor is (inconsistent with the front data, in error, incomplete, confusing, a violation of the FMLA, improperly annotated, being misread by the (employee, supervisor, ACS, manager).
- The unscheduled determination on the PS 3971 is (incorrect, being challenged as inconsistent with EL-510-83-9 Management Instruction, being challenged as cited on the charge letter now as per the 1984 Gildea Memo.)
- The grievant made his/her request in writing on PS 3971 as per ELM 512.421 (in advance, upon return, as soon as possible, via FAX, via telegram, via e-mail scanned and sent to USPS).
- The PS 3971(s) in question should have been disposed of as per ELM 512.423
- The second (subsequent) day(s) after the initial call in (submission of medical substantiation) should not have been marked as unscheduled. Once valid documentation is received the remainder of the absence should have been recorded as scheduled.
- The grievant spoke directly with the immediate supervisor and the leave was requested in advance wherein the supervisor decided the employee did not have to come to work.
- The PS 3971 for absent for supposed scheduled OT is not an official request for leave and therefore the grievant's signature is not required per EL-510-83-9.

NOTES

1. ELM 512.41; 412, 513.331; 332; 41
2. Article 3 of the National Agreement contains management's rights which are not absolute. Their rights are subject to the law, the contract itself and their own regulations (including official leave policies). Sections A thru F do not contain behavior.
3. Coaching For Performance Accountability Handbook.
4. Article 15 of the contract requires a Step 1 be filed (discussed) within 14 days of when the infraction occurred with the immediate supervisor. If no resolution is reached the Union can appeal an adverse decision to Step 2 and beyond. Article 17 it is the Shop Steward who investigates problems to determine whether to file a grievance.
5. ELM 541.2 r
6. For Traumatic Injuries an employee may request 45 days of Continuation of Pay, filed a CA-1 and checked COP box within 30 days of injury, secured CA-16, submitted medical documentation. The Department of Labor NOT USPS controls COP.
7. CA-16 is the form that authorizes YOUR CHOICE of doctor to treat you per the ELM 545.4; 544.112.a
8. ELM 541.J
9. Q&A on FMLA issued 4/06/01 and ELM 825
10. Jan 2001 Letter from Mgr. Tulino HQ USPS Labor Relations Policies and Programs stating USPS does not require a specific format for FMLA documentation but the Union's forms can be used.
11. See notes on No. 4 above.
12. 1985/1986 Step 4 Interpretive Decision stating a two call requirement is contrary to the ELM and 1983 Step 4 Decision that prohibits counting your rest day as part of an absence.
13. ELM 512.411 states except for emergencies, annual leave must be requested on Form 3971 and approved in advance by the supervisor. Section 412 states for emergencies employees must notify appropriate postal authorities of emergency and duration.
14. ELM 514.22 requires LWOP be granted to disabled vets for treatment associated with service connected disability and for National Guard and Reserve duty as well as FMLA. 514.4 gives full discretion of approval for use of LWOP to cover vacation, personal reasons, attend college, cover illness or injury and for union service.
15. Article 16 Section 1 of the contract states a basic principle shall be discipline should be corrective in nature rather than punitive. No employee shall be disciplined except for just cause. It does not define just cause but gives examples. EL 921 defines just cause tests. Article 16 Sec. 2(discussions), Sec. 3(letter of warning), Sec. 4(suspensions) and Section 5 (suspensions of more than 14 days and removal) provide the disciplinary steps.
16. EL 921 Section B calls for a second discussion.
17. ELM 510 indicates placement on Restricted Sick Leave List takes about 9 months. (3 month review with discussion, no improvement in 3 months another discussion. If there is no after another 3 months employees place on RSL.
18. 1984 Step 4 Decision agreeing PS 3971s are to be completed on the clock.
19. The Medical Handbook Chap 865.2 ; .3
20. 1984 Step 4 Decision on when action should be take by medical officer and on return to duty the next day.
21. Contract Memo allows employees to take 80 hours of sick leave per leave year to care for family members who are ill.
22. June 1985 letters from USPS HQ Contract Administration Manager and Medical Officer stating a prognosis is not required on a medical slip.
23. 1985 Step 4 Decision indicating that a FAX doctor signature is OK. Question 20 of the 4/1/01 FMLA Joint Q&A on FMLA allows telegrams etc.(fax).

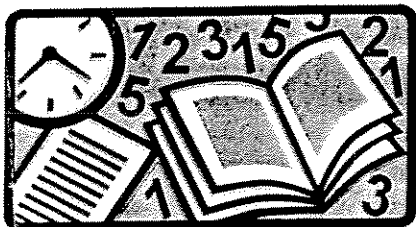
FMLA

Basic Guide For Stewards



EMPLOYEE to be eligible for FMLA coverage:

- Must have worked a minimum of 1250 hours during the 12 months prior to the date the leave is to begin.
- Sick, annual, LWOP, court leave are not included in the 1250 hours. OWCP, military leave do not count toward the 1250 hours. Hours worked is time worked.
- Steward duty time counts toward the 1250 hr. calculation, but there is a dispute over Union leave.
- Long term suspensions or removals overturned with full back pay and benefits have the time counted as work hours towards the 1250 requirement.
- Once an employee, who has a chronic condition, has submitted all the proper documentation and the condition has been accepted by the Postal Service as an FMLA condition, the employee shouldn't be forced to meet the 1250 hrs. requirement each time he/she is absent for that condition.
- Once the employee meets the 1250 hr. requirement in a leave year the employee does not have to meet it again for subsequent absences during the leave year unless he/she suffers from multiple conditions.
- FMLA leave is based on USPS leave year. (Jan.11, 2003 - Jan. 09, 2004 will be the next leave year.]



EMPLOYEE to be entitled to FMLA:

- Must have the birth of a son or daughter; or be adopting/ placement of son or daughter or caring for the newborn or adopted child. [Entitlement is good for 1 year from birth or placement]

- Have management agree to Intermittent leave for the above purposes or reduced schedule leave.
- Must need to care for the employee's spouse, son, daughter or parent with a serious condition.
- Must have a serious health condition him/herself that makes the employee unable to perform one or more of the essential functions of the job.

LEAVE- an employee is entitled to take:

- A total of 12 weeks or up to 480 hours within a leave year.
- Part timers workers less than 40 hours are entitled to 12 x the hours normally scheduled in their work week.
- If the 12 weeks are exhausted an employee can request leave under the regular leave program.
- If two parents work for USPS both may each take 12 weeks of FMLA.
- FMLA and contractual dependent care can be used simultaneously depending on circumstances.

EMPLOYEE is obligated to:

- Request leave to be protected
- Submit a PS 3971 requesting the leave
- Give at least 30 days notice in advance for foreseeable absence.
- Give notice as soon as possible and practicable for unforeseeable absence.
- State the reason for the absence, clearly stating to the supervisor the absence is due to a serious health condition so the supervisor has enough info to allow him/her to make a determination to designate the absence as FMLA covered. [simply requesting sick leave is not enough information for an FMLA determination]
- Provide more information if management requests it upon determining they have incomplete information. 15 days should be allowed for employee to comply after being notified.
- APWU Forms or WH-380 (or any other documents) can be used provided enough information is provided for management to make a determination the absence is due to a covered condition. APWU Forms must be completely filled out with all material facts. APWU takes the position a diagnosis and prognosis should not be placed on the form.
- Give verbal notice on the phone of the absence due to a covered condition and management then has to either designate the leave as FMLA or not and give employee proper written notification of his/her rights under FMLA (Pub.71).

EMPLOYER is obligated to:

- Designate the leave by indicating if the request is: Approved; Approved , FMLA, pending the specified documentation; Disapproved, with the reason for the disapproval.
- Give a copy of the signed PS 3971 to the employee
- Give Pub. 71 to employee if FMLA request is approved or approved pending documentation within two (2) days in writing. If USPS does not abide by this they can later correct their failure.
- Designate the leave as FMLA even if employee does not request the leave be counted as FMLA.
- Request the employee provide required information if form or documents are incomplete.
- Pay for the medical visit if management does not accept employee's doctor's medical analysis and requests a second opinion.
- Secure permission from employee to have USPS doctor contact employee's doctor to clarify and authenticate the medical certification.
- Approve or disapprove request for leave in accordance with appropriate leave policies and CBA.
- Comply with return to duty process. (There is a dispute as to manuals and handbooks imposing more stringent standards for a return to duty than does the law.)
- Post and keep posted in conspicuous places Pub. WH 1420
- Deny or delay designation of FMLA if untimely notice for foreseeable absence is given; for failure to provide certification for absence; failure to provide certification for return to work, employee obtains or requests FMLA under fraudulent circumstances.

MEDICAL CERTIFICATION forms must include:

- Mandatory information acceptable under FMLA regulations
 - A) statement indicating what part of the definition of serious health conditions applies to patient.
 - B) Medical facts to support the certification with brief statement as to how facts meet the criteria of the definition.
 - C) Approximate date serious health condition commenced, its duration and probable duration of employee/patient's present incapacity.
 - D) Statement if it is necessary for employee to take leave intermittently or reduced work schedule.
 - E) Statement if employee is presently incapacitated and likely duration and frequency of episodes of incapacity.

F) If additional treatments are necessary with a statement as to number of probable treatments. A general description of regimen if there is a regimen of continuing treatment should be provided.

G) If employee is able to perform work of any kind if leave is for employee's own serious condition.

Management can request certification if employee requests an extension; there is a significant change in circumstances; questions exist casting doubt on validity of certification or there is a question on the adequacy of the certification. Management can request a second and if need be a third opinion.

A SERIOUS HEALTH CONDITION is:

- An illness, injury, impairment or physical/mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or... continuing treatment by a health care provider.
- Not normally, common colds, flu, earaches, upset stomach, minor ulcers, headaches other than mi-

graine, routine dental or orthodontia, periodontal diseases unless complications arise from them or in some cases if those conditions incapacitate employees more than three days. [There is a litany of possible serious conditions and not serious conditions (see page 13 of CBR-02-04)]

CONTINUING TREATMENT is:

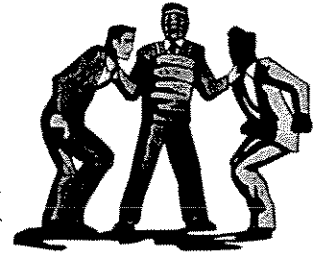
- A period of incapacity of more than three calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves treatment two or more times by a doctor or treatment by a doctor on at least one occasion resulting in a regimen of continuing treatment under the supervision of a doctor.
- Any period of incapacity due to pregnancy or prenatal care.
- Any period of incapacity or treatment for such incapacity due to chronic serious health condition.
- A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective (e.g., severe stroke, terminal illness).

For a condition wherein an employee is unable to perform the functions of the employee's position where the doctor has found the employee is either unable to work at all or unable to perform any of the essential functions of the position within the meaning of the Americans with Disabilities Act management can not force the employee to take light duty in lieu of FML.

TO RETURN TO DUTY an employee must:

- Provide medical certification that he/she is fit for duty when such certification is required.
- Provide certification from the doctor to qualify to return to work. USPS should not delay return to duty per the Step 4 settlement. (Fitness for Duty Exams may be required if job related but should not delay the return to duty).
- Return to duty when FMLA protection ends since the stated reason for the leave ceases to exist.

Grievances & FMLA



Although the FMLA allows for private right of action and appeals through the US Dept. of Labor the CBA provides for the grievance-arbitration process to enforce the contract.

At one time the APWU attempted to maintain a separate process for FMLA related issues. This process is no longer in place as far as it is known. Our contract requires the application and compliance with external law under the provisions of Article 3.

Various contract articles can be cited in FMLA cases:

Article 2— if management applies FMLA in a discriminatory manner or in instances where the ADA provisions of FMLA regulations are misapplied or violated.

Article 3— management's policies must be consistent with applicable laws and regulations. FMLA applies to the postal service and their own reversion of the ELM Chap. 515 requires them to comply with FMLA.

Article 5— unilateral changes to policies or practices related to FMLA are prohibited. Unilateral decisions and dictates of so called FMLA Coordinators under RMD can and should be challenged.

Article 8— work hours counted or not counted towards the requirements. Refusal to grant reduced work schedules or refusal to return to duty.

Article 9— pay affected by refusal to comply with FMLA regulations.

Article 10— violations of the ELM 510, 515; Dependent Care provisions, LWOP MOUs etc.

Article 13— violations of FMLA if management forces employee eligible for FMLA who requests FMLA to go on light duty.

Article 14— refusal to properly administer FMLA creates stressful conditions that compound the medical condition of employee supported by medical documentation.

Article 15— by incorporating changes to the ELM management made FMLA enforceable through Article 19 grievance appeals.

Article 16— If FMLA approved leave is used in disciplinary action it violates the just cause provisions of the CBA and the Q&As on FMLA.

Article 17 & 31— If management refuses to issue the union requested information to enforce FMLA or the CBA.

Article 19- (see Article 15) management violates their own handbooks and regulations.

MOUs on FMLA, Return to Duty, Q&As are all enforceable under the grievance-arbitration procedures.

DOCUMENTATION on FMLA Grievances

Medical documentation is covered under the privacy regulations of USPS primarily under the ASM. However, the Union is one of the need to know parties recognized as the collective bargaining agent allowed access to certain medical documents.

At a minimum a grievance file alleging a violation of the CBA related to FMLA must contain:

- Copies of PS 3971(s) showing dates of absence and application of leave
- Copies of FMLA Union Forms or DOL forms or documents containing required information.
- Any notices from management to employee, to and from other managers.
- Statement from grievant with all relevant details including who, what, when, where, how and why basic questions answered.
- Any related medical documentation contained in management's files.
- A completed position paper from the steward including citations and contentions.
- A statement as to management's compliance with posting of FMLA rights and issuance of Pub. 71.

Also any related discipline and notations related to the absence period or violation contended.

SAMPLE STEP 2 LANGAUGE

- This grievance evolves from the issuance of (state kind of discipline) wherein the Employer improperly cited and used FMLA protected leave as a basis for imposing discipline.*
- This grievance evolves from the improper determination of the Employer that leave requested is not FMLA covered.*
- Although the grievant provided enough information to the Employer to determine the absence was FMLA covered, the supervisor refused to comply with the Act and disapproved the leave.*
- The grievant was (is) FMLA eligible and provided the required information on the absence yet the supervisor improperly designated the leave as non FMLA.*
- The grievant submitted a completed FMLA Form which was improperly rejected by the supervisor only to have a demand imposed which is more stringent than required by the law.*
- Management failed to notify the grievant of FMLA rights compounding the situation and exposing the grievant to liability and/or forfeiting benefits/rights under the law.*
- The demand for a second medical opinion is improper since there is no legitimate question as to the validity or adequacy of the medical certification.*
- Management unilaterally imposed a definition as to serious medical condition opposed to that of a bonafide medical health provider to deny the grievant FMLA rights and protection.*
- Contrary to the assertion of the supervisor the grievant is eligible for FMLA protection based on....*
- The request for re-certification was unreasonable and violated the agreement of the parties found in item 34 of the joint Q&As on FMLA.*
- Management has violated the provisions of the CBA, basically Article 3, 10 and 19 by their unilateral imposition of demands outside of the FMAL including.....*
- The grievant notified supervision of the need for leave and the extent of the situation which the supervisor ignored and failed to render a proper determination under FMLA.*
- The delay in returning the grievant to work after proper certification violated the FMLA.*

REMEDIES

Depending on the fact circumstances remedies can include deleted the AWOL, granting the leave, voiding the discipline imposed, finding employee eligible and changing the determination providing protection, remunerations of wages and benefits, paying for medical costs, interest on lost wages, make whole or match of employees lost wages, reinstatement etc.



Employee's Name (Last, First, M.I.)

Social Security No.

Date Submitted

No. of Hours Requested

Installation (For PM leave, show city, state, and ZIP code)

N/S Day

Pay Loc. #

DIA Code

From Date

Hour

Time of Call or Request

Scheduled Reporting Time

Employee Can Be Reached At (If needed)

Thru Date

Hour

Type of Absence

Documentation (For official use only)

Revised Schedule for (Date)

Approved in Advance

Scheduled Un-Scheduled

PP

Year

Day

Init.

Hours

☐ Annual

☐ Carrier 701 Rule

☐ LWOP (See reverse)

☐ Sick (See reverse)

☐ Late

☐ COP

☐ Other

☐ For FMLA Leave (Certification reviewed)

☐ For COP Leave (CA1 on file)

☐ For Advanced Sick Leave (1221 on file)

☐ For Military Leave (Orders reviewed)

☐ For Court Leave (Summons reviewed)

☐ For Higher Level (1723 on file)

☐ Scheme Training Testing, Qualifying (Memo on file)

Remarks (Do not enter medical information)

Begin Work

Lunch-Out

☐ For FMLA Leave (Certification reviewed)

☐ For COP Leave (CA1 on file)

☐ For Advanced Sick Leave (1221 on file)

☐ For Military Leave (Orders reviewed)

☐ For Court Leave (Summons reviewed)

☐ For Higher Level (1723 on file)

☐ Scheme Training Testing, Qualifying (Memo on file)

Remarks (Do not enter medical information)

Begin Work

Lunch-Out

Lunch-In

End Work

Total Hours

Signature of Person Recording Absence and Date

Signature of Supervisor and Date Notified

Signature of Supervisor and Date

Signature of Supervisor and Date

☐ Approved, not FMLA

☐ Approved, FMLA (See Publication 71)

☐ Disapproved (Give reason):

☐ Ineligible for FMLA (Estimate eligibility date):

☐ Continued on Reverse

PS Form 3971, April 2001 (Page 1 of 2)

Warning: The furnishing of false information on this form may result in a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both, (18 U.S.C. 1001)

Official Action on Application (Return copy of signed request to employee)

Signature of Supervisor and Date

Signature of Supervisor and Date

Signature of Supervisor and Date

Signature of Supervisor and Date

Signature of Supervisor and Date

Signature of Supervisor and Date

Signature of Supervisor and Date

Signature of Supervisor and Date

Signature of Supervisor and Date

During This Absence, I Was Incapacitated for Duty by:

- ☐ Sickness
- ☐ On-the-Job Injury
- ☐ Off-the-Job Injury
- ☐ Pregnancy and Confinement
- ☐ Exposed to a Contagious Disease
- ☐ Undergoing Medical, Dental, or Optical Examination or Treatment (job related)
- ☐ Undergoing Medical, Dental, or Optical Examination or Treatment (Not job related)

During This Absence, I Was Unavailable for Duty Because:

- ☐ Sick Leave for Dependent Care
- ☐ Birth of Child - Bonding
- ☐ Placement of a Child with Employee for Adoption or Foster Care

Additional Information Regarding Denial of Leave Protection Under FMLA:

- ☐ Employee Not Eligible -- Less than 1250 Hours Worked.
- ☐ Employee Not Eligible -- Not Employed with USPS 1 Year.
- ☐ Employee Has Exhausted FMLA Entitlement in Current Leave Year.
- ☐ Absence Not for a Covered Condition.
- ☐ Absence Not for a Covered Family Member.
- ☐ Requested Documentation Not Provided.
- ☐ Documentation Provided, Does Not Meet Criteria for FMLA Protection.
- ☐ Additional Documentation Required

Privacy Act: The collection of this information is authorized by 39 USC 401, 1001, 1003, 1005; 5 USC 8339, and Public Law 103-3. This information will be used to grant or deny your request for official leave from Postal Service duty. It may be disclosed under the routine uses given in Privacy Act system notices USPS 050.020 and USPS 120.070 (see Appendix of Administrative Support Manual or, if you wish to obtain a copy of these notices contact your personnel official). Completion of this form is voluntary. If this information is not provided, official leave may not be granted.

Leave Types (Information Only)									
Leave Type	Time Card Code	PSDS Code	Scheduled	Un-Scheduled	PP	Year	Day	Init.	Hours
AL-FMLA	55/01	32							
SL-FMLA	56/02	33		Sat					
LWOP - FMLA - Part Day	59/05	36		01					
LWOP - FMLA - Full Day	60/06	37		Sun					
LWOP - Lieu of Sick Leave	59/60	20		02					
LWOP - Proffered	59/60	21		Mon					
LWOP - Personal Reasons	59/60	22		03					
LWOP - Part Day	59	23		Tue					
LWOP - Full Day	60	23		04					
LWOP - AWOL	59/60	24		Wed					
LWOP - ICD (Not FMLA) - OWCP	49	25		05					
LWOP - Maternity	59/60	26		Thur					
LWOP - Suspension	59/60	27		06					
LWOP - Union Official	84	28		Fri					
LWOP - Suspension Pending Termination	59/60	29		Sat					
Continuation of Pay - USPS	71	03		08					
Continuation of Pay - USPS-FMLA	71/03	34		Sun					
Continuation of Pay FMLA-ICD-OWCP	49/04	35		09					
Court Duty	61	04		Mon					
Military Leave	67	05		10					
Postmaster's Organization	89	08		Tue					
Blood Donor Leave	69	09		11					
Other Paid Leave	86	10		Wed					
Convention Leave	66	12		12					
Acts of God	78	13		Thur					
Veteran's Funeral	86	15		13					
Relocation	80	16		14					
Civil Defense	77	17		Fri					
Civil Disorder	81	18		14					
Volting Leave	85	18							

514.5 **Forms Required**

514.51 **Form 3971**

A request for LWOP is submitted by the employee on Form 3971, *Request for or Notification of Absence*. If the request for leave indicates that the LWOP will extend over 30 days, a written justification and statement of reason for the desired absence is required.

514.52 **Form 50**

Form 50, *Notification of Personnel Action*, is prepared when LWOP is in excess of 30 days (see Handbook EL-301, *Guidelines for Processing Personnel Actions*).

515 **Absence for Family Care or Serious Health Condition of Employee**

515.1 **Purpose**

Section 515 provides policies to comply with the Family and Medical Leave Act of 1993 (FMLA). Nothing in this section is intended to limit employees' rights or benefits available under other current policies (see 511, 512, 513, 514) or collective bargaining agreements. Likewise, nothing increases the amount of paid leave beyond what is provided for under current leave policies or in any collective bargaining agreement. The conditions for authorizing the use of annual leave, sick leave, or LWOP are modified only to the extent described in this section.

515.2 **Definitions**

The following definitions apply for the purposes of 515:

- a. *Son or daughter* — biological, adopted, or foster child, stepchild, legal ward, or child who stands in the position of a son or daughter to the employee, who is under 18 years of age or who is 18 or older and incapable of self-care because of mental or physical disability.
- b. *Parent* — biological parent or individual who stood in that position to the employee when the employee was a child.
- c. *Spouse* — husband or wife.
- d. *Serious health condition* — illness, injury, impairment, or physical or mental condition that involves any of the following:
 - (1) *Hospital care* — inpatient care (i.e., an overnight stay) in a hospital or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or subsequent to such inpatient care.
 - (2) *Absence plus treatment* — a period of incapacity of more than 3 consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves either one of the following:
 - (a) Treatment two or more times by a health care provider.

- (b) Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider.
- (3) *Pregnancy* — any period of incapacity due to pregnancy or for prenatal care.
- (4) *Chronic condition requiring treatments* — a chronic condition that meets all of the three following conditions:
 - (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).
 - (c) May cause episodic, rather than a continuing period of, incapacity. Examples of such conditions include diabetes, asthma, and epilepsy.
- (5) *Permanent or long-term condition requiring supervision* — a period of incapacity that 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 of such conditions include Alzheimer's, a severe stroke, and the terminal stages of a disease.
- (6) *Condition requiring multiple treatments (nonchronic condition)* — 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 incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment. Examples of such conditions include cancer (which may require chemotherapy, radiation, etc.), severe arthritis (which may require physical therapy), and kidney disease (which may require dialysis).

Note: Cosmetic treatments (such as most treatments for orthodontia or acne) are not "serious health conditions" unless complications occur. Restorative dental surgery after an accident or removal of cancerous growths is a serious health condition provided all the other conditions are met. Allergies, mental illness resulting from stress, and treatments for substance abuse are protected only if all the conditions are met. Routine preventative physical examinations are excluded. Also excluded as a regimen of continuing treatments are treatments that involve only over-the-counter medicine or activities such as bed rest that can be initiated without a visit to a health care provider.

- e. *Health care provider* — doctor of medicine or osteopathy; Christian Science practitioner listed with the First Church of Christ, Scientist, in

515.63

515.63 Temporary Change in Duty Assignment

If an employee requests intermittent leave or a reduced work schedule, the Postal Service may assign the employee, with equivalent pay and benefits, temporarily to the duties of another position consistent with applicable collective bargaining agreements and regulations if such an assignment better accommodates the recurring periods of absence.

515.64 Fair Labor Standards Act Status

An employee exempt from the Fair Labor Standards Act (FLSA) normally may not take leave in less than 1-day increments. However, leave taken for an FMLA-covered reason on an intermittent basis or by temporarily establishing a reduced work schedule can be taken in less than 1-day increments without affecting the employee's FLSA-exempt status.

515.7 Return to Position

Employees whose absence is covered by the FMLA are normally entitled to return to the positions they held when the absence began, or to equivalent positions with equivalent pay, benefits, working conditions, and other terms of employment if they are able to perform the essential functions of the positions. Returning employees are not entitled to any right, benefit, or position to which they would not have been entitled had they not been absent, or to intangible, unmeasurable aspects of the job such as the perceived loss of potential for future promotional opportunities. If an employee was hired for a specific term or only to perform work on a discrete project, then there is no further reinstatement obligation under this section if the employment term or project is over and the employment would not have otherwise continued.

515.8 Benefits

All benefits accrue to employees during an FMLA absence pursuant to the applicable provision of the ELM.

515.9 Family Leave Poster

All postal facilities, including stations and branches, are required to conspicuously display WH Publication 1420, *Your Rights Under the Family and Medical Leave Act of 1993*. It must be posted, and remain posted, on bulletin boards where it can be seen readily by employees and applicants for employment.

516 Absences for Court-Related Service**516.1 General****516.11 Determining Nature of Court-Related Service**

Installation heads ascertain the exact nature of court service and determine if the employee (a) is entitled to paid court leave, (b) must take annual leave or LWOP, or (c) is to serve in an official duty status. If a summons to witness

LABOR RELATIONS



March 19, 1999

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

Dear Bill:

This letter is in regard to your February 23 correspondence and my February 19 response concerning the union's right to medical documentation for the processing of grievances. Upon further review, the following revises the earlier Postal Service position regarding union requests for medical information.

In requesting employee medical documentation, a collective bargaining representative, i.e., authorized union representative, must demonstrate that the information sought is relevant and necessary to his/her duties in accordance with the collective bargaining agreement.

Demonstration of relevancy is addressed by answering the following two questions:

- What is the precise bargaining issue, grievance, or contemplated grievance involved?
- Why does the union claim that the information being sought is relevant and necessary to resolving the issue or dispute?

Upon receipt of this type of request and demonstration of relevancy, the information will be released, as appropriate.

Specific instructions to the field regarding the aforementioned process can be located in Management Instruction (MI) EL-860-98-2, Employee Medical Records. This MI was sent to the American Postal Workers Union on January 9. Enclosed is a copy of the transmittal letter and document.

Should there be any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,


Peter A. Sgro
Acting Manager
Contract Administration (APWU/NPMHU)

Enclosure



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

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,

A handwritten signature in cursive script, reading "Anthony J. Vegliante".

Anthony J. Vegliante

Manager
Contract Administration APWU/NPMHU

Enclosure



September 12, 1996

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

Dear Bill:

This is in response to your July 30 correspondence concerning a system to address disputes arising out of the Family and Medical Leave Act and the Privacy Act. After our last discussion, we agreed to send you a written summary of our understanding regarding your concerns.

You indicated that there is a problem in the field with managers who insist on retention and review of records containing a prognosis or diagnosis. The National Medical Director for the Postal Service, Dr. David Reid, III, addressed the documentation requirements for approval of leave in a memorandum dated June 22, 1995. As noted by Dr. Reid, medical information received by an employee's supervisor that provides a diagnosis and a medical prognosis 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. This application is consistent with the documentation requirements under the FMLA. Therefore, to address your concerns we can reissue the memorandum and review specific complaints on a case by case basis.

In response to your questions regarding those issues needing agreement or disagreement as to the basic principle, we submit the following as our understanding of our final discussion:

Issue: Whether or not supervisors/postmasters/managers may maintain files containing medical records including prognosis or diagnosis.

Answer: Management may maintain WH380, union FMLA forms, or other certifications from health care providers that do not contain restricted medical information. Documents containing diagnosis or prognosis must be returned to the employee, destroyed, or forwarded to the medical unit.

Should you have any further questions concerning these issues, you may call Corine Rodriguez at (202) 268-3823.

Sincerely,

A handwritten signature in cursive script, appearing to read "Anthony J. Vegliante".

Anthony J. Vegliante

Manager
Contract Administration (APWU/NPMHU)

LABOR RELATIONS



April 29, 1999

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

Dear Bill:

This is in response to your April 22 letter to Anthony Vegliante, Vice President, Labor Relations, concerning the recognition of APWU forms for certification of Family and Medical Leave Act (FMLA) absences.

We are not aware of any information concerning modifications to the Department of Labor's (DOL) Optional Form WH-380, Certification of Health Care Provider. Since you have discussed the matter with DOL officials and they have indicated they have no plans to modify the WH-380, this issue should not be a concern.

Postal policy is that the APWU forms, or any other forms, are acceptable so long as the required information (information such as that required on a current WH-380) is provided by the health care provider.

We are unaware that any "...Districts have informed APWU Locals that the [APWU] forms will no longer be accepted." If you provide the name(s) of the district(s) where this has allegedly occurred, we will have the appropriate area office look into the matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Baker", written over the word "Sincerely,".

Charles E. Baker
Acting Manager
Contract Administration (NALC/NRLCA)

MANAGEMENT REQUEST FOR CLARIFICATION OF MEDICAL CERTIFICATION

Employee's name _____

Date of Original Medical Certification _____

Supervisor _____

You verbally requested on _____ that I obtain clarification of my medical certification. I shall need more specific information regarding your request. The Family and Medical Leave Act provides that you are entitled to:

- *The name of my health care provider and the type of medical practice
- * A certification of which part of the definition applies to my condition
- *A brief statement as to how the medical facts meet the criteria of the definition
- *The date the serious health condition commenced and its probable duration,
- *Whether my absence will be intermittent or require a reduced work schedule
- *Additional treatments, if necessary
- *If pregnancy or chronic condition, will I require a reduced leave schedule or intermittent leave
- *The nature of treatments provided by a different provider
- *The regimen of continuing treatment if required
- *Whether or not I can perform work of any kind or the essential functions of my position

The Family and Medical Leave Act requires that ***you provide me with advance written notice detailing the specific expectations and obligations.*** This is to request that you provide me in writing whether you request the opportunity to contact my physician and the specific clarification of my certification that you seek.

Employee's Signature

EXAMPLE #1
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 ELM. Form PS 3971 must be completed by employee.

EMPLOYEE'S NAME **JOHN DOE**

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) X (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. **MR. DOE WAS HOSPITALIZED OVER NIGHT FOR SURGERY ON HIS LEFT KNEE AND HAS BEEN SCHEDULED FOR FOLLOW-UP VISITS AND COULD EXPERIENCE FLARE-UPS OF HIS CONDITION**

Date condition commenced: **6/26/95**

Probable duration of condition: **SIX MONTHS**

Probable duration of the present incapacity (if different): **FOUR WEEKS**

Will the employee be required to be off from work intermittently or work a reduced schedule as a result of this condition and/or treatments? **YES** Note the probable time and duration. **1 TO 2 DAYS PER MONTH FOR THE NEXT 6 MONTHS**

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. **ONE OFFICE VISIT PER MONTH ON OR ABOUT THE 15TH OF EACH MONTH FOR THE NEXT SIX MONTHS**

Is the employee able to perform the functions of employee's position? **NO** If no, describe the physical restrictions placed on the employee, including the duration of such restrictions. **MR. DOE WILL BE UNABLE TO PERFORM ONE OR MORE FUNCTIONS OF THIS POSITION FOR THE NEXT FOUR WEEKS BEGINNING ON 6/26/95 AND WILL BE UNABLE TO DO SO DURING ANY OF THE FLARE-UPS NOTED ABOVE.**

Health Care Provider's Signature **DR. GET BETTER**

Date **6/26/95**

Address **1 MEDICAL PLACE BIG CITY USA**

EXPEDITED REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration	(Grievant: Slate, Floyd
)	
between	(Post Office: Denver BMC
)	
UNITED STATES POSTAL SERVICE	(USPS Case No. E00C-1E-C 02123953
)	
and	(APWU Case No. 021221
)	
AMERICAN POSTAL WORKERS	(
UNION, AFL-CIO)	

BEFORE: D. Andrew Winston, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Donald J. Davis, Sr., Labor Relations Advocate
Judy Ford, Technical Advisor
Zeke Olagoke, Observer

For the Union: George Prusak, President, Colorado State Chapter
Cindy Reynolds, Technical Advisor

Place of Hearing: 7755 East 56th Avenue
Denver, Colorado 80238

Date of Hearing: October 8, 2002

Date of Award: October 10, 2002

Relevant Contract Provision(s): Articles 5, 10 & 19; ELM § 511.4

Contract Year: 2000-2003

Type of Grievance: Contract

RECEIVED

OCT 24 2002

OMAR M. GONZALEZ
REGIONAL COORDINATOR

ISSUE

Did the Service violate the National Agreement when it recorded Floyd Slate's sick leave taken on March 27 and 28, 2002, as an unscheduled absence? If so, what is the appropriate remedy?

RELEVANT FACTS

This grievance was processed in a timely and proper manner. There was no challenge to the jurisdiction of the Arbitrator at the hearing. During the course of the arbitration hearing, all parties were afforded a full and complete opportunity to be heard, present relevant evidence, cross-examine witnesses, and develop arguments. No official transcript was made of the hearing. The witnesses appearing before the Arbitrator were duly sworn. The hearing was closed and the matter stood fully submitted as of October 8, 2002.

Mr. Slate is a Distribution Clerk on Tour 2 at the Denver BMC, reporting for duty at 6:15 a.m. He has approximately twenty five (25) years with the Service.

On March 26, 2002, Mr. Slate called Attendance Control approximately one and one-half (1½) hours before his tour was scheduled to begin. He spoke with Gustavo Garza, Supervisor, Distribution Operations, then recently detailed as an Attendance Control Supervisor at the GMF. Mr. Slate reported to Mr. Garza that he was ill with the flu and could not work that day. Mr. Slate requested twenty four (24) hours sick leave. Mr. Garza asked Mr. Slate to provide medical documentation upon his return to work. Mr. Garza then recorded Mr. Slate's verbal notice on three (3) separate Forms 3971 as unscheduled absences.

ELM § 511.41 defines "unscheduled absences" as "any absences from work that are not requested and approved in advance."

Mr. Slate returned to work on March 29, 2002, and provided the Service with a note from his doctor, dated March 26, 2002, stating that Mr. Slate "[H]as been under care for illness 03/26/02 through 03/28/02[.] May return to work on 03/29/02." The leave request was disapproved on March 29, 2002, by Van Walker, the appointing official, citing as the reason that Mr. Slate "failed to provide acceptable doc[umentation,] charge to LWOP."

Mr. Slate filed two (2) grievances: one (1) challenging the denial of pay for the sick leave taken and one (1) for classifying the leave as unscheduled as opposed to scheduled. The first grievance was settled. The second grievance is before this Arbitrator.

Mr. Slate has two (2) previous instances of attendance-related discipline: a Letter of Warning from his immediate supervisor, dated April 25, 2001, for being absent without official leave (AWOL) and failure to be regular in attendance, and another instance in September 2001 resulting in a seven (7)-day suspension. Both disciplinary actions were grieved and settled, and are scheduled to be expunged from Mr. Slate's personnel file in December 2002 provided there are no further instances of attendance-related discipline.

To date, Mr. Slate has not been disciplined for the absences of March 26-28, 2002.

Mr. Slate testified that it has been the Denver BMC's past practice that when an employee called in sick, the first day missed was recorded as an unscheduled absence but subsequent days were recorded as scheduled absences. When Mr. Slate noticed the Forms 3971 noted the absences were unscheduled, he spoke with his acting supervisor, Marty Martinez, who reportedly told Mr. Slate "that's just how the GMF does it."

John Joseph "Joe" Buckley, Manager, Distribution Operations for the Colorado/Wyoming Cluster with oversight of the Integrated Resource Management Office, testified that a corollary of the ELM's definition of "unscheduled absence" is that a scheduled absence must be both requested and approved in advance. When an employee calls Attendance Control to report that s/he is sick and requests to be absent for a number of consecutive days, the absences are unscheduled and are deemed one (1) incident. The onus is on the employee to contact his/her supervisor directly to obtain prior approval of some or all of the absences. Mr. Buckley has not instructed his department to so advise employees when they call in sick. Indeed, Mr. Slate testified that he received no such instruction from Mr. Garza. Mr. Buckley asserted that employees, including Mr. Slate, should have received "stand ups" on the appropriate procedure for avoiding unscheduled absences when calling in sick. Mr. Buckley insisted that pursuant to the ELM, supervisors could not appropriately change the classification of leave after the fact; scheduled leave, by definition, must be requested and approved prior to it being taken. This was contradicted by Mr. Garza.

AWARD

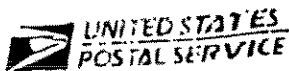
The grievance is sustained. I find that Mr. Slate gave the Service appropriate notice of his illness and impending absences, as required. The Service had no advance notice of the absence of March 26, 2002, and the Union concedes that particular absence was appropriately recorded as unscheduled. The Service was, however, provided advance notice of the March 27 and 28th absences. As the issue of a past practice was not raised at prior steps of the grievance procedure, I can not now consider that argument. Nevertheless, Mr. Slate was not advised by the Service that it was his obligation, after having contacted Attendance Control, to take the additional step of conferring with his immediate supervisor in order to avoid the balance of the sick leave being classified as unscheduled. The Service's failure to so advise Mr. Slate lulled him into a potentially career threatening complacency and violated ELM § 511.42(a), Management Responsibilities, which provides that "[t]o control unscheduled absences, postal officials ... [i]nform employees of leave regulations."

The Service is hereby directed to modify the classification of Mr. Slate's absences of March 27 and 28, 2002, from unscheduled to scheduled, and further, to make Mr. Slate whole in all ways.

October 10, 2002


D. Andrew Winston, Arbitrator

RECEIVED



AUG 30 2002

U.S. POSTAL SERVICE
WASHINGTON, D.C.

Mr. Vincent R. Sombrotto
President
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2144

RE: Q98N-4Q-C 01051141
Class Action
Washington, DC 20260-4100

Dear Mr. Sombrotto:

On several occasions I met with your representative to discuss the Resource Management Database (RMD) at the interpretive step of the grievance procedure.

The interpretive issue is whether or not the RMD, or its web-based counterpart, enterprise Resource Management System (eRMS), violates the National Agreement.

It is mutually agreed that no national interpretive issue is fairly presented. The parties agreed to settle this case based on the following understandings:

- The eRMS will be the web-based version of RMD, located on the Postal Service intranet. The eRMS will have the same functional characteristics as RMD.
- The RMD/eRMS is a computer program. It does not constitute a new rule, regulation or policy, nor does it change or modify existing leave and attendance rules and regulations. When requested in accordance with Articles 17.3 and 31.3, relevant RMD/eRMS records will be provided to local shop stewards.
- The RMD/eRMS was developed to automate leave management, provide a centralized database for leave-related data and ensure compliance with various leave rules and regulations, including the FMLA and Sick Leave for Dependent Care Memorandum of Understanding. The RMD/eRMS records may be used by both parties to support/dispute contentions raised in attendance-related actions.
- When requested, the locally set business rule, which triggers a supervisor's review of an employee's leave record, will be shared with the NALC branch.

Q98N-4Q-C 01051141

- Just as with the current process, it is management's responsibility to consider only those elements of past record in disciplinary action that comply with Article 16.10 of the National Agreement. The RMD/eRMS may track all current discipline, and must reflect the final settlement/decision reached in the grievance-arbitration procedure.
- An employee's written request to have discipline removed from their record, pursuant to Article 16.10 of the collective bargaining agreement, shall also serve as the request to remove the record of discipline from RMD/eRMS.
- Supervisor's notes of discussions pursuant to Article 16.2 are not to be entered in the "supervisor's notes" section of RMD/eRMS.
- RMD/eRMS users must comply with the privacy act, as well as handbooks, manuals and published regulations relating to leave and attendance.
- RMD/eRMS security meets or exceeds security requirements mandated by AS-818.
- It is understood that no function performed by RMD/eRMS now or in the future may violate the National Agreement.

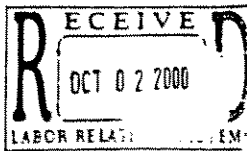
Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sandra J. Savoie
Sandra J. Savoie
Labor Relations Specialist
Labor Relations Policies and
Programs

Vincent R. Sombrovo
Vincent R. Sombrovo
President
National Association of Letter Carriers,
AFL-CIO

Date: 7-09-02



American Postal Workers Union, AFL-CIO

Q98C-40-C 01005505

1300 L Street, NW, Washington, DC 20004

Step 4 - Direct Appeal

Initiate National Dispute

Greg Bell
Industrial Relations Director
1300 L Street, NW
Washington, DC 20005
(202) 642-4273 (Office)
(202) 371-0992 (Fax)

Mr. Anthony J. Vegliante
Vice President, Labor Relations
U.S. Postal Service
475 L'Enfant Plaza
Washington, D.C. 20260

September 28, 2000

Ed Ward
Peter Sgro
Pete Bazylewicz
Pat Heath
Tom Valenti (with case file)

Copy to: Union
Binder

Re: APWU No. HQTG200015, Cert No. 70993220000202436122

National Executive Board
Moe Baker
President

William Burris
Executive Vice President

Robert L. Tunstall
Secretary-Treasurer

Greg Bell
Industrial Relations Director

C. J. "CJ" Guffey
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

Regional Coordinators
Leo F. Peralta
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Power
Northeast Region

Terry Stapleton
Southern Region

Raymond B. Moore
Western Region

Dear Mr. Vegliante:

In accordance with the provisions of Article 15, Section 2 and 4 of the Collective Bargaining Agreement, the APWU is initiating a Step 4 dispute over the Resource Management Database (RMD) Software component of the Postal Service Integrated Resource Management (IRM) program.

The APWU was informed of the Postal Service of its intent to implement Resource Management Database (RMD) software, a component of the Integrated Resource Management (IRM) program. The Postal Service stated that the RMD software was scheduled to be tested in 17 pilot sites beginning in late summer of this year. Moreover, the Postal Service stated that the purpose of the RMD software is to provide a uniform automated process for recording data relative to existing leave rules and regulations.

However, it is the APWU position that the Postal Service unilateral action implementing the RMD procedure has created a uniform automated process that conflicts with, and that violates the collective bargaining agreement and existing leave rules and regulations. For example, RMD generates letters with employees' social security numbers to unauthorized individuals. We believe that providing employees' social security number to unauthorized individuals violates the privacy rights of postal employees. Under existing rules and regulations there are a limited number of individuals and/or agencies that are authorized to have access to employees' social security number.

Through RMD, local management establishes set numbers of unscheduled absences that constitute "failure to be regular in attendance" which results in supervisors taking disciplinary action. Under existing leave rules and regulations employees may be disciplined for being irregular in attendance - however, no discipline may be issued

unless for just cause - and whether "just cause" exists requires a fact determination on the basis of all relevant evidence in each individual case. We believe that the Postal Services' unilateral implementation of a process establishing a set number of absences that constitutes "failure to be regular in attendance", resulting in the issuance of disciplinary action alters and violates the just cause provisions of Article 16 of the National Agreement.

In addition, supervisors through RMD review data related to employees' leave which includes disciplinary action which is retained, regardless of whether such disciplinary action was overturned or the time period since an employee last disciplinary action was beyond a two year period. Under existing regulations, consistent with the collective bargaining agreement, the record of an employee's disciplinary action cannot be considered in taking any subsequent disciplinary action if there has been no discipline for a two year period - and upon an employee's request, any disciplinary notice or decision letter must be removed from the employee's record if such employee had no subsequent discipline for a two year period. We believe that the unilateral implementation of the RMD procedure which alters existing rules and contract provisions is an action that affects the terms and conditions of employment in violation of the Agreement.

Furthermore, the RMD procedure alters and/or is in conflict with the Family Medical Leave Act (FMLA) and various existing related Department of Labor (DOL) regulations.

The Postal Service also violated the National Agreement by failing to provide notification to the APWU of revision to PS Form 3971 (December 1999) pursuant to provisions of Article 19.

Moreover, we also believe that the Postal Service unilateral implementation of the RMD procedures which alter existing leave rules, regulations (including FMLA), established past practices, and agreements between the parties is an action that affects the terms and conditions of employment in violation of the National Agreement.

By letter dated July 7, 2000, the APWU forwarded to the Postal Service a written list of concerns relating to the implementation of the RMD procedure. By letter dated August 9, 2000, the Postal Service responded to the Union - but failed to respond to each of the concerns listed, and related request for information. For example, the Union listed concern with many of the 33 letters that were generated and received no individual response to each concern. The Postal Service provided two disks of screen prints, however there was no confirmation that what we were provided is a complete package of screen prints. We again request a copy of the software in order to determine how this program works and what screens are utilized. Also, the Postal Service August 9 letter stated that it is in the process of revising the form letters in light of the union input. We have not received any confirmation of any revisions to form letters.

Article 15 provides that within thirty (30) days after the initiation of a dispute the parties shall meet in an effort to define the precise issues involved, develop all necessary

AMERICAN POSTAL WORKERS UNION, AFL-CIO

GRIEVANT/UNION	NATURE OF ALLEGATION/VIOLATION <input type="checkbox"/> DISCIPLINE <input type="checkbox"/> ARTICLE 10 VIOLATION <input type="checkbox"/> FMLA <input type="checkbox"/> LEAVE POLICY <input type="checkbox"/> TIME & ATTENDANCE/PAYROLL RECONCILIATION <input type="checkbox"/> PAST PRACTICE <input type="checkbox"/> OTHER:
----------------	---

DATE OF REQUEST: _____

TO: _____ TITLE: _____

FROM: _____ TITLE: _____

Subject: REQUEST FOR INFORMATION & DOCUMENTATION RELATIVE TO PROCESSING A GRIEVANCE

We request the following documents and/or witnesses be made available to the Union in order to properly identify whether or not a grievance does exist, and if so, their relevancy to the grievance:

- | | |
|--|---|
| <input type="checkbox"/> eRMS/RMD 3971 (s) for:
<input type="checkbox"/> Hard Copy/Revised 3971 (s) for:
<input type="checkbox"/> RMD 3972 for _____ thru _____

<input type="checkbox"/> Supv. Hard Copy of current 3972 for employee
<input type="checkbox"/> 1260 for _____ <input type="checkbox"/> 1261 for _____

<input type="checkbox"/> Call-In Log for _____

<input type="checkbox"/> RMD Message(s) sent to FMLA Coordinator
<input type="checkbox"/> Copy of Form 71 sent to employee & proof of delivery
<input type="checkbox"/> Copy of FMLA Message/Data Report for:
<input type="checkbox"/> Copy of FMLA Re-certification Report

<input type="checkbox"/> Second Opinion Log Sheet

<input type="checkbox"/> Copy of Employee's Attending Physician/Medical Report for:

<input type="checkbox"/> Fitness for Duty Request & Supporting Report

<input type="checkbox"/> On the Clock Analysis Report from: _____ to: _____ for: _____

<input type="checkbox"/> Virtual ETC for:

<input type="checkbox"/> EIA Window Data Page/Report for:

<input type="checkbox"/> Restricted Sick Leave Notice

<input type="checkbox"/> OTHER: | <input type="checkbox"/> Leave Window Data/Page for grievant
<input type="checkbox"/> Attendance Review Letter for:

<input type="checkbox"/> Absence Record for: _____ thru: _____
<input type="checkbox"/> TA Reconciliation Report from: _____ to: _____ for: _____
<input type="checkbox"/> RMD Adm. Action Message for:
<input type="checkbox"/> RMD Take Action Message
<input type="checkbox"/> Message to Labor Relations (Take Action)
<input type="checkbox"/> Message from Labor Relations (Concurrence)
<input type="checkbox"/> Attendance Review Letter (s) for:
<input type="checkbox"/> Summary of Message Report for:
<input type="checkbox"/> Employee's Corrective Action History
<input type="checkbox"/> Copies of Past Elements Relied on/cited
<input type="checkbox"/> Copy of Review & Concurrence Form
<input type="checkbox"/> Date of EL 921 Day In Court
<input type="checkbox"/> Date of Informal Discussion (s)
<input type="checkbox"/> Date of Formal Discussion
<input type="checkbox"/> Copy of Disciplinary Notice
<input type="checkbox"/> Carrier Certification/Proof of Delivery
<input type="checkbox"/> Copies of Letter of Inquiry & proof of delivery
<input type="checkbox"/> Date employee notified of leave policies
<input type="checkbox"/> Clock Ring Errors Report for:
<input type="checkbox"/> Missing Time Report <input type="checkbox"/> JOT Alert Report for:
<input type="checkbox"/> Ring Disallowance Report for:
<input type="checkbox"/> OT Leave Report for: _____ <input type="checkbox"/> Unauthorized OT Report
<input type="checkbox"/> Tour Deviations Report for:
<input type="checkbox"/> Authorized Higher Level Report for:
<input type="checkbox"/> Automatic Higher Level Report for:
<input type="checkbox"/> Employee Everything Report for grievant
<input type="checkbox"/> Employee Moves Report for grievance
<input type="checkbox"/> LTD Duty/Rehab Report
<input type="checkbox"/> Pay Week Status Report for:
<input type="checkbox"/> Daily Hours Report for: |
|--|---|

NOTE: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Sec. 2 requires the Employer make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration, or interpretation of the Agreement. Under 8a(5) of the National Labor Relations Act it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.

☐ REQUEST APPROVED ☐ REQUEST DENIED (Give Reason)

Date: _____ Signed: _____

UNION USE ONLY	
Documents Rec'd. () Yes () No	
() Partial receipt of documents	
Grievance Filed? () Yes	
() No, included in appeal.	
Initials: _____	Date: _____

