

Attendance Discipline Grievance Template

Discipline for the charge of “*Irregular attendance*” or “*Failure to Meet Attendance Requirements*” are the most common charges cited in attendance discipline cases. The task of the Steward is to challenge the basis for the discipline. In order to be successful the Union must establish a case file that refutes the allegations and/or the basis management relies on for the issuance of the discipline. That is the mission of the Union in all discipline cases.

In order to achieve that goal, the Union should obtain all of the following documentation. Note that not all of the documentation will be included in the final case file. Only those documents which support the Union argument should be included in the final package.

- Discipline Letter
- Copies of all prior discipline cited
- Article 16 Just Cause Principles
- Applicable excerpts from Articles 10, 16, 19 and ELRM Sections 513 & 665
- M – 39, Section 115
- PS Form 3971 for all cited absences
- PS Form 3972 for previous 2 years
- ERMS *Employee Key Indicator Report* for current and previous year.
- Medical documentation submitted for any cited absence
- PDI notes from Steward / Supervisor
- Documentation of attendance reviews / discussions
- Detailed statement from Steward in re PDI Q & A
- Detailed statement from grievant explaining cited absences
- Documentation of installation absence percentage for current and prior years.
- Restricted sick leave list / ERMS Deems Desirable list*
- EAP referral record*
- Local Agreement*
- FMLA documentation*

(* If necessary / applicable.)

All of the above needs to be requested and obtained **before** meeting at Informal A. Requests for **any** documentation **must** be in writing and copies included in the case file. Denied or delayed requests for documentation, interviews or Stewards time should generate a separate Article 17 / 31 grievances.

As a Steward you have specific rights to information, to do your job, within Articles 17 and 31 but they are worthless if you do not compel management to honor them.

As with any grievance involving discipline the PDI meeting is the crucial foundation for going forward. That is where positions are exchanged and discussed, essentially cards laid out. It is also where the grievance can be quickly resolved.

It is imperative that the Steward take precise notes of all questions asked and answered at the PDI. At this time the Steward can put management on the defensive by demanding a definition of what constitutes “*irregular attendance*” or exactly what the “*attendance requirements*” are. The dirty little secret is that management can’t or won’t provide a precise definition. Because of that you will be able to make the reasonable argument that “*If they can’t even define what irregular is or what the requirements are....how is the employee to know what is unacceptable attendance*”.

Of course, that argument is only possible if the attendance record of the employee appears reasonable or the absences are provably for documented illness. That is determined on a case by case basis. Other arguments available are that;

- There is no record of the employee being put on notice that there is a problem with his/her attendance. That would be shown on the reverse of the 3972 and the *Employee Key Indicator Report*.
- Management did not inform the employee of his FMLA rights for absences of 3 or more days and if they had the cited absences may have qualified for FMLA protection.
- The employee was not on the restricted or deems desirable lists.
- The employee’s prior record was good; he/she has a good sick leave balance.
- The discipline is punitive rather than corrective; the employee was not given an opportunity to demonstrate improvement after review / discussion about attendance.

In all discipline cases, examine the specific charges against the principles of Just Cause in Article 16 to determine if the Service has met its burden. For example, compare the grievant’s absence percentage to that of the office percentage to establish if he/she has been disparately treated.

If the above template is followed / applied the odds increase for a favorable result. Keep in mind that when the Steward professionally and thoroughly processes a grievance it is a problem for management. The more you require them to do things properly the more likely it is that they will think twice before initiating discipline. Make the grievance cost them time and effort by following procedure and fully utilizing the rights provided within Articles 15, 17 and 31.

Lastly, remember to commit all requests to writing and include in the case file. If it isn’t in writing, it never happened because management will never acknowledge or remember verbal requests if it hurts their case.

Additional tools and resources available at BRANCH38NALC.COM



GRIEVANCE REQUEST FORM



Request Date:

Grievance:

Grievant:

Pursuant to the Steward's rights provided for in Articles 17 & 31 of the National Agreement, the following documentation and / or time is requested for the investigation / processing of the grievance identified above. Please inform the requestor of any problem with accommodating the requests made.

MANAGEMENT REPRESENTATIVE

NALC REPRESENTATIVE

DATE

DATE

LEAVE

Leave, in General

M-00147 Pre-arb

September 30, 1985, H1N-2B-C 2563

Leave which is applied for consistent with the National Agreement and Local Memorandum of Understanding is awarded by seniority without regard to full-time or part-time status.

M-00841 Step 4

May 4, 1988, H7C-NA-C 9

An employee who is on extended absence and wishes to continue eligibility for health and life insurance benefits, and those protections for which an employee may be eligible under Article 6 of the National Agreement may use sick leave and/or annual leave in conjunction with leave without pay (LWOP) prior to exhausting his/her leave balance. The employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

M-00165 Executive Order 5396

(Herbert Hoover) July 17, 1930

With respect to medical treatment of disabled veterans who are employed in the executive civil service of the United States, it is hereby ordered that, upon the presentation of an official statement from duly constituted medical authority that medical treatment is required, such annual sick leave as may be permitted by law and such leave without pay as may be necessary shall be granted by the proper supervisory officer to a disabled veteran in order that the veteran may receive such treatment, all without penalty in his efficiency rating.

M-00866 Pre-arb

October 28, 1988, H4N-4F-C 11641

Executive Order 5396 [M-00165], dated July 3, 1930, does apply to the Postal Service and absences meeting the requirements of that decree cannot be used as a basis for discipline. See also M-00388, M-00787

C-18501 Regional Arbitrator Olson

E94H-4E-C 97019847, July 13, 1998

The arbitrator held that management violated the provisions of ELM 513.332 by requiring supervisors to ask employees calling in sick questions listed on a local document titled Unscheduled Leave Request issued by the District Manager.

Administrative Leave

See also [Administrative Leave for Acts of God](#)

M-01669 Letter of Agreement

January 23, 2008

We agree that the forthcoming national-level dispute on

this issue will cover all city letter carriers who were denied administrative leave to attend the 2008 Nevada caucuses or subsequent similar presidential caucuses and who instead were granted annual leave or Leave Without Pay to attend such 2008 presidential caucuses. Accordingly, the National Association of Letter Carriers is not required to initiate local grievances to preserve its right to request a remedy for the subject denials of administrative leave.

M-00905 Step 4

January 4, 1989, H4N-1K-C 24809

Blood leave will not be unreasonably denied consistent with the guidelines in ELM Section 519.

C-09415 Regional Arbitrator R.G. Williams

Management violated PSDS 384 Civil Defense by denying grievant's request for 40 hours of administrative leave for civil defense training.

C-00314 Regional Arbitrator Epstein

June 18, 1983, C1C-4B-C 4455

Management did not violate the contract by denying the grievant's request for administrative leave for donating blood.

C-10319 Regional Arbitrator Fogel

October 5, 1990,

Management did not violate the contract when it required an employee placed on administrative leave during an investigation to call-in each day.

C-10530 Regional Arbitrator Lange

January 11, 1991

Management has the authority to dictate reasonable requirements that constrain an employee's freedom of action during the time that the employee is on administrative leave.

C-11170 Regional Arbitrator Zack

June 1, 1990

A request to participate in an annual town meeting falls within the ambit of ELM provisions relating to granting administrative leave for the purpose of voting.

Annual Leave

M-01515 USPS Letter

February 12, 2004

Memorandum of Policy—Leave computation Date Corrections—erroneous Credit. This memorandum is to announce the new policy and process for handling Leave Computation Date Corrections when an employee has been erroneously credited for prior military or civilian service that is not creditable under USPS leave policy. This new policy is effective for any accounts receivables process on or after February 7, 2004 (pay period 05/04).

LEAVE

M-00508 Step 4

June 15, 1984, H1N-5D-C 19202

Employees who have annual leave approved are entitled to such leave except in emergency situations.

M-00184 Step 4

September 8, 1981, H8N-5C-C 18666

While not contractually obligated to, management should give reasonable consideration to requests for annual leave cancellation.

M-00365 Step 4

April 30 1985, H1N-3A-C 40314

Whether a carrier transferring from the Irving Post Office to the Case Range Station must be allowed to also transfer scheduled leave can only be determined by evaluating local contractual requirements and fact circumstances.

See also [M-00480](#)

M-00708 Step 4

May 12, 1977, NCE 4868

The grievant was granted 40 hours annual leave, covering the period from August 16, 1976, through August 21, 1976. However, when the grievant returned from vacation, he found that his advance commitment for 40 hours annual leave was reduced to 32 hours. Under the circumstances, the reduction of annual leave from 40 hours to 32 hours was inappropriate. Accordingly, the grievance is sustained.

M-00334 Step 4

April 5, 1973, NW 3155

The Postmaster will cease and desist from canceling the employee's bid vacation period during the choice period due to count and inspection week.

M-00535 Step 4

March 11, 1985, H1N-1J-C 34481

An employee in a 204b position should not be precluded from bidding for choice vacation periods.

M-00865 Step 4

March 17, 1977, ACC 10648

Granting additional periods of annual leave in the choice period subsequent to the initial bidding for choice vacations is not prohibited by Article X, Section 2D. of the National Agreement. We further agreed that if the needs of the Postal Service permit, an employee, by combining a choice vacation bid with an approved application for unscheduled absence, could have five consecutive weeks of annual leave during the choice vacation period.

M-01017 USPS Letter

January 29, 1982

This refers to our meeting of January 12, during which we discussed the various provisions set forth in the revised M-39 Handbook. With regard to our discussion on committed annual leave vs. canceling annual leave for route in-

spection purposes, this will clarify that the provision set forth in Article 10, Section 4, D, is controlling. It is not the intent of the Postal Service to cancel annual leave approved during the vacation planning process in order to comport with subsequently scheduled route inspection periods.

M-00492 Step 4

March 12, 1984, H1N-5H-C 18583

Normally, employees on the overtime desired list who have annual leave immediately preceding and/or following non-scheduled days will not be required to work overtime on their off days. However, if they do desire, employees on the overtime desired list may advise their supervisor in writing of their availability to work a nonscheduled day that is in conjunction with approved leave.

M-01367 Step 4

October 22, 1998, E94N-4E-C 98053676

The Step 4 decision H1N-5H-C 18583 ([M-00492](#), above) applies to "spot" or incidental leave also.

C-00268 Regional Arbitrator Levin

September 24, 1984, N1C-1A-C 15271

Management violated Article 10 when it did not permit grievant to "buy back" 160 hours of AL which had been forfeited as excess to the carry-over limit.

C-09481 Regional Arbitrator R.G. Williams

November 20, 1989, S7N-3R-C 20939

Management improperly denied grievant's request for emergency annual leave.

C-10949 Regional Arbitrator Lange

July 9, 1991, W7N-5T-C 22023

Management improperly denied requests for annual leave for the month of December.

C-00154 Regional Arbitrator Dennis

March 4, 1985, N1C-1M-C 30525

Management did not violate the contract when it informed employees that they could not be guaranteed more than three weeks vacation during prime time.

C-00283 Regional Arbitrator Colleran

November 22, 1982, N1C-1M-C 6141

Management improperly terminated a past practice of permitting employees more than three weeks of annual leave during the choice period.

C-10937 Regional Arbitrator Searce

July 5, 1991, S7N-3C-C 36361

Management properly counted reservists called-up for Operation Desert Storm as being in "military leave" status and was, therefore, entitled to block off slots on the AL schedule.

LEAVE

M-01701 Joint Questions and Answers - Transitional Employees, March 26, 2009 (Question # 18)

Transitional employees are not covered by the leave provisions of Articles 10 and 30 of the National Agreement. The granting of annual leave to transitional employees is covered by the Memorandum of Understanding, Re: Transitional Employees - Additional Provisions ([M-01641](#)).

M-01701 Joint Questions and Answers - Transitional Employees, March 26, 2009 (Question # 19)

Transitional employees may not carry over leave from one appointment to another. Transitional employees may be paid for any accrued leave pursuant to the Memorandum of Understanding, Re: Transitional Employees - Additional Provisions ([M-01641](#)).

Leave, Bereavement

M-01645 Memorandum September 11, 2007

Re: Bereavement Leave

City letter carriers may use a total of up to three workdays of annual leave, sick leave or leave without pay, to make arrangements necessitated by the death of a family member or attend the funeral of a family member. Authorization of leave beyond three workdays is subject to the conditions and requirements of Article 10 of the National Agreement, Subsection 510 of the Employee and Labor Relations Manual and the applicable local memorandum of understanding provisions.

Definition of Family Member. "Family member" is defined as a:

- (a) Son or daughter—a biological or adopted child, stepchild, daughter-in-law or son-in-law;
- (b) Spouse;
- (c) Parent; or
- (d) Sibling—brother, sister, brother-in-law or sister-in-law; or
- (e) Grandparent.

Use of Sick Leave. For employees opting to use available sick leave, the leave will be charged to sick leave for dependent care, if eligible.

Documentation. Documentation evidencing the death of the employee's family member is required only when the supervisor deems documentation desirable for the protection of the interest of the Postal Service.

Leave, Court

The regulations concerning court leave are found in ELM Section 516. They provide, in part:

516.21 Definition Court leave is the authorized absence from work status (without loss of or reduction in pay, leave to which otherwise entitled, credit for time or service, or performance rating) of an employee who is summoned in connection with a judicial proceeding, by a court or authority responsible for the conduct of that proceeding, to serve as a juror, as a witness in a nonofficial capacity on behalf of a state or local government, or as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. The court or judicial proceeding may be located in the District of Columbia, a state, territory, or possession of the United States, including the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands.

516.22 Eligibility Court leave is granted to full-time and part-time regular employees. Certain part-time flexible employees are granted court leave as provided and governed by applicable collective bargaining agreements. Other employees are ineligible for court leave and must use either annual leave or LWOP to cover the period of absence from postal duties for court service but may retain any fees or compensation received incident to such court service. Court leave is granted only to eligible employees who would be in work status or on annual leave except for jury duty or service as a witness in a nonofficial capacity on behalf of a state or local government, or service as a witness in a nonofficial capacity on behalf of a private party in a judicial proceeding to which the Postal Service is a party or the real party in interest. An employee on LWOP, when called for such court service, although otherwise eligible for court leave, is not granted court leave but may retain any fees or compensation received incident to court service.

C-06821 National Arbitrator Mittenthal February 10, 1987, H1N-3U-C 35720

Management did not violate ELM Section 516 by requiring the grievants to report to work before their scheduled jury duty.

C-03223 National Arbitrator Gamser October 3, 1980, N8-E-0088

Where there has been a practice to permit employees to temporarily change their work schedule to conform to the days on which the employee is called to serve on jury duty or make a court appearance, the Postal Service may not unilaterally change that practice. See also [M-00501](#), [M-00056](#), [M-01063](#)

LEAVE

M-01063 APWU Step 4 **January 21, 1988, H4C-5B-C-44765**

The question in this grievance is whether or not a past practice has been established to allow an employee to voluntarily change their work schedule to coincide with the days the employee was required to be in court under the circumstances which would make them eligible for court leave.

We mutually agreed, in accordance with Arbitrator Gamser's decision dated October 3, 1980, that where it is established in an appropriate proceeding that management of an installation has consistently interpreted the provisions of the E&LR Manual and the related provisions of any earlier manual, regulation, or the Federal Personnel Manual, to allow employees to change their work days, as well as their work hours, to coincide with the court circumstances above, management must continue such practice.

M-00110 Step 4 **February 3, 1977, NCC 3978**

The grievant was summoned by the court to testify in his official capacity as a letter carrier. In such circumstances, he is in on official duty status and entitled to his regular compensation without regard to any entitlement to court leave.

M-00772 Memo, Herbert A. Doyle **January 12, 1987**

An employee who appears as a witness in a third-party action which has been assigned to the Postal Service, is in official duty status for the time spent in court and for the time spent traveling between the court and the work site.

M-00108 Step 4 **January 31, 1977, NCN 4402**

The grievant in this instance is entitled to court leave as a result of being subpoenaed by the District Court of Massachusetts to be a witness for the State.

M-00641 Step 4 **April 15, 1977 NCE 4997**

Under the provisions of Public Law 91-563 (5-USC-6332) is provided that when an employee is summoned to serve as a witness in a non-official capacity on behalf of a state or local government, he is entitled to court leave during the time he is absent as a witness.

M-00337 Step 4 **October 30, 1973, NW 5109**

A full-time employee should be granted court leave when he appears as a witness in behalf of any State or Municipal government, as well as when he appears as a witness for the Federal Government.

M-00602 Pre-arb, NC 4513

The grievance is sustained. Under Part 721.652 and .653 of the Postal Manual, the grievant should not have been

required to report to work before serving court duty. In the instant case, the grievant should have been temporarily detailed to a schedule of hours conforming to the court day.

M-00657 Step 4 **January 13, 1978, NCS 6629**

The grievant is not entitled to compensation for appearing in court on his non-scheduled day.

M-01030 Pre-arb **December 10, 1991, H7N-1P-C-17979**

This grievance concerns the granting of Leave Without Pay (LWOP) to an employee who volunteered to serve on a grand jury.

The granting of LWOP is a matter of administrative discretion. Each request is examined closely and a decision made based on the needs of the employee, the needs of the USPS and the cost to the USPS, and such decision must be reasonable.

M-01051 APWU Pre-arb **October 30, 1980, H4C-4K-C-5277**

The issue in this grievance is whether time spent by the grievant at the NLRB hearing was official duty. During that discussion, it was mutually agreed that the following would represent full settlement of this case:

1. The said subpoena issued to the grievant constituted a proper authority.
2. The grievant shall be compensated in accordance with Part 516.42 of the ELM, and such compensation shall terminate (except travel and subsistence expenses) upon the employee's release from the subpoena.

C-00203 Regional Arbitrator Roumell **April 6, 1984, C1T-4F-C 27336**

Management violated the contract when it denied a request for a change of schedule for jury duty on the basis that only four days were involved; "If the grievant has a right...he has a right unlimited by the extent of time involved."

C-09882 Regional Arbitrator P. Williams **February 26, 1990**

Management did not violate the contract when it refused grievants' requests to have their non-scheduled days changed to coincide with days they were excused from court duty.

Leave, Enforced

M-01154 USPS Internal Memorandum **April 19, 1990**

"In Pittman v. Merit Systems Protection Board, 832 F.2d

LEAVE

598 (Fed. Cir. 1987), 87FMSR 7054, the Federal Circuit held that the placement of an employee on enforced leave for more than 14 days (even in situations where the agency has medical documentation stating that the employee is physically unable to carry the duties of his or her position) is inherently disciplinary and is tantamount to an appealable suspension. The court held that "indefinite enforced leave is tantamount to depriving the worker of his job--without any review other than that by the agency itself changes its mind and decides that he can perform his job." *Id.*, at 600."

"The MSPB follows the precedent of the Federal Circuit, and considers the court's Pittman decision binding in regard to claims of constructive suspension arising from periods of enforced leave which exceed 14 calendar days."

Leave, Incidental

C-05670 National Arbitrator Mittenthal January 29, 1986, H1N-NA-C 61

LMU provisions which grant employees the right to take incidental leave are not in conflict or inconsistent with the National Agreement and are, therefore, valid and enforceable. However:

"To the extent to which LMU clauses allow an employee to make his initial selection within the non-choice period, such clauses are 'inconsistent or in conflict with...' the plain meaning of Section 3.D."

M-00712 Step 4 July 21, 1977, NCC 7451

All requests for leave on Saturday should be treated on an equal basis as has been the past practice at this facility.

M-00528 Step 4 June 21, 1984, H1N-5D-C 20399

Article 10 does not require that annual leave outside of the choice vacation period be taken in increments of 5 or 10 working days. However, the local parties may have established a variety of conditions under which incidental leave requests may be handled.

C-10901 Regional Arbitrator Cushman June 13, 1991, S4N-3P-C 28517

Management violated the LMU when it did not grant one day of incidental annual leave; grievant is entitled to eight hours of administrative leave at his convenience.

Leave, Maternal

M-00785 Step 4 May 22, 1987, H4N-3S-C 31204

Leave without pay for maternity reasons is not considered "work" for the purposes of achieving protected status pursuant to the provisions of Article 6.A.3.

M-00088 Step 4 September 25, 1984, H1C-1E-C 28103

The question raised in this case is whether the grievant was improperly required to begin a new 6 year period in a work status in order to achieve protected status on returning to duty after an absence of more than one year: The union contends that Article 6.A.3. did not intend to include time on maternity leave as time not worked for purposes of retaining protected status. During our discussion, we agreed to resolve this case based on our having no dispute relative to the meaning and intent of Article 6.A.3.

Leave, Military

M-01590 Step 4 Settlement November 14, 1979

Employees who are members of the National Guard and who are called to active duty to replace striking prison guards are entitled to additional military leave under existing regulations.

M-01603 Butterbaugh v. Department of Justice (02-3331), U.S. Court of Appeals for the Federal Circuit July 24, 2003

Federal employees claimed that the employing agency violated the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) when it charged them military leave for reserve training when they were not scheduled to work. The Court agreed, concluding that the agency had violated 5 U.S.C. § 6323(a)(1) by charging the leave. (See [M-01604](#) below regarding postal employees.)

M-01604 Miller v. Postal Service, Merit Systems Protection Board, March 7, 2007

The Board ruled that a postal employee is not covered by 5 U.S.C. § 6323 as in Butterbaugh (see [M-01603](#) above). However, the MSPB said it had authority under USERRA to enforce such an employee's right under the USPS Employee and Labor Relations Manual to be charged military leave only for work days.

M-01605 Interpretive Step Settlement March 12, 2007

Article 41.2.D.2 of the National Agreement provides that city letter carriers who enter the military shall not have their seniority broken or interrupted because of military service. This provision applies to city letter carriers restored in the same craft in the same installation after return from military service and to city letter carriers involuntary returned after military service to the same craft in an installation other than the one they left. Such involuntary reassignment may only occur when a city letter carrier vacancy in the applicable regular work force category and type (e.g. full-time regular or part-time flexible, as appropriate) is not available in the home installation at the time of return. Whether such vacancy is available must be determined based on the individual facts of each case.

LEAVE

Nothing in Article 41.2.D.2 supplants or diminishes any rights that an employee has under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

M-01538 USPS LETTER

March 18, 2005

FEHBP and FEGLI implementation changes for career employees absent to perform active duty military service. Civilian employees of the U.S Postal Service who serve in the National Guard or Reserve and are called to active duty (voluntarily or involuntarily) in support of a contingency operation as defined in Title 10 U.S.C. 101(a)(13), are eligible for full payment of FEHBP premiums by the Postal Service.

M-01544 USPS Letter

July 8, 2005

Full-time employees, other than the D.C. National Guard, receive fifteen (15) days of military leave at the beginning of each fiscal year. Part-time employees, other than the D.C. National Guard, are eligible to receive one (1) hour of military leave for each twentieth-six (26) hours in a pay status and/or military Leave Without Pay (LWOP) in the preceding fiscal year provided the employee's pay for military leave does not exceed eighty (80) hours.

C-13793 National Arbitrator Mittenthal

August 31, 1994, H7N-NA-C 34861

In accordance with ELM 517.53, national guardsmen performing marijuana eradication are entitled to military leave for law enforcement provided they are both "enforcing the law" and "providing military assistance".

M-01478 Step 4

February 3, 2003, A98N-4A-C-02094236

During our discussion we agreed that the grievant was called to active duty as a member of the Army National Guard of the United States and that members of the Army National Guard meet the eligibility requirements of Part 517.21 of the Employee and Labor Relations Manual (ELM) to receive paid military leave. The parties further agree that determining whether the grievant qualified for the "Law Enforcement Allowance" under Part 517.431 of the ELM is a fact question that must be based on the specific facts of this case.

M-01465 USPS Letter

June 4, 2002

USPS Letter concerning change in military leave provisions of ELM Section 517.53. Non-work days will not be charged against the paid military leave regardless of whether they fall within a period of absence or fall at the beginning or end of an active duty period.

M-00174 Letter

December 12, 1977

It is the policy of the U. S. Postal Service to allow any employee, who so desires, to serve in the National Guard or

Reserve. Any action discouraging employees from such service will not be permitted. When such service creates a work schedule conflict, every effort will be made to resolve the conflict as satisfactorily as possible.

M-00156 Step 4

August 29, 1979, NCN 19069

The union is requesting military leave for those employees called to active duty during the prison guard strike in New York in April, 1979. After reviewing this matter, it is our determination that the duties performed by these employees would, out of necessity, be considered law enforcement duties.

M-00339 Step 4

June 25, 1973, NS 3963

When employees have regular weekly and/or week-end (reserve) training meetings, that conflict with scheduled work requirements in the Postal Service, their absence from work may be covered in one of the following manner:

- a. Use of annual leave.
- b. Request leave without pay.
- c. Arrange a mutually agreeable trade of work days for the period involved with another employee who is qualified to replace the absent employee.

M-01158 Step 4

January 14, 1994, HON-5R-C 8065

Further during our discussion, we mutually agreed that an employee's request for military leave is provided for in section 517.71 of the ELM. Specifically stated:

An employee who has official duty orders or official notices signed by appropriate military authority for weekly, bi-weekly or monthly training meetings and who has a conflict with scheduled work requirements may choose one of the four ways of meeting military obligation.

- A. Use of military leave not in excess of 15 calendar days.
- B. Use annual leave.
- C. Use LWOP.
- D. Arrange a mutually agreeable trade of workdays and days off with another employee who is qualified to replace the absent employee. Such trades must be cleared with the responsible supervisor and must be in accordance with the terms of collective bargaining agreements.

C-10169 Regional Arbitrator Levin

August 7, 1990

Management properly denied paid military leave to the grievant for time spent receiving a required physical examination.

LEAVE

M-01506 USPS Policy Letter November 25, 2003

On November 14, President of the United States George W. Bush issued a memorandum to the heads of Executive departments and agencies directing them to provide five (5) days of uncharged leave to Federal civil servants who were called to active duty in the continuing Global War on Terrorism.

The Postal Service recognizes the service and sacrifice of members of the Reserve Forces and the Air and Army National Guard, and wishes to ensure that Postal Service employees, who are not covered by the President's Memorandum, are included in this directive. The Postal Service will continue its tradition of being a model for employer support of the Guard and Reserve.

This is notification that Postmaster General John E. Potter has determined that postal employees should be included in this benefit. We know that your organization will join Postmaster General Potter in supporting this initiative.

M-01453 CAU Publication USERRA Rights, December 2001

Contract Administration Unit Publication reviewing letter carrier rights under the Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA). Includes explanation of letter carriers' bidding and restoration rights.

M-01687 U.S. Department of Labor, Assistant Secretary for Veterans' Employment and Training, July 22, 2002

... Therefore, in determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the civilian employer should be combined with the months and hours that would have been worked during the twelve months prior to the start of the leave requested but for the military service.

PTF Leave

Leave for part-time flexible employees is governed by ELM Section 512.523 which states:

512.523(a). A part-time flexible employee who has been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave) in a service week is not granted paid annual or sick leave during the remainder of that service week. Absences in such cases are treated as non-duty time, not chargeable to paid leave of any kind. Supervisors should avoid granting leave resulting in the requirement for overtime pay.

512.523(b). Part-time flexible employees who request

leave on days that they are scheduled to work, except legal holidays, may be granted leave provided they can be spared. The combination of leave and workhours charged to these employees cannot exceed 8 hours on any one day. The installation head may also consider a request for annual leave on any day a part-time flexible employee is not scheduled to work. The 40 hours paid service in a service week specified in 512.523a may not be exceeded.

September 30, 1985 H1N-2B-C 2563

Leave which is applied for consistent with the National Agreement and Local Memorandum of Understanding is awarded by seniority without regard to full-time or part-time status.

M-01000 APWU Settlement Agreement June 17, 1980, A8-W-0449

The parties agree that the reference to "40 hours or more of paid service (work, leave, or a combination of work and leave)" contained in Section 512.523a of the Employee and Labor Relations Manual does not refer to overtime hours or work.

The parties further agree that in no case may the total of straight time hours and all paid leave hours exceed 8 hours per service day or 40 hours per service week.

M-01589 Step 4 Settlement June 21, 1982

We mutually agreed that there was no interpretive dispute between the parties at the National level as to the meaning and intent of Article 19 of the National Agreement as it relates to a Part-time Flexible requesting leave or a day he/she is not scheduled for duty.

In accord with Part 512.523 of the ELM, installation heads may consider requests for annual leave on any day a Part-time Flexible is not-scheduled to work~ However, 40 hours paid service in a service week may not be exceeded

The criteria for converting part-time flexibles to full-time regulars under the Memorandum of Understanding relating to maximization are not affected by approval or: such leave"

Leave Sharing

M-01656 Memorandum September 11, 2007

Re: Leave Sharing

The Postal Service will continue a Leave Sharing Program during the term of the 2006 Agreement under which career postal employees will be able to donate annual leave from their earned annual leave account to another career postal employee, within the same geographic area serviced by a

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postal district. In addition, career postal employees may donate annual leave to other family members that are career postal employees without restriction as to geographic location. Family members shall include son or daughter, parent, and spouse as defined in ELM Section 515.2. Single donations must be of 8 or more whole hours and may not exceed half of the amount of annual leave earned each year based on the leave earnings category of the donor at the time of donation. Sick leave, unearned annual leave, and annual leave hours subject to forfeiture (leave in excess of the maximum carryover which the employee would not be permitted to use before the end of the leave year), may not be donated, and employees may not donate leave to their immediate supervisors. To be eligible to receive donated leave, a career employee (a) must be incapacitated for available postal duties due to serious personal health conditions or pregnancy and (b) must be known or expected to miss at least 40 more hours from work than his or her own annual leave and/or sick leave balance(s), as applicable, will cover, and (c) must have his or her absence approved pursuant to standard attendance policies. Donated leave may be used to cover the 40 hours of LWOP required to be eligible for leave sharing.

For purposes other than pay and legally required payroll deductions, employees using donated leave will be subject to regulations applicable to employees in LWOP status and will not earn any type of leave while using donated leave. Donated leave may be carried over from one leave year to the next without limitation. Donated leave not actually used remains in the recipient's account (i.e., is not restored to donors). Such residual donated leave at any time may be applied against negative leave balances caused by a medical exigency. At separation, any remaining donated leave balance will be paid in a lump sum.

(The preceding Memorandum of Understanding. Leave Sharing, applies to Transitional Employees.)

M-01407 Memorandum of Understanding, (Relevant Part) March 21, 2000

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that the following represents the parties' agreement with regard to implementation of the upgrade issue emanating from the September 19, 1999 Fleischli Award, our agreement regarding case configuration when using the vertical flat casing work method, and additional provisions relative to the 1998 National Agreement.

The Memorandum of Understanding Re: Leave Sharing found on page 161 of the 1994 National Agreement will be renewed for the remainder of the term of the 1998 National Agreement.

M-01409 Memorandum of Understanding, April 7, 2000

It is hereby agreed and understood by the U. S. Postal

Service and National Association of Letter Carriers (NALC), AFL-CIO that the Memorandum of Understanding Re: Sick Leave for Dependent Care and the Memorandum of Understanding Re: Leave Sharing contained in the 1994-1998 National Agreement, expired with the term of that contract on September 19, 1999. By Memorandum of Understanding dated March 21, 2000, both these memoranda were renewed for the remainder of the term of the 1998 National Agreement.

Therefore, the NALC will withdraw from the grievance/arbitration procedure, all grievances at all steps, challenging the denial of either Sick Leave for Dependent Care or Leave Sharing during the period of September 20, 1999 through March 20, 2000. The parties agree that requests submitted for Leave Sharing and Sick Leave for Dependent Care on March 21, 2000 and for the remainder of the term of the 1998 National Agreement, will be addressed in accordance with the provisions of those two memoranda. Further, it is agreed that any request for Sick Leave for Dependent Care or Leave Sharing that was granted during the period of September 20, 1999 through March 20, 2000 will be honored.

M-01022 USPS Letter November 8, 1991

Letter from Assistant Postmaster General transmitting instructions for the Leave sharing Program.

M-01293 Step 4 March 31, 1998, A94N-4A-C 97090426

Donated leave under the leave share program is considered paid status for holiday leave purposes

Leave, Sick

See also [Medical Certification](#)

M-00079 Step 4 November 9, 1983, H1N-5G-C 14955

Under ELM 513.362, an employee is required to provide "acceptable evidence of incapacity to work." The form in question has been determined by local management to meet that requirement. Accordingly, the form may be provided as a convenience to an employee, and its use by employees is optional.

C-03231 National Arbitrator Garrett November 19, 1979 NC-NAT-16285

Whether the Postal Service properly may impose discipline upon an employee for "excessive absenteeism" or "failure to maintain a regular schedule" when the absences on which the charges are based include absences on approved sick leave must be determined on a case-by-case basis under the provisions of Article XVI.

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M-00489 Step 4 **November 3, 1983, H1N-5B-C 3489**

For the purposes of ELM 513.362, an absence is counted only when the employee was scheduled for work and failed to show. A nonscheduled day would not be counted in determining when the employee must provide documentation in order to be granted approved leave.

M-00199 Step 4 **March 21, 1975, NBC 3502 (N-82)**

The Form 3971 clearly reflected that management had disapproved the grievant's request for sick leave. However, the records reflect that the three days in question were charged to LWOP, not AWOL. Since LWOP is considered approved absence, local officials will be notified to grant the grievant sick leave pay for the three days in question. See also [M-00707](#)

M-00932 Step 4 **May 21, 1974, NB-S-1129**

Neither sick leave nor leave without pay can be charged against an employee unless requested by that employee.

M-00665 Step 4 **May 27, 1977, NCS 5591**

A part-time flexible employee is not guaranteed a set number of hours sick leave any time requested nor may sick leave be used merely to obtain or round out a (40) hour week. However, we agreed that generally a part-time flexible should be guaranteed sick leave commensurate with the number of hours that the employee was realistically scheduled to work or would reasonably have been expected to work on a given day.

M-01329 Step 4 **May 26, 1998, A94N-4A-C 98054688**

Step 4 settlement concerning the use of sick leave by Part-time flexible employees under the provisions of ELM 513.421 (see file)

M-01059 Step 4 **March 30, 1984, H1N-3W-C-21270**

The question raised in this grievance involves a local policy concerning the procedure to call in and advise management of an employee's absence.

After further review of this matter we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. It was mutually agreed that any local policy establishing a call-in procedure must be in compliance with Section 513.332 of the Employee and Labor Relations Manual (ELM).

M-00301 Step 4 **July 12, 1985, H1C-5B-C 31977**

The union contends that the two-call requirement for unexpected illness/injury is contrary to the regulation contained in Part 513.332 of the ELM. It is the position of the

Postal Service that the January 4, 1985 policy, as written, is unreasonable and therefore improper. Accordingly, the grievance is sustained and the said policy shall be rescinded.

M-01166 Step 4 **October 4, 1993, HON-5R-C 4914**

The issue in this grievance is whether a sick leave may be approved for counseling recommended by a physician due to symptoms of anxiety and stress.

During our discussion, we mutually agreed to the following as full settlement on this case. The parties at the local level are instructed to meet regarding this matter. If the union is able to document that the counseling was medically necessary then the sick leave request will be handled in accordance with normal leave approval procedures.

C-04396 Regional Arbitrator Britton **July 10, 1984, S1N-3U-C 4356**

An established past practice of allowing someone other than the affected employee to call in sick may not be unilaterally changed.

C-00242 Regional Arbitrator Cohen **October 18, 1982, C8C-4C-C 19575**

An employee may be given sick leave even though not totally disabled. Management acted improperly by refusing grievant's request to change his approved annual leave to sick leave.

C-00006 Regional Arbitrator Cohen **January 11, 1982, C8C-4G-C 22983**

Management violated the contract by establishing a local leave policy which required an ill employee to call in on each day of an absence.

C-13342 Regional Arbitrator Epstein **January 21, 1994, I90N-4I-C 94047336**

The Postal Service violated the agreement when it denied sick leave to an employee who was so distressed by the impending death of a close relative that he was unable to work.

Sick leave, advanced

The regulations concerning advanced sick leave are found in ELM 513.

513.5 Advanced Sick Leave
513.51 Policy
513.511 May Not Exceed Thirty

Days Sick leave not to exceed 30 days (240 hours) may be advanced in cases of an employee's serious disability or illness if there is reason to believe the employee will return to duty. Sick leave may be advanced

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whether or not the employee has an annual leave or donated leave balance.

513.512 Medical Document Required

Every request for advanced sick leave must be supported by medical documentation of the illness.

513.52 Administration

513.521 Installation Heads' Approval

Officials in charge of installations are authorized to approve these advances without reference to higher authority.

513.522 Forms Forwarded

PS Form 1221, Advanced Sick Leave Authorization, is completed and forwarded to the Eagan ASC when advanced sick leave is authorized.

513.53 Additional Sick Leave

513.531 Thirty-Day Maximum

Additional sick leave may be advanced even though liquidation of a previous advance has not been completed provided the advance at no time exceeds 30 days. Any advanced sick leave authorized is in addition to the sick leave that has been earned by the employee at the time the advance is authorized.

513.532 Liquidating Advanced Sick Leave

The liquidation of advanced sick leave is not to be confused with the substitution of annual leave for sick leave to avoid forfeiture of the annual leave. Advanced sick leave may be liquidated in the following manner:

- a. Charging the sick leave against the sick leave earned by the employee as it is earned upon return to duty.*
- b. Charging the sick leave against an equivalent amount of annual leave at the employee's request provided the annual leave charge is made prior to the time such leave is forfeited because of the leave carryover limit.*

C-00191 Regional Arbitrator Foster June 11, 1984, S1C-3A-C 28150

The arbitrator found that management violated the contract by refusing grievants' requests for advance sick leave.

"Part 513.511 of the Employee and Labor Relations Manual does not mandate the granting of advance sick leave, but rather employs the permissive word "may" where there is "reason to believe the employee will return to duty." The obvious purpose of this quoted condition is that there should exist a reasonable expectation that the employee will be able to return to duty and work at least long enough to repay the advanced sick leave. While there will frequently be some uncertainty as to whether that is the case at the time of the request, the decision is left to the exercise of sound managerial discretion that may not be abused by an arbitrary denial unsupported by a factually based good reason. Accordingly, the critical question in this case is whether management had sufficient evidence at the time of the decision to reasonably believe that the Grievant would return to duty and repay the advance sick leave if it was granted."

C-10455 Regional Arbitrator Axon December 15, 1990, W7N-5R-C 21549

Management violated the contract by refusing grievants' requests for advance sick leave. See also [C-08199](#)

C-26893 Regional Arbitrator Cenci February 2, 2007, B01N-4B-C 06215482

... management is not required to interview an employee or request the employee's explanation of sick leave usage before denying a §513.511 request. However, by not doing so management may place itself in a situation where the request is being denied almost entirely on the impermissible basis that the employee has exhausted his accumulated sick leave. In the circumstances of this case, I conclude that a full and fair investigation would have included an opportunity for the grievant to explain his sick leave usage before his request was denied.

Sick Leave, PTF

M-01374 Step 4 December 22, 1998, 194N-4I-C 98093715

The issue in this grievance is whether Management violated the National Agreement by recording the grievant's (who is a PTF) request for sick leave as a non scheduled day.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. Rather, it requires the application of ELM Section 513.421 (c) which provides:

c. Limitations in 513.421b apply to paid sick leave only and not to a combination of sick leave and workhours. However, part-time flexible employees who have been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave) in a service week are not granted sick leave during the remainder of that service week. Absences, in such cases, are treated

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as non-duty time which is not chargeable to paid leave of any kind. (Sick leave is not intended to be used to supplement earnings of employees.)

We further agreed that the restriction on granting sick leave to PTF employees “who have been credited with 40 hours or more of paid service” applies only to PTF employees who have already been credited with 40 hours of service at the time the request is made. In the circumstances presented in this case the requested sick leave should have been granted since the employee was scheduled to work and had only been credited with 31.9 hours of paid service on the day the request was made.

Sick Leave, for Dependent Care

ELM Section 513

513.12 Sick Leave for Dependent Care A limited amount of sick leave may also be used to provide for the medical needs of a family member. Nonbargaining unit employees, and bargaining unit employees if provided in their national agreements, are allowed to take up to 80 hours of their accrued sick leave per leave year to give care or otherwise attend to a family member (as defined in 515.2) with an illness, injury, or other condition that, if an employee had such a condition, would justify the use of sick leave. If leave for dependent care is approved, but the employee has already used the maximum 80 hours of sick leave allowable, the difference is charged to annual leave or to LWOP at the employee's option. (See 515 for information about FMLA entitlement to be

M-01657 Memorandum September 11, 2007

Re: Sick Leave for Dependent Care

The parties agree that, during the term of the 2006 National Agreement, sick leave may be used by an employee to give care or otherwise attend to a family member with an illness, injury or other condition which, if an employee had such condition, would justify the use of sick leave by that employee. Family members shall include son or daughter, parent, and spouse as defined in ELM Section 515.2. Up to 80 hours of sick leave may be used for dependent care in any leave year. Approval of sick leave for dependent care will be subject to normal procedures for leave approval.

M-01407 Memorandum of Understanding, [Relevant part] March 21, 2000

It is hereby agreed by the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, that the following represents the parties' agreement with regard to implementation of the upgrade issue emanating from the September 19, 1999 Fleischli Award, our agree-

ment regarding case configuration when using the vertical flat casing work method, and additional provisions relative to the 1998 National Agreement.

The Memorandum of Understanding Re: Sick Leave for Dependent Care found on page 162 of the 1994 National Agreement will be renewed for the remainder of the term of the 1998 National Agreement.

M-01409 Memorandum of Understanding, April 7, 2000

It is hereby agreed and understood by the U. S. Postal Service and National Association of Letter Carriers (NALC), AFL-CIO that the Memorandum of Understanding Re: Sick Leave for Dependent Care and the Memorandum of Understanding Re: Leave Sharing contained in the 1994-1998 National Agreement, expired with the term of that contract on September 19, 1999. By Memorandum of Understanding dated March 21, 2000, both these memoranda were renewed for the remainder of the term of the 1998 National Agreement.

Therefore, the NALC will withdraw from the grievance/arbitration procedure, all grievances at all steps, challenging the denial of either Sick Leave for Dependent Care or Leave Sharing during the period of September 20, 1999 through March 20, 2000. The parties agree that requests submitted for Leave Sharing and Sick Leave for Dependent Care on March 21, 2000 and for the remainder of the term of the 1998 National Agreement, will be addressed in accordance with the provisions of those two memoranda. Further, it is agreed that any request for Sick Leave for Dependent Care or Leave Sharing that was granted during the period of September 20, 1999 through March 20, 2000 will be honored.

M-01363 Step 4 October 22, 1998

We mutually agree at this level that the consultation with the son's speech pathologist would qualify under the Sick Leave for Dependant Care memorandum.

C-18452 Regional Arbitrator Powell C94N-4C-C 98022262

The grievant, who had requested Sick Leave for Dependant Care because of his son's illness, was required to provide medical certification. The arbitrator held that since there was no evidence of sick leave abuse, the request was unwarranted. The Postal service was ordered to reimburse the grievant for expenses. See also [C-18462](#).

Leave, Sick, Restricted

M-00002 Step 4 August 23, 1977, NCC 7450

Management should inform employees prior to placing them on restricted sick leave that their usage of sick leave

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demonstrates a pattern of abusing the use of sick leave.
See also [M-00704](#)

M-00664 Step 4
October 19, 1976, NCE 3042

Management should take into account absences which are attributable to the employee's disability and as soon as a substantial improvement is shown in the employee's attendance record, consideration will be given to removing his name from the restricted list.

M-00705 Step 4
Oct 31, 1977, NCC 8354

The set percentage of sick leave usage, in and of itself, should not be the sole determining factor on taking further corrective action

C-00070 Regional Arbitrator DiLeone
September 16, 1981, C8C-4G-C 16130

Management improperly placed the grievant on restricted sick leave.

C-00330 Regional Arbitrator Caraway
October 17, 1983, S1C-3A-C 11234

Management violated the contract when it used a restricted sick leave letter which went beyond the basic conditions set forth in the ELM.

Leave Without Pay

M-00932 Step 4
May 21, 1974, NB-S-1129

Neither sick leave nor leave without pay can be charged against an employee unless requested by that employee.

M-01058 APWU Step 4
December 6, 1985, H4C-1E-C-6349

The basic dispute in this grievance concerns whether or not employees who have no leave to cover vacations during the choice vacation period are entitled to the automatic granting of LWOP to cover the absence.

We mutually agreed that this grievance does not fairly present a nationally interpretive dispute. The approval of LWOP under the above circumstances is subject to the provisions of Part 514, ELM. The parties recognize that LWOP may be granted to cover the employee's absence when that employee has no leave to cover vacation during choice vacation period. However, approval of such request for LWOP is a matter of administrative discretion based upon the needs of the employee, the needs of service, and the cost to the service.

Accordingly, the grievance is remanded to Step 3 where those issues of Local concern, such as LMU application, past practices, etc., may be addressed.

M-01381 APWU Pre-arb
April 20, 1999 Q90C-4Q-C 95048663

This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning Paid Leave and LWOP' found on page 312 of the 1998 National Agreement. The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as the parties' further agreement on the use of paid leave and LWOP. We further agree that:

As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.

Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, absences for family care or serious health problem of employee (policies to comply with the Family and Medical Leave Act.).

In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. As we have previously agreed, this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

M-01235 APWU Memorandum
November 14, 1991

The basic intent of this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is when an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave when they reach the point where they may exhaust their leave benefits.

M-01371 Step 4
January 13, 1999, F94N-4FJ-C- 97100062

The issue contained in this grievance whether an employee when requesting LWOP under FMLA, must exhaust paid leave before the approval of LWOP. As in this case, where an employee has insufficient sick leave to cover an FMLA approved absence which qualifies for sick leave usage, LWOP cannot be denied.

M-01136 APWU Step 4
December 20, 1973, AB-NAT-34

This case concerned a... local policy not to grant leave without pay for scheduled vacations. This was inconsistent with Postal Service policy that requests for leave with-

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out pay be considered on an individual basis, giving due regard to the total circumstances involved, and that decisions approving or disapproving such requests be based on reasons of merit.

In discussing this matter with you... we emphasized that authorizing leave without pay is a matter of administrative discretion. Except for disabled veterans, military reservists and National Guardsmen, who are entitled to leave without pay in certain circumstances, an employee cannot demand that it be granted. It is recognized, of course, that an employee will be granted leave without pay if requested under the provisions of Article 24 of the National Agreement, provided the terms and conditions specified therein are met.

We also indicated that, where an employee intermittently requests and is granted approval to be absent from work for the purpose of conducting union business, it is not the intent of the Postal Service that such employee be required to use annual leave to cover the absence. If management determines that the employee's services can be spared and it approves the requested absence, then the employee has the option of using annual leave or leave without pay to cover the absence.

M-01382 APWU Memorandum November 13, 1991

The undersigned parties negotiated a Memorandum of Understanding (MOU) entitled "LWOP in lieu of SL/AL" that allows an employee to request Leave Without Pay (LWOP) prior to exhausting annual or sick leave. The following serves as a guide for administering these newly negotiated MOU provisions.

The basic intent of this MOU is to establish that an employee need not exhaust annual or sick leave prior to requesting LWOP. One example of the term "need not exhaust" is when an employee requests maternity or paternity leave and was previously required by local management to exhaust their sick or annual leave prior to receiving LWOP. An employee now has the option of requesting LWOP in lieu of sick or annual leave prior to reaching the point where they may exhaust their leave benefits.

It was not the intent of this MOU to increase leave usage (i.e. approved time off). Moreover, it was not the intent that every or all instances of approved leave be changed to LWOP thus allowing the employee to accumulate a leave balance which would create a "use or lose" situation. Furthermore, the employer is not obligated to approve such leave for the last hour of the employee's scheduled workday prior to and/or the first hour of the employee's scheduled workday after a holiday.

This MOU does not change Local Memoranda of Understanding regarding procedures for prescheduling annual leave for choice or nonchoice vacation periods. It also was not intended to provide employees the opportunity to

preschedule LWOP in lieu of annual leave for choice or nonchoice periods. An employee may at a later date request to change the prescheduled annual leave to LWOP, subject to supervisor approval in accordance with normal leave approval procedures. However, this option is available to an employee only if they are at the point of exhausting their annual leave balance.

This MOU does not establish a priority between incidental requests for annual leave or LWOP when several employees are simultaneously requesting such leave. The normal established local practice prevails, i.e., whether leave requests are approved in order of seniority or on a first come first serve basis or other local procedure. This memorandum of understanding has no effect on any existing leave approval policies or other leave provisions contained in the Employee and Labor Relations Manual or other applicable manuals and handbooks.

Leave, Family and Medical

The Postal Service regulations implementing the provisions of the Family and Medical Leave Act (FMLA) are found in ELM Section 515.

C-29873 National Arbitrator Shyam Das April 18, 2012

Arbitrator Das directed the Postal Service to cease and desist from requiring employees to submit FMLA medical certifications using only the Department of Labor (DOL) WH-380 forms.

M-01547 USPS Letter July 26, 2005

On July 19, 2005, in the case of Harrell v. U.S. Postal Service, the United States Court of Appeals for the Seventh Circuit ruled that the Postal Service's return to work provisions in ELM 865 cannot be applied to bargaining unit employees returning from FMLA-protected absences. The ELM provisions before the court allowed management, prior to an employee's return to work from a FMLA-protected absence, to request detailed medical information when the absence was caused by a number of specified medical conditions, or if the absence exceeded 21 days. The ELM provisions recently changed. The new ELM provisions authorize return to work clearance when management has a reasonable belief, based upon reliable and objective information, that the employee may be unable to perform the essential functions of his/her position or may pose a direct threat to health or safety. This standard comports with the requirements of the Rehabilitation Act that employers make medical inquiries only when there is a reasonable, objective basis to do so.

The Postal Service will comply with the Harrell decision in those facilities located within the three states subject to the court's jurisdiction; Indiana, Illinois, and Wisconsin.

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**C-23261 National Arbitrator Nolan,
Q98N-4Q-C 01090839 April 28, 2002**

National dispute involving Publication 71 is arbitrable. The Postal Service had argued that NALC could not resolve in arbitration a dispute concerning the Family and Medical Leave Act, a federal law. Arbitrator Nolan also rejected a series of additional management arguments that the case was not arbitrable, including claims that the grievance was untimely and that Publication 71 is not covered by Article 19.

**C-25724 National Arbitrator Das,
January 28, 2005, Q00C-4Q-C 03126482**

In applying ELM 513.332 in the context of the RMD process, ACS's may ask questions necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury of for a condition which requires ELM 865 return-to-work procedures, in a manner consistent with the Findings in this decision, but may not otherwise require employees to describe the nature of their illness/injury.

The Postal Service's current process for initiating FMLA review by a third health care provider, at issue in this case, is not consistent with the FMLA or with ELM 515.1 and 515.54, and implementation of that process violates Articles 5 and 10.2.A of the National Agreement. The Postal Service is directed to rescind that process.

**M-01558 Prearbitration Settlement
January 11, 2006**

A Step B team has the authority to determine if an employee's FMLA certification of a serious health condition provides the information required to protect the absence, in accordance with the FMLA, and to determine whether a certification for a chronic condition is acceptable, with regard to the duration and frequency, when it uses descriptors such as "unknown", "indefinite" or "intermittent."

**M-01635 USPS Letter
January 9, 2008**

USPS response to NALC inquiry: In accordance with ELM 515.51, employees can submit their FMLA information to a supervisor or the FMLA Coordinator. The Postal Service is considering revisions to ELM 515.51. In the interim, the field will be informed that supervisors should be forwarding the employee's FMLA information to the FMLA Coordinator, whenever received.

**M-01552 USPS Letter
August 30, 2005**

Letter from the Postal Service concerning new FMLA certification for a previously certified FMLA medical condition when the employee asks for leave for the previously certified FMLA medical condition in a new leave year.

**M-01271 USPS Publication
March 1995**

Internal USPS publication entitled Family and Medical Leave Act (FMLA) Reference Material for US Postal Service.

**M-01378 USPS Memorandum
November 22, 1995**

Postal Service Headquarters Memorandum concerning FMLA Issues.

**M-01379 USPS Letter
September 12, 1996**

Postal Service Headquarters letter concerning FMLA Issues.

**M-01281 Prearbitration Settlement
February 26, 1997, F90N-4F-D 95043198**

The provisions of ELM Section 515, "Absence for Family Care or Serious Health Condition of Employee" are enforceable through the grievance arbitration procedure.

**M-01270 Prearbitration Settlement
October 16, 1997, F94N-4F-D 97026204**

In a disciplinary hearing involving just cause, the union may argue as an affirmative defense that management's actions were inconsistent with the Family and Medical Leave Act

**M-01371 Step 4
January 13, 1999, F94N-4FJ-C- 97100062**

The issue contained in this grievance whether an employee when requesting LWOP under FMLA, must exhaust paid leave before the approval of LWOP. As in this case, where an employee has insufficient sick leave to cover an FMLA approved absence which qualifies for sick leave usage, LWOP cannot be denied.

**M-01424 Prearbitration Settlement
Q94N-4Q-C 99224270, March 28, 2000**

There is no dispute that an employee who requests and is entitled to time off under ELM 515, Absences for Family Care or Serious Health Problem of Employee, must be allowed up to a total of 12 workweeks of absence within a Postal Service leave year. LWOP may be taken in conjunction with annual or sick leave for which the employee is qualified. An employee need not exhaust annual or sick leave prior to requesting LWOP.

**M-01222 USPS Letter
February 7, 1994**

NOTE: Partly Overruled by M-01687, below.

Question: Do employees retain the no-layoff protection when FMLA interrupts the 20 day pay periods worked per year during the six year period of continuous service?

Answer: Yes. However, since the maximum FMLA time off is 12 weeks or 6 pay periods per leave year, loss of the no-layoff protection would normally be for other reasons. The only time FMLA would interrupt the years required for protection is in cases where more than 12 weeks of FMLA during two different leave years result in more than 6 pay periods of absence during an individual employee's anniversary year. In these rare cases the no-layoff protec-

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tion must manually be restored. This is accomplished by sending a memorandum to the Minneapolis Information Service Center.

Question: Does OWCP and Military Leave count towards the 1250 work hour criteria for eligibility for FMLA?

Answer: No. Whether an employee has worked the minimum 1250 hours of service is determined according to the principles established under the Fair Labor Standards Act (FLSA) for determining compensable hours of work. OWCP and Military Leave do not qualify as work under these principles.

M-01687 U.S. Department of Labor, Assistant Secretary for Veterans' Employment and Training, July 22, 2002

... Therefore, in determining whether a veteran meets the FMLA eligibility requirement, the months employed and the hours that were actually worked for the civilian employer should be combined with the months and hours that would have been worked during the twelve months prior to the start of the leave requested but for the military service.

**M-01320 Pre-arbitration Settlement
May 21, 1998, C94N-4C-C 96031384**

The parties do not dispute the fact that there is no "laundry list" of serious health conditions. Rather, the circumstances determine whether a condition is serious, not the diagnosis. Therefore, every request for FMLA leave must be considered on a case-by-case basis, applying the definitions to the information provided by the employee and the employee's health care provider.

In the instant case, the information on the grievant's WH-380 appeared to be complete and the supervisor believed that the three day absence did not qualify for FMLA coverage. However, since that initial documentation, the grievant has disclosed additional information which suggests that his illness may have been the result of a chronic condition. Since it is arguable that the supervisor should have considered this supplemental documentation, the parties agree that the grievant's absence will be treated as though it were an absence protected under the FMLA.

**C-23261 National Arbitrator Nolan
April 28, 2002, Q98N-4Q-C 01090839**

The arbitrator found that NALC's grievance challenging revisions to Publication 71 was arbitrable. The grievance was subsequently resolved by the prearbitration settlement [M-01474](#), below.

**M-01474 Prearbitration Settlement
Q98N-4Q-C 01090839, December 9, 2002**

The issue is whether Publication 71, "Notice for Employees Requesting Leave for Conditions Covered by the Family and Medical Leave Act", violates the National

Agreement by requiring "supporting documentation" for an absence of three days or less in order for an employee's absence to be protected under the Family and Medical Leave Act (FMLA).

After viewing this matter, we agree that no national interpretive issue is presented. The parties agree to resolve the issue presented based on the following understanding:

The parties agree that the Postal Service may require an employee's leave to be supported by an FMLA medical certification, unless waived by management, in order for the absence to be protected. When an employee uses leave due to a condition already supported by an FMLA certification, the employee is not required to provide another certification in order for the absence to be FMLA protected.

We further agree that the documentation requirements for leave for an absence of three days or less are found in Section 513.361 of the Employee and Labor Relations Manual which states in pertinent part that:

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

**M-01436 Step 4
April 3, 2001, B94N-4B-C 98056900**

When an employee is awarded back pay, the hours an employee would have worked if not for the action which resulted in the back pay period, are counted as work hours for the 1250 work hour eligibility under the Family Medical Leave Act (FMLA).

If an employee substitutes annual or sick leave for any part of the back pay period that they were not ready, willing and able to perform their postal job, the leave is not counted as work hours for the 1250 work hour eligibility requirement under the FMLA.

If a remedy modifies an action, resulting in a period of suspension or leave without pay, that time is not counted as work hours for the 1250 hours eligibility requirement under the FMLA.

**M-01381 APWU Pre-arbitration Settlement
April 20, 1999 Q90C-4Q-C 95048663**

This grievance concerns the effect of the Memorandum of Understanding (MOU) concerning "Paid Leave and LWOP" found on page 312 of the 1998 National Agreement. The parties hereby reaffirm the attached Memorandum of Understanding dated November 13, 1991, which serves as

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the parties further agreement on the use of paid leave and LWOP. We further agree that:

1. As specified in ELM 513.61, if sick leave is approved, but the employee does not have sufficient sick leave to cover the absence, the difference is charged to annual leave or to LWOP at the employee's option.
2. Employees may use LWOP in lieu of sick or annual leave when an employee requests and is entitled to time off under ELM 515, absences for family care or serious health problem of employee (policies to comply with the Family and Medical Leave Act.).
3. In accordance with Article 10, Section 6, when an employee's absence is approved in accordance with normal leave approval procedures, the employee may utilize annual and sick leave in conjunction with leave without pay. As we have previously agreed, this would include an employee who wishes to continue eligibility for health and life insurance benefits, and/or those protections for which the employee may be eligible under Article 6 of the National Agreement.

C-14107 Regional Arbitrator Lurie November 27, 1994, H90N-4H-D 94068273

"Because the grievant's absence was protected leave under the provisions of the FMLA, the reliance upon that leave as a basis for her removal from the Postal Service was in violation of the Act, and is void, as a contravention of public policy and the laws of this Country. The citation of that leave was also a violation of Article 19 of the Agreement, inasmuch as the Act has been expressly endorsed by the Postal Service, and integrated into its handbooks and manuals." See also [C-18540](#), [C-18477](#)

C-27066 Regional Arbitration Cenci April 26, 2007, B01N-4B-C 06187305

... FMLA 90 also notes that not all absences under the FMLA will be predictable and that certification cannot be withheld because a health care provider did not submit an exact schedule of leave.

The Form 2 submitted by the grievant met the requirements set forth in FMLA-90 in my view, and the grievant should not have been required to provide further clarification. His condition is chronic and it is difficult to see how its duration could be described more precisely than as "indefinite".

RMD & eRMS Programs

M-01468 Prearbitration Settlement, September 9, 2002, Q98N 4Q C 01051141

The Interpretive issue is whether or not the Resource Management Database (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.

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.

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M-01597 Postal Service Correspondence

December 19, 2006

Regarding supervisory activation of the "Deems Desirable" option in eRMS and the Restricted Sick Leave List (RSL List) Provisions of ELM Section 513.39: A supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interests of the Postal Service must be made on a case by case basis, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious, or unreasonable. Availability of this eRMS option does not expand or diminish supervisory authority, or change policy concerning medical documentation in any way.