

Office of Human Resources Management Guidance on Selected Sick Leave Issues

In recent meetings with representatives from the National Association of Government Employees (NAGE), VA management agreed to issue guidance on sick leave which might serve as a basis for insuring that sick leave requests and medical certification requirements are administered in accordance with law, regulation, and the master agreement between VA and NAGE.

NAGE has filed grievances on employees behalf at several NAGE represented facilities, because of what it contends is a lack of understanding of how sick leaves rules should be applied. The guidance attached is the result of the meetings mentioned above and is intended to serve as a basis for a review of any related pending grievances and prospectively for new cases that may arise.

If in applying this guidance, management believes it may have erred with respect to any pending sick leave related grievance, then it should grant appropriate redress to the grievant. If not, management should explain its rationale and allow the grievance to continue. If the union believes that management has acted appropriately it should encourage the employee to withdraw the grievance.

Any questions on this guidance should be directed to Katie McCullough-Bradshaw at 273-9836 or Linda Settle at 273-9838 of the Customer Advisory and Consulting Group in the Office of Human Resources Management.

January 2001

Sick Leave Guidance:

1. Zero Balance does not always demonstrate excessive use of sick leave.

It is not uncommon that in cases involving serious disabilities, prolonged illnesses, pregnancies, or other serious health conditions, an employee's accrued sick leave account may be depleted to zero.

General Note: When such instances occur, supervisors may take the opportunity to discuss their concerns with employees regarding a **pattern of excessive leave use for unscheduled sick leave**. Based upon the employee's explanation pertaining to his/her personal health or family health situation, a supervisor can determine whether the employee should be advised about the possibility of a future requirement for medical certification or whether some reasonable accommodation should or can be made if the condition is chronic or not expected to improve.

2. The justification for issuing notices of medical certification requirements should exclude absences that have previously been approved based on administratively acceptable medical documentation.

Administratively Acceptable means that the leave-approving official (supervisor) will determine if the documentation adequately supports the employee's need for the use of scheduled or unscheduled sick leave. The employer should not normally require an excessive amount of documentation to demonstrate the need for sick leave.

3. "An employee who is released from duty by the supervisor based on the supervisor's determination, or a determination by the Medical Officer of the Day, or by the Personnel Health Physician, that he/she is incapacitated for duty due to illness or injury shall not be required to furnish medical certification for the day. The day the employee is sent home due to illness or injury during his or her tour of duty does not count as one of the 3 days referred to in Section 5." (Master Agreement Article 18, Section 7)

4. Regardless of the duration of the absence, an agency may consider an employee's certification as to the reason for his or her absence as administratively acceptable evidence. Certification from the health care provider will determine the length of the incapacitation for each individual and, therefore, the duration of the health condition.

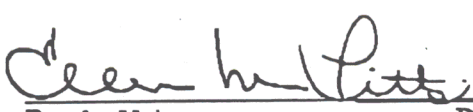
- 5. **The Employer shall not issue any supplemental leave policies at the departmental level (service, product line) or station level which conflict with the Master Agreement. Any conflicting policies that exist will be rescinded immediately.**
- 6. **Family leave policies will be implemented according to governing laws, regulations, and nationally negotiated agreements. "**
- 7. **Failure to follow leave-requesting policies will not negate an employee's entitlement to accrued sick leave.**

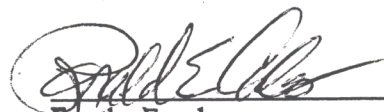
Sick leave is an employee entitlement. A supervisor cannot deny entitlement to sick leave if the employee's request is for any reason authorized in 5 CFR 630.401. The employee may, however, be required to produce medical certification in accordance with MP-5, Part I, 11(b). Further, the supervisor may counsel or discipline the employee for failure to follow leave-requesting policies.

- 8. **Written decisions will be made on all sick leave certifications at the end of the six-month period, and provided to the employee.**

VA's current policy states "In any case, where an employee has been given notice that any sick leave request must be supported by a medical certificate, it will be the responsibility of the leave approving official to review the case in not later than 6 months to determine whether the requirement for furnishing a medical certificate for approved sick leave may be eliminated. If it is determined that a medical certificate is no longer required for sick leave of 3 days or less, the employee shall be so notified in writing" (MP-5, Part I, Chapter 630, 11.b(4)). The employee will also be notified of the reasons, in writing, if the restriction is to be continued.

- 9. **Annual leave may be taken in lieu of sick leave at the employee's request. Locals may negotiate the procedures for use of annual leave in lieu of sick leave.**


 For the Union Date
12/27/00

 12/30/00
 For the Employer Date