



Maryland Professional Employees Council
AFT/AFL-CIO
7127 Rutherford Road
Baltimore, MD 21244

A union of professionals
in service to the people
of Maryland

June 16, 2017

Michael L. Higgs, Jr.
Director
Department of Assessments and Taxation
301 W. Preston Street
8th Floor
Baltimore, Maryland 21201

Re: DAT Sick Leave Call-In Procedures

Dear Mr. Higgs:

As the President of the Maryland Professional Employees Council, AFT Local 6197, AFL-CIO ("MPEC"), I am writing to demand that you immediately address the May 22, 2017 "SDAT Leave Call-In Confirmation Questions" policy issued by your Office of Human Resources, a copy of which is attached hereto. While the policy was apparently rescinded on Friday, June 9, 2017, both its very creation, and the reason given for its rescission, are of great concern to MPEC and our members within your Department. The policy evidences a fundamental misunderstanding and misapplication of both state and federal law, and evidences a belief by your personnel office that they are entitled to violate employees' fundamental privacy rights.

Matters related to sick leave usage necessarily involve issues of privacy, and there exists on both a state and Federal level an extensive body of law and regulation addressing the need to balance an employer's legitimate business needs with an employee's entitlement to medical privacy. Of utmost significance is the requirement, reflected in the Memorandum of Understanding ("MOU") between MPEC and the State, that the "Employer **shall not ask the employee to provide information as to his/her diagnosis or condition except as permitted by applicable law.**" (MOU Article 10, Section 3; emphasis added)

The "SDAT Leave Call-In Confirmation Questions" distributed by your staff improperly conflates two very separate matters: the level of information required to be provided in furtherance of the use of FMLA, and the level of information and notice to which management is entitled when an employee seeks to use their own, **earned** sick leave. First, the FMLA does not, as asserted in the policy, give "employers the right to obtain information from the employee about their need for leave." (Emphasis in original) The information required of State employees in furtherance of their use of earned sick leave is governed by the aforementioned MOU, COMAR 17.04.11.05, and Maryland State Personnel and Pensions Code Annotated, Section 9-504. Except under extra-ordinary circumstances, employees are entitled to use sick leave for



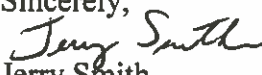
themselves and to address the needs of their immediate family (State Personnel and Pensions Section 9-501), and are not required to provide any documentation of illness *at all* unless they are absent for five (5) or more consecutive days. (MOU, COMAR 17.04.11.05). Even where an employee is required to provide certification of illness, that documentation is limited to a verification from an appropriate medical provider (see SPP 9-504) that the employee is or was under their care, and a statement regarding the employee's prognosis for return to work.

The FMLA is simply not implicated in an employee's routine entitlement to sick leave use. In fact, should an employer seek to require medical certification for FMLA purposes, such notice must be given to the employee in writing along with a notice of the employee's rights and responsibilities under the FMLA. MPEC staff is certainly willing to meet with representatives of your Office of Human Resources to discuss the difference between FMLA and regular sick leave. The FMLA does not, as the policy states, give employers the right to obtain the following information from an employee seeking to use sick leave:

- "What is the reason for your absence?"
- "What essential functions of your job can you NOT perform?" (emphasis in original)
- "Will you see a doctor today for your injury/illness?"
- "Have you previously taken leave for this condition? If so, when?"
- "When did you first learn you would need to be absent?"
- "When do they expect to return to work?"

In her rescission notice of June 9, 2017, Kate Holmes of your Office of Human Resources indicates that the proposed policy is to be discussed with MPEC in the next two months. While I certainly agree that sick leave notification policies are matters subject to negotiation, rest assured, MPEC will never agree to terms remotely close to the notification procedures called for in this policy. It is not clear whether DAT legal counsel was consulted in the issuance of this policy, and he has been copied on this letter of concern. However, in no event will the Union ever consent to employees being required to respond to such grossly inappropriate inquiries as a condition for use of their own, earned sick leave. The very fact that the policy was drafted and distributed is of great concern to your employees, who understandably view this as a reflection of the attitude and intent of your department.

I look forward to your response, which I hope will be an assurance that in no circumstances will employees of DAT be expected to comply with such a grossly unlawful policy.

Sincerely,

Jerry Smith
MPEC President

SDAT Leave Call-In Confirmation Questions

Under the FMLA regulations, employers have the right to obtain information from the employee about their need for leave. Going forward, immediate supervisors must ask all employees that call in sick (FMLA included) the following confirmation questions.

Employee Name:	
Call-In Date & Time:	Who spoke with employee?
Confirmation Question	Employee's Answer
What is the reason for your absence?	
What essential functions of your job can you <u>not</u> perform?	
Will you see a doctor today for your injury/illness?	
Have you previously taken leave for this condition? If so, when?	
When did you first learn you would need to be absent?	
When do they expect to return to work?	

Call-in Procedures

The employee or their designee MUST notify their immediate supervisor or designee at the worksite of their need to use leave as soon as possible, but at least within 15 minutes of their scheduled starting time, unless extenuating circumstances preclude this notification.

In accordance with this established policy employee MUST leave a message if their supervisor or designee is unavailable, or the Employer may instruct an employee to call a secondary number, and the employee will not be required to call back.

The employee or designee must call each day of the absence until the employee notifies the SDAT supervisor or manager of a date he/she will return to duty.

In cases where a County Office of HQ Department requires coverage during core hours. The manager may set internal guidelines and procedures regarding employee notification as it relates to an employer's arrival time and need to request any type of unscheduled leave, including sick leave. These guidelines should be in writing and distributed to all employees who are required to provide coverage. Guidelines and procedures MUST be reviewed and approved by the Associate Director and a copy kept on file in the Office of Human Resources.

Employee Name	Call-in Date	Call-in Time	Employee's Supervisor	Who Spoke with Employee?	What is the reason for your absence?	What essential functions of your job can you NOT perform?	Will you see a doctor today for your injury/illness?	Have you previously taken leave for this condition? If so, when?	When did you first learn you would need to be absent?	When do they expect to return to work?
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