

Managing Sick Leave Problems



By Diana J. Veilleux



Throughout the year, Shaw, Bransford, Veilleux & Roth provides training to federal managers and supervisors about federal personnel rules. One of the subjects that we get

the most questions about is federal leave policies; in particular, sick leave and dealing with employees who have leave problems. In some agencies, a culture of entitlement has arisen regarding use of sick leave, leaving managers unsure about what information they are entitled to ask an employee for in order to decide whether to approve sick leave and what to do if the information provided is insufficient. Also, many times we find that managers are unaware that they have tools, such as a leave restriction letter, for dealing with the chronic sick leave abuser. This article will provide some information on the rules and some pointers for dealing with sick leave problems.

What is sick leave for anyway?

In a nutshell, sick leave is supposed to be used only when a federal employee is personally too incapacitated from illness to come to work; for an employee to attend a medical or dental appointment; and for an employee to care for a family member who is ill. Federal law also allows federal employees to use sick leave

to arrange for and attend a family member's funeral or to adopt a child.

Sick leave is *not* a substitute for annual leave. It cannot be used, for example, to augment an employee's annual leave so that he can take a longer vacation. Misusing sick leave is a serious action that can lead to serious discipline for both the employee who abuses the leave and the manager who authorizes it.

What evidence is needed to approve sick leave?

The rule is that a supervisor may grant sick leave only when it is supported by "administratively acceptable" evidence. Generally, however, this only comes up if an employee is absent for more than three days. For absences of three days or less, the government-wide practice is to allow an employee to self-certify. This means that the employee need only submit a leave slip requesting sick leave in order for it to be approved.

Nevertheless, there are certain circumstances when a manager can ask for medical information, even when the absence is less than three days, or ask an employee for additional medical information to justify a grant of sick leave for more than three days. These situations include when the manager does not believe that the employee is really sick; if the supervisor has cause to question the authenticity of medical information submitted by the employee; or when the employee is on leave restriction.

What if the employee fails or refuses to provide adequate medical documentation?

When we ask the above question during our training, we invariably have some managers say that if the employee does not submit administratively acceptable medical information to justify a grant of sick leave, they should be placed on leave without pay (LWOP). However, the better response is that the employee in that situation should be considered absent without official leave (AWOL). The reason for this is that LWOP is a type of approved leave, even though the employee is not in a pay status, whereas AWOL is an unapproved absence. If an employee fails to comply with a supervisor's request for administratively acceptable evidence to grant his sick leave, he should be placed on AWOL because his leave request has not been approved.

What can be done about a chronic sick leave abuser?

There are some employees who skate under the radar by taking sick leave in small increments so as to avoid having to submit medical justification. These types of situations also frequently involve unscheduled absences when the employee calls in the same day of the absence. They can quickly morph from the occasional absence to absences so frequent and unpredictable that they are disruptive to

continued on next page

Managing Sick Leave continued from page 29

the whole workplace. Managers can deal with this situation by counseling the employee and, if the situation does not improve, by placing the employee on leave restriction.

This is accomplished by providing the employee with a letter outlining the problems with the employee's leave use and stating whatever additional requirements are going to be imposed on the employee. For example, the employee can be required to submit all requests for sick leave in advance (as opposed to the day of the absence) and can be required to submit medical documentation to support a grant of sick leave even when the employee is out less than three days. If the employee fails to abide by the requirements in the leave restriction letter, the employee can (and should) be placed on AWOL.

If the employee's leave use improves, the leave restriction letter can be lifted. However, if the leave use does not improve, the leave restriction letter can be a basis for discipline, up to and including removal.

How does FMLA leave come into play?

The Family and Medical Leave Act grants covered full-time federal employees up to 12 work weeks of unpaid leave, which can be used when an employee has a serious health condition that renders the employee incapacitated from work, or for the employee to care for a spouse, child or parent who has a serious health condition. FMLA leave can be taken all at once or intermittently if, for example, an employee has a chronic health condition.

There are certain requirements that must be fulfilled in order for FMLA leave to be granted. For example, an employee is required to provide notice to her employer that she wishes to take leave 30 days in advance of when the leave is to start (except in emergency situations), and

the employer may require a detailed medical certification from the employee or the employee's family member in order to approve the leave. An employee cannot retroactively invoke FMLA leave after a prolonged absence.

For all of the above reasons, it is much less likely that an employee will attempt to or be successful at abusing FMLA leave. On the other hand, agencies cannot impose more restrictive policies for FMLA leave and may not deny an employee FMLA leave for failing to follow the agency's leave procedures. Therefore, FMLA leave cannot be included in a leave restriction letter.

As the above sampling shows, federal sick leave policies are complicated. Nevertheless, all federal supervisors should have a basic understanding of them in order to manage their workforce. The key to avoiding sick leave abuse by employees is to know the rules and then, not being afraid to enforce them. ■

Diana J. Veilleux is a partner at Shaw, Bransford, Veilleux & Roth, P.C. of Washington, D.C., where she has practiced since 1990. Ms. Veilleux specializes in employment law and litigation, and provides legal representation to individual clients in various forums, including the Merit Systems Protection Board, the Equal Employment Opportunity Commission, and federal district and appellate courts.

She co-hosts FEDtalk, a weekly radio show on Fridays, 11:00 am to noon (Eastern Time), on the all-federal employee radio station, Federal News Radio.com. On FEDtalk, the law firm presents experts who discuss matters of importance to federal employees and retirees.

Prior to joining SBVR, Ms. Veilleux was an attorney with the United States Postal Service in the Office of Labor Law for five years, where she handled administrative cases and litigation in federal district courts. Ms. Veilleux also provided legal and policy advice to Postal Service management pertaining to federal labor and employment law issues.

“

Sick leave is NOT a substitute for annual leave...

Misusing sick leave is a serious action that can lead to serious discipline for both the employee who abuses the leave and the manager who authorizes it.

”