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 Office of the  
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September 12, 1996

MAY 3 1999

 VICE PRESIDENT'S OFFICE  
 N.A.L.C. HDQTRS., WASHINGTON, D.C.

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

Dear Bill:

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

You indicated that there is a problem in the field with managers who insist on retention and review of records containing a prognosis or diagnosis. The National Medical Director for the Postal Service, Dr. David Reid, III, addressed the documentation requirements for approval of leave in a memorandum dated June 22, 1995. As noted by Dr. Reid, medical information received by an employee's supervisor that provides a diagnosis and a medical prognosis must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806. This application is consistent with the documentation requirements under the FMLA. Therefore, to address your concerns we can reissue the memorandum and review specific complaints on a case by case basis.

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

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

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

Issue: Whether or not employees returning from a FMLA absence may be denied employment after submission of a physician's statement that the employee is fit to return to duty (825.310c).

Answer: No.

Issue: Whether or not the Postal Service may require a second medical opinion through a fitness for duty exam by a USPS designated physician for a FMLA absence for the condition justifying FMLA (825.310e).

Answer: Not prior to returning the employee to active status. After the employee returns to work, management maintains the same rights as they would otherwise have if an employee who has not been on leave comes to work and they have reason to believe the employee may be incapable of performing the work without endangering himself or others around him.

Issue: May disciplinary action against an employee include any absences covered by FMLA (825.220.3.b)?

Answer: No.

Issue: Is the employer required to post form 1420? After being properly notified by the employee of a FMLA condition, is the employer required to notify the employee of employee obligations and provide the employee with their rights and obligations (825.300 and 825.301)?

Answer: Yes, the form 1420 should be posted. The employee should be provided a copy of Publication 71 and a copy of the completed and signed PS 3971, Request for or Notification of Absence, with the type of leave and additional documentation requirements noted.

Issue: Can an employee returning from a FMLA absence or being examined for a FMLA condition be required to provide access to employee private medical records as a condition of employment (825.310a)?

Answer: Employees returning from an FMLA absence or being examined for an FMLA condition are not required to provide access to their private medical records. However, documentation necessary to determine FMLA coverage may be required.

Issue: If the employer does not meet its posting and notice obligation within the required time frames, at what point can the omission be corrected and how is the time spent on FMLA treated?

Answer: The obligation is met when the omission is corrected. The time spent on leave will not count against the employee's 12 weeks of FMLA entitlement even though leave for covered conditions will be protected by the FMLA.

M-01379

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

Sincerely,



Anthony J. Vegliante  
Manager  
Contract Administration (APWU/NPMHU)

## USPS to Field: Comply With New Restricted Information Policy



MANAGERS, HUMAN RESOURCES (ALL AREAS)  
 MANAGERS, HUMAN RESOURCES (ALL DISTRICTS)  
 SENIOR AREA MEDICAL DIRECTORS

SUBJECT: Documentation Requirements

It has recently come to my attention that there is some confusion in the field concerning the substance of medical information needed by a supervisor to approve leave pursuant to Section 513.36 of the Employee and Labor Relations Manual. The following restates the Postal Service's position.

When employees are required to submit medical documentation to support a request for approved leave, such documentation should be furnished by the employee's attending physician or other attending practitioner, with an explanation of the nature of the employee's illness or injury sufficient to indicate that the employee was or will be unable to perform his or her normal duties during the period of absence. Normally, statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation.

In order to return to duty when medical documentation is required, an employee must submit to the supervisor information from the appropriate medical source which includes:

1. Evidence of incapacitation for the period of absence.
2. Evidence of the ability to return to duty with or without limitations.

Medical information which includes a diagnosis and a medical prognosis is not necessary to approve leave. A health care provider can provide an explanation of medical facts sufficient to indicate that an employee is, or will be, incapacitated for duty without giving a specific diagnosis or medical prognosis. If medical documentation is received by an employee's supervisor that provides a diagnosis and a medical prognosis, it must be forwarded to the health unit or office of the contract medical provider and treated as a "restricted medical record" under Section 214.3 of Handbook EL-806.

In order to facilitate operational scheduling and planning, supervisors may request medical information relative to the duration of an absence, future absences, or an employee's future ability to perform the full duties of a position or duty assignment. Such information may be given to a supervisor by an employee or health care provider without divulging restricted medical information.

David H. Reid, III MD  
 National Medical Director  
 Office of Employee Health and Services

### ELM and PB Excerpts, Continued

only when the employee is on restricted sick leave (see 513.37) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.

**513.362 Over 3 Days.** For absences in excess of 3 days, employees are required to submit documentation or other acceptable evidence of incapacity for work.

**513.363 Extended Periods.** Employees who are on sick leave for extended periods are required to submit at appropriate intervals, *but not more frequently than once per pay period*, satisfactory evidence of continued incapacity for work unless some responsible supervisor has knowledge of employee's continuing incapacity for work.

**513.364 Medical Documentation or Other Acceptable**

*Evidence.* When employees are required to submit medical documentation pursuant to these regulations, such documentation should be furnished by the employee's attending physician or other attending practitioner. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application.

Director  
MER  
LRR

UNITED STATES POSTAL SERVICE  
WESTERN REGION  
San Bruno, CA 94029

M-01379

\* File LRR

OUR REF: 232:LSV:nmm

SUBJECT: Medical Documentation

TO: MSC Managers/Postmasters  
Los Angeles, CA Postmaster  
BHC General Managers

SC	✓
MP	
CS	
F	
ME	✓
FILE	

DATE: July 27, 1979

Dist  
7-30-79  
PAD

The American Civil Liberties Union has questioned one of our sectional center managers concerning an instruction that was issued with reference to medical documentation required to support absences due to illness or injury.

Our Office of Labor Law has answered that correspondence, and we believe the reply should be forwarded for your information. It is enclosed.

*Lloyd S. Vincent*

Lloyd S. Vincent, Manager  
Employee Services Branch

Enclosure

cc: District Directors, E&LR

RECEIVED  
JUL 30 1979  
Director E & L II  
INGLEWOOD, CA 90311

RECEIVED  
JUL 30 1979  
Sectional Center Manager  
Los Angeles, CA 90011

June 20, 1979

Mr. Alan L. Schlosser  
 Staff Counsel  
 American Civil Liberties Union  
 of Northern California, Inc.  
 814 Mission Street - Suite 301  
 San Francisco, California 94103

Dear Mr. Schlosser:

This responds to your April 12, 1979, letter to \_\_\_\_\_, MSC Manager/Postmaster, \_\_\_\_\_, concerning the medical documentation required to support absences due to illness or injury. Specifically, you inquired as to the "reasons for the disclosure of diagnosis requirement of section 513.364" of the Postal Service's Employee and Labor Relations Manual (ELM). In this regard, you indicated your understanding that the requirement for inclusion of diagnosis information contained in the July 27, 1978, directive of Postmaster \_\_\_\_\_ was incorporated in the ELM, and you expressed the view that "the requirement of disclosure of cause of illness constitutes an invasion of privacy, protected by the United States Constitution."

Initially, we note that ELM, Section 513.364, which is the controlling regulation in such matters, does not contain a "disclosure of diagnosis requirement." It does, however, require that the medical documentation submitted in support of an application for sick leave contain more than the "physician's certificate of disease or disorder" suggested in your letter. Thus, Section 513.364 provides:...

.364 Medical Documentation or Other Acceptable Evidence. When employees are required to submit medical documentation pursuant to these regulations, such documentation should be furnished by the employee's attending physician or other attending practitioner. Such documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his normal postal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation to perform duties. Supervisors may accept proof other than medical documentation if they believe it supports approval of the sick leave application. (Emphasis added.)

The requirements for some statement as to the nature of the employee's illness evidences more than a concern for preventing fabrication of illness. As the above language indicates, sick leave cannot be granted

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for all illnesses and injuries, but only for those which incapacitate an employee for the performance of normal postal duties. In short, sick leave is not an unconditional privilege, but one which can be exercised only upon a showing of inability to work.

Given the conditional nature of the Postal Service (and the entire Federal Government) sick leave program, we believe that, in considering an employee's application for use of sick leave, Postal Service management has a legitimate need to know whether the illness is of such a nature as to, in fact, incapacitate the employee for the performance of duties. As Section 516.364 indicates, our past experience has shown that statements which merely verify attention or treatment by a doctor do not meet that need. Indeed, as you are aware, there are many conditions for which a doctor is consulted which do not, in any way, interfere with performance of work. Consequently, more than a general medical statement is necessary for the purposes of considering a sick leave application.

At the same time, however, we have no desire to cause embarrassment to employees, and we generally have no need to know the specifics of the cause or treatment of an employee's illness. Thus, our new regulations do not require a diagnosis statement, but rather only that information "sufficient to indicate to management that the employee was (or will be) unable to perform his normal postal duties for the period of the absence." Within the parameters of such language, a doctor can give the information necessary for approval of sick leave, e.g., statements indicating that an employee is unable to perform heavy lifting or requires rest and quiet at home, without revealing particularly intimate details about the employee's illness. In our view, therefore, such language satisfies both the interest of limited disclosure of personal information by employees and management's need to ensure that the requirements conditional to use of the sick leave privilege are met.

We hope that the foregoing will be of assistance to you.

Very truly yours,

Stephen E. Alpern  
Associate General Counsel  
Office of Labor Law