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Some managers still harassing their employees with AWOL for tardiness

By Charlie Estudillo
First Vice President, NCSSAFOL

Throughout the country, some managers and supervisors are continuing to bring AWOL charges against employees if they arrive in the office after the end of the morning flexband or if they clock-in after the start time of a staff meeting or training.

According to our contract:

Article 31 Section 3 A: "Infrequent tardiness of less than one hour shall normally be excused if the reasons are acceptable."

Article 31 Section 5: "If the use of annual or sick leave cannot be anticipated, the request for approval shall be called in by the:

- Start of fixed shift for fixed shift employees
- End of morning flexband for flexible schedule employees
- Time an employee is required to report for training or for a scheduled work activity.

"The parties recognize that occasionally circumstances exist, infrequent in number, when employees may not be able to call in timely as described above.

"In the event the employee does not report during the reporting period, the supervisor will not record the leave status until the end of the scheduled shift, except for the need to process time and attendance records. If the employee's leave status has not been clarified by the end of the shift, the absence may be charged to AWOL. This will not preclude a later change in leave status for good and sufficient reasons."

This means AWOL is only to be charged if the leave status is unclear by the end of the workday. Employees would be wise to challenge (grieve) any charging of AWOL. Unexpected tardies/lateness for good reason can mount up and ultimately lead to discipline. Don't let the ball get rolling.

Here's another important reminder: If you arrive after the start time of training or a staff meeting, it is *illegal* for management to allow you participate in any part of the staff meeting or training without pay (as shown in bold type below). It is against the law and regulation to require an employee to perform work (including attending mandatory staff meetings or training) without compensation.

If management wants to be punitive and won't excuse the tardiness per Article 31 Section 3, and insists on charging leave, that leave has to be from the start time of the meeting/training until the earliest increment of 15 minutes that you attend with pay. That means management must intercept you at the door and not allow you to attend the meeting or training for the period (in ¼ hour increments) that has elapsed since the start time of the training/meeting, then let you in to participate in the remainder of the training/meeting.

If you attend the meeting/training and are later charged leave or AWOL, you have been allowed to work without pay.

To allow or require an employee to attend training or a meeting – then to charge AWOL or leave – is in violation of law and regulation. Basically, management can't force you or let you perform work for free.

It would also be improper to have management make you put in for leave from 4:15 to 4:30, for example, for arrival at 8:01 am because you are being penalized for being 1 minute late and the period of leave is 8:00 am to 8:15 am (assuming the training/meeting was scheduled for 8:00 am). If you come in at 9:01 for example, and management charges you for leave or attempts to charge AWOL, it is illegal to start working before 9:15. *Management can't have it both ways: charging leave or AWOL and getting free, unpaid work out of you*.

The regulation below states that management may excuse tardiness for up to one hour, without charge to leave. Certainly the first tardy should be excused without charge to leave because "never having been tardy" is certainly "infrequent" under the contract. After that, the number of tardies within a certain time frame will depend on whether it is considered "infrequent." Management should not automatically charge leave or threaten AWOL for each and every tardy.

The best defense against being charged tardy is to leave earlier from home so you are not tardy. But, if you are going to be tardy or you think you might be tardy, the safest thing to do is to call in before the end of the morning flexband or

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It has come to my attention. . .

'Reminders' may trigger bargaining

By Charlie Estudillo
First Vice President, NCSSAFOL

It has come to my attention that a number of managers are issuing "Reminders" to their staffs and in doing so, they're attempting to wipe out past practices and other employee rights.

These so-called "Reminders" are frequently biased and may not accurately reflect the rules of the workplace. One that I saw "Reminded" employees that they had to get their coffee BEFORE clocking-in, which WAS NOT the past practice. This is a change in past practice if employees had the practice of getting their coffee AFTER clocking-in and then going to their desk.

It is incumbent upon the Union to timely (within three days) request to negotiate on any management attempt to change conditions of employment. These are generally things like eating at your desk, listening to music at your desk when not on the phone and everything that does not fall under "management rights" to assign work.

You should also request to negotiate on any changes to the way the work is done.

Read these "Reminders" carefully and request to negotiate on any variances from the reality of your workplace and make sure you assert your past practices by requesting to negotiate and filing a grievance or Unfair Labor Practice (ULP) if necessary.

Talk to your Local President or other Local officer in charge of grievances and ULPs before filing anything - but you should request to negotiate immediately.

You will lose your past practices unless you assert your right to bargain and insist on the status quo. In requesting to bargain, you can propose the status quo and request to bargain in substance. If you have any questions, call your Local President or email me.

You know what has gone on in your workplace. This is a transparent attempt to change the rules of the workplace. We know management will respond with the traditional battle cry (say this with a parrot voice) "Covered by contract. Awwwk!"

Don't buy it, don't believe it. The term used to describe this management ploy is "transparent subterfuge."

Past practices belong to the Union and the employees -- not management! If the Union does not request to negotiate, we will have waived our rights unless a grievance is filed (which costs money to arbitrate). Management will refuse to bargain and we can file a ULP or grievance but the refusal to negotiate makes our grievance stronger if the Local decides to go that route.

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Tardy, not AWOL

the start time of training or the meeting. Don't wait until you are late or know you will be late. Remember you are supposed to call in before the start time of the meeting/training or the end of the flexband. The best thing is to call the office on your cell phone, then if there is a dispute at some point, your cell phone bill will have recorded the call and you can prove the call was made.

Unreasonable management may deny your leave request, but they cannot rightly claim you failed to call in timely as required (failure to follow leave procedures). You can grieve the leave denial more effectively than dealing with a failure to call in.

If you are handed a leave slip by management for a tardiness that you believe should be excused, write "under protest" in the "Remarks" block of the leave slip, make a copy, give it to management and see your Union rep. *Do not fill out a leave slip for AWOL*. If you are charged AWOL, see your Union rep.

If you think you have been charged AWOL but don't want to ask your management staff, check the "Mainframe Time and Attendance/Employee Time and Attendance" icon on your desktop and go to "Daily Time and Attendance: Current pay period" on the left of the screen to verify. If charged AWOL, it is generally better to submit a leave slip for annual leave marked "under protest" and grieve it than to let the AWOL stay on your record.

Below is the OPM regulation on excusing absence (including tardiness) for less than one hour without charge to leave:

TITLE 5--ADMINISTRATIVE PERSONNEL CHAPTER I--OFFICE OF PERSONNEL MANAGEMENT PART 630_ABSENCE AND LEAVE—

Table of Contents Subpart B_Definitions and General Provisions for Annual and Sick Leave Sec. 630.206 Minimum charge.

(a) Unless an agency establishes a minimum charge of less than one hour, or establishes a different minimum charge through negotiations, the minimum charge for leave is one hour, and additional charges are in multiples thereof. If an employee is unavoidably or necessarily absent for less than one hour, or tardy, the agency, for adequate reason, may excuse him without charge to leave. (b) When an employee is charged with leave for an unauthorized absence or tardiness, the agency may not require him to perform work for any part of the leave period charged against his account.

EEOC focuses on age discrimination

The U.S. Equal Employment Opportunity Commission recently heard testimony that age discrimination is causing the nation's older workers to have a difficult time maintaining and finding new jobs, a problem exacerbated by the downturn in the economy.

The number and percentage of age discrimination charges filed with the EEOC have grown, rising from 16,548 charges — 21.8 percent of all charges — filed in fiscal year 2006, to 22,778 —24.4 percent — in fiscal year 2009.

The Commission heard testimony from a number of experts on the impact of the economic crisis on older workers, the legal issues surrounding age discrimination, and best practices to retain older workers.

Dr. William Spriggs, the Assistant Secretary for Policy at the U.S. Department of Labor, testified that the rate of unemployment for people age 55 and over "rose from a pre-recession low of 3.0 percent (November 2007) to reach 7.3 percent in August, 2010, making the past 22 months the longest spell of high unemployment workers in this age group have experienced in 60 years."

Older workers also spend far more time searching for work and are jobless for far longer periods of time compared to workers under 55.

Spriggs' testimony reflected the experience of Jessie Williams, who had worked for 31 years in Las Vegas at Republic Services, a multi-million dollar waste disposal company. After more than three decades of stellar employment, he was terminated along with four other foremen over 40. He testified, "I was told that I wasn't needed any longer . . . [and] that they were going to 'get rid of the old foremen and get some new blood.'"

Following his discharge, Williams had to move out of state to find employment. He later became part of the EEOC's suit against Republic filed on behalf of more than 20 workers discharged due to their age. The case was ultimately settled for nearly $3 million.

Another panel discussed legal issues relating to age discrimination, including the impact of legal precedents, as well as the important role the EEOC can play in addressing the issue. Representatives of the AARP and the Society for Human Resource Management (SHRM) discussed best practices to retain and attract older workers. These include increasing part-time and flexible work schedules, offering "phased retirement," and, in appropriate situations, permitting employees to switch to geographically distant locations during certain seasons — the so-called "snow bird" migration to warmer climates in the wintertime.

"Hard working men and women should never be harassed at work or forced out of their jobs on account of their age," said EEOC Chair Jacqueline A. Berrien. "The testimony we heard also sheds light on some of the unique challenges faced by older job seekers and will be invaluable as the Commission works to strengthen its enforcement of the Age Discrimination in Employment Act."

"The treatment of older workers is a matter of grave concern for the Commission," said EEOC Commissioner Stuart J. Ishimaru. "We must be vigilant that employers do not use the current economy as an excuse for discrimination against older workers."

Materials from the Commission meeting, including biographies and statements of the panelists, with links to information about age discrimination can be found on the EEOC's website at http://www.eeoc.gov/eeoc/meetings/11-17-10/index.cfm. A transcript of the meeting will be posted online.

The EEOC enforces the nation's laws prohibiting employment discrimination. More information about the agency can be found on its website at www.eeoc.gov.

Union prevails with overtime issue

Richard Klein, the Associate General Counsel for AFGE Local 1923, prevailed in awarding a U.S. Naval Academy employee back pay for unfair distribution of overtime.

The Union contended that the agency violated the contract by failing to provide the employee with the same amount of overtime as others in the department (some of whom had worked substantially more hours than the grievant). Klein also argued that the academy discriminated against the employee because of his Union status and age.

The Naval Academy attempted to resolve the grievance by offering to pay 69 hours of pay at the first step of the grievance and then 265 hours of pay after the fourth step. The Union disagreed and argued that the grievant was entitled to much more. The case was then moved to arbitration.

Arbitrator Lawrence S. Coburn agreed, stating that the agency failed to assign the grievant those overtime hours that were available to other employees. He ordered the Naval Academy to pay the grievant 480 hours of pay, in addition to annual and sick leave owed based on the 480 hours. The agency was also ordered to pay attorney fees.

The National Agreement between the American Federation of Government Employees and the Social Security Administration (aka, your Union Contract) is online: Click Here

Requesting sick leave: Know your rights

Recently, AFGE has become aware that many Social Security offices have a "policy" which requires employees to obtain a note from their doctor when they called in sick the day before or after a holiday.

This is a clear violation of the National Agreement and management cannot establish policies which contradict or supersede the National Agreement.

There are three contractual situations that allow management to request a medical certificate from an employee:

1)The request for sick leave exceeds three (3) consecutive workdays;

2) Request for three consecutive days or less but management has reason to suspect sick leave abuse (Article 31, Section 4.B.1. states**:** ***When an employee's absences indicate a possible abuse of sick leave, the submission of a medical certificate or appropriate documentation, as determined by management, may be required to support any sick leave absence regardless of its duration.)***

3) The employee has been placed on sick leave restriction.

Management *may* request a medical certificate when sick leave requests exceed three consecutive workdays, but this is discretionary. The three-day threshold was raised such as due to the swine flu.

Sick leave restriction occurs when there is a clear pattern of abuse (for example, an employee calls in sick every Monday).

- Requesting sick leave the day before or after a holiday *does not constitute a pattern of abuse.*
- Requesting annual leave in August and then asking for sick leave the day before or after a holiday *does not constitute a pattern of abuse.*
- Requesting annual leave in August *and* then threatening to call in sick if the annual leave is denied, *and* re-questing sick leave the day before or after a holiday, *may raise a suspicion of abuse.*

If your office has a policy that contradicts the National Agreement, please contact your AFGE Representative as soon as possible. As we are entering another 6-month leave request period, make every effort to resolve these issues.

Provisions for sick leave are contained in Article 31, Section 4. Click Here. *Hint: use bookmarks to navigate.*

Hatch Act prohibits cubicle display of partisan pix

(Editor's note: Thomas Crawley, SSA's Designated Ethics Official, recently issued this memorandum concerning the Hatch Act because federal employees need to be especially careful as the 2012 election season gets closer. Violating the Hatch Act can result in losing your job. If management questions you about actions you have taken, tell them you want to speak to your Union Rep immediately!)

On April 5, 2011, President Obama announced that he is officially a candidate for reelection. On the same day, the U.S. Office of Special Counsel (OSC), the independent Federal agency responsible for enforcing the Hatch Act, issued guidance to all Federal employees regarding the display of pictures of President Obama in the Federal workplace now that he is a candidate for reelection. A copy of this guidance is posted on OSC's Hatch Act internet site.

The OSC's guidance is clear: the Hatch Act prohibits Federal employees from displaying in the Federal workplace pictures of candidates for partisan public office, with two exceptions: 1) the display of an official photograph of the President, and 2) the display of an employee's personal photograph with any candidate.

The first exception allows the display in all Federal buildings of any unaltered official photographs, including the traditional portrait photograph of the President, and photographs of the President conducting official business. This exception does *not* permit the display of pictures downloaded from the Internet, clipped from magazines or newspapers, screen savers, or life-size cutouts.

To meet the second exception, a photograph must meet three requirements: 1) the photograph was on display prior to the date the candidate announced his or her candidacy; 2) both the employee and the candidate are in the photograph; and 3) the photograph is a personal one taken at a personal event or function.

This guidance, which is not new, applies to photographs of any Presidential candidate at the time he or she declares as a candidate for office. A Federal employee who displays a prohibited photograph violates the Hatch Act. The penalty for a Hatch Act violation is removal from Government service.

If you have questions about the Hatch Act, please contact your Deputy Ethics Counselor or ethics staff contact.

FLRA settles dispute over credit card use

In a split decision, the Federal Labor Relations Authority (FLRA) upheld an arbitration award finding no just cause to suspend a grievant who used her government credit card for travel expenses related to Union duties. The agency alleged that she used her government credit card for a Union caucus -- an activity for which she hadn't scheduled official time or received agency travel orders -- but an arbitrator found that when the grievant traveled on official Union duties, she engaged in "official travel," and the expenses were official travel-related expenses.

The majority of the FLRA found the agency hadn't defined "official travel" or "government business," and a new government-wide definition of official travel did not take effect until after the trip in question. Member Thomas Beck dissented, calling the arbitrator's interpretation of the term "official travel" a "fabrication."

Social Security Administration, Region IX and AFGE, Council 220, 111 LRP 38054 (FLRA 05/27/11).