

PBA Local 382 Memorandum

February 2, 2015

To All Members & Other Interested Parties:

Whether or not you are affected by the subject of this email, please be advised that jail management has recently undertaken a questionable Time & Attendance Initiative to try to combat what they claim to be excessive use of sick time for a particular group of officers. These types of initiatives are older than dirt and these initiatives will continue long after we are all dead and buried, whereas officers will use sick time as they see fit and management will look for ways to combat the use of sick time as they see fit.

This particular initiative directs any officer who was disciplined for sick time in 2014, to provide a doctor's note for each sick day used as of January 1st of this year and until further notice regardless of the fact that these officers have sick time on the books.

This is being addressed by the PBA and we are in the process of collecting the necessary information. While I believe that we will again be legally successful to argue this issue as a matter of **legal technicality**, I must stress to you that winning these sick time battles is just part of a much bigger and much more complicated war for which I believe there can never be a clear winner.

I can tell you from my years of experience in and out of court on this issue where we have won our point twice, that there is an equal amount of blame to go around on both sides when this back and forth sick time issue continuously re-presents itself.

Officers are to blame if and when their **use of sick time becomes obviously excessive, abusive, taken as a pattern, taken without proper explanation/verification or taken in amounts that exceed their yearly and collective allotment.**

This is not my opinion. These bolded terms above are the terms used in nationwide case law as the reasons why management is permitted to act in a lawful manner as to combat the abuse of acceptable sick time standards. Also note that the word "**Abuse**" is never spelled out exactly. It's always left to case by case interpretation.

Management is to blame when they **abandon or try to over-extend the lawful allowances that they are given by the courts as to monitor, critique and control sick time usage or abuse of sick time and they resort to using their lawful managerial prerogatives in a spiteful, arbitrary, reactionary, antagonistic, retaliatory and harassing manner.**

It's a legally complex issue, which I'm going to explain and in this explanation you'll see that even when we were successful in court and as confident as I am that we will be successful again, when we address these issues, we never truly win nor does management ever truly lose or visa-versa. We just kick the can down the road until the next time it erupts, **but I can say that a**

violation of a court consent order will not be easy for management to defend and custody supervisors need to be more in tuned with following orders, which violate a signed court consent.

For the sake of clarity...

"Abuse" or the definition of the word in relation to sick time, you'll find to be much different in an officers opinion as compared to managements opinion, but OPINION has nothing to do with it when legalities are argued.

"Abuse" in an officer's opinion is only applicable when we run out of sick days. Until we run out of sick days, we believe that our sick days are ours to take without question. Even when we run out of sick time, officers believe that as long as we can **claim to be sick** or **claim that one of our dependents may be sick**, we should not be questioned, critiqued, challenged or disciplined.

That sound good when officer's discuss it with one another, but bring that opinion to a judge or an arbitrator and **you'll be laughed out of the room**. Hopefully this will be the last time I need to address this **opinion** that sick days are ours to use at will. **They are not.**

Managements opinion on sick days is quite simple and exactly in line with the courts opinion, which is simply that **when you use a sick day without being sick or without the legitimate need to care for an ill dependent, its abuse** and there isn't a judge or arbitrator in the world who will disagree with that.

When it comes to sick days, there's **no legal argument** to make about your household needs, a part time job, your spouse's job, child care, your shift not being acceptable, your RDO's not being acceptable, weather conditions, your social activities, your children's social activities, vacation extensions, or used in place of other time off request denials etc. A **sick day** used for any reason other than **sickness** is **abuse** as far as the courts are concerned. Our particular contract allows sick days to be used as an extension to Bereavement Days, but that's where it ends.

This "abuse issue" is why the courts have always upheld that management is permitted to set policy and practice on how abuse will be sought out, determined and dealt with through discipline or through measures meant to discourage abuse. These measures taken are many, such as phone calls, home visits, requests for doctor's notes, fitness for duty exams, etc.

These things at face value seem intrusive, but nationwide case law dictates, allows and defends the lawful ways in which management is permitted to combat, monitor and critique employee use of sick time as mentioned above, which is in our **Attendance Control Policy** and it's important to mention that our particular **Attendance Control Policy** has been **personally submitted to and studied by a state superior court judge on two occasions at our request and found to be lawful.**

Hopefully this will end the debates that our rights are being violated when they call or visit our homes, ask for a doctor's note or ask us to be evaluated by a county doctor in a FFD Exam or that sick time use is ever going to be a free ride, but I can assure you that we still have very valid technical arguments to make.

The courts are not stupid, neither are our attorneys, county attorneys and neither are we.

Its clear that management acts in a reckless manner when **sick time panic** sets in and a clear distinction can be made when our policy is being followed properly and when the policy language is being manipulated to try to **use lawful practices in an unlawful manner due to panic and pressure to lower jail costs.**

Examples:

*A call to your home is acceptable. A home visit is acceptable, but when you're called twice and it's verified that you are home sick and you still get a home visit and a third phone call while the home visit is occurring, it's clear that management is attempting to intimidate and harass you as opposed to seeking proof of a sick day's validity.

*A doctor's note request is acceptable, but when you submit a note and it's fully verified that you are legitimate, but you are still sent to a FFD Exam, it's clear that management is attempting to intimidate and harass you and we have found in the past that our county doctors are more than willing to be part of this intimidation practice and have made their own threats to officers who are subjected to them such as termination, shift changes, or the loss of job related perks.

*Being disciplined for sick time use that is excessive, not properly verified, or beyond your allotted amount in acceptable, but when you have already been disciplined, answered for your actions, accepted the discipline and management continues their request for a doctor's note as their way to continue the discipline while you have sick time on the books, is clearly a sign of intimidation and harassment.

While the courts allow management to use monitoring tools as to seek to determine abuse and allow discipline to be administered once that abuse is determined, it does not allow those monitoring tools to be used as a form of discipline or to threaten, intimidate, harass or retaliate beyond the disciplinary action that took place in the past.

If you were disciplined in 2014 for abuse of sick time, our position and concern is that moving into 2015, certain officers are now being further punished and being subjected to corrective measures such as being forced to bring a doctor's note before abuse is even determined or that corrective measures are warranted.

If I was charged, found guilty of shoplifting and paid the legal price, must I prove each time in the future that I didn't shoplift every time I walk into a store?

No, the law will give me the benefit of the doubt that I will not shoplift again, but if I do, the legal system will deal with me appropriately and accordingly.

Our disciplinary practices are no different. We cant be subjected to continued punitive actions for past violations and before a future violation occurs.

This is where management makes their mistake, but I need to be clear on this...

Our legal argument, soon going back to superior court is not to restrain management from exercising their lawful authority, but more to seek the courts protection that management's authority is not abused or applied in an unlawful or arbitrary manner and employees are not subjected to retaliatory and overbearing practices within our policies.

Below, you will see that I have requested a list of all officers being subjected to this arbitrary **Doctors Note Initiative**, but if you have been put on this list, have been asked to sign jail documentation regarding this list and your obligation to supply a doctor's note since January 1, 2015, have in fact had a doctor's note requested from you after January 1, 2015 or have been subjected to any arbitrary or punitive/disciplinary actions, **threats of transfer**, conversations or confrontations with a supervisor due to this doctors note issue or your use of sick time since January 1, 2015 please contact me immediately with the details.

Threats of transfer as a singular form of discipline is particularly addressed in labor law as being a violation.

Also be advised that when you do in fact supply a doctor's note for legitimate reasons or call in sick, **you are not obligated to specify or disclose your "exact illness" to any uniformed jail personnel** regardless of the fact that managements latest directive states that you do. **It is a violation of the ADA to be forced to disclose an exact illness**, especially to a coworker and your only obligation is to verify that you were under a doctor's care. A doctor's note for these routine sick call verifications need only specify that you visited a doctor for medical reasons. **A sick call need only provide that you are sick, the amount of sick time that you may need and to provide contact information.**

This too will be addressed in our upcoming court complaint as it being another violation of our two prior court consent orders.

Thank you for your time, cooperation and continued support.

Respectfully,

Joe Amato, President
PBA Local 382

CC. All Necessary Jail & County Officials