

PBA Local 382
Memorandum

10-29-14

To: David Boyd, Deputy Director

CC. All County Officials, County Counsel, PBA Counsel, US Department of Labor
Division of Compliance, County Hospital

Sir,

I received your email about a meeting with me regarding the Perez FMLA grievance I assume and other officers as mentioned who I also assume are personnel/FMLA matters. If you still want to meet after this email for your originally planned reasons fine, but maybe we can first meet on what I'm about to lay out, because I think right now we're on opposite pages.

I'm available for a meeting on Thursday & Friday of this week.

Until we do get on the same page, maybe it's advisable for you **not** to meet with any individual officers who have filed complaints or will be filing shortly if the FMLA violations continue.

I'd like to address several floundering issues in one swoop.

We meet, we talk, we exchange emails etc. on a regular basis and normally we bang out the issues. With that, you should have realized 3 things when I chose to file the grievance.

1. You should have realized how many years its been since I filed a grievance, made a complaint to an arbitrator or sought the oversight of an outside regulatory agency. (years) Why Now?

2. You should have realized that if I actually filed a grievance, it means that our collective agenda of communicating properly to avoid grievances may have broken

down to a point where we have nothing more to say on the particular issue, which caused and may have avoided the grievance in the first place.

3. You should have realized by now that I don't commit baseless opinions or annoyances to paper or make legal complaints on things before I am convinced that the complaint is researched, real, warranted, and not only supported by law, but by case law on how the laws are supposed to be applied.

I stand by the grievance as is, in its entirety so either settle it or don't, but in my usual fashion, I always show my cards so here's my cards...

The grievance was for your benefit. Yes you read that right. It would have been the easy way out for **you.**

There's Federal Relief that I should have sought from the beginning, which includes damages, legal expenses, fines, but no... I wasted almost 2 more weeks of he said she said nonsense.

In my original pre-grievance request, I ask for you to give Perez 2 weeks back pay that he should have never lost in the first place and \$250 for a medical report expense that he shouldn't have been subjected to in the first place because of the departmental games being played with Family Leave Law and I got a song and dance routine.

The offer to take the \$250 off the table is back on because I did even further research into FMLA/ADA Law that showed how truly insane this Perez issue was, but the overall issues regarding the misapplication of the FMLA and employee abuses are much deeper.

Now the jail is buzzing again about officers federal rights being violated and now I have to file with the USDOL. We are going to get in line with the proper application of the FMLA Law with or without your help.

These FMLA/County Doctor, **atrocities** that we met and communicated about for years, needs to formally be brought to a legal forum and needs to be scrutinized and investigated by USDOL and this Perez grievance is only the tip of the iceberg to begin to get the attention of the arbitration system where it applies and to have our

entire practice for the above listed matters reviewed by the actual agencies who set the laws. **LAWS**, not options for you to play with.

I credit you for a few years of peace and quiet that existed for the most part and for the way in which we get things done as opposed to the past where management ignored everything and left me with nothing more than grievances, complaints and public ridicule of county and jail officials.

For **my part in the cooperative process**, you came to me with issues where officers were wrong, **I recognized and conceded they were wrong**, I cooperated with what you needed to do to fix it and we both walk away with our dignity and integrity in tact.

I'm actually sorry we hit this road block, but even you must realize that it was only a matter of time.

Where did the train leave the tracks on these issues mentioned above? I happen to believe that the train of good management/labor relations went off the tracks shortly after you took over our FMLA issues. Can't blame you. It's an HR issue and God knows that HR in the jail is a sick joke as we speak and has been for years. I'll address that further in a subsequent complaint.

This entire FMLA thing where you and I were supposed to work together to stop the abuse in the system, began as what I thought was going to be one of our proactive and cooperative initiatives, but its turned into a nightmare where you walk away snickering and I get an ulcer. Was that the plan?

We can both agree that the FMLA is a concern for employers nationwide, subject to employee abuse and almost laughable as to how liberal it is and as many pages of documents that are printed to advise employees how to utilize it, there are just as many documents printed to advise employers how not to be taken advantage of. Therefore I saw your concerns that it may have spiraled out of control and I cooperated with monitoring the system more closely.

We were on the same page so I thought. "Let's do it right and lets weed out the abusers"...was what I recall being our agenda.

However, am I to accept that the process is going to be that anyone who asks for a leave will be treated like an abuser from the door, forced to jump through legal hoops and to have their integrity, their illness, or a family members illness dragged through the mud by YOU and until YOU feel they are entitled to a leave or will we get back to basics and start granting or denying these leaves based on what the LAW requires?

Passing the David Boyd smell test on a leave application is an impossibility and even though we can agree that the reasons for a leave may be weak based on our past generations employment and work standards, Federal Law now allows these liberal standards so therefore, the only smell test we need to concern ourselves with, is the Federal Smell Test.

What was good for us back in the day to raise our kids, deal with a pregnant wife, care for a new born child or an ill family member is no longer the norm so we have to adapt. I think we did a lot over the years to lower the amount of leaves so take a breath and start being more objective.

The stress you're putting on these people with illnesses and issues with their family members is disgusting and the actions of the county doctor who you are using as part of the abuse is even more disgusting, not to mention that you shouldn't be using the "county doctor" in the first place, but I'll get to that.

You're taking your employer prerogatives and entitlements under the FMLA way too far over to the other side where it's becoming too obvious that your way of stopping employee abuse is to cause your own brand of abuse by antagonizing anyone who files for a leave and then have the nerve to point to the law as if the law allows what you're doing.

IT'S IMPOSSIBLE for you to defend the fact that EVERY SINGLE LEAVE APPLICATION is being, held up beyond the legally prescribed time frame and denied and manipulated to the point where officers need to seek legal advice. You can play that "I need more information game" & Go see the county doctor for a FFDE game" in the application process for just so long before it becomes obvious that you're doing it in a manner to deter and frustrate the employee, which in and of itself is a violation of the law.

Manipulation, deterrents, threats, intimidation, coercion... it's all covered and you're walking right into a buzz saw, sometimes by your own actions and sometimes

by subjecting the officers to those two jokes at the county hospital who call themselves "Doctors".

Your rights and allowances under FMLA as management are to **scrutinize the leave paperwork for its qualifying clarity and completion, not the illness or to make personal opinion based judgment calls on those illnesses as reason to deny a leave.**

That managerial right to scrutinize the paperwork for qualifying clarity does not translated to your right as management to be judge and jury on the health needs of an employee, the health needs of a family member or to look at the FMLA as a managerial option rather than a law.

Opinions of **what YOU think your rights are or what type of illness YOU think falls under FMLA guidelines** don't come into play and I assure you that you're overstepping your legal and moral boundaries.

I want to believe that it's not actually you who devised what you're doing, but more of someone who coached you on what your allowed to do. Antagonism has never been your style. Why now?

Were you given FMLA bullet points to follow? I've seen those on the Internet, which gives you a useless Readers Digest version.

Are you following the advice of an attorney? I certainly hope not, but again...I know many attorneys who were absent from law school on the day they taught ethics. Recipients of this email excluded of course. Did you actually read the **statute & maybe some case law?**

The statute will give you particulars and case law will give you examples of how courts all over the U.S. have ruled in these FMLA issues. Case Law will also give you insight into some of the awards given to employees and fines levied against employers in other parts of the county where I'm sure their administrators also thought they can change the world of federal law by aggravating their employees who tried to utilize the law.

I haven't seen one case that even partly interprets the FMLA in accordance with the demands and practices of Essex County or condones the head games being played against our officers.

You do not have the right to keep denying a leave application and requesting more and more information to a point of exhaustion about an illness to where medical privacy law is violated.

You do not have the right to demand a schedule of absences if a schedule isn't feasible based on the illness on intermittent leave issues or deny an application based on that, but when a clear schedule can be ascertained we concede that the application must reflect that.

You **only** have the right to seek "clarity" on the medical certification based on what the LAW says should be on that certification not what **"YOU"** want it to say and you are fully entitled to contact the employees HCP for clarity. No need for any foot dragging or sending an employee back to their doctor 4 times for "More Information." It's a game and it needs to stop.

You do not have the right to send an employee to the "County Doctor" to have their medical condition evaluated in a FFDE when a leave application and proper certification from the employees HCP is submitted.

You **only** have the right to seek clarity that the certification is complete and that the medical condition is **"legitimate and qualifying"** and should the employees own HCP not offer that clarity for some reason, you **only** have the right to send the employee for a second opinion to a **Mutually Agreed Upon "INDEPENDENT DOCTOR"** who **IS NOT EMPLOYED BY THE SAME EMPLOYER**. A 3rd opinion may also be sought under the same guidelines and that third opinion becomes binding. Lastly, any second or third opinion based examination must be at the expense of the employer and must **only** be for the specific health issue for which the leave has been requested.

As only one example and as recently as a few weeks ago, you sent CO Sherieff, who applied for a leave to the "county doctor" **who threatened to put him out of work as being unfit for duty for the illness that he presented on his certification by his HCP**, which resulted in legal action, which you and HR will be receiving shortly.

This officer's illness is clearly not an illness that would deem him unfit to be a correction officer and clearly this game being played between the jail and the county

doctor, in my opinion, is obviously a well orchestrated attempt to demoralize, intimidate, deter and coerce ANYONE who files for a leave.

It ends as of now. My members will be told that when they file a leave request, have submitted all proper documentation from their HCP and are ordered to appear in the county doctor's office for a FFDE to evaluate them for the leave approval... they can refuse that order, contact me and will be referred to our attorney to file a DOL complaint.

You do not have the right to deny an employee FMLA intermittent leave for themselves or a family member because in YOUR OPINION, that person "can just call in sick and that's what sick time is for."

Yes, back in "OUR WORLD" that person can just call in sick and sick time is in fact for personal or family illness, but when that employee in the "NEW WORLD" chooses to utilize the FMLA and presents a clear certification that they will need intermittent leave for a qualifying reason...short of you sending them for the IME under the FMLA terms mentioned above, **just sign the approval form and move on.**

You don't have to like the fact that modern day employees post 1993 have gained such protections under federal law, but as an employer or an employer's point man, recognize that it's the law and your job is to follow the law, which in this case basically states that a person can take 12 weeks of intermittent or consecutive time off without being denied, punished, insulted, embarrassed, or threatened for doing so. (Readers Digest Version)

The entire process as written in the FMLA is to avoid these **opinion based and retaliatory conflicts**, but we turned things into a circus.

You do not have the right to demand a FFDE by the "county doctor" as a blanket policy when an employee asks to be reinstated at the end of a family leave and submits the proper certification from their **treating physician.**

You do have the right to order a FFDE by the county doctor at the point of reinstatement if **just cause is shown** and if so, **must be done without causing a delay in the employees return, after the employee is properly reinstated, in paid status and at the expense of the employer.**

In that FFDE for just cause being conducted by the county doctor you will instruct the doctor that nothing more than the medical issue that caused the leave will be discussed and/or examined. He should know that already.

This too ends as of now. My members will be advised that when **returning from their leave** they are **only obligated** to **undergo a FFDE by their treating physician** in accordance with their job duties and should expect to be **reinstated back into paid status on the exact day that their treating physician reports and certifies on paper that they are fully fit and capable to return to work as a correction officer.**

My members will further be advised that due to our complaints, the county will most likely find a reason of **just cause** and send them to the county doctor **just for spite** once they are reinstated, but will also be advised that they are **not obligated to divulge or discuss anything other than the medical reason for the leave. If any further questions are asked for any unrelated matters, they are allowed to tell the county doctor that their unrelated medical history or any current issues other than the issue that caused the leave is "none of the doctors business" and will be referred to our attorney to file a DOL complaint.**

No more fishing expeditions.

The FMLA is designed to remove fear of losing your job or suffering some sort of work related punishment for needing medical time off, but in our jail, the fear and punishment begins the second an officer seeks FMLA paperwork and enters the first step into the Den of frustration known as the Jails HR Office. Then the frustration continues into your office, the county doctor's office, my office and our attorney's office to argue things that are supposed to be **accepted and "inarguable" under the terms of the FMLA.**

These abuses and manipulations of the FMLA need to stop immediately and I suggest you deal with the law like every other employer across the country is dealing with the law free of opinion based denials, retaliation and coercion.

Sincerely,

Joe Amato, President
PBA Local 382

