



RTO BULLETIN

April 12, 2010

Long-Term Employee Fired for Chronic Absenteeism

"[E]ven if all of the absences [...] were largely attributable to chronic conditions [...] the Transit Authority remains within its rights to bring disciplinary charges for chronic absenteeism."

"An employer has the right to expect that employees will report to work on a regular basis. Arbitrators have generally recognized that an employee who does not report to work on a regular basis may be subject to discipline, including discharge, for chronic absenteeism, notwithstanding that the absences are the result of legitimate illness or chronic conditions."

That's what an arbitrator wrote recently when she fired a TA employee with 28 years on the job for chronic absenteeism.

The 2002 contract authorized management to define what "chronic absenteeism" means and allowed them to write people up for it -- even when they have doctor's lines for all of their sick leave. Since then, union reps have been fighting to limit the damage of that contract language, but it was only a matter of time before an arbitrator fired someone for chronic absenteeism.

We all know the TA is trying to get rid of more and more workers. They will now use this decision to go after workers who have legitimate chronic medical conditions that cause them to miss work. Here are the things you need to know to protect yourself and help the union reps fight to save your job.

- **FMLA** -- if you have a chronic medical condition that might cause you to miss work, ask your doctor to fill out the paperwork for FMLA coverage. The Family Medical Leave Act (FMLA) is a federal law which requires the employer to give

you up to 60 days off each year because of a chronic medical condition. The TA cannot discipline you for any sick time you use that is covered by the FMLA. If you sometimes miss work because of a chronic medical condition, such as heel spurs, back pain, migraines, asthma, HIV -- or anything else your doctor certifies as a chronic medical condition -- file for FMLA protection.

- **21 day letter** -- when the TA is considering bringing charges against you for chronic absenteeism, they have to give you the chance the submit additional medical documentation about the nature of your condition. They will send you a "21-day letter" requesting that information. Do not ignore this letter. Even if you've submitted doctor's lines every time you've been out, it's in your interest to provide additional information from your doctor. If you get one of these letters, call your union rep and discuss what you should do.
- **DAN** -- if you receive a DAN (Disciplinary Action Notification) for chronic absenteeism, appeal it. Then

call a union rep.

"Chronic absenteeism" is not the same as the "Sick Leave Control List". Doctor's lines will keep you off the SLCL, but they won't be enough to protect you from a chronic absenteeism charge. If you have a chronic medical condition, the most important thing you can do to protect yourself is to file for FMLA coverage. You should also file for FMLA if you sometimes have to take time off to care for a family member with a chronic medical condition. Don't use your sick time to cover you when you're looking after a family member, that will just put you at greater risk of a chronic absenteeism charge. If you've got FMLA coverage to care for a parent, spouse or child, you can use AVAs, vacation time, or OTO.

If you have any questions about this, contact a union rep. In RTO, reps can be reached at:

- 646-252-5549 (2 Broadway)
- 718-694-4168/4212 (130 Livingston St.)
- 212-873-6000 (TWU Hall)
- KEVIN HARRINGTON

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