

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 129.09

DATE: 01 December 2020

SUBJECT: LEAVE MISUSE

POLICY DIRECTIVE

PURPOSE:

To establish and maintain an acceptable level of staff attendance and procedures for administering corrective action.

REFERENCE:

143CSR1 Title 143 Legislative Rule of the West Virginia Division of Personnel.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DOC Policy Directive 129.09, dated 01 April 2012; and RJA Policy 3019, dated 31 December 1988.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation (DCR). This Policy is available for general distribution.

DEFINITIONS:

Employee: Any permanent status employee (including probationary employees) of the State of West Virginia working at Central Office, a correctional facility or other work unit within the West Virginia Division of Corrections and Rehabilitation. For the purposes of this policy, this does not include temporary employees, contractors and their employees or volunteers.

Unsupported Sick Leave: Any absence for which an employee has requested paid sick leave, *regardless of the duration*, that is not substantiated by a physician's/practitioner's statement verifying the legitimacy of the absence.

POLICY:

- I. Attendance is an essential element of every job. An undependable employee is of questionable value to the DCR and poor or unacceptable attendance shall be dealt with promptly.
 - A. Supervisors are vested with the responsibility and authority to approve or deny discretionary leave requests based upon the business need and workflow of the facility or work unit.
 - B. A guide to assist supervisors in making informed decisions when determining whether leave requests should be approved or denied is available in the Supervisor's Toolbox section on the WV Division of Personnel's website.
- II. When an employee is absent from work without authorization for sick or annual leave, the employee's pay shall be docked for an equal amount of time paid during which no work was performed. The employee shall be notified in writing that his or her pay is being docked and that the unauthorized leave is misconduct for which discipline is being imposed.
- III. To evaluate whether an employee is misusing his or her leave, supervisors shall be responsible for requesting the appropriate human resource/payroll staff to calculate the employee's absenteeism rate which should generally not exceed 5%.
 - A. An Absenteeism Evaluation Assessment Form and detailed instructions are provided in the "Supervisor's Guide to Attendance Management" available in the Supervisor's Toolbox section on the Division of Personnel's website.
 - B. To evaluate whether an employee is misusing his or her leave, the number of work hours the employee has been available to work over a certain period of time (usually six months) must be determined.
 1. Available work hours equal total regular scheduled work hours during the period being evaluated minus pre-approved annual leave, holidays, overtime, supported sick leave, approved medical and personal leaves of absence without pay, required military leave, and court/jury/hearing leave.
 2. Unsupported sick leave, annual leave used when sick leave is exhausted, unauthorized leave, and suspensions due to unauthorized leave, leave misuse, and/or absenteeism are included in available work hours.

- C. Misuse of leave may be determined to occur when unsupported sick leave hours are equal to or greater than five percent (5%) of the time available for work in a given six (6) month period. This figure is calculated by dividing the total number of unsupported sick leave hours taken by the time available for work during the given period and multiplying that figure by 100 (unsupported sick leave/time available for work = _____ x 100 = _____%).
 - D. Absences protected by law, such as the State Parental Leave Act (PLA), federal Family and Medical Leave Act (FMLA), workers compensation, military leave, or leave as a form of reasonable accommodation under the American with Disabilities Act (ADA), as well as pre-approved annual leave, cannot be considered as an unsupported absence for disciplinary reasons, leave misuse, even if the absence was not designated as such leave.
 - E. There is no presumption of leave misuse solely by virtue of an employee exceeding the established percentages referenced above. Leave misuse shall be determined to have occurred only after a full review of the circumstances involved and no disciplinary action should be initiated without a full review.
 - F. In order to identify and correct the misuse of sick and annual leave, supervisors should consider factors including number, frequency and duration of absences; patterns of leave use; excessive use of emergency annual leave; tardiness; and excessive use of unsupported sick leave.
- IV. When addressing unacceptable attendance patterns, supervisors should use informal corrective action such as explaining/clarifying the agency's attendance standards and policy prior to formal disciplinary action. A specific time period when attendance will again be evaluated should also be established.
- A. Corrective counseling with a written plan of improvement, containing specific expectations and time frames in which to accomplish them may be used. The employee's attendance should be monitored and reassessed on a two (2) to three (3) month basis to determine the effectiveness of any corrective action plan.
 - B. Excessive leave usage shall be considered when evaluating an employee's performance and deficiencies should be reported to the employee and reflected in her or her score.
- V. If an employee's unsupported sick leave usage is determined to be excessive, the employee may be required to provide verification by a physician/practitioner of an illness of less than three (3) consecutive scheduled work days or scheduled shifts, or for medical/dental appointments. The employee shall receive prior written notice of this requirement for appropriate substantiation.
- A. A reference to the employee's absenteeism rate based on the Absenteeism Evaluation Assessment Form is not sufficient grounds for disciplinary action but can be used to

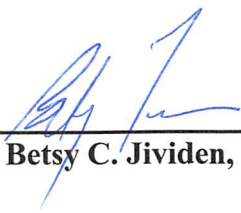
support placing an employee on restrictions or for purposes of issuing disciplinary action if the circumstances warrant such action.

- B. Once placed on sick leave restriction, an employee will remain in that status for a period of approximately six (6) months at the Superintendent, or work unit supervisor or director as appropriate, or designee's discretion.
 - 1. At the end of the period, the employee's use of sick leave shall be reviewed to determine if misuse still exists.
 - 2. Since unsupported use of sick leave is not allowed while under restriction, the test for misuse will consist of the determination of an absence pattern as defined under sick leave misuse where chronic illness (long lasting or re-current condition) is not the determining factor for sick leave.
 - 3. If no misuse has occurred, the restrictions shall be removed.
- C. This process does not preclude a Superintendent, or work unit supervisor or director as appropriate, from issuing leave restrictions if the situation warrants.

ATTACHMENT(S):

None.

APPROVED SIGNATURE: _____


Betsy C. Jividen, Commissioner

11-19-20
Date