



Brotherhood of Locomotive Engineers

General Committee of Adjustment

Norfolk Southern Railway Systems Lines
(former Southern)

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R. C. Wallace
General Chairman

W. M. Overton, Jr.
Vice-General Chairman

August 6, 2004

ALL LOCAL CHAIRMEN
Norfolk Southern Lines

Dear Sirs and Brothers:

I have enclosed copies of correspondence by Northern Region Local Chairman Regan to NS VP Mark MacMahon along with Mr. Pete Poirier's response concerning the application of the Family Medical Leave Act. You were furnished a copy of Mark MacMahon's letter dated May 3, 04, in my correspondence to you dated May 5, 2004.

Mr. Poirier's response to questions of Brother Regan will help to explain how the law is being applied on Norfolk Southern. If you have any questions other than those covered by Mr. Poirier in his letter, I'm sure he will be happy to respond.

I trust this information will be beneficial to you.

Fraternally yours,

R. C. Wallace
General Chairman

RCW:jsw

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Brotherhood of Locomotive Engineers & Trainmen
Division 335 – Elrama Pa

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July 11, 2004

Reference: FMLA Changes

Mr. Mark R. MacMahon

Sir;

I have received a copy of your letter (FL-33) dated May 3 2004, which I have received from my General Chairman, to advise us of the changes pertaining to Family Leave Medical Act (FLMA) effective August 1, 2004.

Several questions have been posed to me as a result, most of which I do not have the proper answers. I am writing you in hope that you can answer the questions so I can further educate my members on how the changes will affect them and their families.

Example: If an employee has 2 weeks vacation remaining and uses 2 days for FMLA;

- What days will NS take from the employee?
- Which vacation week will the days be taken from for FMLA?
- How can a collective bargaining agreement be violated that guarantees 2 whole weeks paid vacation and days are taken away for FMLA?
- Will this reduce the vacation week (7 days) down to 5 days?
- Which days would they take? Monday, Tuesday....Saturday, Sunday?
- Do you have a choice?
- Do you still get 7 days off but only paid for 5 days?
- Could you possibly end up with a week's vacation and no pay?

WE JUST DON'T KNOW!

The procedure is not clear and will further complicate the lives of the employees who desperately need FLMA to cope with the unstable environment that we work and live everyday.

Let's take the following example:

One of my members has FLMA for himself and arranges office visits and lab work around his rest day and when he can't he must use FMLA. He also has scheduled surgery for his vacation in October. If it is necessary to use FMLA before his vacation, how will the substitution effect his vacation? Will the days be reduced? The time off is not an option and the pay from his vacation is relied upon. So information is vital for this particular member and will have a major effect on his upcoming medical attention.

I feel that without the Questions & Answers pertaining to the various scenarios that *will* occur to the employee using FLMA; it would be a disservice to the employees who reply on FLMA the most and any future participant.

I also feel that until the Questions & Answers are distributed to all employees, the effective date of August 1, 2004 should be postponed. A period of adjustment should be considered and allow the employees time to understand and adjust to the new procedure. The provided information will help reduce confusion in the future not only for the employees who have FLMA, but supervisors, crew call management and payroll.

The issues of a possible violation of vacation allowance in the Collective Bargaining Agreement (CBA) is an issue that should be closely reviewed and I'll let the officers of the Brotherhood of Locomotive Engineers & Trainmen address the legalities of that side of the issue. My immediate concern is to my members of the division and the hardships that can result from the change without being fully notified of the procedure.

Are there any plans in the very near future to educate the employees of the changes about to take place?

Employees hired after the revised policy updated in 2000, don't have any idea how the program was in 1994 to 2000. So you cannot assume that all employees currently getting FMLA, understand the substitution procedure that was in effect at that time.

In closing, I feel we need information distributed to everyone to explain the procedure to avoid unnecessary hardships and confusion. I would appreciate your explanation and views regarding this very important issue. Hopefully, we can clarify this procedure for all and avoid the most certain problems that will arise from the changes due to go in effect on August 1, 2004.

Respectfully yours,

John M Regan
Local Chairman
Brotherhood of Locomotive Engineers & Trainman
Division 335



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Peter C. Poirier
Director
Labor Relations
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July 28, 2004

FL-33

Mr. John M. Regan, Local Chairman
Brotherhood of Locomotive Engineers & Trainmen
322 Jean Drive
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Dear Mr. Regan:

This refers to your letter dated July 11, 2004 concerning changes to Norfolk Southern's Family and Medical Leave Policy. Mark MacMahon asked me to respond as FMLA matters fall within my area of responsibility. You raise a number of issues that I will address individually, but first I'll summarize the revised policy because that may provide you with some assurances.

First, any employee who is authorized a block FMLA leave for his or her own serious health condition, including the employee's own pregnancy, will not be required to substitute paid leave for FMLA leave. An employee in that circumstance will retain the flexibility to use or not use paid leave as he or she chooses. Second, an employee who is authorized block FMLA leave to care for a family member who has a serious health condition, or to bond with a newborn child, or in connection with the adoption or foster care of a child will be required to use available paid leave. Third, an employee who is authorized intermittent FMLA leave for any reason must use available paid leave at the same time as the FMLA leave.

Available paid leave means sick days (when provided by a collective bargaining agreement), personal days, and vacation days. Paid leave will be assigned first from available sick days if the leave is for the employee's own serious health condition, then available personal days, followed by single days of vacation and days from scheduled vacation weeks starting with the employee's least desirable scheduled week unless the employee chooses to change that order.

Since employees have the ability to choose the order in which paid leave is taken in connection with FMLA leave, the questions concerning what days of the week and what weeks of the month will be used should be moot; however, if the employee does not choose which vacation day or days to use and one day is decremented from a week of vacation, normally that will be the first day of the week. An employee who has seven days of vacation and uses two for FMLA will have five days of paid vacation left in that week and no days of unpaid vacation. It is not possible to end up with a week's vacation and no pay; in that circumstance there is no week of vacation left and the employee will be expected to be available for work.

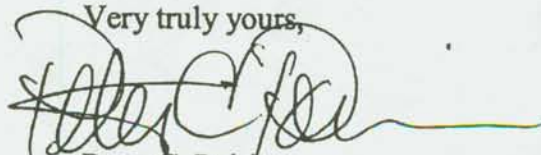
Mr. John M. Regan
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In the example you gave, the outcome will depend on how many intermittent days the employee uses and whether the time off for surgery is granted as a separate block leave. The intermittent leave up to the time of the surgery will reduce the number of vacation days left in October. If the surgery is authorized as a block leave, vacation may or may not be used at the employee's discretion.

Every employee who requests FMLA leave or whose circumstances indicate that FMLA applies will be given a fact sheet that contains information concerning the law, Norfolk Southern policy, procedures to be followed and the process for the required use of paid leave concurrent with FMLA leave. That fact sheet contains full disclosure for every employee who will, or may, be subject to the substitution policy in writing before the leave is tentatively approved. I think you may agree that the most effective time to provide specific written information is right at the point in time when the information is most needed; just before the employee leaves service for one of the authorized FMLA reasons.

We are content, as you seem to be, to leave the issue of legality and the impact of FMLA on collectively bargained rights to the Federal Court. Obviously, we believe that the law clearly provides up to 12 weeks' unpaid leave for specific reasons and that employers may require employees to substitute available paid leave. We also believe that Norfolk Southern's FMLA policy comports with the law and with our labor agreements. Finally, we're confident that before any employee takes FMLA leave under the revised policy, he or she will have an opportunity to fully understand the rights and obligations associated with such leave.

Very truly yours,



Peter C. Poirier

cc: R. C. Wallace