

SETTLEMENT AGREEMENT
National Grievance – dated July 5, 2012
The Granting of Leave For Blood Donation Program Participation

The National Veterans Affairs Council – American Federation of Government Employees (“NVAC” or the “Union”) and the Department of Veterans Affairs (“Agency”) hereby agrees to settle all disputes arising out of the NVAC’s National Grievance dated July 5, 2012 regarding “the granting of donor leave for employees who participate in sponsored or endorsed blood donation”, in accordance with the following terms and conditions:

I. Withdrawal of Grievance:

By execution of this settlement agreement (hereafter “Agreement” or “Settlement Agreement”), NVAC voluntarily withdraws the National Grievance and waives any and all actions, claims, complaints, grievances, appeals, or proceedings of whatever nature arising from the allegations contained in the National Grievance against VA, its past and present officers and employees, in their personal as well as their official capacities, including all damages and attorney fees, which are now or hereafter may be asserted by NVAC based on any action taken prior to or on the date of the execution of this Agreement, with the exception of any grievances that may arise by reason of breach of any term of this Settlement Agreement. NVAC agrees to promptly provide any document or take other action necessary to effectuate the withdrawal or dismissal of the National Grievance.

II. Terms of the Settlement:

By execution of this Agreement, NVAC and the Agency (collectively the “parties”) have agreed to the following:

Within thirty (30) calendar days of execution of this agreement, the Agency will distribute an updated version of HR Flyer Leave 12-04 Subject, “SUBJ: Granting of Authorized Absence for Blood Donor Programs” (see Attachment 1).

III. Stipulations:

1. The parties have entered into this Settlement Agreement freely and voluntarily.
2. This Settlement Agreement does not constitute an admission of guilt, fault, or wrongdoing by either party.
3. The obligations of the parties specified above constitute consideration sufficient to render this Settlement Agreement enforceable by either party.
4. This Settlement Agreement shall not serve as precedent for resolving any other complaints, grievances, appeals, or actions that may be filed.
5. This Settlement Agreement constitutes the entire understanding between the parties regarding the resolution and settlement of the National Grievance, and there are no other terms or commitments, verbal or written, regarding the settlement of the National Grievance.


6. Either party may bring a claim in the form of a grievance arising by reason of breach of any term of this Settlement Agreement.
7. The Agency and NVAC have thoroughly reviewed the entire Agreement and understand its provisions.
8. This Settlement Agreement may not be modified, except by a written agreement signed by the undersigned herein.

IV. If a provision of this agreement is found to be invalid or illegal in any forum, such provision will be considered to be severed, and the invalidity of that provision will not result in the invalidity of this agreement or any other provision of this agreement.



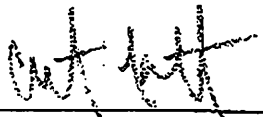
For the Union:
Ibidi Roberts
Staff Attorney
National VA Council

DATE: 1/9/2013



For the Agency:
Deborah Munn
Director, Worklife and Benefits Service
Department of Veterans Affairs

DATE: 1/14/13



For the Agency:
Christina Knott
Staff Attorney (023)
Office of the General Counsel
Department of Veterans Affairs

DATE: 1/15/2013

Worklife and Benefits Service (058)

FLYER

Leave 12-04
January 15, 2013
(revised)

TO: Chief, HRMS

SUBJ: Granting of Authorized Absence for Blood Donor Programs

This Flyer provides Human Resources (HR) offices with guidance regarding the use of authorized absence for blood donor programs.

VA Handbook 5011, Part III, Chapter 2, paragraph 12e, and Part III, Chapter 3, paragraph 9e, provides the authority to grant authorized absence for any period of the day needed for rest and recuperation when participating in uncompensated blood donor programs, such as the American Red Cross. Additionally, it is also appropriate to grant authorized absence for reasonable time spent traveling to and from the blood donation site, processing in, and time needed to draw blood. However, it is **not** appropriate to grant additional authorized absence as a "thank you" or as an official or unofficial time off award for donating blood as donating blood is a voluntary action on the part of the employee. Granting of authorized absence that exceeds policy could be construed that the Department of Veterans Affairs is paying our employees to donate blood.

Example. On April 9, 2012, an employee donates blood during a local blood drive. Time required for this donation is:

- 5 minutes to walk to the donation site;
- 10 minutes to complete the necessary paperwork;
- 10 minutes to draw blood;
- 30 minutes for rest and recuperation; and
- 5 minutes to walk back to work.

Since the total time needed for this blood donation is 60 minutes, granting of 60 minutes of authorized absence is appropriate. If the minutes in the above example increase or decrease, the total minutes of authorized absence that may be granted will change accordingly. For example, if rest and recuperation time is increased from 30 to 3 ½ hours, the total authorized absence that may be granted would increase from 60 to 4 hours. In accordance with VA policy and collective bargaining agreements (CBAs), supervisors have the discretion to determine the amount of authorized absence granted for blood donations. **For employees covered by a CBA, the amount of authorized absence granted for blood donations should be in accordance with past practice and terms of applicable CBAs. Facilities with past practices that do not conform with VA policy and/or CBAs should correct their practice and enter into local negotiations as necessary.**

Inappropriate uses of authorized absence. Inappropriate uses of authorized absence include, but are not limited to:

- Using the example above, granting an additional 3 hours of authorized absence in order for the employee to receive a total of four hours authorized absence for donating blood based on the mistaken belief that employees are entitled to 4 hours of authorized absence for giving blood regardless of the time needed for the donation;
- Granting additional authorized absence, to be used at a later date, to thank the employee for donating blood; or
- Granting an official or unofficial 4-hour time off award to thank the employee for donating blood. **NOTE:** Granting of time off awards must be consistent with VA Handbook 5017, Employee Recognition and Awards. Official time off awards may **not** be granted to employees for donating blood.

We appreciate HR office cooperation in ensuring that granting of authorized absence for blood donor programs is consistent with VA Handbook 5011 and this guidance.

**Office of Human Resources and Administration
Office of Human Resources Management**

11. Any health care provider designated or approved by the Department shall not be employed by the Department or be under the administrative oversight of the Department on a regular basis unless the employee's official duty station is located in an area where access to health care is extremely limited.
- F. **Medical Recertification** - While an employee is using leave under FMLA, the Department may require, at the Department's expense, subsequent medical recertification from the health care provider only if the circumstances described in the original medical certification change significantly or if the Department receives bona fide information that casts doubt upon the continuing validity of the medical certification. Such requests for medical recertification shall not occur more frequently than every six weeks.
- G. An employee eligible under the Department's Family Medical Leave Program may request to participate in the telework program consistent with Article 20 - Telework of this Agreement.
- H. **Protection of Employment and Benefits** - Upon return from family and medical leave, the employee will be restored to the same position as occupied before the leave or to an equivalent position in the same commuting area with equivalent benefits, pay, status, and other terms and conditions of employment.
- I. The Department shall inform its employees of their entitlements and responsibilities under FMLA, including the requirements and obligations of employees.
- J. An employee who meets the criteria for leave and has complied with the requirements under this section may not be denied leave, consistent with all applicable rules governing annual or sick leave, as appropriate.

Section 17 - Blood, Bone Marrow and Organ Donor Leave

- A. Donor leave will be granted consistent with government-wide rules and regulations.
- B. Employees will be granted up to four hours of excused absence to donate blood to a Department sponsored or endorsed blood program. Additional excused absence will be granted to employees who donate blood platelets through Department endorsed Hemophoresis Programs. Time spent in necessary travel for such purposes shall also be administrative leave. The Department may require available documentation of blood donation when there is a basis to verify the donation.
- C. Upon request, subject to certification by a health care provider, leave-approving officials shall approve excused absence for employees who serve as living donors for bone marrow, organ, and tissue donation and

ARTICLE
35 - SECTION 17