



NATIONAL VETERANS AFFAIRS COUNCIL

American Federation of Government Employees, Affiliated with the AFL-CIO

Out of Many/One Union
AFGE NVAC/AFL-CIO

NATIONAL GRIEVANCE NG-5/6/2020

Date: May 6, 2020

To: Michael Picerno
Acting Executive Director
Office of Labor-Management Relations
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420
michael.picerno@va.gov
Sent via electronic mail only

From: Shalonda Miller, Staff Counsel, National Veterans Affairs Council (#53) (“NVAC”),
American Federation of Government Employees, AFL-CIO (“AFGE”)

RE: **National Grievance against the Department of Veterans Affairs for failing to comply with the monetary limitations set forth in the EPSLA and intentionally creating indebtedness actions.**

STATEMENT OF CHARGES

Pursuant to the provisions of Article 43, Section 11 of the Master Agreement Between the Department of Veterans Affairs and the American Federation of Government Employees (2011) (“MCBA”), the American Federation of Government Employees/National Veterans Affairs Council (“the Union”) is filing this National Grievance against you and all other associated officials and/or individuals acting as agents on behalf of the Department of Veterans Affairs, Veterans Health Administration (the “Department” or “VA”) for failure to implement the pay limits under the Emergency Paid Sick Leave Act (“EPSLA”). The Department’s actions intentionally cause bargaining unit employees (“BUE”) to incur debts that are required to be repaid to the Department, which unlawfully discourages BUE participation in the emergency sick leave program. The Department also unilaterally, and prematurely, determined that debt waivers will be denied in violation of the required considerations in the debt waiver process. The Department has also failed to bargain this change with the Union. To date, the Department has failed to remedy this violation, and as such, continues to violate the MCBA and federal law.

Specifically, the Department violated Articles 2, 36 and 47 of the MCBA, 5 U.S.C. §7116(a), Department of Labor (“DOL”) regulations, the Fair Labor Standards Act (“FLSA”), 5 U.S.C. 5584, and any and all other relevant articles, laws, regulations, and past practices not herein specified. The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or



otherwise, as necessary.

STATEMENT OF THE CASE

Background

The EPSLA (or the “Act”) is part of the Families First Coronavirus Relief Act (“FFCRA”). Pub. L. No. 116-127, Division E (March 18, 2020). The EPSLA provides employees with up to 2 weeks (or up to 80 hours) of paid sick leave for full-time employees (and a prorated number of hours for part-time employees), if the employee is unable to work or telework because the employee:

1. is subject to a government quarantine or isolation order (such as shelter-in-place) for reasons related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. is caring for an individual who is under a quarantine or isolation order or has been advised to self-quarantine related to COVID-19;
5. is caring for a child whose school or place of care is closed, or childcare provider is unavailable, for reasons related to COVID-19; or
6. is experiencing other substantially similar conditions, as specified by the Department of Health and Human Services.

Under the Act, if an employee is granted leave for reasons (1), (2) or (3) above, the employee shall receive 100% of his or her salary, up to \$551 per day. Whereas, leave granted for reasons (4), (5) or (6) is capped at 2/3 of an employee’s salary, up to \$200 per day. There are also cumulative dollar limits to the amount an employee can receive under these provisions of the Act.

The DOL administers and enforces EPSLA’s paid leave requirements. A violation of the EPSLA is considered a violation of the minimum wage provisions of the FLSA. *See* FFCRA, Sec. 5105(a).

On April 23, 2020, the VA Office of the Chief Human Capital Officer issued a bulletin implementing the EPSLA throughout the Department. The “Leave Requesting Procedures for Employees” section of the bulletin provides as follows:

At this time, the timekeeping codes are not programmed for the different rates of pay that may apply, and therefore the system will not automatically prevent an employee from using leave over the statutory limits under the FFCRA, nor will it automatically enforce the statutory caps on daily or aggregate pay.... Furthermore, VA employees must be made aware that leave taken under the new FFCRA law may result in a future indebtedness that will be collected at a later date. Reconciliation will occur once the payroll provider has programmed the new timekeeping codes, and employees will be notified accordingly of any overpayment. Since

employees will be informed in advance of the overpayment, it is expected that any requested waiver of the overpayment will not be approved.

Prior to being approved for EPSLA, BUE are also being required to sign a document acknowledging their understanding that if a debt is incurred due to the Department's timekeeping errors, the employee is responsible for repayment and may not submit a debt waiver.

As a result of the Department's actions, eligible BUE employees are forced to balance their right to emergency sick leave during this worldwide pandemic, versus the financial hardship they would face once forced to repay the Department for intentional errors that are caused through no fault of their own.

Violations

The VA's failure to comply with EPSLA's daily or cumulative pay limits constitutes a violation of the MCBA and federal law. Further, it constitutes a change in conditions of employment for BUE. The Department did not notify the Union and provide it with an opportunity to bargain concerning its failure to apply the EPSLA pay limits; and in doing so, the Department failed to satisfy its bargaining obligations with the Union as required by Article 47 of the MCBA.

Article 2 of the MCBA requires the Department comply with federal law. Here, the Department has ignored the daily and aggregate cash value for paid leave plainly established by the Act and the DOL provisions implementing the Act. *See* FFCRA §§ 5510(5)(A)(ii), (5)(B)(ii); 29 CFR §826.22(c). Therefore, the Department has also violated Article 2 of the MCBA.

Article 36 of the MCBA requires the Department to allow BUE to request waivers of overpayments of pay and allowances received in good faith. Here, the Department has forced BUE to waive these rights in order to receive emergency sick leave in violation of the agreement. The Department's actions cause BUE financial harm and discourages them from utilizing the benefits available to them under the EPSLA.

Remedies Requested

The Union asks that, to remedy the above situation, the Department agree to the following:

- To cease and desist deliberate overpayments to BUE approved for EPSLA leave;
- To integrate EPSLA's daily and aggregate pay limits into the VA's timekeeping system;
- To permit BUE to apply for waivers of any overpayments made under the EPSLA;
- To fully comply with its contractual obligations under Articles 2, 36 and 47 of the MCBA and its statutory obligations under 5 U.S.C. §7116(a), 5 U.S.C. §5584, FFCRA §5510, 29 U.S.C. §206, and 29 CFR §826.22(c); and,
- To agree to any and all other remedies appropriate in this matter.

Time Frame and Contact

This is a National Grievance, and the time frame for resolution of this matter is not waived until the matter is resolved or settled. If you have any questions, please contact the undersigned at the AFGE Office of the General Counsel.

Submitted by,



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cc: Alma L. Lee, President, AFGE/NVAC
Bill Wetmore, Chairperson, Grievance and Arbitration Committee, AFGE/NVAC
Ibidun Roberts, Supervisory Attorney, AFGE/NVAC