



# NATIONAL VETERANS AFFAIRS COUNCIL

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

## NATIONAL GRIEVANCE

**NG-06/9/2020**

**Date:** June 9, 2020

**To:** Michael Picerno  
Acting Executive Director  
Office of Labor-Management Relations  
U.S. Department of Veterans Affairs  
[michael.picerno@va.gov](mailto:michael.picerno@va.gov)  
*Sent via electronic mail only*

**From:** Christopher Zatrutz, 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 approve appropriate leave during a deadly pandemic.**

### 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 for failing to approve leave during a deadly pandemic. To date, the Department has failed to remedy this violation and as such continues to violate VA Handbook 5011/34, the MCBA, and federal law.

Specifically, the Department violated Articles 2, 3, 30 of the MCBA; VA Handbook 5011/34; 29 C.F.R. §1960.8; and any and all other relevant articles, laws, regulations, customs, and past practices not herein specified.

### STATEMENT OF THE CASE

#### **Background**

##### **A. Weather and Safety Leave**

The Administrative Leave Act of 2016 authorizes the Department to approve leave for weather and safety issues due to “a condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location.” 5 U.S.C. § 6329c. The statute grants the Office of Personnel Management (“OPM”) regulatory authority over the administration of weather and safety leave. 5 U.S.C. § 6329c(d).



On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. (Attachment A). On March 13, 2020, President Trump issued a proclamation declaring a national emergency. (Attachment B). As a result of the pandemic, on March 12, 2020, the Office of Management and Budget (“OMB”) issued guidance to Federal Executive Branch agencies to grant weather and safety leave “due to a condition that prevents the employee or group of employees from safely traveling to or performing work at an approved location.” (Attachment C).<sup>1</sup> The guidance also broadened the scope of weather and safety leave to employees with a higher risk of serious complications from COVID-19 who are not telework-eligible. (Attachment C).

On March 17, 2020, OMB directed agencies to “restrict individuals infected with, or at higher risk for serious illness from, COVID-19 from accessing Federal facilities.” (Attachment D). OPM has not otherwise developed guidance on specific situations when weather and safety leave is appropriate. Rather, OPM directed agencies to grant “weather and safety leave in circumstances in which allowing an employee to travel to or perform work at the normal worksite would pose significant safety risks for the employee, other employees, or the general public.” (Attachment E).

The Department’s “Request for Weather and Safety Leave” forms require employees requesting weather and safety leave to receive formal instruction to quarantine from a local health provider. (Attachment F). This requirement limits weather and safety leave in ways not provided for in the Act, OPM regulations, or even the Department handbook.

Here, at several facilities,<sup>2</sup> the Department has failed to approve weather and safety leave for eligible employees. Employees under state-at-home orders, those instructed to quarantine, and those at high-risk for serious illness from COVID-19 have been denied weather and safety leave. By failing to grant weather and safety leave for these employees, the Department violated governmental guidance and federal law. Specifically, by requiring these employees to risk exposure to the virus by reporting to their official duty stations, the Department failed to furnish a place of employment free from recognized hazards. *See* 29 C.F.R. §1960.8.

## **B. Occupational Health Leave**

Article 30 of the MCBA requires the Department to take certain action during a pandemic. Regarding leave, the Department must grant sick leave or leave without pay (“LWOP”) if an employee is ill “as a result of a pandemic.” Additionally, if the Department sends home an employee it suspects contracted a communicable disease, the employee cannot be charged leave without valid verification of the illness.

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<sup>1</sup> 5 U.S.C. § 6329c(b)(3).

<sup>2</sup> Affected facilities include, for example, the Dayton VA Medical Center, Salem VA Medical Center, Roudebush VA Medical Center, VA NY Harbor Healthcare System, and the Atlanta VA Healthcare System.

Here, at several facilities,<sup>3</sup> the Department failed to grant sick leave or LWOP to employees who contracted COVID-19. Additionally, the Department incorrectly charged leave to symptomatic employees who were sent home without valid verification of the illness.<sup>4</sup> By failing to grant leave and by incorrectly charging leave, the Department violated Article 30 of the MCBA. In doing so, the Department violated Article 3 of the MCBA, which encourages the Parties to maintain a cooperative labor-management relationship that is based on mutual respect, open communication, consideration of each other's views, and minimizing collective bargaining disputes.

## **Violation**

By failing to fulfill its obligations, the Department violated, and continues to violate, the following:

- Article 2 of the MCBA: requiring the Department to comply with all federal law and regulations;
- Article 3 of the MCBA: requiring the Department to maintain an effective, cooperative labor-management relationship with the Union;
- Article 30 of the MCBA: requiring the Department to grant employees sick leave or leave without pay if ill as a result of a pandemic;
- Article 30 of the MCBA: prohibiting the Department from charging leave to employees who are suspected of contracting a communicable disease, sent home from the worksite, but without valid verification of the illness;
- VA Handbook 5011/34: prescribing the requirements for weather and safety leave;
- 29 C.F.R. §1960.8: requiring the Department to furnish to each employee employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm;
- Any and all other relevant articles, laws, rules, regulations, customs, and past practices not herein specified.

## **Remedies Requested**

To remedy the above violations, the Union asks that the Department agree to the following:

1. To immediately provide weather and safety leave to all eligible employees, including those under stay-at-home orders, quarantine orders, and those at high-risk for serious illness from COVID-19;
2. To immediately provide sick leave or LWOP to all employees who contract COVID-19;
3. To cease and desist further violations of the VA Handbook, MCBA and law;
4. To fully comply with its contractual obligations under Articles 2, 3, and 30 of the MCBA and its regulatory obligations under 29 C.F.R. §1960.8.

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<sup>3</sup> Affected facilities include, for example, the Dayton VA Medical Center, Salem VA Medical Center, Roudebush VA Medical Center, VA NY Harbor Healthcare System, and the Atlanta VA Healthcare System.

<sup>4</sup> Affected facilities include, for example, Roudebush VA Medical Center and Dayton VA Medical Center.

5. To post an electronic notice, signed by the VA Secretary, to all VA bargaining unit employees that the department violated the MCBA and law and that the Department will refrain from further violations of the MCBA and law;
6. To make whole the Union and any employee adversely affected by the Department's violations, including, but not limited to, restoration of leave.
7. To pay reasonable attorney's fees and litigation costs under 5 U.S.C. §5596; and
8. 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. The undersigned is the designated representative for this grievance. If you have any questions regarding this National Grievance, please contact the undersigned at AFGE Office of the General Counsel.



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Christopher Zatrutz  
Staff Counsel, National VA Council  
Office of the General Counsel  
AFGE, AFL-CIO  
80 F Street, NW  
Washington, DC 20001  
Tel: 202-639-6424  
Fax: 202-379-2928  
christopher.zatrutz@afge.org

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