



GREG BROCKMEYER
Director of Administration

COUNTY OF DANE

DEPARTMENT OF ADMINISTRATION
Room 425 City-County Building
210 Martin Luther King Jr. Blvd.
Madison, WI 53703-3342

Phone: (608) 266-4941
Fax: (608) 266-4425 TTY WI Relay 711

May 5, 2023

Erik Anderson
Employee Group #65

RE: Step 3 Grievance Decision – COVID/Sick Leave Time Use.

A third step hearing was held on May 2, 2023. I have summarized the primary arguments of each of the parties below:

Employee Group #65

Erik Anderson presented:

- On March 17th, I was experiencing COVID symptoms and notified management about absence.
- Public health requires two tests, a rapid test and PCR test. In waiting for the test results and having an added directive of providing a doctor's note indicating clearance to return to work, I did not return to work until March 22.
- On March 31, I was informed of the inability to use COVID time leave due to the 2023 COVID Policy.
- This grievance lists the 2022 COVID leave policy due to an email conversation between Greg Brockmeyer and Derek Wallace where it was agreed to apply the same temporary exceptions from the 2022 COVID policy to the 2023 COVID policy.
- Though Ronda Schwetz indicates that my absence affects zoo operations, I believe that having to wait to get a doctor's notice adds to my absence and believe that the sharing of my doctor's notice to management is a violation of HIPAA.
- The remedy is for the standing doctor's notice directive to be rescinded, that sick time be reimbursed for time Saturday, Sunday and Tuesday and be allowed to use COVID leave for the absences of Friday, Saturday, Sunday and Tuesday and to be made whole.

Henry Vilas Zoo

Ronda Schwetz presented:

- When it was learned that Erik Anderson had put COVID time on his ETR, Joanna Soto reached out to HR Director Amy Utzig and Employee Advocate Manager Shannon Maier.
- Both individuals shared the 2023 policy that does not allow use of pending test results with negative result.
- We followed policy and checked with Employee Relations and Corporation Counsel.
- With regards to the doctor's note, it needs to state he's clear to come back to work and he was informed that his HIPAA concerns were to be directed to the head of Employee Relations.

Decision

The grievance is denied.

The employee raises two issues. First, the employee requests to be released from his requirement to obtain a doctor's note when absent from work and stating that illness is the reasons for his absence. This requirement was given to the employee due to his excessive sick leave usage. Notice to the employee was provided in a letter to the Employee on March 31, 2022. The employee did not grieve this requirement when it was noticed. As a result, the employee's time to file a grievance on this requirement has long since passed.

Second, the employee argues that he should be able to use COVID leave for the purposes for which he was absent. The Temporary Exception for COVID Leave in payroll year 2023 does not allow employees to use 2023 COVID Leave in order to obtain a COVID test. The employee points to an email dialog with another Employee Group representative (Derek Wallace) in the development of the 2023 Temporary Exception to show that his use of time should be permitted. That interpretation is not supported by the facts of the development of the 2023 Emergency COVID Leave.

For the payroll year 2022, Employees could use Emergency COVID Leave for any of the following reasons:

1. The employee has a COVID-19 diagnosis, is seeking a diagnosis, or is seeking a COVID-19 test.
2. The employee has an immediate family member who: has been diagnosed with COVID; who has symptoms and is seeking a diagnosis; needs to obtain a COVID test; or is under a quarantine or isolation order related to COVID-19.
3. For the employee or their immediate family members to obtain a COVID-19 vaccination including boosters, and to recover from the effects of the vaccine.
4. For the employee to care for their child or other individual who is unable to care for themselves as a result of the closure of their school, child care facility, or other care program due to COVID-19.

The county workforce received a notification via email of the proposed temporary exception for 2023 Emergency COVID Leave. In that proposal, employees could use Emergency COVID Leave for any of the following reasons:

1. The employee has a COVID-19 diagnosis.
2. The employee has an immediate family member who: has been diagnosed with COVID or is under a quarantine or isolation order related to COVID-19.
3. For the employee to care for their child or other individual who is unable to care for themselves as a result of the closure of their school, child care facility, or other care program due to COVID-19.

Four employees (Derek Wallace, Patti Kraemer, Sonia Kurhajetz, and Laura Beutel) raised concerns under the temporary exception process about the removal of the 2022 Reason #3 – the ability to use Emergency COVID Leave in order to obtain a vaccination and to recover from the effects of a vaccination.

Giving the timing of the concerns raised, the impending start of a payroll year, and a snowstorm that closed the County, I wrote to those employees that if they would withdraw their concern, the Department would modify its proposal to include the ability to receive a vaccination as it existed in 2023. The employees withdrew their concern and a final temporary exception setting Emergency COVID Leave for 2023 was published to the DOA website. The final 2023 Emergency COVID Leave allowed employees to use COVID Leave for the following reasons:

1. The employee has a COVID-19 diagnosis.
2. The employee has an immediate family member who: has been diagnosed with COVID or is under a quarantine or isolation order related to COVID-19.
3. For the employee to care for their child or other individual who is unable to care for themselves as a result of the closure of their school, child care facility, or other care program due to COVID-19.
4. The employee is obtaining immunization related to COVID-19 or recovering from an injury, disability, illness, or condition related to such immunization

As the final version of the temporary exception for 2023 Emergency COVID Leave does not permit employees to use COVID time to obtain a COVID test, the employee cannot use COVID Leave.

The grievant has shared an email that I wrote to the four employees that says, "I am changing the 2023 Temporary Exception to include all of the provisions that were in the 2022 Temporary Exception." The grievant argues that this means that the 2023 Temporary Exception should include the reason to seek a COVID test. However, this reading of the email does not reflect the development of the 2023 Temporary Exception. Nowhere in the discussion of these objections did employees communicate a concern about eliminating the need to obtain a COVID test as a reason to use COVID leave. As a result, the published Temporary Exception has not included time off to obtain a test as a reason to use Emergency COVID Leave for the entirety of the 2023 payroll year. Indeed, there was not a discussion of this reason because at-home testing has become widely accepted, eliminating the need for this leave. The 2023 version of Emergency COVID leave made clear that the county accepts at-home tests, where this was previously in an APM policy.

Further, if the intent was to include that reason in 2023 Emergency COVID Leave, employees should have raised that concern before the first pay period of 2023. Raising this issue now, several months after the Emergency COVID Leave benefit was defined and issued, does not create a reason to provide the relief the employee is seeking. Moreover, allowing the employee to use COVID Leave for this reason would have profound negative consequences for the administration of the County, as the County would also need to provide a retroactive benefit to every other employee that was denied COVID leave in 2023 in order to obtain a COVID test.

Even if the grievant's reading of the development of the 2023 Emergency COVID Leave Temporary Exception were correct, the grievant would only be entitled to use one day of Emergency COVID leave. Once the employee tested negative, he did not have any further reasons to use Emergency COVID leave.

Finally, the employee raised concerns regarding Health Insurance Portability and Accountability Act (HIPAA). These concerns are immaterial. HIPAA protects sensitive information being disclosed without the patient's consent or knowledge. In order to use Emergency COVID Leave, employees must provide documentation of their use of the leave. If employees do not want to provide that documentation, then they do not have to use the leave. HIPAA does not prevent managers and HR representatives from

reviewing the information submitted. It is also unclear how this concern is related to any potential forms of relief.

If you have any questions, you may contact me at 608-266-4519.

Sincerely,

A handwritten signature in black ink that reads "Greg Brockmeyer". The signature is written in a cursive style with a large, prominent initial "G".

Greg Brockmeyer
Director of Administration

Cc: Ronda Schwetz
Neil Rainford