



DANE COUNTY EGR 720

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Council of State, County and Municipal
Employees - Council 32

Step 3 Grievance: COVID-19 Emergency Leave

Employer: Dane County	Date of Alleged Infractions: November 9, 2021
Department: Administration	Division: Employee Relations
Employee: Evelyn Mikul	Work Location: Human Services (EAWS Division)
Dates: November 22, 2021	

Employee Benefit Handbook Violations

- Creation of 2021 COVID-19 Emergency Leave
- 2021 Supplemental Emergency COVID-19 Leave
- Existing Benefits
- Any other provisions that may apply

Statement of Circumstances:

On November 9, 2021, Evelyn Mikul was denied use of 2021 Supplemental Emergency COVID-19 Leave and instead had to take leave without pay for 4.5 hours to cover her absence on November 2, 2021 (Attachment A).

Violation of the Employee Benefit Handbook:

Evelyn Mikul indicated to her supervisor that she wished to use the 2021 Supplement Emergency COVID-19 for an absence of November 2, 2021. Ms. Mikul received a “booster” COVID-19 vaccination and following the vaccination, she had COVID-19 symptoms on the aforementioned date and wished to use the 2021 COVID Supplemental Emergency COVID-19 Leave. She was subsequently denied use of the leave because “getting a vaccine” is not part of the 2021 Supplemental Emergency COVID-19 Leave (see again Attachment A). This is despite Ms. Mikul providing a notice from her doctor indicating she was “excused from work on 11/2/21 due to a reported medical issue” (Attachment B).

On December 11, 2020, the Director of Administration issued a proposed temporary exception to the Employee Benefit Handbook that created the 2021 COVID-19 Emergency Leave (Attachment C). Given that there were no objections to the proposed exception, the exception was then implemented. The exception indicates an employee can use the 2021 COVID-19 Emergency Leave for multiple reasons. The first such reason is as follows:

The employee has a COVID-19 diagnosis, is experiencing symptoms of COVID-19 and is seeking a medical diagnosis; or the employee has been exposed to COVID-19 and is seeking a COVID-19 test.

On February 12, 2021, the EAWS Division Administration, Nikia Morton, wrote to the whole division (Attachment D) indicating that the Department of Administration had provided additional clarification regarding this provision of the 2021 COVID-19 Emergency Leave:

As of today, there has been additional clarification of the initial communication regarding covering sickness due to dose(s) of the vaccine. This is knowing that some individuals may experience symptoms such as fever, chills, body aches, etc. Per DOA response and directive to department Payroll Clerks to approve these leave requests per Greg Brockmeyer:

Our [DOA] position is that the leave should be used for potential COVID exposure. That said, the symptoms that employees are experiencing after the vaccine are very similar to COVID and as such, the employee has no way of knowing if it's a reaction to the vaccine or if they have COVID - so the answer to your question is yes, they can use the COVID leave in that situation.

Such clarification is subject to the Existing Benefits clause of the Employee Benefit Handbook (Attachment E) as they are primarily related to “wages, hours and conditions of employment” and also were clearly “established by practice with the knowledge and tacit consent of the County.”

Later in 2021, the Director of Administration issued another proposed temporary exception to the Employee Benefit Handbook that created the 2021 COVID-19 Emergency Leave. The leave was eventually implemented (see Attachment F for the current version), and the first reason the leave is allowed is essentially as the first 2021 COVID-19 Emergency Leave temporary exception:

The employee has a COVID-19 diagnosis or has symptoms of COVID-19 and is seeking a diagnosis.

Given that the same language exists in the 2021 Supplemental Emergency Leave, it follows the county is bound by the same clarification DOA provided on February 12, 2021 and that all affected employees should be able to use any variation of COVID-19 Emergency Leave in order to recover from potential illnesses brought forth by COVID-19 vaccination.

Request for Settlement or Corrective Action:

EGR 720 requests

- a) the County allows Ms. Mikul to use the 2021 Supplemental COVID-19 Emergency Leave for the 4.5 hours in question she took without pay,
- b) the County allow all affected employees the ability to use 2021 Supplemental COVID-19 Emergency Leave to recover from any illness potentially related to the COVID-19 vaccine, consistent with the county's past practice
- c) and that the employee(s) be made whole for any losses.

Derek Wallace

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Steward, EGR 720

11/22/2021

Date