Absenteism/Tardiness:  
Negotiating a New Cause of Action  

by  
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Introduction:  

Employees will be absent or tardy from time to time. However, for some employees, attendance is a chronic problem. This paper discusses the bargaining process in which a new cause of action was added to the Memorandum of Understanding (MOU) and the following collaborative process that created a clear guideline and policy for addressing this problem.  

Background:  

Employees earn vacation and sick leave time each pay period. Some of the bargaining units have “personal time off” and others have “vacation leave” and “sick leave”. The vacation and personal time off accruals are earned based upon years of service. These accruals increase at regular increments during the course of employment and are capped at four to six times the annual limit based on years of continuous service. Vacation and personal time off accruals not used during the course of employment are cashed out upon termination. Bargaining units that have sick leave accounts accrue sick leave at a fixed rate for the entire course of employment. Upon termination, the first 240 hours of unused sick leave are cashed out at 100 percent and hours over 240 at 50 percent.  

Scheduled, unscheduled and partial shift absences are three sources of absenteeism.  

Scheduled absences are leaves such as vacation or personal time off. This type of absence requires scheduling in advance and manager approval. If vacation leave is being abused, the manager who allowed the leave needs to take corrective action. This problem can be remedied by education. Some managers do not realize that they are not required to approve leave if the employee has a balance especially if the leave will adversely affect operations.  

Unscheduled absences are sick days, disability, FMLA, and worker’s compensation. Partial shift absences include arriving late or leaving early or taking longer breaks or
lunch periods than allowed. Unscheduled absences, excluding those leaves where the employee is in a protected status, and partial shift absences cause most of the problems.

Repeated unscheduled absences or late arrivals to work bring direct and indirect costs.

**Direct cost** is overtime that occurs when it is necessary to fill in for the absent employee to meet project deadlines. **Indirect cost** rises from time spent by the manager disciplining, terminating or finding a replacement. Additionally the morale of employees is affected because they must bear the burden of doing the work of the absent employee.

While most employees carry a decent leave balance to cover most needs, a large number have little or no accrual. These are the employees who use sick leave almost as soon as it is earned or carry a leave balance of less than 8 hours.

The MOU’s contain a variety of causes of action that can be used to reprimand or discipline an employee for absenteeism or tardiness such as:

- failure to meet work performance standards and requirements,
- inefficiency, or
- unexcused absence from duty, including, but not limited to, participation in unlawful strikes or other job actions, such as sick-ins or slow downs.

For a variety of reasons, managers are reluctant to discipline employees for absenteeism. One rational given to Human Resources is that, “Her work is excellent when she is here.” The manager fails to see that efficiency and productivity are directly related to the employee being there to do the work. Some managers are concerned that the employee has personal or health problems causing the absence and fear that discipline may bring a lawsuit or other complaint. Whatever the excuse the manager uses, if an employee is allowed to continue abusing leave, the abuse is likely to continue and send a message to other workers it will be tolerated.

Employees have a different outlook. Some feel if they earned the leave, they should take it immediately and do not worry about the possibility of long-term illnesses or injuries. Some employees feel they “save” the County money by not working all their scheduled hours. Actually the opposite is true because of the cost of covering for their absences. Some chronic abusers may claim the manager is “out to get them.” By the time a manager deals with excessive absenteeism, the relationship between the employee and manager has likely become confrontational and both view the other as an adversary.

**The Negotiation Process**

Based upon the number of employees who are chronic leave abusers and the difficulty in trying to teach managers how to deal with it, it was clear that we needed a new cause of action that would be understandable to employees and managers. During negotiations the County proposed adding a cause of action titled “Absenteism/Tardiness” to all MOU’s.
Although leave abuse was not an issue in the management and supervisory ranks, we wanted to be equitable and make the MOU’s consistent.

The bargaining units were cool to the addition but agreed that the cause of action was necessary but needed to be understandable. The employees on the bargaining teams expressed the opinion that the cause of action was a way of giving management more power and instead of correcting leave abuse it would bring animosity between the manager and the employee.

A union business agent suggested we work together to create a process understandable to everyone. He suggested that since causes of action are typically punitive, a way to correct the problem instead of simply applying discipline should be established. We agreed that a process that would allow the employee and manager to work to correct the problem was essential. We also agreed that after a period of time, if the problem was not corrected then discipline could be imposed.

The next issue was how to fairly apply this across the board. Some abuse problems are easy to spot while others are not. For example, some employees call in sick almost every pay day or the day following a payday. Some show up late on Mondays. These patterns are easy to recognize. If the manager does not deal with the problem other employees may mimic this pattern. Yet other employees, for example, are absent for a few hours or a day sporadically over a period of time. Although these frequent absences are a minor disruption, they are not so obvious that they give clear evidence of abuse. However sporadic leave abusers could end up with insufficient leave time to cover a necessary absence and face the necessity of being on unpaid leave status which creates a new set of problems.

The union’s position was that if we could implement a policy that put responsibility on both the manager and the employee, they would not have a problem of getting “buy in” from the unit members. We also wanted a system that would facilitate dialogue between the manager and the employee so they could determine if there were factors causing the employee’s absences or tardiness that would be appropriate for a protected leave status such as FMLA or CFRA.

The Procedure:

Since the union proposed writing a policy, we requested they submit sample language as a starting point. The County wanted language that covered abuse of all leaves including sick, vacation and PTO.

The County agreed on tardiness, abuse of sick leave and PTO depending upon the MOU. We agreed that since vacation is controlled by the supervisor, it requires approval before it can be taken. Therefore, managing vacation accruals is a management function and if the employee has no balance the manager must deny the request.
The union agreed to educate its members and the County its managers and supervisors on this new cause of action and procedure.

After much discussion, we agreed on the following language.

**Absenteeism**

If an employee is not able to report due to illness or injury, the employee shall report as soon as possible to the appropriate supervisor, but in no case more than thirty (30) minutes after the start of the work day, except for extenuating circumstances prohibiting giving notice.

Failure to notify as soon as possible and in conforming to the thirty (30) minute notification shall be cause for the following disciplinary action:

1. For the first time in a six (6) month period, a Memorandum of Discussion.
2. For the second time within a six (6) month period, a Letter of Reprimand.
3. For any subsequent time within a six (6) month period, suspension from work; or at any time four (4) or more incidents occur within a six (6) month period, the employee may be discharged.

The six (6) month period will be defined as six (6) months form the most recent incident.

Any Letter of Reprimand regarding failure to notify the County as provided herein, which is more than six (6) months old, will include an expiration date of six (6) months from the date of the most recent occurrence and will be automatically removed from the personnel file, should no other incidents occur during this period.

If the County has a reasonable basis to believe that an employee is abusing the sick leave benefit, the County or the employee’s supervisor must first meet with the employee to: 1) explain the reasonable basis for the believed abuse, and 2) discuss the reasons for the employee’s absence. The employee has the right to Union representation at such meeting. After such meeting, and depending on the factual circumstances, the County may:

(a) Place the employee on restricted sick leave for a period of not more than four (4) months, under the direction of the Director of Human Resources;
(b) Suspend the employee without pay for up to five (5) days for abuse of sick leave; or dismissal from employment if a prior suspension involved abuse of sick leave;

(c) Place the employee in an employee assistance program, if agreed by the employee.

Tardiness

Repeated failure to report to work on time may result in appropriate discipline as set forth below:

(a) For the first time in a six (6) month period, a Memorandum of Discussion.

(b) For the second time within a six (6) month period, a Letter of Reprimand.

(c) For any subsequent time within a six (6) month period, suspension from work; or at any time four (4) or more incidents occur within a six (6) month period, the employee may be discharged.

If an employee reports to the work site after the designated starting time, the employee will be paid only for time actually worked; however, the employee may be allowed to utilize annual leave for lost pay, provided the employee’s supervisor approves.

Any Letter of Reprimand regarding failure to notify the County as provided herein, which is more than six (6) months old, will include an expiration date of six (6) months from the date of the most recent occurrence and will be automatically removed from the personnel file, should no other incidents occur during this period.

Conclusion:

Absenteeism and tardiness are costly items for employers. Extra money is spent to back-fill for an excessively absent employee. However, a larger cost is to the other employees and the relationship between employee and manager. Morale becomes an issue and managers risk having other employees become chronic offenders of unscheduled leave if the problem is not dealt with promptly and decisively.

A successful outcome to solving any problem depends on recognizing a common goal. In this case, absenteeism and tardiness affect both management and employees. A collaborative environment where union and management are willing to work together to achieve a solution to this problem, helps to ensure a successful outcome. Both sides must be willing to compromise in order to achieve a resolution that meets the interests of both
sides. And both sides share responsibility for the success or failure of the decisions made in the joint effort. Additionally, the employees involved in negotiations learn that management is willing to work with employees and value their input.

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