

BERKELEY POLICE DEPARTMENT

DATE ISSUED: August 12, 2009

GENERAL ORDER S-5

SUBJECT: SICK LEAVE AND ATTENDANCE MONITORING

PURPOSE

- 1 - The purpose of this Order is to establish policies and procedures for use of sick leave, monitoring and evaluating employee attendance records, and for taking corrective action when necessary.

POLICY

- 2 - Sick leave shall be used only for absences from a scheduled work duty shift due to personal illness or injury, or to care for a member of an employee's "immediate family", as defined in the collective bargaining agreement between the City of Berkeley and the subject employee's labor group.
 - (a) Consecutive or extended term use of sick leave due to a recognized medical issue will not be considered abuse.

PROCEDURE

General

- 3 - Sick leave shall not be used for an absence from duty resulting from a service-related illness or injury subject to coverage by the City's Worker's Compensation insurance program.
- 4 - Sick leave used for an absence from duty due to a reason other than what is authorized in paragraph 2 of this Order (e.g., participation in leisure or personal activities, attendance at a social event, extension of an employee's weekend/holiday/vacation, etc.) shall be deemed abusive and is prohibited.
- 5 - Single or multiple uses of sick leave having an identifiable pattern (i.e., taken in conjunction with days off, holidays or vacation), or a questionable explanation provided by the employee, may be deemed abusive.
- 6 - An employee suspected of engaging in abusive use of sick leave will be subject to administrative monitoring and disciplinary action.

Absence Monitoring

- 7 - Supervisors have a duty to monitor subordinate employees' attendance, including sick leave usage, and shall review attendance records regularly, though no less than once every performance appraisal report period.
- 8 - When a supervisor observes a single absence, or pattern of absences, that may be consistent with an abuse of sick leave, or the use of more than half of the employee's sick leave accrual for the preceding twelve (12) month period, he/she shall review the associated absence report record(s) to evaluate the reason(s)

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provided for the absence(s) of concern.

- (a) The supervisor shall advise the subject employee of the specific absence(s) in question and circumstances which revealed the issue, and determine if there was a valid reason(s) for the absence(s) of concern.
- 9 - In the event an employee provides a reasonable explanation for unplanned and/or seemingly excessive uses of sick leave (e.g., an employee's care for him/herself or a family member regarding a serious medical condition), and where there is anticipation of a related future absence, the supervisor may recommend the employee apply for benefits provided by the Federal Family and Medical Leave Act (FMLA) and/or the City of Berkeley Employee Assistance Program (ref. City of Berkeley Administrative Regulation 2.4).
- 10 - If the employee's explanation for the subject absence(s) reveals a violation of paragraph 4 of this Order, or is questionable or inadequate, the supervisor shall counsel the employee against abusive use of sick leave and admonish him/her regarding possible disciplinary action should a future abuse(s) occur.
- (a) The supervisor may also initiate a Performance Improvement Plan (PIP) as a mechanism to monitor an employee's attendance and use of sick leave.
 - (b) The supervisor should inform the employee of their right to administrative representation at future progress report meetings, as subsequent violation(s) of attendance policy could lead to discipline.
- 11 - Following the initial counseling meeting, the supervisor shall review the relevant attendance records with the employee every 30 days for a period of six (6) months.
- (a) If an abuse of sick leave does not recur in the six (6) month period following the initial counseling meeting, the supervisor shall inform the employee that his/her attendance will be reviewed quarterly for, at minimum, six (6) months.
 - (b) Attendance monitoring authorized by this Order, whether informal or as part of a PIP, will remain in effect no more than one (1) year from the date of the initial counseling meeting, unless continued monitoring is necessary.
- 12 - If during the six (6) month monitoring period there is another incident of sick leave abuse, the supervisor shall document the matter as a formal personnel complaint and advise the employee:
- (a) If not already initiated, a PIP will be instituted and administrative monitoring will continue for a period of one (1) year; and,

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- (b) The failure to correct substandard performance with regard to sick time abuse may result in disciplinary action as prescribed in General Order P-26.
- 13 - Upon the conclusion of an attendance monitoring program, the supervisor shall inform the subject employee and advise him/her their attendance will be routinely reviewed in accordance with paragraph 7 of this Order.

Physician Verification, Employee Responsibilities

- 14 - If an absence(s) of concern is due to an apparent illness and/or injury, to ensure appropriate medical care, the supervisor may require the employee submit a "physician verification" each time the employee is absent due to a medical condition.
 - (a) A "physician verification" shall, at minimum, include the following information:
 - (1) The date and time the employee went to see the physician;
 - (2) A statement that a physician treated the employee, and that the physician determined that the employee was in fact ill and/or injured on the date of the absence;
 - (3) A return to work date; and,
 - (4) Whether or not the employee is able to fully perform his/her normal assigned duties.
 - (b) A "physician verification" may also be required in cases of excessive absence due to injury or illness care for an employee's immediate family.
- 15 - An employee required to submit a "physician verification" shall present it to his/her supervisor upon return to work, at the beginning of that day's duty shift.
 - (a) An employee's failure to provide a required "physician verification" may result in the modification of his/her attendance record from "Sick Leave" to "Unauthorized Leave Without Pay", and may result in disciplinary action.

Administrative Documentation

- 16 - The supervisor shall complete a written summary, in memorandum form, of the initial counseling session, including any corrective action plan implemented, to the employee for their review.
 - (a) The employee shall initial the supervisor's memorandum as acknowledgement he/she reviewed its contents.

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- (b) An employee who disagrees with the content of, or wishes to provide additional information to, the supervisor's memorandum may submit to the supervisor their own memorandum containing such information.
- 17 - The supervisor will submit the reviewed and initialed summary memorandum, and all attachments, to the Division Commander via the chain of command.
- 18 - In accordance with General Order P-28, the supervisor responsible for completion of a Performance Appraisal Report for an employee counseled and monitored for suspected or confirmed inappropriate use of sick leave shall include with the Report a summary of the administrative review that identified the issue and outcome of the associated performance improvement process.

References: 29 CFR §825 (Family and Medical Leave Act of 1993 (FMLA))
California Government Code §§3300, et. seq.
City of Berkeley Administrative Regulation 2.4 (Family Care Leave)
General Orders P-17, P-26 and P-28
Memorandum Agreement between the City of Berkeley and various
employee bargaining groups (Berkeley Police Association, SEIU
Local 1021, SEIU Local 1)