



UNITED STATES POSTAL SERVICE
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EMPLOYEE RELATIONS DEPARTMENT

July 20, 1992

MEMORANDUM FOR REGIONAL AND FIELD DIRECTORS
HUMAN RESOURCES

SUBJECT: Discipline for Nonbargaining Unit Employees

During our discussions with the management associations, several issues of concern have been raised which will be addressed in this memorandum.

First, it has been brought to our attention that there is some confusion regarding the proper placement of nonbargaining unit employees in an off-duty status without pay on an emergency basis. Section 651.3 of the Employee and Labor Relations Manual (ELM) provides, in pertinent part:

An employee may be placed in an off-duty status immediately (without pay) ... when: (a) intoxicated, (b) failing to observe safety rules, (c) failing to obey a direct order, or (d) disrupting day-to-day postal operations in any other way. The employee is returned to duty status when the cause for nonpay status ceases.

Emergency placement in an off-duty status without pay is to be used in those instances where it is necessary to get an employee off the premises immediately. However, the employee is to be maintained in that status for a short period of time only. It is not a substitute for the placement of an employee on a regular suspension for a specified number of days or on indefinite suspension under the crime provisions.

Where it is necessary to ensure that an employee does not have access to the work place for a period in excess of a few days, the employee may be placed on administrative leave. This is an appropriate measure to take in those circumstances where the Inspection Service is conducting an investigation into allegations of misconduct and the nature of that misconduct makes it impractical to



FORM LETTER - EMERGENCY PLACEMENT IN OFF-DUTY STATUS
NONBARGAINING DATA BASE
Revised 6/92

See 651.3 ELM

SUBJECT: EMERGENCY PLACEMENT IN OFF-DUTY STATUS 1/

DATE

TIME

INSTALLATION

TO: (Employee's Name, Job Title, Social Security Number)

Reason for placement in off-duty status: (set forth in substance the reasons for this action and the criteria in Employee and Labor Relations Manual Section 651.3 upon which the action is based).

Your placement in an off-duty status will commence (time and date) and continue until you are advised otherwise. 2/

You have the right to appeal this decision in writing under the provisions of Employee and Labor Relations Manual Section 652.3 to (first level appeal official and address) within 10 calendar days from the date of your receipt of this letter.

/s/ Immediate Supervisor

I RECEIVED THE ORIGINAL OF THIS LETTER ON ____ (date) ____ 3/

SIGNATURE _____ TIME _____

FOOTNOTE INSTRUCTIONS FOR EMERGENCY PLACEMENT
IN OFF-DUTY STATUS

- 1/ The emergency placement of an employee in off-duty status is intended to be used in those instances where it is necessary to place an employee in that status immediately. The emergency placement is for use only for a short period of time, i.e., one or two days. It is not a substitute for the placement of an employee on suspension for a specified number of days or an indefinite period. See Sections 651.5 and 651.6 of the Employee and Labor Relations Manual.

Further, for those employees who may appeal to the Merit Systems Protection Board (MSPB), placement in

TOWARD AN UNDERSTANDING OF ENFORCED LEAVE

WHAT IS ENFORCED LEAVE?

Enforced Leave is the term employed by the Merit Systems Protection Board (MSPB or Board) and some federal courts to describe the involuntary placement of a federal employee in some type of leave status other than administrative leave.

POINTS TO UNDERSTAND CONCERNING ENFORCED LEAVE

1. The involuntary placement of an employee on enforced leave is considered a disciplinary suspension by the MSPB. According to the Board, placement on enforced leave constitutes a type of "constructive" suspension.
2. The placement on enforced leave must be **involuntary** and the employee must be one who has a right to appeal adverse actions to the Board in order for the Board to have jurisdiction over the appeal. In other words, the employee must be a preference-eligible or a supervisor/manager.
3. The key question in enforced leave cases is whether the placement on leave was **voluntary** or **involuntary**, not whether the employee was ready, willing and able to work. Whether the leave was voluntary or involuntary will depend on whether the Postal Service or the employee initiated the absence. Sometimes the Board will require a jurisdictional hearing to determine the voluntariness of the leave.
4. If an employee is in a non-duty status receiving administrative leave and we stop the administrative leave and require the employee to take some other type of leave, the enforced leave starts at the point the administrative leave stopped.
5. If an employee is out on voluntary sick leave and seeks to return to work, and the Postal Service refuses to allow the employee to return to work, and requires the employee to take more leave, we have placed the employee on enforced leave at the point we refused to allow the employee to return to work.
6. Many of the recent enforced leave cases we have seen involve employees who are unable to work their regular assignments due to medical problems and who seek light-duty. If there is no light-duty work available, the employee can't simply be sent home or ordered to take leave. If this is done, the employee has been placed on enforced leave.

SELECT FEDERAL CIRCUIT DECISIONS RE: ENFORCED LEAVE

1. **Green v. MSPB**, No. 93-3342, Fed. Cir. Nov. 8, 1993 (nonprecedential)

The plaintiff's request for light-duty was denied, so he didn't report for work. The issue before the Board and the Federal Circuit was whether the plaintiff's absence was voluntary or involuntary. The Board held that plaintiff's absence was voluntary, therefore there was no enforced leave and the Board had no jurisdiction over the appeal. The Court found otherwise, holding that a reasonable person reading the letter informing the plaintiff that his light-duty request was denied, would conclude that he would not be permitted to return to work. Therefore his absence was involuntary and he had been placed on enforced leave. (Note that this decision was not reported, but is available on PNET.)

2. **Holloway v. U. S. Postal Service**, 933 F.2d 219 (Fed. Cir. 1993)

The plaintiff refused to perform his assigned duties and was ordered to "clock out" and was placed on "nonduty, nonpay" status. The issue was whether he had been "constructively suspended." The Court found that because the plaintiff refused to perform his duties, his absence was voluntary and not a constructive suspension.

3. **Perez v. MSPB**, 931 F.2d 853 (Fed. Cir. 1991)

The plaintiff was out of work on voluntary sick leave. After he failed to respond to two requests for medical documentation, he was placed in an AWOL status. The issue was whether the placement in an AWOL status constituted a constructive suspension. The Court held that it was the plaintiff's choice to remain out of work, therefore his absence was voluntary and he had not been constructively suspended.

4. **Pittman v. MSPB**, 832 F.2d 598 (Fed. Cir. 1987)

In this seminal case, the Federal Circuit held that the placement of a federal employee on "indefinite enforced leave is tantamount to depriving the worker of his job - without any review other than by the agency - until the agency itself changes its mind and decides that he can perform his job." *Id.*, page 600. Because of this case, the placement of a federal employee who can otherwise appeal adverse actions to the Board, on enforced leave for more than 14-days became a matter appealable to the MSPB.

5. **Walker v. Dept. of Health & Human Services**, 58 M.S.P.R. 614 (1993)


The appellant had been out on sick leave and sought to return, but was not allowed to return to duty until she furnished "a release from her physician." Her absence was not voluntary but was "at the behest or under the control of the agency." Also, since the required statutory procedural protections were not provided, the constructive suspension was automatically reversed.

6. **Barnes v. U. S. Postal Service**, 49 M.S.P.R. 21 (1991)

The Postal Service placed the appellant on enforced leave, but the action was procedurally correct in that the appellant was provided with all requisite statutory procedures (proposed action, notice period and letter of decision). In addition, the Postal Service proved that the basis of the action was correct because there was no work available for the appellant within his medical restrictions.

MISCELLANEOUS RESOURCES AVAILABLE REGARDING ENFORCED LEAVE

1. Peter Broida, **A Guide to Merit Systems Protection Board Law and Practice**, Dewey Publications, Inc., (Atlington, VA, 1996), Chapter 6, Section 6.
2. Ms. Sherry A. Cagnoli's memorandum dated March 1, 1988, entitled "MSPB Precedent Affecting Enforced Leave."
3. Ms. Sherry A. Cagnoli's memorandum dated April 19, 1990, captioned "Enforced Leave." (Attached to the memorandum are form letters for use when proposing an employee's placement on enforced leave and the accompanying letter of decision).
4. "Doubting *Thomas* (Why Enforced Paid Leave for Employees Unable to Work Should Not Be Considered a Suspension)", **Perspective, Federal Merit Systems Reporter**, Volume 96, Issue 3E, (April 29, 1996).


Robert G. Doyle
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Northeast/New York Metro Areas
October 9, 1996

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