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Via Email Only:  
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Mr. Daniel Babor  
Supervisory Air Marshal in Charge  
Los Angeles Field Office  
Federal Air Marshal Service  
Transportation Security Administration

**Re: Local Sick Leave Policy**

We are the legal representative for the Air Marshal Association and the majority of the Federal Air Marshals ("FAM") in the Los Angeles Field Office. We write to you as a result of growing concern about the recent implementation of a particularly onerous sick leave policy in the Los Angeles Field Office.

Assistant Supervisory Air Marshal in Charge ("ASAC") Robert Duerr recently directed the Supervisory FAMs to conduct an attendance review. As per his direction, any FAM with four occurrences of unscheduled sick leave (or annual leave in lieu of sick leave or LWOP in lieu of sick leave) within a rolling six-month period will be considered to have "excessive unscheduled attendance." After a FAM has accrued four occurrences of unscheduled absences within a six-month period, the SFAM is directed to meet with that FAM to review his or her unscheduled absence and to discuss attendance. In the meeting, the SFAM is to advise the FAM that his or her sick leave use will be monitored for at least the next two 28-day roster periods, and possibly longer, to assess whether a sick leave restriction is appropriate. ASAC Duerr advised that excessive use of unscheduled sick leave could serve as the basis for requiring an employee to substantiate all absences with administratively acceptable documentation and for the restriction of sick leave.

Concluding that four occurrences are "excessive" is speculative and preposterous, but also four unscheduled sick leave occurrences over a 180-day period is operationally not excessive considering the current makeup of the FAM workforce and the operational tempo that

FAMs endure.<sup>1</sup> As an aging workforce, there is a significant increase in medical issues due to the FAMs' work environment, and job duties, which includes travel through numerous time zones and a variety of work shifts. Notably, most long-tenured FAMs have accrued a significant amount of sick and annual leave knowing that, as their law enforcement careers taper to an end, they will likely experience an increase in sudden and chronic mental and physical work-related ailments. Sick leave restriction should be limited to extreme and documented instances of sick leave abuse, not to four occurrences in a 180-day period.

Management should encourage FAMs to utilize earned sick leave when needed without any reservation or concern of targeted harassment, scrutiny, or retaliation. However, under this new policy and heightened scrutiny, FAMs will be apprehensive to take unplanned sick leave out of fear of potential retaliation or punishment. Punishing FAMs for using sick leave when needed sends a chilling message to your workforce which jeopardizes the safety of the traveling public. Moreover, it is doubtful the public would appreciate a policy that effectively forces sick FAMs onto aircraft. Such policy is not consistent with our nation's values. Further, we question a policy that appears to be only applicable to FAMs and not to supervisors or management. If this policy was sound, which it is not, it should also be applicable to supervisors and management. How many supervisor attendance records were audited during the development of this policy? How many supervisors have been placed on leave restriction, or had their ability to "flex" days off whenever they want to revoked?

We have also reviewed recently issued Memorandums of Leave Restriction. Among other requirements, the Memorandum requires a FAM who requests leave because of a sudden illness to provide medical documentation "**immediately**" upon the FAM's return to duty. If a FAM fails to "immediately" provide the medical documentation it "may result in the disapproval of [the] leave request, a charge of unapproved absence (AWOL), and appropriate disciplinary action." That requirement conflicts with TSA policy. The TSA Handbook to MD 1100.63-1 specifically sets forth the TSA's policy on leave. Section D(1)(g) states:

When administratively acceptable documentation is required, it should be submitted no later than 15 calendar days after the date requested by management. If despite the employee's diligent, good faith efforts he/she is unable to provide the requested documentation, the documentation can be provided within a reasonable period of time. Generally, the documentation should be submitted no later than 30 calendar days after the date requested.

Clearly, the requirement set forth in the recently issued Memorandums conflicts with the TSA directive and is otherwise completely unreasonable. Further, the tone in the Memorandums suggests that SFAMs may either deny or punish FAMs for utilizing earned sick leave

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<sup>1</sup> TSA policy even allows full-time employees to "use up to 104 hours of sick leave each leave year for general medical care of a family member and bereavement purposes. See Section D(4)(b) to the Handbook to TSA MD 1100.63-1. 104 hours equates to 13 days.

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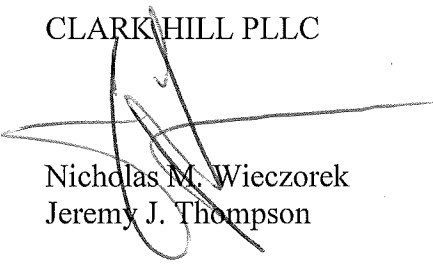
Page 3

irrespective of the FAM's personal medical situation. 5 CFR § 630.401 provides that an agency must grant sick leave to an employee when he or she receives medical, dental, or optical examinations or treatments. 5 CFR § 630.401(a)(1). Indeed, no agency has discretion to deny sick leave to a qualified individual. *Miller v. Bond*, 641 F.2d 997, 1004 (D.C.Cir. 1981); *Wade v. Dept. of Navy*, 829 F.2d 1106, 1110 (Fed.Cir. 1987) (where there was uncontested evidence that employee was receiving medical treatment, regulation required government to grant employee sick leave, whether or not he was incapacitated by his illness); *see also U.S. Dept. of Health and Human Serv., Social Sec. Admin., Kansas City, Missouri Dist. and AFGE, Local 1336*, 37 FLRA 924, 928 (1990) (concluding that the arbitrator's award was contrary to 5 CFR § 630.401(a) to the extent it sustained management's action in denying the grievant the right to use her accumulated sick leave for a medical appointment; concluding the arbitrator's award was deficient to the extent it sustained the AWOL charge attributable to the time the grievant was receiving medical examination or treatment). Section D(7)(a) of the Handbook to TSA MD 1100.63-1 also states that "supervisors shall not deny employee use of accrued sick leave unless there is **specific** knowledge of employee misuse or abuse." (Emphasis added). Absent that "specific" knowledge, a FAM's use of and request to use sick leave must be accepted.

If this improper and out-of-policy harassment continues, we will be required to respond accordingly, including advising congressional contacts that the LAFO is creating an environment wherein the agency is forcing sick FAMs onto aircraft because the FAMs are fearful to request sick leave when reasonably needed. Additionally, we remind you of management's obligations set forth in Section O of TSA MD 1100.63-1, which include advising employees of their eligibility for LWOP under the FMLA. We have polled numerous FAMs about that issue and there is an absence of awareness regarding their entitlement to leave under the FMLA.

Very truly yours,

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