



NATIONAL COUNCIL OF SSA FIELD OPERATIONS LOCALS AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Representing over 27,000 Social Security Employees working in over 1,100 field installations and 36 teleservice centers across the nation, Puerto Rico and Pacific Islands

Date: June 2, 2020

To: James Julian
Office of Labor Management & Employee Relations (OLMER)
6401 Security Blvd.
2170 Annex Blvd.
Baltimore, MD 21235

From: Peter J. Harris, Esq. on behalf of SSA-Council 220, American Federation of Government Employees, AFL-CIO (AFGE)

Re: The Social Security Administration's failure to implement and comply with the CARES ACT, and the monetary limitations set forth in the EPSLA and intentionally creating indebtedness actions.

STATEMENT OF CHARGES

Pursuant to the provisions of Article 24, Section 10 of the SSA/AFGE 2019 CBA, the Union is filing this Grievance on half of all operations employees covered by Council 220, against you and all other associated officials and/or individuals acting as agents on behalf of Social Security Administration (SSA), for failure to timely implement the CARES ACT, and the pay limits under the Emergency Paid Sick Leave Act ("EPSLA").

The Administration's failure to implement the CARES ACT timely intentionally cause bargaining unit employees ("BUE") to incur debts that are required to be repaid to the SSA, which unlawfully discourages BUE participation in the emergency sick leave program.

SSA has also unilaterally, and prematurely, determined that debt waivers will be denied in violation of the required considerations in the debt waiver process, as outlined in the parties CBA in Article 3. The SSA has also failed to bargain this change with the Union as required by Article 4. To date, the SSA has failed to remedy this violation, and as such, continues to violate the CBA and Federal Law.

Specifically, the SSA violated Articles 1, Section 1 and 2, Article, 3, Section 9, Article 4, Section 1 and 2., 5 U.S.C. §7116(a), Department of Labor ("DOL") regulations, the Fair Labor Standards Act ("FLSA"), 5 U.S.C. 5584, and the CARES ACT, any and all other relevant articles, laws, regulations, and past practices not herein specified.

The Union specifically reserves the right to supplement this grievance based upon the discovery of new evidence or information of which it is not presently aware, or is otherwise necessary.

STATEMENT OF THE CASE

Background

The EPSLA (or the “Act”) is part of the Families First Coronavirus Relief Act (“FFCRA”). Pub. L. No. 116-127, Division E (March 18, 2020). The EPSLA provides employees with up to 2 weeks (or up to 80 hours) of paid sick leave for full-time employees (and a prorated number of hours for part-time employees), if the employee is unable to work or telework because the employee:

1. is subject to a government quarantine or isolation order (such as shelter-in-place) for reasons related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
4. is caring for an individual who is under a quarantine or isolation order or has been advised to self-quarantine related to COVID-19;
5. is caring for a child whose school or place of care is closed, or childcare provider is unavailable, for reasons related to COVID-19; or
6. is experiencing other substantially similar conditions, as specified by the Department of Health and Human Services.

Under the Act, if an employee is granted leave for reasons (1), (2) or (3) above, the employee shall receive 100% of his or her salary, up to \$551 per day. Whereas, leave granted for reasons (4), (5) or (6) is capped at 2/3 of an employee’s salary, up to \$200 per day. There are also cumulative dollar limits to the amount an employee can receive under these provisions of the Act.

The DOL administers and enforces EPSLA’s paid leave requirements. A violation of the EPSLA is considered a violation of the minimum wage provisions of the FLSA. See FFCRA, Sec. 5105(a).

The act became effective on April 1, 2020. SSA did NOT implement the act on that date, and to date, still has not complied.

On May 29, 2020, the SSA began notifying employees throughout the Agency about the SSA’s interim plan to allow employees to take leave provided for under the EPSLA, the following talking points were provided to managers to read:

“How to Request EPSL

- *You may choose to wait and use this leave later in the year, up to December 31, when our payroll system has been updated.*
- *However, if you decide to use EPSL now, we will use an interim procedure because currently employees are unable to input this leave type in webTA.*
- *The interim procedure is to post weather and safety leave in webTA for the period you want to use EPSL, but you need to understand that you may be subject to an overpayment and have possible tax implications. You will receive a debt letter from our payroll provider later in the year when our payroll system is updated.*
- *If you need to use the leave now, you must:*
- *Complete an EPSL request form indicating which qualifying reason applies;*
 - ***Sign the form acknowledging that if you elect to use EPSL and your normal rate of pay is higher than the EPSL rate, you are responsible for the debt incurred and that a waiver of indebtedness will not be approved.***
- *You will post Weather and Safety Leave (WSL) (061 -Administrative Weather & Safety Used) to your timesheet in webTA and must add the remark "xx hours of WSL used in lieu of EPSL on xx/xx/xx".*
- *Managers are responsible for manually tracking the number of hours used by each eligible employee and ensuring the employee does not exceed the limit.*
- *Once webTA is updated to allow EPSL, I will email you to let you know that the timekeeper will process a correction to your timesheet for any pay period in which the eligible employee used WSL in lieu of EPSL."*

Prior to being approved for EPSLA employees are required to sign a document acknowledging their understanding that if a debt is incurred due to the SSA's timekeeping errors, the employee is responsible for repayment and a waiver will NOT be approved.

As a result of the SSA'S actions, eligible BUE employees are forced to balance their right to take emergency sick leave during this worldwide pandemic, versus the financial hardship they would face once forced to repay the SSA for intentional errors that are caused through no fault of their own.

Violation

The SSA's failure to comply with EPSLA's daily or cumulative pay limits constitutes a violation of the CBA and federal law. Further, it constitutes a change in conditions of employment for BUE. The SSA did not notify the

Union and provide it with an opportunity to bargain concerning its failure to apply the EPSLA pay limits; and in doing so, the SSA failed to satisfy its bargaining obligations with the Union as required by Article 4 of the CBA.

Article 2, Section 1 of the CBA requires the SSA comply with federal law. Here, the SSA has ignored the daily and aggregate cash value for paid leave plainly established by the Act and the DOL provisions implementing the Act. See FFCRA §§ 5510(5)(A)(ii), (5)(B)(ii); 29 CFR §826.22(c). Therefore, the SSA has also violated Article 2 of the MCBA.

Article 3, Section 9(B) of the CBA requires the SSA to allow BUE to request waivers of overpayments of pay and allowances received in good faith. Here, the SSA has forced BUE to waive these rights in order to receive emergency sick leave in violation of the agreement. The SSA's actions cause BUE financial harm and discourages them from utilizing the benefits available to them under the EPSLA.

Remedies Requested

The Union seeks the following remedies:

- To cease and desist deliberate overpayments to BUE approved for EPSLA leave;
- SSA will waive all overpayments created by their refusal to implement CARES ACT timely and fully;
- To integrate EPSLA's daily and aggregate pay limits into the SSA's timekeeping system;
- Employees will be allowed to use EPSLA leave retroactively back to 04/01/20. In that instance, SSA will restore the employees leave and waive any resulting overpayment. (If employees are converting LWOP/AWOL to leave under the CARES ACT, employees will be made whole, interest and leave accruals).
- An FLRA styled posting indicating SSA violated federal law and committed an Unfair Labor Practice,
- To fully comply with its contractual obligations under Articles 2, 3 and 4 of the CBA and its statutory obligations under 5 U.S.C. §7116(a), 5 U.S.C. §5584, FFCRA §5510, 29 U.S.C. §206, and 29 CFR §826.22(c); and,
- To agree to any and all other remedies appropriate in this matter.
- Reasonable Attorney Fees,
- Penalties as appropriate under the Act.

The Union would like an oral presentation, please contact me at peterlocal3438@yahoo.com to arrange for that.

Thanks!

/s/Peter J. Harris Esq.
Executive Vice President, Council 220