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EXECUTIVE VICE PRESIDENT
AND CHIEF HUMAN RESOURCES OFFICER

UNITED STATES
POSTAL SERVICE

July 26, 2005

VICE PRESIDENTS, AREA OPERATIONS
MANAGER, CAPITAL METRO OPERATIONS

SUBJECT: Procedures for Returning Craft Employees to Work Following FMLA-Protected Absences

The purpose of this memorandum is to clarify the procedures for clearing craft employees to return to work following FMLA-protected absences.

On July 19, 2005, in the case of *Harrell v. U.S. Postal Service*, the United States Court of Appeals for the Seventh Circuit ruled that the Postal Service's return to work provisions in ELM 865 cannot be applied to bargaining unit employees returning from FMLA-protected absences. Instead, the court determined that the Postal Service can only require a short statement from an employee's medical provider to the effect that the employee is fit to return to duty. The court reasoned that "the provisions of the FMLA simply require an employer to rely on the evaluation of the employee's own health care provider" and, therefore, the Postal Service cannot impose its "more burdensome" return to work requirements on its employees. It is important to note that the Postal Service is bound to follow this decision in Indiana, Illinois, and Wisconsin, as these states fall within the area covered by the Seventh Circuit.

The ELM provisions before the court in *Harrell* allowed management, prior to an employee's return to work from a FMLA-protected absence, to request detailed medical information when the absence was caused by a number of specified medical conditions, or if the absence exceeded 21 days. These ELM provisions recently changed. The new ELM provisions authorize return to work clearance when management has a reasonable belief, based upon reliable and objective information, that the employee may be unable to perform the essential functions of his/her position or may pose a direct threat to health or safety. This standard comports with the requirements of the Rehabilitation Act that employers make medical inquiries only when there is a reasonable, objective basis to do so.

The Postal Service will comply with the *Harrell* decision in those facilities located within the three states subject to the court's jurisdiction: Indiana, Illinois, and Wisconsin. Effective immediately, in facilities located in these three states, management may not request any of the information contained in ELM 865.1 *before* a craft employee returns to work from a FMLA-protected absence. In these three states, employees must be allowed to return to work upon presenting a simple statement from their health care providers that they are able to return to work. Once these employees have returned to work, consistent with the Rehabilitation Act, management may request information concerning an employee's fitness for duty, providing management has a reasonable belief, based upon reliable and objective information, that:

- The employee may not be able to perform the essential functions of his/her position, or
- The employee may pose a direct threat to the health or safety of him/herself or others due to that medical condition.

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In all facilities *not* located within Illinois, Indiana, or Wisconsin, continue to apply ELM 865.1 as written. That is, under the circumstances set out in ELM 865.1, management may request medical information prior to allowing a craft employee to return to duty after a FMLA-protected absence.

For those Areas and Districts having facilities located within Illinois, Indiana, and Wisconsin, additional instructions will be issued shortly by the Labor Relations Department at Headquarters.

Anthony J. Vegliante

cc: Mr. Donahoe
Ms. Gibbons
Mr. Harris
Mr. Tulino