

Note may save sick day pay



HELP WANTED
CARRIE MASON-DRAFFEN

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DEAR CARRIE: Can an employer insist on medical documentation for unscheduled sick leave? I am a unionized employee and earn 13 sick days per year. If an employee calls in sick when a shift is understaffed, the managers insist on a doctor's note. When coverage is sufficient, documentation is seldom necessary unless an employee is out for more than three days. The union says that if management asks for a doctor's note when we are understaffed, employees must provide one. If they can't, management will dock their pay for the time off. Is this legal?

Noteworthy?

DEAR NOTEWORTHY: I'm afraid it is. Neither federal nor New York State labor laws require employers to offer paid time off, such as sick days. And when they do, they set the terms.

So an employer can require you to present a doctor's note before agreeing to pay you the sick days, said Carmelo Grimaldi, an employment lawyer and partner at Meltzer, Lippe, Goldstein & Breitstone in Mineola.

Some exceptions apply, though. If a union or employment contract spells out the conditions for paying sick days, the company has to abide by those terms.

And the company can't legally target a race or gender of employees with the demand for a doctor's note, he says. Your company's practices seem to be based on staffing needs rather than discrimination, Grimaldi points out.

"It appears that the employer . . . is merely treating the payment of sick days differently when it is understaffed," he said.

Even though your union rep says the company's action is legal, perhaps for your own satisfaction you should peruse the contract's language on sick days.

DEAR CARRIE: After being laid off, I collected unemployment benefits for six months. They ended when my old company rehired me. But two months later, the owner laid me off

again. He said he didn't need me anymore. I don't buy his reason because he laid me off after a pay dispute. My question is this: Am I eligible for unemployment benefits again? And what if he denies he terminated me? He claimed that when he spoke with another employee. They talked by phone, so no witnesses were around.

Entitled to second round?

DEAR ENTITLED: Whether you can collect benefits again depends on whether you first did so in a 52-week period that is still in effect. You can collect up to 26 weeks (six months) of unemployment benefits in a 52-week period that begins when you first start collecting, according to the New York State Labor Department.

Since you collected benefits for six months, you may have exhausted your entitlement for that 52-week span. But if another six months has passed since you collected benefits, a new 52-week span has begun so you could be eligible again.

As for the owner disputing your claim: If you think you qualify for the benefits, apply for them.

"The reviewers will make a decision based on the information [the employees] provide," said a spokeswoman for the New York State Labor Department. "If the employer disputes the decision, the employee can ask for a hearing."

You could e-mail your manager or the company owner to ask for information about unemployment benefits since you are being let go. Your letter and the manager's response could serve as proof you were laid off. In the future, if you're unlucky enough to be laid off again, ask for a letter confirming you were let go and why.

For more information call the Labor Department's unemployment benefits telephone claims center at 888-209-8124.

Carrie Mason-Draffen welcomes workplace questions, though she cannot respond to every query. Some may be edited for length and clarity. Call her with your questions at 631-843-2450, or send e-mail to carrie.draffen@newsday.com. Send a letter to Dear Help Wanted, Business Desk, Newsday, 235 Pinelawn Rd., Melville, NY 11747-4250. Your name and number won't be published.

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NEWSDAY, SUNDAY, FEBRUARY 24, 2008