

The Professionals Guild of Ohio



PGO UNION NEWS

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H1N1, the Flu and You

*By Amelia Woodward, Esq.,
PGO Field Representative*

Now that flu season is upon us, it is important to know your rights at work if you, or someone in your household, comes down with H1N1 or the flu. Many employers are asking employees to stay home if they are sick with the flu or someone in their household contracts the H1N1 virus. But when is an illness covered leave under FMLA? What about the Americans with Disabilities Act, will that protect you in the event you get sick with the flu or, worse, H1N1?

First, review your contract. Your contract's provisions on sick leave will give you some guidance about what to do when you or someone in your household gets sick, such as how to call in sick and if you need to turn in a doctor's note when you return to work. Also, review your sick leave balance periodically to verify you are being credited the correct amount of sick leave and that there is enough sick leave available to you in case you do get sick with the flu. Check your contract for any difference in how FMLA related sick leave and non-FMLA related sick leave are administered. Depending on the severity of your illness, you should follow the provisions in your

contract regarding how to use your sick leave.

According to the U.S. Department of Labor (DOL), Wage and Hour Division, there have not been changes to how FMLA is currently applied because of the flu epidemic and H1N1. However, the federal government is reviewing the law and how it affects employees during a severe flu pandemic. Currently only "serious health conditions" are covered under FMLA. The flu is not a serious health condition unless complications arise because of the flu or the H1N1 virus. Complications that may arise because of the flu are any illness-related problems that become a serious health condition as defined by the FMLA.

You should be aware that a serious health condition under FMLA is "any illness...that involves inpatient care in a hospital," or requires "continuing treatment by a health care provider." The DOL states that if a person is incapacitated with the flu for more than three consecutive calendar days and gets continuing treatment by a health care provider, FMLA will cover that illness.

There may be questions about what FMLA means about "treatment." The DOL says that treatment consists of being examined

for a serious health condition by a health care provider, evaluating the condition, and getting treatment in an effort to improve ones health. Being advised by a doctor to stay and home, in bed and drink plenty of fluids is not treatment for the purposes of FMLA coverage.

The Americans with Disabilities Act (ADA) may also be important in cases where a flu epidemic is circulating. Under the ADA, if an ADA covered employer believes an employee is showing flu-like symptoms and a flu pandemic (a global epidemic) has been issued, the employer can send employees home without violating the ADA. The Centers for Disease Control has stated that the employer will not violate the ADA because sending people home who display flu like symptoms which, if the illness is serious enough, could pose a direct threat to others during a flu pandemic and is not a disability-related action during the period of a pandemic. However, there is no federal law mandating that employers who send employees home during a flu epidemic provide the employee with their regular rate of pay for any hours not worked.

Author's note: The above mentioned laws are relatively complicated. If you have questions about your rights under any of these laws or how they relate to your contract, please call the PGO, or an attorney.

SERB Update

By John Campbell-Orde, Esq., PGO Field Representative

As you may know, the State Employment Relations Board (SERB) is the agency that regulates public sector unions and employers in Ohio. SERB is responsible for enforcing Ohio's collective bargaining law. As part of that function, each year SERB issues opinions interpreting what the collective bargaining law means. With 2009 drawing to a close, PGO thought it appropriate to review some of SERB's new opinions interpreting the collective bargaining law. This first report will be followed by more updates in subsequent issues of the *PGO Union News*.

In *In re Tuscarawas Township Board of Trustees* SERB addressed several questions arising from the collective bargaining law. The employer was charged with violating the collective bargaining law (i.e. committing an unfair labor practice) by refusing to process

to arbitration two grievances filed by the union. When the employer discharged two employees, the union filed grievances challenging the discharges. After the employer recognized that the grievances had been filed and stated that it would process them, the union appealed both grievances to arbitration in accordance with the collective bargaining agreement. The employer, however, refused to participate in the arbitrations. The employer argued that because the union had merged with another union local, the union no longer represented the employees who had been discharged, and therefore the employer was not required to arbitrate the grievances.

SERB concluded that the employer had violated the collective bargaining law by refusing to process the grievances to arbitration. The collective bargaining law makes it an unfair labor practice for an employer to engage in a pattern or practice of refusing to process grievances, including refusing to participate in arbitrations arising from grievances. SERB rejected the employer's argument that by merging with another union local, the union no longer represented the discharged employees or the other employees in the bargaining unit.

Next, SERB addressed whether the employer had committed an unfair labor practice by refusing to participate in the arbitrations over the two grievances. First, SERB concluded that the employer had not engaged in a *pattern* of refusing to process grievances to arbitration. The employer had refused to process to arbitration only two grievances, which had been filed at the same time. Therefore, SERB concluded that there was no *pattern* of failing to process grievances to arbitration. SERB then considered whether the employer had engaged in a *practice* of refusing to process grievances to arbitration.

SERB concluded that the employer had committed an unfair labor practice by engaging in a *practice* of not processing grievances to arbitration. SERB reasoned that although only two grievances were involved, the employer had engaged in a *practice* of refusing to process grievances to arbitration because the employer had willfully refused to process the grievances based on its continued and inappropriate refusal to recognize the union as representing the bargaining unit after the merger between union locals. Having found that the employer committed an unfair labor practice, SERB ordered the employer to process the two grievances to arbitration.

Voice of a PGO Union Leader

By Amelia Woodward, Esq., PGO Field Representative

Dan Ehle is our featured leader this month. Dan has been a Corrections Officer at the Lucas County Correctional Treatment Facility for five years. He was recently elected President of Council 15 and he is also the Secretary of the PGO Executive Board. The Lucas County Correctional Treatment Facility is unique in Ohio because it is the only facility of its kind recognized by SERB as a public employer that is required to bargain with a union representing its employees. PGO won official bargaining rights for Council 15 a year ago after a lengthy battle at SERB.

What did you do before you started with Lucas County CTF?

I went to University of Toledo for Engineering, but when I saw a job posted for a Corrections Officer at the Lucas County Correctional Treatment Facility, I decided to switch majors so I could work while finishing a Criminal Justice degree.

What is the CTF and what is your favorite part about being a Corrections Officer?

The CTF is a treatment facility that is run like a jail, although we don't usually have anyone sentenced here for violent offenses. The best thing about my job is that I do get to help people and by helping them, I do see people succeed after they leave the CTF. I do see individuals who spent some time here, leave and do the right thing after they leave.

As Council President, what struggles are you faced with on a day to day basis?

I don't generally have too many problems on a day to day basis. For the most part we all get along well, and we are lucky enough to have a good working relationship with management. Most of the time, we have no problems at all. I'd say that just keeping people informed about what is going on in the workplace is a bit of a challenge. As a Corrections Officer, we react to things that happen on a daily basis, which is the same approach we take when things happen in the workplace that needs the assistance of the union.



PGO Secretary and Council 15 President Dan Ehle

What would you tell someone who is not unionized about why they should be in a Union?

Everybody should have a voice in the workplace. Sometimes people don't have a voice to speak up about matters at work. A union provides that voice for people in the workplace.

What are the biggest advantages to union membership in your opinion?

I think the protection afforded by having a union is a big advantage to being a union member. It is also good to know that there are people with the union who can help you at all times. It definitely provides some relief knowing there is someone to help you when things at work aren't going well. In a union, you're never really alone when facing an issue at work.

How can the PGO improve in helping you in your role as council President?

I think the PGO has done a good job. If there is anything I need help with, the PGO is always there to assist me. There isn't anything more to ask for because the PGO is doing what they are supposed to be doing.

What activities are you involved in outside of the Union and your job?

I like to work out, and I coach 8th grade football. We just finished up our season at Arbor Hills. I am also a huge Cleveland Browns fan; I always have

PGO Councils Elect Officers

PGO Council 14—Aurora Academy

Please join us in welcoming Council 14, Aurora Academy's new local president and vice president. **Julianne Morper** was elected president and **Brittany Thomas** was elected vice president. PGO staff are looking forward to working with Julianne and Brittany. Special thanks to Aurora Academy's outgoing officers, former president **Beth Nestor** and former vice president **Cassy Johnson**, for their service.

PGO Council 13-Lucas County Children Services

There have also been some changes in the local leadership at PGO Council 13, Lucas County Children Services. Former vice president, **Joe DeStazio** has been elected president and former president **Dave Rudebock** was chosen as one of four council vice presidents. Council 13 also has a new secretary electing **Lucretia Wainright** to replace **Karen Keaton**. The other officers include: **Lynn Pinkelman**, executive vice president; **Michael Hiltman**, services vice president; **Heidi Middlebrooks**, clerical vice president; and, **Nancy Reineke**, treasurer.

Congratulations to all newly elected officers in all of our councils and thank you so much for volunteering to work for your Union.



"A Union job!"



PGO Office Holiday Schedule

The PGO office in Columbus will be closed December 24th and 25th in observance of the Christmas Holiday. The office will also be closed on December 31st and January 1st in observance of the New Year Holiday.

2010 PGO Executive Board Meetings Tentatively Scheduled

Quarterly meetings of the PGO Executive Board have been tentatively scheduled for January 23rd at the PGO office in Columbus and April 17th at the Montgomery County Children Services office in Dayton. The July 17th and October 16th meetings will be held at the Lucas County Children Services office in Toledo. All meetings are scheduled to begin at 10:30 a.m. All meeting dates, times and locations are tentative and subject to change by the Executive Board.

**HAVE A
MERRY
CHRISTMAS
AND A
HAPPY NEW
YEAR!**

