

Policies regarding employees coming to work sick

Information compiled April 17, 2006

**The Question:** This transit agency is concerned with employees coming to work sick and spreading illnesses to other employees and passengers. Do you have a policy that allows a supervisor to relieve an operator if the operator appears too sick to be at work? If you have a policy, can you please attach a copy in your reply? If not, please let us know how you handle such situations.

**Ben Franklin Transit** says... We do not have such a policy. We have too many employees out on FML to worry about sending more home.

**Clallam Transit** says... We do not have a written policy concerning sick employees. If an operator did appear to be too sick to be safe, a supervisor would speak with them and recommend that they go home.

**Community Transit** says... We don't have a formal policy on this, but if an employee seems ill and there is a safety concern, we encourage them to go "sick at the window" and take the day off.

**CUBS** says... This had not been a problem.

**Everett Transit** says... We do not have a policy regarding this issue. However, our supervisors have the authority to keep a driver off the road for any reason, including driver illness. This issue has not come up, but if a driver is "too" sick to drive, they could be considered a safety concern and not allowed to drive.

**Grays Harbor Transit** says... We do not have a policy for this situation, nor do we have this type of problem.

**Intercity Transit** says... We have the ability by contract with the Amalgamated Transit Union to send Operators to a physician to determine if they are fit for duty. Usually the dispatcher will observe the Operator in some distress and send them home sick. If they wanted to challenge the decision; they could do so through the grievance procedure. Non-represented employees can be sent home as we see fit.

**Island Transit** says... We don't have one.

**Jefferson Transit** says... That would probably fall under "fit for duty" test. Our policy is general in nature in that if a driver is deemed to be unfit to drive they are relieved. Having a cold or minor

flu may not preclude an individual, but a fever of 101 will generally make an employee incapable of doing their job in a safe manner.

**Kitsap Transit** says... We have actually been thinking about this issue, although I haven't responded yet. We are currently rewriting our employee handbook and we may address the dilemma. Right now, we don't have any written policy about the issue, but we see that the concern will increase as the fear of a major flu epidemic increases.

Two things give us pause:

1. The appearance of illness symptoms by an employee may tempt a supervisor to take action based on incorrect perceptions. It would be similar to making employment decisions based on a perceived disability, which would violate current ADA law. Court rulings have indicated that the employee and not the employer decides whether or not the employee is well enough to work. Ultimately, only a doctor can determine whether an illness is serious enough to prevent an employee from doing the job.
2. The other concern deals with pay. If an employee does not want to use leave time, if there is General Leave, or is out of sick leave, the decision by the supervisor to send a person home has economic consequences. The only solid ground for the supervisor to stand on would be if the employee obviously can't do the job.

Another avenue employers have is through the FTA Drug and Alcohol regulations covering Reasonable Suspicion Testing. Under those regulations, a supervisor can legitimately order an employee to leave work in order to be tested for drugs and alcohol if the employee shows documentable and contemporaneous signs of impairment. We know from the national statistics that fewer than 10% of Reasonable Suspicion testing results are positive. This means that the reason for being ordered to test were other than drugs or alcohol. Most probably the reason was illness, lack of sleep, or stress. So there are ways to relieve employees from work, with pay, if they appear unable to do the assigned work.

We will probably not include any language in our handbook about this issue, since we are already covered by using the requirement that employees actually perform work, and the FTA rules regarding Reasonable Suspicion testing.

**Mason Transit** says... We do not have a formal policy on pulling operators. However, we have done so in the past and our Operations Manager and Road Supervisor use their discretion in doing so. If you get response on this, I would like to see any policies you receive also! Thank you!

**Pacific Transit** says... We do not have a policy and we really haven't had the situation arise.

**Spokane Transit** says... I've reviewed our policies and we do not have one regarding sick employees coming to work.

**Twin Transit** says... We don't have any official policy on this.

**Whatcom Transit** says... We do allow supervisors and dispatchers who make "fit-for-duty" calls to send operators who are sick home. This actually applies throughout the organization. We don't have a written policy specifically addressing this.

Section: <b>Work Standards</b> Policy #: <b>6.14, Fitness for Duty</b> <b>And Health Requirements</b>	Effective/ <b>Revision</b> Date: 11/30/05
	Union Notification Date: 10/01/05
	Approval:
	_____
	General Manager <span style="float: right;">Date</span>

Throughout employment, employees are expected to maintain physical and mental health that allows satisfactory completion of their normal job duties and responsibilities. Therefore, WTA may require employees to undergo medical or psychological examinations or drug or alcohol testing. Justification for such examinations or tests shall be related to the employee's job performance or observed reasonable cause. Except in emergencies requiring immediate medical attention, any employee required to undergo a medical or psychological examination will be given at least 48 hours' notice. Failure on the part of any employee to appear for a scheduled medical or psychological examination or a drug or alcohol test will result in disciplinary action, up to and including termination of employment.

All WTA-required medical and psychological examinations performed by a physician selected by WTA will be paid for in full by WTA. **Only job-related information and reports from these WTA-paid and -mandated examinations will be released to WTA.** The WTA shall maintain all medical records in a confidential medical file and access will be limited to those with a business need-to-know. For more details on medical file access, see Policy 2.03, Employee Personnel Files.

Employees whose jobs require a Commercial Driver's License must maintain a current Department of Transportation (DOT) medical certification. Employees must provide WTA with a copy of the Medical Examiner's Certificate and may wish to have the entire physical report placed in their confidential medical file. WTA's medical insurance will cover these physicals if they are included as part of an annual wellness examination. If employees need or wish to obtain a DOT physical outside of their regular annual wellness check, WTA will pay for the examination in full, *if it is performed by WTA's occupational healthcare provider.* **The occupational healthcare provider will not release the results of these tests to WTA without the employee's written authorization;** however, employees may wish to have the results of these tests placed in their confidential medical file. The Human Resources Department can provide information on provider options. Employees are responsible for scheduling their own DOT physicals. DOT physicals shall not be conducted on WTA time; employees should schedule them on days off or be prepared to take paid leave or leave-without-pay (if available) for the appointment.