
To: Board of Trustees' Academic and Student Affairs Committee
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From: Dr. Michael Dowd, Faculty Senate President

Copies: Joan A. Stasa, Assistant to the President for Board Affairs
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Subject: Faculty Senate Executive Committee's December Report to the Board of Trustees

I wish to bring to the Board's attention a university policy that was discussed recently at your Faculty Senate. The name of the policy is "*CWA and classified/non union absenteeism*" (#3364-25-31), though it is more commonly known as the "*Staff Absence Policy*." I recognize that this is a negotiated policy and that Faculty Senate does not involve itself in such negotiations. However, I am not raising a *labor relation* issue. Instead, I bring this policy to the Board's attention for three reasons. First, the *Staff Absence Policy* has created a significant *gender inequity issue* across our university. Second, discussion of this policy began with the university's Women's Leadership Forum but has become a concern of the Faculty Senate because this policy is having a significant negative impact on the operations of both academic and non-academic units. Third, I want to point out what I consider to be a striking conflict of interest with the implementation of this policy. Although I am not expecting explicit action from the committee today, I ask that members of the Academic and Student Affairs Committee read the attached document attentively – with the hope that a reading of the *Staff Absence Policy* will prompt its reconsideration.

The overriding reason I have brought this policy to the Board's attention is the same reason I brought it to the Faculty Senate for discussion: in my opinion, this policy is archaic, unfair, and punitive.

The discussion at Faculty Senate was based a White Paper written by the Women's Leadership Forum (WLF). For new Board members, please note that the WLF has been formally recognized by the UT Administration to promote the development of new policies, practices, research, and procedures to ensure and enhance gender equity. I have attached a copy of that paper to this report.

The White Paper describes the study the WLF conducted, defines the existing problem, and describes the impact of the *Staff Absence Policy* (with examples and evidence). In addition, the White Paper describes the incongruity with other institutions and current workplace practices and the cost of a punitive absence policy. Note some of the important points contained in that White Paper:

- ≠ The current policy “penalizes staff members for taking earned sick leave time by assigning ‘points’ for time taken.”¹
- ≠ Depending on the labor organization, either 12 or 16 “points” results in termination of employment.
- ≠ Again, termination of employment can result for simply taking sick time that employees have already earned through their labor contract.

¹ “*White Paper on the University of Toledo's Staff Absence Policy*,” The University of Toledo Women's Leadership Forum, p. 1. Subsequent references to this White Paper in this report will be denoted simply as the “WLF White Paper.” Page references to that White Paper in this report refer to the document attached to this report.

To repeat, I am not raising a *labor relation* issue. In this case, consider the principle of the policy v. the actual impact of implementation. All policies are intended to be applied equally to all relevant individuals. Yet the application and enforcement of the *Staff Absence Policy* has impacted female staff members more adversely than their male colleagues. The WLF's White Paper notes that on the Main Campus, 62% of staff members subject to corrective action under this “point system” were female; on the Health Science Campus, 78% of staff members subject to such corrective action were female (WLF White Paper, p. 4). It is clear that though applied equally to all in principle this policy, when enforced, adversely affects women more than men.

While percentages of 62% and 78% are striking, and do provide important information, basic statistics teaches us to look beyond such percentages – for the information content generating those percentages. In this case, why is this policy having a more adverse impact on women than men? In part, it is the nature, structure, and enforcement of this policy. And, in part, it is the role women play in our society. As the WLF's White Paper states, though this policy “applies equally to all, its impact is felt much more by women because women are – and will remain for the foreseeable future – the primary care givers in our society” (WLF White Paper, p. 2). It continues: “Not only do [women] have to take sick leave for their own illnesses, but also to care for sick children, spouses, and parents and to take family members to doctor appointments” (WLF White Paper, p. 2). With every such instance, even though the employee has earned sick leave, UT strikes 1 or 2 points against these primary care givers – simply because the *Staff Absence Policy* fails to make reasonable accommodations for our female employees and their familial responsibilities.

The impact of this policy is that UT's female employees, as primary care givers, cannot take sick days to care for themselves, their children, their parents, etc. – even though they have earned such sick days – because this policy will accrue points intended on termination of their employment. So the choice they face is to either care for their loved-ones and risk losing their job, or going to work while risking the health and safety of their family members. As this choice is currently forced upon our staff members, how can the *Staff Absence Policy* be defended as assisting the University of Toledo in achieving its mission of improving the Human Condition? Is UT's Mission Statement for public consumption only, but not to be applied in practice? Further, UT's first core value is “compassion, professionalism and respect” and our sixth is “wellness, healing and safety.”² Can the *Staff Absence Policy* be defended as being consistent with the University of Toledo's Core Values?

As mentioned earlier, the WLF has been formally recognized by the UT Administration to promote the development of new policies, practices, and procedures to ensure gender equity at UT. With that in mind, know that the Women's Leadership Forum states that the *Staff Absence Policy*:

≠ “adversely impacts women and creates a climate that is hostile, unwelcoming, and unnecessarily stressful” (WLF White Paper, p. 2), and

≠ “contributes to making UT a female--unfriendly place to work” (WLF White Paper, p. 1).

I believe that there will always be good policies and bad policies – and policies with unintended consequences. Perhaps the *Staff Absence Policy* is a policy with consequences neither the university nor staff organizations anticipated. Because this policy is having a significant negative impact on the Human Condition of so many of our employees – and is inconsistent with UT's Core Values – I ask, in the most sincere language, that each member of

² <http://www.utoledo.edu/campus/about/mission.html>.

the Board of Trustees read the White Paper from the Women's Leadership Forum. (Again, that document has been attached to this report.)

The last point I will make about this policy deals with the conflict of interest I mentioned earlier. Before I get to that, I ask for latitude from the Board in my intentional vagueness for not "naming names" during this meeting – as there is no benefit from such specificity in an open meeting. I will provide such details in private if desired.

Regarding the *Staff Absence Policy*, if an employee wishes to appeal a "point" being struck against her or him for sick leave, that employee would make such an appeal to a "specific university administrator" in a "specific university office." It appears to me that a substantial conflict of interest exists when the same "specific university administrator" charged with adjudicating such appeals has additional duties in a different university office charged with strict enforcement of the same policy.

As this White Paper was discussed at the Faculty Senate, this conflict of interest was on full display when that "specific university administrator" responded to issues raised by both Senators and the representative of the WLF. That "specific university administrator" could not provide clear, definitive, or satisfactory answers to most questions asked. This is not a reflection of that "specific university administrator" – in most cases that person had to give two, sometimes conflicting answers to each question asked. To be clear, I am not criticizing that "specific university administrator." How can one person provide one answer to a question when that person is expected to represent two different university positions?

This conflict of interest has produced two results. First, it exacerbates the unfriendly, unwelcoming, and hostile environment for UT women created by the *Staff Absence Policy*. Second, this conflict of interest sends a very clear signal to all female employees regarding the treatment they can expect from this administration. Given this conflict of interest, a female staff member wishing to appeal a decision to that "specific university administrator" knows that the University of Toledo has constructed an administrative environment by which an impartial hearing of such appeals is not possible.

This conflict of interest has been brought to the attention of senior administrators. To my knowledge, no actions have been taken to correct this situation or even investigate it.

The Women's Leadership Forum has tried on many occasions to engage senior administrators about the impact the *Staff Absence Policy* is having on female employees. So far, administrators simply dismiss such concerns as a *labor relation* issue. Although negotiated, administrators are unwilling to admit that the impact of the *Staff Absence Policy* has extended far beyond *labor relations*. That is, the administration refuses to acknowledge that the *Staff Absence Policy* has created significant gender inequity issues, is having a negative impact on the operations of both academic and non-academic units, and presents a substantial conflict of interest which precludes impartial hearings.

If one of our policies *damages* the Human Condition, or is *inconsistent* with our Core Values, shouldn't the administration work with staff labor organizations to set right that policy? Or is UT's Mission Statement and our Core Values just puffery? As the administration is unwilling to have such discussions, only the Board of Trustees can call for a re-examination/reconsideration of the *Staff Absence Policy*. In the strongest language possible, I encourage the Board to do so.

I appreciate very much the opportunity the Board has given me to express the concerns I have received from faculty members, students, staff members, alumni, and community members. I welcome your comments and questions about this issues I raised today.

White Paper on the University of Toledo's Staff Absence Policy

Women's Leadership Forum and Women's Leadership Forum Council

Discussed at the
University of Toledo Faculty Senate
November 6, 2012

Executive Summary

This white paper examines the gender impact of the University of Toledo's current absence policy that penalizes staff members for taking earned sick leave time by assigning "points" for time taken. Using statistical and anecdotal evidence, the paper outlines how a policy meant to apply equally to all contributes to making UT a female-unfriendly place to work.

Justification for Study

The Women's Leadership Forum began in 2004 as an informal group of UT women in every employment sector on the main campus. In 2005, the group was formally recognized by the president and the provost, who appointed the first leadership body. In 2008, the WLF invited women from the Health Science Campus to join, and elections for representatives from that campus were held in 2009. The mission of the Women's Leadership Forum is: to initiate research on the status of women at the University of Toledo, offer insight and recommendations to the president and the university administrative leadership, and provide oversight and publicity for implementation of policies that will ensure the full and equal participation for women students, faculty, and staff in all aspect of life and leadership at the University of Toledo, including issues of access, equity, and success. The Council (the leadership group of the WLF) promotes the development of new policies, practices, research, and procedures to ensure and enhance gender equity.

In keeping with this mission, the WLF presents this white paper examining an issue that has repeatedly been brought forward in our meetings as well as in private conversations with affected individuals—the punitive absence policy that applies to staff members, both on the Health Science Campus and the Main Campus. Because an overwhelming majority of staff are female (73 percent, according to 2009 statistics), any personnel policy will affect women more than men. But in this case, because of the nature of the policy and the role women play in society, the WLF believes it impacts female employees more profoundly and adversely than male employees.

Problem Defined

This policy, which assigns "points" to staff members when they take sick leave, was a part of the contract of the Health Science Campus AFSCME workers when the merger between MUO and UT occurred in 2006. Since that time, it has also been applied to CWA workers on the main campus as an outcome of contract negotiations.

AFSCME workers can accumulate an unlimited amount of sick leave, and earn 4.6 hours for 80 hours of work, or 15 days per year. CWA workers receive the same amount, and accumulation is also unlimited. Such generous sick leave is appropriate for an institution where health care is one of its primary missions. However, while accumulation of sick leave is unlimited, in reality the ability to actually use this sick leave is severely limited. If an employee takes two hours or more of sick time, or is more than two hours late reporting for work (even for doctors' appointments where physician delays result in arriving late for work), he or she is assessed one "point." For AFSCME workers, the accumulation of 12 "points" leads to termination from employment. For CWA workers, 16 "points" results in termination.

The WLF believes this policy adversely impacts women and creates a climate that is hostile, unwelcoming, and unnecessarily stressful. While it applies equally to all, its impact is felt much more by women because women are—and will remain for the foreseeable future—the primary care givers in our society. Not only do they have to take sick leave for their own illnesses, but also to care for sick children, spouses, and parents and to take family members to doctor appointments. Missing 12 or 16 days in a year because of these responsibilities, and losing one's job as a result, punishes women who are trying to fulfill society's defined role for them as wives, mothers, and daughters.

Both union contracts allow for exemptions from the policy for Family and Medical Leave Act approved leave. However, in reading the university's policy on FMLA, it appears to only apply to chronic illnesses. If an employee or a family member has a chronic condition that is certified by a doctor, the employee can ask that their sick leave be exempted from being assessed punitive points. However, the kinds of sicknesses common among children are not chronic conditions, but rather are just part of life, especially for younger children. FMLA does not cover a cold one week, the stomach flu the next, and a playground injury the next, all potentially multiplied by two or three children in the family. The WLF has also heard of instances where doctors charge for completing FMLA paperwork, which may prohibit staff at the bottom of the pay levels from being able to get such exemptions.

The WLF has repeatedly asked for clarification on how the FMLA policy covers non-chronic illnesses, but its requests have gone unanswered. The university's FMLA form defines "multiple treatments (non-chronic conditions)" as "any period of absence to receive multiple treatments by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis)." Such definition seems to leave out the common cold and flu.

Impact of the Policy

This absence policy adversely impacts women every day, and makes it more difficult for female workers to be dedicated, focused, and effective. It is easy to envision such common situations. For example: A young child enrolled in daycare comes down with a cold. The daycare provider requires that the child stay home to keep from infecting others. The female employee—the child's mother—must leave work at 2 p.m. and pick up the sick child. She is assessed one point because of the absence. The child is still sick on the next day, and she must again stay home. She is assessed another point. On the third day, the child is better and is allowed to return to daycare, but only after the child is assessed by a doctor. The earliest doctor's appointment that can be arranged on such a short notice is 10 a.m. Since the employee will now be more than two hours late, she is assessed another point. In three days, she has assessed one-quarter of the points that will get her terminated if she is an AFSCME member.

But it does not end there. The child who was sick has now infected another of the employee's children, who must now stay home. Point number 4 is assessed. The employee is now one-third of the way to being terminated. And this is just for one illness. Multiply this by similar circumstances that occur commonly throughout the year (especially when children attend daycare), and the difficulties for the employee are clear. She can either come to

work and leave her sick children in the care of others, who may or may not be available or capable, or she can be in danger of losing her job. And this example does not even take into account what happens if the employee comes down with the same illness as her children. More points assessed.

Examples and Evidence

Anecdotal evidence suggests that the sick leave policy is not uniformly applied, and is a significant hardship for female employees. Below are actual descriptions of situations that UT employees have experienced regarding the leave policy.

- From an employee with a male supervisor: “My kids were sick. I called my supervisor and told him I was not coming in because my kids were sick. He stated, ‘You are doing the right thing by staying home with sick kids, that’s a woman’s place is to be home and a man’s place is to be working.’ My supervisor stated he hoped the kids feel better, and if not, ‘maybe you should think about quitting. This would give me an opportunity to hire a male. I know they come to work because they don’t stay home with sick kid.’”
- From a supervisor: “A supervisor has to do what needs to be done, to run the department. They do not like handing out points. They have a boss who expects them to do a supervisory job.... The majority of points are accumulated for lateness and for calling off for sick children. The supervisor can understand calling off for sick kids. If the employee is off 3 consecutive days they might only get 2 points instead of 3. You can not keep calling off for sick kids and expect me to drop a point every time.
- From a perfect attendance employee: “The employee has perfect attendance. They have made employee of the month, they have attended all the perfect attendance luncheons, and was able to cash out their time at the end of the year. This particular employee called off on a weekend. The supervisor responded by saying, you know if you call in you will accumulate weekend points and you will have to make up another weekend in order to drop one day. The employee stated, ‘Please give me a break I am a perfect employee.’ The supervisor response was, ‘I am not a judge and there is no jury here. You have the same punishment as my other employees in the department. I don’t make the rules, I follow them.’”
- An employee forced to obtain an FMLA: “I was off because my daughter was sick. It was a total of 4 days which included a weekend call off. My husband was supposed to watch her over the weekend but something came up and he could not stay. This gave me a total of 6 points, 2 for two days and 4 points for the weekend. I already had 3 previous points. This is a total of 9 points. When I reach 12 points, I would be terminated. I went to my daughter’s pediatrician on Monday and obtained an FMLA to cover me for the days I called off. Luckily I was able to obtain the FMLA. My daughter has a history of bowel syndrome and from time to time it gives her problems. She has been doing pretty well with it, so I didn’t take out an FMLA. I now have an FMLA.”

In addition to anecdotal evidence, there is the example offered last year. When the H1N1 epidemic struck, the university administration suspended the medical leave policy for students. This suspension granted students leniency for missing classes, and protected them by stating that faculty should hold students harmless for missed classes because of illness. This not only protected the students’ academic standing, but it undoubtedly helped to stop the spread of the virus among the student population. This lenient exemption from the university’s policy was appropriate, and in keeping with the stated mission of the institution as a student-centered university.

But ironically, the administration did not make a similar allowance for its own staff employees. The WLF believes the university should have demonstrated its concern about the spread of the dangerous pandemic by granting an exemption from the point system for those staff who were infected or impacted by it (such as when local schools were closed because of the outbreak). It is inappropriate to have sick employees—particularly those who are treating patients in the medical center who may be vulnerable to such viruses—reporting for work. The failure to suspend the absence policy during

the pandemic was also contrary to recommendations issued by the Centers for Disease Control, which urged all employers nationwide to relax their absence policies in order to control the spread of this disease, particularly requesting businesses “to develop non-punitive leave policies.” A *New York Times* article on the problem of workers dealing with H1N1 without adequate sick leave noted another business that discourages workers from taking sick leave by assigning demerit points for time taken — Wal-Mart.

In addition to this anecdotal evidence, there is clear statistical evidence of the discriminatory impact of this policy on women. On the main campus, where the policy has been in place for two years, data provided by Human Resources showed that 62 percent of CWA employees subject to corrective action (defined as coaching, written warnings, pre-discharge, or termination) were female, 36 percent were male, and 2 percent were unidentified by gender. Two years of data are insufficient to provide a meaningful analysis for the main campus, and the WLF will continue to monitor this data in the future. On the Health Science Campus, five years of data for AFSCME workers showed that 78 percent were likely females (based upon the gender generally associated with the first names of the employees), 14 percent were likely males, and 8 percent could not be determined based upon the first name. The WLF was unable to use data that clearly specified gender because the Human Resources department does not track the gender of employees subject to corrective action on the Health Science Campus.

Incongruity with Other Institutions and Current Workplace Practices

The University of Toledo's sick leave policy is uncommon among Ohio state universities. An examination of the sick leave policies at Bowling Green State University, Cleveland State University, The Ohio State University, Youngstown State University, Akron University, and the University of Cincinnati showed no similar policies in place.

The WLF understands the need to adequately staff the offices of the university, particularly those on the Health Science Campus where unexpected absences can impact patient care. But the possibility of those on the front

lines of patient care coming to work sick because they are near termination surely is not the answer. If employees have displayed patterns of sick leave abuse, then those employees should be counseled individually, and some means for addressing abuse should be developed. This could be an important point of discussion in the next contract talks between the administration and the unions.

But a policy that penalizes employees for being sick or caring for the needs of sick family members is not appropriate for the 21st century workplace. The application of technology that allows employees to telecommute would be one way that UT could adapt its employee policies to allow for the maximum flexibility. Some companies — including the federal government — require that employees have the capability to work from home. While there are some positions where telecommuting is not feasible, it would make sense for UT to investigate scenarios where such an accommodation would be possible.

The Cost of a Punitive Absence Policy

What is the cost of such an absence policy? It costs the university capable and trained employees who are terminated because of circumstances beyond their control. It costs in employee commitment to the institution. It costs in poor morale. It may result in the spread of disease to other employees, or more critically, to medical center patients who are most vulnerable.

But the WLF believes the primary cost is borne by the female staff members on both campuses who must constantly juggle their work responsibilities with their societal responsibilities. Female staff members should not have to choose between caring for their sick children, spouses, or parents, or losing their jobs. The WLF believes this sick leave policy is an example of an institutional policy that applies equally to all, but its unintended consequence is that it makes the University of Toledo a female-unfriendly place to work.

In keeping with its mission, the WLF respectfully asks the administration to reconsider this policy as a demonstration of the university's commitment to improving the work environment for all its employees.