



COMMUNITY & PUBLIC SECTOR UNION ♦ SPSF GROUP NSW BRANCH

160 Clarence Street, Sydney NSW
Email: psa@psa.asn.au
State Branch Secretary: John Cahill

GPO Box 3365, Sydney NSW 2001
Internet: <http://www.psa.labor.net.au>

Phone: (02) 9220 0900 Fax: (02) 9262 1623
ABN: 11 681 811 732
State Branch President: Sue Walsh

AH:ko A12/1283

IN REPLY
PLEASE QUOTE
FILE NUMBER:

4 October 2012

Mr Mark Phillip
Director, Industrial Relations
NSW Department of Education and Training
GPO Box 33
SYDNEY NSW 2000

Dear Mr Phillip

Re: Circular IRC12/18 - ADVICE REGARDING PARTICIPATION BY TAFE NSW EMPLOYEES INDUSTRIAL ACTION - MONDAY 8 OCTOBER 2012

The CPSU wrote to the Department on 24 September 2012 regarding this matter.

That letter raised issues about the accuracy of the information contained in the advice and identifying concerns about the lawfulness of the direction regarding leave for Monday 8 October 2012.

The CPSU is now aware of union members being denied access to annual leave, and other forms of leave, including flex leave, for Monday 8 October 2012 on the basis of the advice contained in Circular IRC12/18.

Relevantly the advice states:

"Applications for recreation or extended leave, flex time or adjusted core times where they coincide with the stop work meeting on 8 October 2012 should not be approved except in exceptional emergency circumstances.

Employees should be informed that a medical certificate must be produced to support applications for sick/carers leave in relation to the period during which industrial action is taken"

Further Institute and College managers have emailed TAFE employees stating, among other things:

"We are advised that industrial action on this day will be deemed to be an unauthorised absence of employees of TAFE NSW. Unauthorised absences will be unpaid and time in lieu credit and accrued flexitime cannot be used to cover unauthorised absences. Applications for recreation or extended leave, flex time or adjusted core times where they coincide with the stop work meeting on 8 October 2012 should not be approved except in emergency circumstances. Employees should be informed that a medical certificate must be produced to support applications for sick/carers leave in relation to the period during which industrial action is taken."

The Department appears to have taken the view that attendance by a TAFE employee at any of the PSA/CPSU organised meetings on Monday 8 October 2012 will constitute industrial action.

It would also appear that, based on this advice, any TAFE employee attending one of the union meetings will be deemed to be on an "unauthorised absence" and they will have their salary docked (apparently for an undefined amount of time). Further it can be assumed that this would be recorded on the employee's personnel file.

As the CPSU explained in the letter of 24 September 2012 the union has never advised members in TAFE that they could, or should, take protected or unprotected action on Monday 8 October 2012.

The union has been clear in the advice provided to members. The CPSU encourages TAFE members to support the action on Monday 8 October 2012 by applying for leave or taking a flex day to attend one of the meetings.

It is of great concern to the union that the Department continues to provide false and misleading information to TAFE employees.

Furthermore it is a concern the Department and TAFE believe it is within their legal right to dictate to staff what they can, and cannot, do in their own time.

The CPSU requests that the Department issue an urgent written clarification to the advice contained in circular IRC12/18 and advise TAFE employees of the following:

- The PSA/CPSU has at no stage advised members employed in TAFE NSW that they can take protected or unprotected industrial action on Monday 8 October 2012.
- TAFE employees should not be prohibited from accessing leave because they intend to attend one of the PSA/CPSU meetings on Monday 8 October 2012.
- A refusal to approve leave or flexitime because a TAFE employee intends to attend one of the PSA/CPSU meetings on Monday 8 October will breach the Fair Work Act and the relevant Enterprise Agreement.
- A requirement for employees to provide a medical certificate for sick leave and carers leave for a single day may breach the relevant Enterprise Agreement.

The CPSU requests that this advice be forwarded to all relevant employees as a matter of urgency and no later than 5pm Thursday 4 October 2012.

The CPSU also seeks written confirmation that the clarifying circular has been sent.

Yours sincerely



Steve Turner
Assistant State Branch Secretary