



Carolyn Pokorny
MTA Inspector General

Office of the Inspector General
Metropolitan Transportation Authority
One Penn Plaza, 11th Floor, Suite 1110
New York, NY 10119
212-878-0000

May 12, 2021

Via Electronic Mail

Sarah E. Feinberg
Interim President
New York City Transit
2 Broadway, 30th Floor
New York, NY 10004

**Re: NYC Transit Bus Operator's Abuse
of Family Medical Leave Act and
Sick Leave
MTA/OIG #2021-13**

Dear Ms. Feinberg,

The Office of the MTA Inspector General (OIG) substantiated allegations that from 2018 to 2020, a New York City Transit (NYC Transit) Bus Operator (Bus Operator) abused his approval for intermittent time off under the Family Medical Leave Act (FMLA) for himself and a family member and abused his sick leave. Specifically, on over 90 instances, the Bus Operator was gambling in Atlantic City, New Jersey or visiting Hershey Park while claiming FMLA and sick leave. These instances equated to approximately 824 hours of pay (~\$24,909 in salary) to which he was not entitled. The OIG also found that the Bus Operator submitted 18 forms to NYC Transit which falsely claimed he was unable to work due to his own illness or the illness of a family member. As detailed below, the Bus Operator admitted to the fraud and told the OIG that he has a gambling addiction. However, he stated that he did not seek treatment until after he was contacted by the OIG for an interview.

We recommend that NYC Transit discipline the Bus Operator as it deems appropriate, up to and including termination and recoup payments made to the Bus Operator for both the sick leave and the FMLA-protected sick leave he used while in Atlantic City or visiting Hershey Park.

I. BACKGROUND

On March 25, 1996, NYC Transit hired the Bus Operator. He is assigned to the Ulmer Park Bus Depot in Brooklyn with regular days off are Saturday and Sunday. Based on his time records, the Bus Operator generally worked an 11-to-12-hour shift, which included breaks.

On or about August 26, 2017, the Bus Operator applied for and received intermittent FMLA leave from September 24, 2017 to September 23, 2018 alleging that his own serious health condition rendered him unable to perform the functions of his position at times. Additionally, he applied for and received intermittent FMLA leave for the same period to care for a family member. The Bus Operator submitted subsequent applications in 2018 and 2019 to have his intermittent FMLA for himself and to care for his family member extended through to September 2020, which were approved by NYC Transit.

The applications that the Bus Operator signed contained the following language: “I do hereby certify that to the best of my knowledge the above information is true and correct. I understand that fraudulently requesting, obtaining and/or misusing this leave will be cause for disciplinary action, up to and including dismissal for employment.”

II. INVESTIGATION

A. Records Review

A review of time and leave records revealed that the Bus Operator used approximately 120 days of intermittent FMLA and sick leave between 2018 and 2020 (the FMLA time period). In addition, the Bus Operator submitted 18 “Application for Leave of Absence Due to Illness and Application for Use of Previously Approved Intermittent Leave for a Family Member Under the Family Medical Leave Act” forms (collectively, the Illness Forms) for some of the days he fraudulently used FMLA leave. On these Illness Forms, the Bus Operator certified that he needed to use FMLA leave because he “was unfit for work on account of illness during this period” or “was not at work on account of the illness/medical treatment of his family member.”

The OIG obtained records from the Tropicana Resort and Casino in Atlantic City, New Jersey (the Tropicana) for the time period the Bus Operator was approved for intermittent FMLA leave. On 95 instances, the Bus Operator either used FMLA or sick leave (for himself or to allegedly care for a family member) while gambling in Atlantic City, as detailed in the attached Exhibit A. The OIG also reviewed the Bus Operator’s bank records which confirmed his frequent visits to Atlantic City while using FMLA and sick leave. The bank records also revealed 1 instance when the Bus Operator was in Hershey Park, Pennsylvania while using sick leave. In total, there were 96 instances of leave abuse by the Bus Operator.

As a result, the Bus Operator received approximately 824 hours of pay, equating to \$24,909 in salary, for which he was not entitled to because he was actually gambling in Atlantic City or visiting Hershey Park.¹

¹ Of the 96 instances, there are 23 dates the Bus Operator took unpaid FMLA.

B. Interview of the Bus Operator

On April 16, 2021, the OIG interviewed the Bus Operator. The Bus Operator confirmed that he began his career with NYC Transit on March 25, 1996 and was assigned to the Ulmer Bus Depot. The Bus Operator did not recall when he originally applied for FMLA but stated he had to apply yearly to renew his application. He was approved for intermittent FMLA for himself and for a family member. He said he used FMLA 3 to 4 times a month. He said when using a FMLA day he would notify the dispatcher at the depot or, starting approximately a year ago, he notified Work Partners, an outside company contracted with NYC Transit.

The Bus Operator admitted to traveling to Atlantic City and gambling while on FMLA. Specifically, he admitted to over 90 instances on which he was gambling in Atlantic City and used FMLA and/or sick leave. He then claimed that he has a gambling addiction and is currently seeking help. However, he also conceded that he did not seek treatment until after the OIG contacted him for an interview.

III. POLICIES AND ANALYSIS

A. MTA All-Agency Code of Ethics

1. § 4.02: Public Trust

The MTA All-Agency Code of Ethics, Section 4.02, states, in pertinent part, that employees shall not engage in a course of conduct that will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust. Further, employees shall avoid even the appearance that they can be improperly influenced in the performance of their official duties or induced to violate the public trust or impair their independence of judgment in the exercise of their official duties.

Here, the Bus Operator abused FMLA and sick leave while in Atlantic City. He used his approved FMLA status to take unscheduled time off and received \$24,909 pay for which he was not entitled when he used it for the purposes of gambling in Atlantic City and visiting Hershey Park.

2. § 9.01: General

The MTA All-Agency Code of Ethics, Section 9.01, states, in pertinent part, that employees who violate any provision of the State Ethics Laws or of this Code may be subject to disciplinary action consistent with that administered for violations of the rules and regulations of the applicable MTA Agency, up to and including termination.

Here, the Bus Operator abused FMLA and sick leave to gamble in Atlantic City or visiting Hershey Park. He used his approved FMLA status to take unscheduled time off on short notice and received pay for which he was not entitled when he used it for the purposes of gambling in Atlantic City or visiting Hershey Park.

B. NYC Transit Rules and Regulations and Memorandum

1. *NYC Transit's FMLA Implementation Guidelines (Guidelines) issued on April 4, 2013*

The Guidelines state, in pertinent part, that FMLA entitles eligible employees up to 12 weeks of leave in a rolling 12-month period for the serious health condition of the employee or employee's covered family members. FMLA is not intended to be an addition to existing leave policies or contractual benefits where such policy provides equal or greater rights than provided pursuant to FMLA. Existing leave policies remain in effect and employees using FMLA leave are required to follow the Authority's policies and contractual procedures.

An eligible employee may take leave upon the employee's own serious health condition.

Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary because of the employee's own serious health condition.

2. *Rule 2(b) Knowledge of and Compliance with Rules*

Rule 2(b) states, in pertinent part, that employees who violate any of these rules may be disciplined in accordance with the Civil Service Law or their collective bargaining agreement or Authority policy, as applicable.

3. *Rule 5(a): Reporting for Duty*

Rule 5(a), states, in pertinent part, that employees must report for their assignments as directed. Absence from duty without proper authority is regarded by the Authority as willful neglect of duty and as a serious breach of discipline. Sick leave, whether with or without pay, will be granted only upon proper evidence that the employee was actually ill and unable to perform his/her duties during the period of the absence.

4. *Rule 8(a): Reports by Employees*

Rule 8(a), states, in pertinent part, that written or oral reports must be complete and accurate. Employees who knowingly submit or make reports containing false statements shall be charged with misconduct and incompetence.

5. *Rule 12(a)(10): Code of Ethics, Course of Conduct*

Rule 12(a)(10), states, in pertinent part, that employees shall not pursue a course of conduct which will raise suspicion among the public that he/she is likely to be engaged in acts that are in violation of his/her trust.

Here, the Bus Operator violated these policies when he falsely used his FMLA approval and claimed sick leave to gamble in Atlantic City or visiting Hershey Park. Furthermore, the

Bus Operator submitted 18 false Illness Leave Forms claiming illness for himself or his family member on days when he was in Atlantic City but was well enough to travel there and gamble.

IV. FINDINGS

1. The Bus Operator engaged in time and leave abuse, specifically misuse of sick leave and FMLA, in violation of the NYC Transit's FMLA Implementation Guidelines and Rules 2(b), 5(a), 8(a), and 12(a)(10).
2. The Bus Operator violated the public trust by falsely reporting to NYC Transit that he was sick and/or he was caring for a family member in order to use FMLA leave to go to Atlantic City or elsewhere in violation of the MTA All-Agency Code of Ethics Sections 4.02 and 9.01.

V. RECOMMENDATIONS

We recommend that NYC Transit impose discipline on the Bus Operator as it deems appropriate, up to and including termination, and recoup payments made to the Bus Operator for the paid leave he received under the guise of sick leave and FMLA while gambling in Atlantic City or visiting Hershey Park.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within 30 days of any actions you intend to take, and the result of any action taken pursuant to this letter. In addition, please indicate your acceptance or rejection of each recommendation and the proposed quarter in the calendar year that the recommendation will be implemented. Please be advised that the Office of the MTA Inspector General may publicly disclose this report consistent with its statute and other state law, which may include name(s) of individuals and entities. Should you have any questions, or need additional information, please contact Executive Deputy Inspector General for Legal Pei Pei Cheng-de Castro at (212) 878-0072.

Very truly yours,

/S/

Carolyn Pokorny

cc: David Farber, General Counsel, NYC Transit
Monica Murray, Chief Administrative Officer, NYC Transit
Kim Moore-Ward, Vice President, Office of Labor Relations, NYC Transit

Exhibit A

	Date	Leave Used	Tropicana and Other Activity
1	2/16/2018	FMLA	Check-in; Gambling
2	2/19/2018	FMLA	Check-out
3	3/23/2018	FMLA	Check-in; Gambling
4	4/3/2018	FMLA	Check-in; Gambling
5	4/4/2018	FMLA	Gambling
6	4/6/2018	FMLA	Check-out
7	4/20/2018	FMLA	Gambling
8	4/30/2018	FMLA	Gambling
9	5/1/2018	FMLA	Check-out
10	5/4/2018	FMLA	Check-in; Gambling
11	5/10/2018	FMLA	Check-in; Gambling
12	5/11/2018	FMLA	Gambling
13	5/25/2018	FMLA	Check-in; Gambling
14	5/31/2018	FMLA	Check-in; Gambling
15	6/1/2018	FMLA	Gambling
16	6/14/2018	FMLA	Check-in; Gambling
17	6/15/2018	FMLA	Gambling
18	7/13/2018	FMLA	Check-in; Gambling
19	8/9/2018	SICK	Check-in; Gambling
20	8/10/2018	SICK	Gambling
21	8/27/2018	SICK	*Charge at Ocean's Resort; Gambling
22	8/28/2018	SICK	Check-out
23	8/29/2018	SICK	*Charge at Hershey Park
24	9/7/2018	FMLA	Check-in; Gambling
25	9/13/2018	FMLA	Check-in; Gambling
26	9/14/2018	FMLA	Gambling
27	9/28/2018	FMLA	Check-in; Gambling
28	10/5/2018	FMLA	Check-in; Gambling
29	10/12/2018	FMLA	Gambling
30	10/17/2018	FMLA	Check-in; Gambling
31	10/18/2018	FMLA	Gambling
32	10/19/2018	FMLA	Check-out, Check-in; Gambling

Exhibit A

	Date	Leave Used	Tropicana and Other Activity
33	10/29/2018	SICK60	Gambling
34	10/30/2018	SICK60	Gambling
35	10/31/2018	SICK60	Check-out
36	11/9/2018	SICK60	Check-in; Gambling
37	11/16/2018	SICK60	Check-in; Gambling
38	11/19/2018	SICK60	Check-out
39	11/23/2018	SICK	Check-in; Gambling
40	11/26/2018	SICK60	Gambling
41	11/27/2018	SICK60	Check-out
42	12/28/2018	SICK60	Check-in; Gambling
43	2/4/2019	FMLA	Gambling
44	2/5/2019	FMLA	Check-out
45	3/18/2019	FMLA	Gambling
46	3/29/2019	FMLA	Check-in; Gambling
47	4/19/2019	FMLA	Check-in; Gambling
48	7/5/2019	FMLA	Gambling
49	7/8/2019	FMLA	Check-in; Gambling
50	7/9/2019	FMLA	Check-out
51	7/19/2019	FMLE	Check-in; Gambling
52	7/22/2019	FMLE	Check-out
53	8/9/2019	FMLA	Gambling
54	9/5/2019	FMLE	Check-in; Gambling
55	9/6/2019	FMLE	Gambling
56	9/20/2019	FMLA	Check-in; Gambling
57	10/10/2019	FMLA	Check-in; Gambling
58	10/11/2019	FMLA	Gambling
59	10/17/2019	FMLA	Check-in; Gambling
60	10/18/2019	FMLA	Gambling
61	11/22/2019	FMLA	Check-in; Gambling

Exhibit A

	Date	Leave Used	Tropicana and Other Activity
62	12/13/2019	FMLA	Check-in; Gambling
63	12/26/2019	FMLA	Check-in; Gambling
64	12/27/2019	FMLA	Gambling
65	1/2/2020	FMLA	Check-in; Gambling
66	1/3/2020	FMLA	Gambling
67	1/6/2020	FMLA	Gambling
68	1/8/2020	FMLA	Check-in; Gambling
69	1/9/2020	FMLA	Gambling
70	1/10/2020	FMLA	Gambling
71	1/30/2020	FMLA	Gambling
72	1/31/2020	FMLA	Check-in; Gambling
73	2/3/2020	FMLA	Gambling; Check-out
74	2/20/2020	FMLA	Check-in; Gambling
75	2/21/2020	FMLA	Gambling
76	7/6/2020	FMLA	Gambling
77	7/7/2020	FMLA	Gambling
78	7/8/2020	FMLA	Gambling
79	7/9/2020	FMLA	Check-in; Gambling
80	7/10/2020	FMLA	Gambling
81	7/13/2020	FMLA	Gambling
82	7/14/2020	FMLA	Gambling
83	7/15/2020	FMLA	Check-in; Gambling
84	7/16/2020	FMLA	Gambling
85	7/17/2020	FMLA	Gambling
86	8/6/2020	FMLE	Gambling
87	8/7/2020	FMLE	Gambling
88	8/21/2020	FMLE	Check-in; Gambling
89	9/4/2020	FMLA	Gambling

Exhibit A

	Date	Leave Used	Tropicana and Other Activity
90	10/5/2020	FMLA	Gambling
91	10/6/2020	FMLA	Gambling; Check-out
92	10/7/2020	FMLA	Gambling
93	10/8/2020	FMLA	Check-in; Gambling
94	10/9/2020	FMLA	Gambling
95	11/6/2020	FMLA	Check-in; Gambling
96	11/25/2020	FMLA	Check-in; Gambling
<i>* Based on bank records review</i>			
Notes <i>FMLE: used for a family member</i> <i>SICK60: 60% pay (paid for 60% of his salary)</i>			



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Agency Response
to
MTA/OIG #2021-13

NYC Transit Bus Operator's Abuse of Family Medical Leave Act and Sick Leave

In May 2021, in response to the OIG's investigation and report, NYC Transit placed the Bus Operator on suspension without pay and filed disciplinary charges against him. On October 25, 2021, the Bus Operator entered an agreement whereby he agreed to reimburse NYC Transit in the amount of \$24,909 for unearned pay. The employee's retirement is pending.