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USPTO Pays Travel Costs for Teleworking Managers

Hoteling Examiners Must Fund Own Expenses

While hoteling USPTO patent and trademark examiners eat production time, and some pay hundreds of out-of-pocket dollars each biweek on flights and living expenses to meet the agency's one-hour-per-week-onsite requirement, the USPTO appears willing to pay those same expenses for some of its managers because it has designated their homes as their duty stations.

POPA so far has identified six managers who live outside the 50-mile maximum commuting radius of the Alexandria headquarters and who have home duty stations. There are likely more. If and when they are called back to USPTO headquarters in Alexandria, under current law and regulation, the agency must pay all expenses for them, including transportation, housing and per diem. The following managers are known to have had their duty station changed from the USPTO to their home (as listed):

- Howard Goldberg, Delray Beach, Florida
- David Larsen, Austin, Texas
- Fred McKelvey, Honolulu, Hawaii
- Joseph Rolla, Lewes, Delaware
- Adam Striegel, Mission Viejo, California
- Brian Weber, Chicago, Illinois.

Currently 50-60 patent examiners who live outside of the 50-mile commuting area participate in the hoteling program. The USPTO claims it cannot pay for them to travel to headquarters and refuses to designate their homes as duty stations. The June 2008 *POPA News* reported how the USPTO is trying to convince Congress to pass legislation that would enable the agency to designate home duty stations for its examiners without requiring the USPTO to pay their travel expenses when they're required at the agency office.

With the rapidly rising costs of air travel, many long-distance hoteling examiners may not be able to afford the biweekly travel costs and may be forced to choose between quitting their USPTO jobs or relocating to the headquarters area. If the USPTO wants a nationwide teleworking workforce, it should budget to pay for the true costs of all teleworking personnel, not just its managers.

At the USPTO, what's required for examiners is not required of managers—what's good enough for the goose apparently is not good enough for the gander. POPA urges the agency to practice equity in designating home duty stations for examiners and paying for their travel and expenses when they are required at headquarters.

Agency Wants Cutbacks on Parental Leave

During a recent USPTO-POPA contract mediation session, USPTO officials refused to give any business reason for proposing to restrict maternity/paternity leave for patent professionals.

When asked directly why the agency was intending to limit benefits when the USPTO's suggested restrictions did not seem to save time or money, agency negotiators would respond only that the current policies are "too generous," without further elaboration.

In reality, continuing the current USPTO-POPA negotiated maternity/paternity leave policies could save the agency salary and administrative costs.

The current USPTO maternity/paternity policy allows a parent for six months after a baby is born or adopted to use any combination of sick leave (as allowed by law), annual leave, compensatory time and leave without pay (LWOP). This can be used continuously or intermittently. After the six months, if the parent wishes additional LWOP, he/she can invoke his/her rights under the federal Family and Medical Leave Act (FMLA) for an additional 12 weeks. Few USPTO parents actually use the full amount of available time off.

The agency wants to change the benefits to grant 1,056 hours of maternity/paternity leave total, at its discretion. The first 12 weeks of any LWOP after the birth or adoption of a child would count towards an employee's FMLA entitlement. The USPTO will only consider allowing additional LWOP—up to the 1,056-hour maternity/paternity leave total—if an employee depletes all other available leave except for 40 hours of annual leave.

Therefore under the USPTO proposal, if an employee has no accrued leave, he/she could use the entire 1,056 hours as LWOP, but by invoking FMLA as the USPTO wants to require, the employee would use up the 12-week FMLA entitlement first. FMLA LWOP is limited to 12 weeks per year, but can also be used as an emergency unpaid leave source for personal medical care or care of a family member. If the employee has no LWOP available under FMLA (it could have been used to care for a sick family member or for the employee's medical care) the employee

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Agency Wants Cutbacks

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can request additional LWOP, to be granted at the agency's discretion, up to 1,056 hours of total parental leave.

An employee who has any leave balance will be able to use the leave and invoke FMLA to use LWOP, all in the same biweek. However, if an employee with an annual leave balance in excess of 40 hours submitted a time plan using all LWOP, it would be denied, if the agency's proposals stand. Employees with leave balances can also use non-FLMA LWOP in combination with paid leave up to the 1,056 maximum USPTO-proposed parental leave. The agency proposes that all first-year employees, who are usually not covered by the FMLA, would be entitled to eight weeks of any combination of leave, i.e., annual, sick or LWOP, taken consecutively only.

Prior to taking parental leave, all employees must submit a plan for leave use to their supervisor for approval.

Some workplace consequences if the USPTO-proposed policies are enacted:

Reduced flexibility. The current policy enables employees to use any combination of leave within the first six months of maternity/paternity leave. Employees are not required to deplete their annual and sick leave balances. A big benefit of allowing employees to take LWOP and keep a leave balance is that when they return to work and need sick or annual leave, they have some to use. After returning to work, LWOP—even for emergencies—is given at a supervisor's discretion; it is not guaranteed.

Increased monitoring. The proposed changes create extra administrative headaches for supervisors and employees. Each hour of any kind of leave must be counted against the 1,056-hour leave total, which is an arbitrary number that doesn't align with any standardized leave figure. All LWOP hours must be logged towards the FMLA total.

Increased salary costs. By forcing employees to use sick leave for maternity leave upfront, rather than allowing them to use LWOP and carry leave balances for possible later use, the USPTO is paying for hours that may, in fact, never be used or paid for if carried. The federal government doesn't pay employees for accrued sick leave when they leave federal service. Alternatively, enabling parents to carry the sick leave gives them a salary backup for future medical needs and emergencies.

The USPTO is taking advantage of this negotiation/mediation to try to abolish the current agency-wide policy allowing all employees up to one hour of administrative time per work day for rest as ordered by an employee's doctor. This policy applies to all (not just pregnant) employees who need to rest during the day for medical reasons. The agency's rationale is that with such flexible work schedules, employees can just extend their days by an hour if they need to rest in the middle, but that doesn't actually aid people who cannot work long hours due to medical causes. Alternatively, the USPTO proposal will require employees to use sick leave for rest time.

All of the current maternity/paternity leave policies that are available to POPA bargaining unit employees also apply to all other USPTO employees. Supervisors and managers can expect that if the agency is successful in implementing this for its patent professionals, it will extend the policies to its management staff.

When POPA met with senior USPTO officials in late July to informally discuss issues, the senior managers refused to talk about any parental leave topics, reinforcing all of the USPTO's inflexible negotiations positions on parental leave.

Because the USPTO cannot articulate a valid business case for changing its maternity/paternity policies, and because the current practices provide needed support for employee parents and encourage them to continue their USPTO careers, POPA will persevere to maintain the current maternity/paternity policies.

Your Issues Reach HIGH Places With the *POPA News*

"The information in the *POPA News* is helpful to me and gives me a better understanding of the issues which are important to the patent office examiners."

—***William Jones, chairman, Cummins-Allison Corp.,*** *who worked with POPA officers on changing the Patent Reform legislation pending in Congress, in a letter to POPA President Robert Budens.*

Quick CAO Action Brings Timely Pay Raises

Thanks to an initiative by USPTO Chief Administrative Officer Stephen S. Smith, patent professionals received their special pay scale increases in a timely manner.

POPA had lobbied the USPTO to ask for the special pay scale increase. After the agency followed through with the request, the Office of Personnel Management approved its implementation effective May 25, 2008.

As most of the almost 6,000 patent professionals waited to see that pay increase in their paychecks, the National Finance Center at the Department of Agriculture, which generates USPTO paychecks, notified the agency that it would be several months before it could reprogram the system to serve all USPTO employees.

CAO Smith took the initiative to put together a team of Office of Human Resources employees to manually enter the data needed to process some 6,000 individual pay actions.

As a result, patent professionals received their pay increases months ahead of the finance center's schedule.

Many thanks to CAO Smith and the OHR staff for making the pay increase a reality quickly.

New POPA Election Process for Changing Patents Workforce

To keep pace with the changing geography of USPTO patent professionals' workplaces, POPA is changing its biannual election process to make it easier for all dues-paying members to participate.

The 2008 election will occur over three days covering the back and front ends of biweeks to enable the highest number of teleworkers to participate. Teleworking employees living in other states more often travel to the headquarters office over the last weekend of a biweek (from Saturday to count Monday) to capture most efficiently the one-hour per biweek on-site requirement.

Please note the upcoming specific dates for election participation:

Oct. 24: Nominating period opens for delegates and officers at noon.

—Nominating forms will be available for printing at *www.popa.org* on the morning of Oct. 24.

—Nominees for delegate need a minimum of five signatures from POPA dues-paying members in their area, i.e., Chemical, Electrical, Mechanical or Design/Other.

—Nominees for officer positions need a minimum of 15 signatures from POPA dues-paying members.

Oct. 31: Nominating period closes; all completed forms must be returned to POPA Secretary Howard Locker or any member of the Election Committee listed at the bottom of the nomination form.

Nov. 4: POPA will mail notification of the upcoming election to the last known home address of all dues-paying members. If you believe you are a dues-paying member and you do not receive a mailed notice by Nov. 10, contact your POPA representative to verify your membership status and home address information.

Nov. 20, 21 and 24: POPA Election Days

Dec. 4: POPA Annual Meeting. Newly elected POPA officers and delegates will be installed.

To join POPA and become eligible to vote in the election, go to *www.popa.org* and click on Join POPA. Fill out and sign the dues deduction form (electronic signatures are not accepted) and return it to any POPA representative.

"You deserve the credit for saving my job"

Thank you for helping me to keep my job. I would have been at home, unemployed, without your help. You and POPA deserve all the credit for saving my job and other examiners' jobs.

Please keep up the great work and I hope and pray that management changes thinking and thinks positively about employees, and we all work together and make this office (PTO) an excellent place to work.

—Junior Examiner, Name Withheld by Request

USPTO Asks Only Top Producers About the Production System

As part of its "strategic assessment of the patent production system," the USPTO conducted focus-group discussions in late July using only top-producing examiners as research participants, according to USPTO managers.

The agency's contracted researchers chose these top performers randomly from each technology center and asked them to discuss in the focus groups whether or not they agree with comments such as:

- "The current production goals used to measure my performance are realistic."
- "The awards available to me provide an incentive to me to produce more than is expected."
- "The Patent Training Academy prepares examiners who are able to work independently."

By sampling only top-performing patent examiners, the research will not discover what aspects of the production system hinder top production by all examiners. The results cannot be extrapolated to the full patent examining corps—for the agency to present results as such to Congress would be misleading and deceptive.

POPA looks forward to additional unbiased USPTO research on the production system that will guide a redesign that reflects the reality of patent examination.

PTO Flashback

Patent Office Memorandum, Sept. 10, 1945

The following is excerpted from an actual memo sent office-wide from then Patent Office Commissioner Casper W. Ooms.

"It has been brought to my attention that the practice prevails [in] the Patent Office of measuring the 'amount of work accomplished' by Assistant Examiners during particular periods of time by assigning quotas of production…. This practice necessarily emphasizes quantity rather than quality of work.

"Work of the kind in which Patent Office Examiners are engaged involves great public and private interests, and requires exceptional training and experience coupled with matured and considered judgment in its execution. For these reasons, it cannot be measured by methods applicable to routine office operations. High class professional work performance in a favorable environment and adequately compensated inevitably attracts and holds high class men [and women], and the pride of achievement entertained by such men [and women] ordinarily provides a sufficient incentive for work which is commendable both as to quality and quantity."

Examiner Fired After Computer Crashes

POPA Seeks Reconsideration of Removal

When managers in Technology Center 3700 offered next to no catastrophic time after the hard drive crashed and burned for a probationary examiner who was producing at 100 percent, the employee's production unsurprisingly suffered and the USPTO fired him because he'd "not progressed at the expected rate."

TC 3700 Director Fred Schmidt fired the probationary employee in his 21st month despite the employee's promotion after seven months on the job and 97 percent production through the first three quarters of fiscal year 2008. During a meeting with the employee and his supervisor at the end of the third quarter of fiscal year 2008, the employee reported that Schmidt said that things were looking good for promotion to the next grade in the near future. The supervisor commented on the examiner's good-quality work—and that this was how the examiner had been able to make his production despite having absolutely no allowances for the fiscal year! Based upon this good review and the seeming promise of retention and promotion, the employee signed a new one-year apartment lease in early August.

On Aug. 12, Schmidt gave the employee a removal notice effective Aug. 15, telling the shocked employee only "we've given you enough chances." In the removal letter, Schmidt referenced the employee's lack of ability to balance workflow and production, overdue amendments, and his struggle with identifying and formulating proper rejections. [A note for examiners: The employee had a total of 3 negative workflow points charged and had 100 percent production for the second and third quarters of FY2008, despite having an actions-per-disposal of 6.2 for the year with zero allowances.] Contrary to Schmidt's allegations, the examiner reported that few, if any, of his office actions were ever returned for correction.

No Comp Time for Data Lost

Not mentioned in the removal letter was the employee's computer crash on July 1, which left his hard drive unrecoverable and his data unsalvageable according to USPTO computer technicians. The employee's supervisor granted little time for this catastrophic failure and made no allowance for all the work in process that was lost (including electronic searches and office actions). The agency did not contest that the work was lost, but granted no time compensation. The agency did, however, charge the examiner negative workflow points for these cases in which the work was lost, some of which were cases that the examiner had inherited from examiners who had left the USPTO.

When POPA presented the above facts, the agency changed its rationale for the firing from production and workflow, as had been headlined in the removal letter, to "quality." When POPA then asked how the agency promoted the employee at seven months if his quality was poor, how the employee was able to produce at 100 percent if his quality was poor, and why few if any cases were kicked back to the employee for corrections if his quality was poor, the agency then shifted its reason for firing from "quality" to "end-loading."

POPA responded with USPTO data showing that the agency's own records did not support the end-loading allegation. The agency has not refuted the data, has not responded further, and has not yet rescinded the removal.

Per the employee's 20-month review dated July 13, 2008, the employee "met expectations" in every quality element evaluated, including "formulating rejections under 102/103 and/or determining how claims distinguish over the prior art." After six previous "met expectations" evaluations in the areas of "ability to accept instructions and respond to feedback" and "work habits," the July 13 evaluation indicated that the examiner "needs improvement."

The overdue cases, resulting negative workflow points, and low production during the pay period of the computer crash were all referenced as negatives, which according to the agency's comments on July 29, "raise serious questions about the examiner's ability and/or desire to successfully perform his job as a patent examiner."

POPA is asking senior USPTO officials to reconsider the loss of this productive, trained examiner. As reported in the June 2008 *POPA News,* when the agency removed a fully-successful probationary examiner for working unpaid overtime, despite his receiving conflicting advice from TC 3700 managers on that issue, POPA appealed to senior patents management to intervene and the removal was rescinded. POPA again hopes that more rational heads will prevail on this case.

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