CS-100
REV 08/2022

Agency Grievance No.

(Provided by Employer)

GRIEVANCE AND GRIEVANCE APPEAL FORM

Civil Service Reference No.

(Assigned by Civil Service)

This form is used for (1) grievances, (2) agency responses, and (3) appeals of agency response. Before filing this form, see Regulation 8.01, *Grievance and Grievance Appeal Procedures,* and Regulation 8.06, *Computing Time and Filing Documents*.

GRIEVANT'S NAME			**NAME OF GRIEVANT'S REPRESENTATIVE (IF ANY)**		
GRIEVANT'S E-MAIL ADDRESS	**GRIEVANT'S PHONE NO.**		**REP'S E-MAIL ADDRESS**	**REP'S PHONE NO.**	
GRIEVANT'S MAILING ADDRESS			**REP'S MAILING ADDRESS**		
CITY	**STATE**	**ZIP CODE**	**CITY**	**STATE**	**ZIP CODE**
EMPLOYEE ID NO.	**GRIEVANT'S DEPARTMENT, AGENCY, CLASS AND LEVEL**				

Please check the appropriate step.

☐ **Employee grievance at Step 1**	☐ **Agency answer at Step 1**
☐ **Employee grievance at Step 2**	☐ **Agency answer at Step 2**
☐ **Employee grievance appeal to Civil Service after Step 2**	

All grievance appeals to Civil Service must be in response to a department's answer or failure to answer at Step 2 and must be filed to MCSC-Hearings@mi.gov, unless a prior request for an alternative filing method is granted by the CSHO's administrative officer.

EMPLOYEE STATEMENT OF BASIS FOR THE GRIEVANCE / AGENCY RESPONSE (Attach additional sheets, if necessary.)

RELIEF SOUGHT (Attach additional sheets, if necessary.)

SIGNATURE (Either sign or type your name as an electronic signature.)	**DATE**

Please keep a copy for your records.

Instructions

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- ☐ If you have an authorized representative, have you provided all contact information (including a valid email address), and is the representative eligible to represent you? See Regulation 8.01, § 4.K.
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- ☐ For a Step-2 grievance, have you included any Step-1 grievance and any Step-1 response?
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- ☐ Does your appeal contain a copy of all Step-1 and Step-2 grievances and departmental responses?
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David W. Towne's Appeal of Step Two Grievance Determination
(Grievance No 2025-01)
Filed pursuant to Michigan Civ Serv R 8-1.3

Timely filed under R 8-1.3(a)(2) (within 28 days of the Department's Step Two response)

To: The Hearing Officer, Michigan Civil Service Hearings Office [Address per applicable rules]

From: David W Towne 3123 Forest Rd, Apt 101 Lansing, MI 48910 davidtowne@gmail.com 734-620-2711

Date: May 30, 2025

I. Introduction

This appeal challenges the Department of Attorney General's unconscionable denial of my Step Two grievance and wrongful termination—a betrayal of a dedicated public servant grappling with certified mental health conditions. The Department's actions—including mislabeling my absence as "no call no show," relying on irrelevant login data to insinuate performance issues, refusing to engage in an interactive process, issuing a defective UPS-delivered ultimatum, and engaging in bad-faith conduct—violate my rights under the Family and Medical Leave Act (FMLA), 29 USC §§ 2601 et seq; the Americans with Disabilities Act (ADA), 42 USC §§ 12101 et seq; the Michigan Persons with Disabilities Civil Rights Act, Mich Comp Laws §§ 37.1101 et seq; and constitutional due process as established in *Cleveland Bd of Educ v Loudermill*, 470 US 532 (1985). The Department's pretextual shift from performance issues to an absence narrative, its overriding of AAG Jason Evans's settlement efforts, and its threats regarding unemployment benefits demand that full discovery be permitted. I incorporate by reference all arguments, evidence, and citations from my Step One and Step Two grievance briefs and supplemental submissions (see Mich Civ Serv R 8-2.2(c)).

II. Procedural History and Undisputed Facts

A. Notification and Communication On February 10, 2025, while experiencing severe depression, anxiety, a recently diagnosed ADHD, and the effects of a COVID-19 infection, I emailed my supervisor, AAG Michael Hill, stating that I "may need to take unpaid leave" (Exhibit A, Step 1 Grievance, p 2). I also informed AAG Jeffrey Mapes—my peer accountability partner approved by AAG Jason Evans—that I urgently required extended leave (Exhibit B, Step 2 Supplemental, p 1). My conditions were previously documented during my FMLA leave in October 2024 (Exhibit C, Second Supplemental, p 1).

B. Opportunities to Clarify and Departmental Inaction Despite numerous opportunities to resolve any ambiguity in my communication, AAG Hill neither contacted me nor forwarded my email to Director VanDeusen. Director VanDeusen's voicemail on February 18, 2025, did not indicate any concern regarding my message. Instead, the Department later issued an ultimatum via UPS—a threat rather than an invitation for clarification. Given the Department's prior practice of retroactively approving FMLA leave, I reasonably relied on both my email and my

in-person discussion with Mapes to indicate that I needed extended leave due to my documented conditions.

C. Defective Notice and Shifting Rationales At the Step One conference, the Department initially raised login data without clear explanation, vaguely implying that I was not "really" working during the first week of February 2025 (Exhibit D, Step 1 Agency Response, p 1). I challenged both the relevance and accuracy of this data. In its subsequent Step Two response, the Department abandoned the login data rationale and instead labeled my absence as "no call no show" (Exhibit E, Step 2 Grievance, p 3). On February 20, 2025, an ultimatum was sent via UPS demanding my return by February 24, 2025, while omitting any mention of my FMLA rights—even though my disabilities were known. Due to delivery issues at my residence, I received the letter after the deadline. I later learned of my termination on March 4, 2025, when Department staff arrived to retrieve state-issued equipment. Although AAG Evans initially signaled that settlement was likely, he indicated that higher officials had overruled his judgment and even threatened to affirmatively report my dismissal as "job abandonment" to the Unemployment Insurance Agency should I have the audacity to apply for unemployment benefits. These actions have resulted in the complete and total loss of my livelihood, loss of essential medical insurance, and irreparable damage to my professional reputation—consequences that are wildly disproportionate to the sin of sending an ambiguous email while in the midst of a mental health crisis.

III. Legal and Procedural Violations

A. Failure to Engage in the Interactive Process Under 29 CFR § 825.302(c), an employee need not explicitly invoke "FMLA" to trigger an employer's duty to clarify leave requests that indicate a serious health condition. My February 10 email, my in-person discussion with Mapes, and my prior FMLA leave history imposed on the Department an affirmative duty to engage in an interactive process. In *Humphrey v Mem'l Hosps Ass'n*, 239 F3d 1128 (9th Cir 2001) and *Byrne v Avon Prods Inc*, 328 F3d 379 (7th Cir 2003), courts have held that ambiguous employee communications require proactive followup by employers. The Department's refusal to follow up on my request—despite being aware of my certified conditions—violates its statutory obligations under 29 USC § 2612(a)(1)(D) and constitutes disability discrimination under the ADA and the Michigan Persons with Disabilities Civil Rights Act (see *Cehrs v Ne Ohio Alzheimer's Research Ctr*, 155 F3d 775 (6th Cir 1998)).

B. Denial of Due Process Michigan Civ Serv Reg 2-6.1 requires that termination notices be sent by registered mail to ensure receipt and provide an opportunity to respond. The UPS-delivered ultimatum—received after the February 24, 2025 deadline and lacking any reference to FMLA rights—failed to provide proper notice, thereby denying me due process rights as set forth in *Cleveland Bd of Educ v Loudermill*, 470 US 532 (1985) and as actionable under 42 USC § 1983.

C. Pretextual Dismissal and Mischaracterization The Department initially relied on irrelevant login data to insinuate poor performance, only to drop it later in the grievance process and rely on a "no call no show" label, arguing that it would be impossible to interpret my admittedly vague email in any way other than their subjective determination after the fact. It is likely that they realized that vaguely alleging performance issues could support an inference of a bait-and-

switch prohibited under Michigan law—a pretextual rationale functioning in place of the actual reason for dismissal or discipline. See *In re Bay Cnty Sheriff's Dep't*, 2016 WL 8738341 (Mich Civ Serv Comm 2016) and further supported by *Mich Dep't of Transp v Mich Civ Serv Comm'n*, 2018 WL 5276420 (Mich Ct App 2018). The "no call no show" label enables the skipping of the multi-step due process normally required when an employee has a minimal record of discipline. Moreover, as the Department was fully aware of my mental health issues, my communications clearly warranted clarification rather than punishment, and the Department's mischaracterization contravenes the protections afforded under Mich Civ Serv R 1-8.1.

D. Disproportionate and Retaliatory Consequences The termination, the coercive implication of a resignation in lieu of dismissal "offer" at the Step Two conference, and the threats to challenge any attempt to secure unemployment benefits have imposed harm that is not only disproportionate to any communication error, but evidence of a punitive, even cruel, mindset. This conduct, including the overriding of AAG Evans's judgment regarding settlement, reveals a retaliatory motive in violation of 29 USC § 2615(a)(2) and Mich Civ Serv R 2-10, as further illustrated in *Chalfant v Titan Distrib Inc*, 475 F3d 982 (8th Cir 2007).

E. Bad Faith in the Grievance Process The Department's failure to follow up on my initial communication, its shifting of rationales, and it's refusal to meaningfully engage in the grievance process (denying AG Evans settlement authority at step one, and offering only the absolute bare minimum of responsible HR practice as a "settlement proposal" at step two) demonstrate bad faith. By not clarifying my leave request and instead issuing a coercive ultimatum, the Department has abrogated its statutory duty to provide the interactive process required under both FMLA and ADA, as noted in *Humphrey* and *Byrne*. This conduct necessitates full discovery to expose the hidden motives behind my termination.

IV. Requested Relief

Accordingly, I demand that the Hearing Officer:

1 **Declare** that my termination was procedurally and substantively flawed under Michigan Civ Serv R 8-1.3.

2 **Order** that my absence from February 10 through February 24, 2025, be retroactively designated as FMLA-protected leave pursuant to 29 USC § 2612.

3 **Grant** my reinstatement to my former position with full restoration of back pay, accrued benefits, and seniority, as provided by Michigan Civ Serv R 8-1.3(c).

4 **Alternatively**, if reinstatement is not feasible, award a severance package compensating for lost income, loss of essential medical insurance, damage to my professional reputation, and significant emotional distress.

5 **Mandate** that the Department formally acknowledge its violations of the FMLA, ADA, Michigan Persons with Disabilities Civil Rights Act, and due process rights as established in *Cleveland Bd of Educ v Loudermill*, 470 US 532 (1985).

6 **Require** that the Department institute corrective measures—including disciplinary action, comprehensive training on FMLA and ADA compliance, and full disclosure of all internal communications and documents regarding my termination (see Mich Civ Serv R 8-2.2(d))—to determine the individuals and motives behind this pretextual dismissal.

7 **Ensure** that I am insulated from future supervision by any individuals involved in denying my settlement.

V. Conclusion

The Department's callous refusal to engage with a struggling employee, its defective notice procedure, the pretextual bait-and-switch in shifting from performance issues to an absence narrative, and its retaliatory threats have devastated my livelihood and worsened my mental health during an already vulnerable period. These actions are not mere administrative oversights but deliberate violations of my FMLA, ADA, Michigan Persons with Disabilities Civil Rights Act, and due process rights. I respectfully request that the Hearing Officer reverse my termination, grant the relief requested herein, and hold the Department accountable for its discriminatory and unlawful conduct.

Respectfully submitted,

/s/

David W Towne

Authorities Cited

1 **Michigan Civ Serv Rules/Regulations:** Mich Civ Serv R 8-1.3; Mich Civ Serv R 8-2.2(c)- (d); Mich Civ Serv Reg 2-6.1

2 **Federal Regulations and Statutes:** 29 CFR § 825.302(c); 29 USC §§ 2612(a)(1)(D), 2615(a)(2); 42 USC § 1983; Americans with Disabilities Act, 42 USC §§ 12101 et seq

3 **State Statutes:** Michigan Persons with Disabilities Civil Rights Act, Mich Comp Laws §§ 37.1101 et seq

4 **Key Cases:** *Cleveland Bd of Educ v Loudermill*, 470 US 532 (1985) *In re Bay Cnty Sheriff's Dep't*, 2016 WL 8738341 (Mich Civ Serv Comm 2016) *Mich Dep't of Transp v Mich Civ Serv Comm'n*, 2018 WL 5276420 (Mich Ct App 2018) *Cehrs v Ne Ohio Alzheimer's Research Ctr*, 155 F3d 775 (6th Cir 1998) *Humphrey v Mem'l Hosps Ass'n*, 239 F3d 1128 (9th Cir 2001) *Byrne v Avon Prods Inc*, 328 F3d 379 (7th Cir 2003) *Chalfant v Titan Distrib Inc*, 475 F3d 982 (8th Cir 2007) *Spachman v Swan Harbour Assocs*, 252 Mich App 400, 651 NW2d 174 (2002)

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GRIEVANT'S MAILING ADDRESS			REP'S MAILING ADDRESS		
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
EMPLOYEE ID NO.	GRIEVANT'S DEPARTMENT, AGENCY, CLASS AND LEVEL				

Please check the appropriate step.

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- ☐ **Employee grievance at Step 2**
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See Attached Agency Answer to Step 1

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RELIEF SOUGHT (Attach additional sheets, if necessary.)

SIGNATURE (Either sign or type your name as an electronic signature.)	DATE

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EMPLOYEE STATEMENT OF BASIS FOR THE GRIEVANCE (Cont'd)

> Ok. If you do come back after your appointment, please email me when you are back on the clock.

The exchange is brief; in hindsight, both emails are subject to more than one interpretation. From my perspective, the urgency of my need for a "time out" was top of mind; my intention was to indicate that I might not return for an indefinite period. When I read it, Hill's response seemed to align with that understanding, saying "if you come back." But to someone who did not fully appreciate the extent of my distress, my email could be read as a much narrower request. In any event, after reading AAG Hill's response, I did not linger to consider the possibility that there had been no meeting of the minds; instead, I closed my laptop and turned off my phone and shut out the world.

The next week, I informed my "peer accountability partner," AAG Jeffrey Mapes, of my intentions when visited my home on Tuesday, February 18, out of a stated concern for my well-being. I explained that I was feeling overwhelmed, frozen by a "perfectionist paradox" (if it can't be done perfectly, avoid doing it at all) and beaten down by depression and anxiety working in tandem—all of which made the idea of facing the challenges of work (with its deadlines, phone calls, voicemails, emails, and sometimes adversarial interactions with AAG Hill) unbearable for the moment. I reassured AAG Mapes that I would get better with some rest and be able return to work before long. As he was leaving, Mapes promised confidentiality, but I specifically asked him to advise the Corporate Oversight Division Chief that I was "okay," but not yet ready to return to work.

I am aware of missed calls and even outreach by HR to my emergency contact, but I did not have direct contact with the department from that point until March 4, 2025.[1] I did not see this as cause for concern; my prior experience with the department's FMLA process was largely informal, instigated by HR long after my leave began. I knew that I would have to submit the proper forms and documentation from my physician to establish FMLA eligibility, but I also believed that this was not an urgent matter, again based on my experience in 2024.

I reasoned that HR, my immediate supervisor and the Division Chief were all aware of my mental health diagnoses (depression, anxiety, and attention deficit hyperactivity

[1] In the interest of full disclosure, I have at various times exchanged messages with Marcia Knapp-Stoll, who formerly served as my assistant in the Transportation Division and remains a valued friend and colleague. Her recent messages—expressions of care and concern—were of a personal and nonofficial nature.

disorder, or ADHD) because I had personally shared that information with the relevant individuals when I realized that department employees would not. I had sent the email to AAG Hill and the personal message via AAG Mapes. AAG Evans and I had recently discussed several promising strategies for managing my workload and related deadlines. I mistakenly assumed that everything would be well once I was no longer in a state of emotional and physical exhaustion, so long as I did not exceed my annual FMLA limit, and the necessary paperwork was submitted before I planned to return to work.

Despite my good faith efforts to alert my supervisor to my health-related need for time off, I later learned that I was dismissed on February 24, 2025, without consideration of my request for FMLA leave, as required by 29 USC 2612(a)(1)(D), which guarantees eligible employees the right to take unpaid, job-protected leave for serious health conditions. The director of human resources has confirmed that my email to AAG Hill from February 10 was not forwarded to her office. The department appears to have made its decision without a full knowledge of the facts, engaging in the interactive process required by law, or affording me the opportunity to provide necessary medical documentation supporting my need for leave.

Although my termination was effective Monday, February 24, 2025, I did not learn of it until more than a week later, on Tuesday, March 4, when AG staff arrived unannounced at my home, displaying badges and demanding that I turn over my work computer, phone, state-owned desktop monitors (which I do not have, as I purchased my own shortly after starting with the department in February 2022), and my state ID badge. I surrendered the state-owned electronics in my possession, but I was unable to locate my badge while they stood on my doorstep insisting this was "standard procedure."

It is likely that this dismissal violated the Americans with Disabilities Act (ADA) and relevant case law. See, e.g., *Cehrs v Northeast Ohio Alzheimer's Research Ctr*, 155 F3d 775 (CA 6, 1998)(recognizing that an employer's failure to accommodate a non-standard leave request due to a medical condition could constitute disability discrimination.). All three mental health conditions I have disclosed to the department are recognized as disabilities under the ADA and employees suffering from them are entitled to the ADA's protections.

The Michigan Civil Service Rules (MCSR) also provide protections for employees in circumstances like mine that the department seemingly failed to consider, including MCSR 5-10 (guaranteeing eligible employees the right to request medical leave) and MCSR 1-8 (prohibiting discrimination and retaliation against employees with disabilities).

This abrupt action has left me without health insurance, without future pay, and without the opportunity to file for disability insurance benefits. It was a shocking and wholly unexpected blow and a major setback in my efforts to manage my mental and emotional health. Since March 4, I have been overwhelmed by fears of mounting debt, impending

eviction, loss of medical care when I truly need it, and catastrophic damage to my professional reputation and prospects. Such consequences are wildly disproportionate to the errors I committed: sending a vaguely worded email as I was spiraling into emotional turmoil and avoiding phone calls while I was, or had a reasonable (but mistaken) belief that I was on unpaid leave under FMLA.

RELIEF SOUGHT (Cont'd)

3. **Assurance that the Michigan Department of Attorney General complies with the FMLA, ADA, and Michigan Civil Service Rules**, including mandatory training for supervisory personnel on recognizing and appropriately handling employee requests for medical leave and accommodations under federal and state law.
4. **Restoration of my state IT services access** while this grievance is pending, so that I may gather evidence to support my claims.
5. If it is determined that my request for leave was negligently or intentionally mishandled, I also request a **temporary or permanent reassignment** within the division or elsewhere in the department at an equal job classification and pay grade.

Finally, although I am optimistic that this is a case of mutual misunderstanding that can be amicably resolved, department staff should be advised preserve the contents of my devices and all individuals with relevant evidence instructed to retain it, as this matter is likely to be litigated if it cannot be resolved informally or through the grievance process.

I am proud to be a public servant and an Assistant Attorney General, and I am committed to my duties. I appreciate your prompt attention to this grievance and hope that we can come to a swift and just resolution.

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From: David Towne
To: VanDeusen, Lannie (AG)
Subject: Re: Step Two Grievance Conference
Date: Tuesday, April 29, 2025 2:46:23 AM
Attachments: image001.png

Subject: Supplemental Clarification and Additional Evidence for Step 2 Grievance
Grievant: David W. Towne
Grievance No.: 2025-01

To: Lannie VanDeusen
Director of Human Resources
Michigan Department of Attorney General
Step 2 Grievance Official

Dear Director VanDeusen,

In preparation for the Step 2 grievance conference this Wednesday afternoon, I respectfully submit this supplemental statement for the record in the pending grievance, which was timely filed on April 7, 2025.

The purpose of this correspondence is to restate, clarify, and supplement certain facts and arguments, including points that were either expressly presented or reasonably implicit in the Step 2 grievance, or incorporated by reference from the Step 1 grievance. It is not intended to raise new claims or introduce new factual bases outside the scope of the grievance(s) as filed. I submit this statement now, prior to the conference and prior to issuance of any Step 2 decision, to avoid any potential confusion and to ensure the record is complete.

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1. Triggering of Employer Duties Under FMLA and ADA
My February 10, 2025, communication to AAG Michael Hill, combined with the Department's prior knowledge of my depression, anxiety, and ADHD diagnoses, was more than sufficient to trigger its duty to engage in the interactive process and to assess eligibility for protected leave under the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA). Formal submission of FMLA paperwork was not required to trigger these obligations. See *Spachman v Swan Harbour Associates*, 252 Mich App 400 (2002).

There is no dispute that:

- The Department is covered by the FMLA;
- I was an eligible employee under the FMLA;
- I was legally entitled to FMLA leave due to serious, and at times disabling, mood and executive function disorders;
- The Department denied benefits to which I was entitled under the FMLA, and instead terminated my employment without gathering all relevant facts or initiating the interactive process as required by law.

The Department's sole defense appears to be a flat assertion that I did not provide adequate notice—despite my documented mental health conditions, my previous use of FMLA leave, my February 10 email, and subsequent face-to-face communication with my designated peer accountability partner. The Department's position is not merely wrong as a matter of law; it is morally indefensible.

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2. Due Process Violations (42 USC § 1983)
As outlined in my grievances, the Department deprived me of a constitutionally protected property interest in my continued employment without providing meaningful notice, an opportunity to respond, or a hearing, in violation of the Fourteenth Amendment to the United States Constitution. See *Cleveland Board of Education v Loudermill*, 470 US 532 (1985); 42 USC § 1983.

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3. Defective Service of Notice
I reaffirm that the Department failed to comply with Michigan Civil Service Regulation 2.01, Standard F, by serving my notice of dismissal via first-class mail, rather than registered mail, and long after the dismissal's effective date—thus depriving me of notice as required.

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4. Reservation of Rights
I respectfully reserve all rights to fully develop, expand upon, and seek redress for the above-identified violations through Step 3 appeal proceedings and/or litigation.

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5. Additional Evidence of Retaliatory Conduct
Subsequent to the filing of my grievance, I was informed that the Department intends to affirmatively report the reason for my dismissal as "no call no show" to the Unemployment Insurance Agency, contrary to prior assurances from Jason Evans, Chief of the Corporate Oversight Division. Although an employer may respond to inquiries from the UIA, it is under no legal obligation to affirmatively disclose the cause of separation unless it chooses to do so. The discretionary decision to report my separation as abandonment, or the act of threatening to do so, rather than simply declining to comment—particularly given the circumstances surrounding my dismissal—constitutes additional circumstantial evidence of retaliatory and punitive conduct following my assertion of rights under the FMLA, ADA, ELCRA, and Civil Service Rules.

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6. Concerns Regarding the Department's Good Faith Participation
I also note that, during the Step 1 grievance stage, AAG Evans twice indicated his belief that resolution through settlement was likely. However, at the Step 1 settlement conference, he stated that he lacked settlement authority, and later reiterated during a follow-up call that resolution would not be possible due to instructions from higher-level officials. This sequence of events raises serious concerns about whether the Department has meaningfully participated in the grievance process in good faith, as required by Michigan Civil Service Regulation 8.01.

Thank you for ensuring that this supplemental statement is included in the Step 2 grievance record.

Kind regards,

David W. Towne
3123 Forest Rd., Apt. 101
Lansing, MI 48910-3849
734-620-2711

On Fri, Apr 25, 2025 at 4:27 PM David Towne <davidtowne@gmail.com> wrote:

> Thank you for accommodating my request--I do appreciate it. I will see you Wednesday.
>
> Kind regards,
>
> **David W. Towne**
> 3123 Forest Rd. Apt. 101
> Lansing, MI 48910-3849
> 734-620-2711
>
>
>
> On Fri, Apr 25, 2025 at 3:45 PM VanDeusen, Lannie (AG) <VanDeusenL2@michigan.gov> wrote:
>
> > Good afternoon David,
> >
> > Per your request, I will be sending a team's invite for the step two grievance conference rather than meeting in person. The teams meeting will be held at the same time as we discussed on Wednesday, April 30 at 2:00 p.m.
> >
> > Thank you,
> >
> > **Lannie VanDeusen**
> >
> > Director of Human Resources
> >
> > Human Resources Division
> >
> > Michigan Department of Attorney General
> >
> > 525 W. Ottawa St., PO Box 30212, Lansing, MI 48909
> >
> > Main Division Phone: (517) 335-7625
> >
> > Office Phone: (517) 335-7431
> >
> > Mobile Phone: (517) 749-2905

Vandeusenl2@michigan.gov

Michigan.gov/AG

From: **David Towne** davidtowne@gmail.com
Subject: Second Supplemental Grievance Statement and Formal Demand for Retroactive FMLA Designation
Date: May 6, 2025 at 5:33 AM
To: VanDeusen, Lannie (AG) VanDeusenL2@michigan.gov
Bcc: Evans, Jason (AG) evansj@michigan.gov, David W. Towne Esq. TowneD@michigan.gov

Director VanDeusen:

This email serves both as a supplemental submission to the grievance record in Step 2 Grievance No. 2025-01, and as a formal demand that the Department retroactively designate my requested leave—from the afternoon of **Thursday, February 6 through February 24, 2025**—as protected under the Family and Medical Leave Act (FMLA).

As you no doubt recall, in October 2024, I submitted an FMLA leave application weeks after beginning an extended absence for medical reasons. At your suggestion, I provided a signed but undated form, which you personally approved for retroactive effect without hesitation. That cooperative and flexible approach stands in stark contrast to the Department's current posture—namely, that regardless of any misunderstanding on your part or lack of awareness on my part, I failed to request leave "the right way," and must therefore suffer the most severe consequence available: dismissal, despite being lawfully entitled to unpaid leave. That is neither consistent nor justifiable.

Contrary to the Department's assertion at the settlement conference—where it became clear there was no genuine willingness to resolve this dispute and where the offer presented was little more than a veiled insult—there was no indication of misunderstanding following my email to my supervisor regarding my medical situation. AAG Hill made no effort to call me at home, leave a voicemail at my personal number, or contact me at my personal email address. He also apparently failed to forward my email to you, as you claimed to have no knowledge of it when we spoke. The assertion that the Department was unaware of what had happened and did its best to reach me is demonstrably untrue.

That assertion also fails to account for my in-person conversation with AAG Mapes, during which I explained my circumstances and asked that he inform the division chief. Your counsel acknowledged that this conversation took place, yet dismissed its significance without explanation—hand-waving away what was clearly an objective manifestation of my intent that occurred long before your ultimatum via UPS.

While I may not have used the word "FMLA" in my communications with AAG Hill or AAG Mapes, the law is clear: **under 29 CFR § 825.302(c), employees are not required to invoke any specific language** to trigger FMLA protections. My communications were more than sufficient to require follow-up—not silence. Two voicemails left on the same afternoon, followed by a misdelivered ultimatum with a deadline less than one business day later, do not meet any reasonable standard of notice—let alone the Department's legal obligations.

I have already acknowledged that my initial message could have been clearer. But to claim that it could only be interpreted as a request for a single day off is insupportable. That framing is opportunistic and misleading. Moreover, the Department's intransigence is wildly inconsistent with how you yourself have handled similar matters in the past—including my own prior leave a few short months before.

Accordingly, I now formally demand that my leave from **February 6 through February 24, 2025** be retroactively designated as protected FMLA leave. Any continued "absence" after that date was the direct result of the Department's own procedural failures and unjustified termination. I assert that I am entitled to:

- Full back pay and restoration of benefits,
- Reinstatement to my position or a comparable role, or in the alternative,
- A severance arrangement sufficient to fairly compensate me for: lost income, including benefits; the financial and emotional costs of contesting this unlawful and—under *Cleveland Board of Education v. Loudermill*—unconstitutional action; and the serious harm done to my personal and professional well-being by the Department's noncompliance with the law.

Kindly govern yourself accordingly.

Regards,

David W. Towne

3123 Forest Rd. Apt. 101

Lansing, MI 48910-3849

734-620-2711

Agency Grievance No. 2025-01
Grievant' s Name: David Towne

Agency answer at Step 1

The Department of Attorney General (Department) denies David Towne's grievance.

Mr. Towne emailed his supervisor on February 10 indicating only that he may be out of leave time and may need to take unpaid leave to attend a medical appointment that morning. His supervisor responded – understanding the request was to take leave for a medical appointment – asking him to let him know when he was back on the clock. At no time did Mr. Towne indicate that he was seeking a medical leave beyond the date of his medical appointment. Nor was any documentation submitted requesting a medical leave of absence as would be required under Department policy. Thus, the Department was never on notice that Mr. Towne was seeking medical leave beyond the date of his medical appointment. In fact, Mr. Towne's supervisor's email response dated February 10, 2025, conveyed his supervisor's understanding that Mr. Towne was only seeking leave for the date of the appointment. That was the last communication from Mr. Towne until his devices were picked up on March 4 by Department staff.

After that February 10 email exchange, the Department made numerous attempts to reach Mr. Towne. This included emails, Teams messages, phone calls to Mr. Towne and his emergency contact, and a letter mailed to his home indicating that he had to return to work or be separated. Mr. Towne chose to ignore all of these attempts to reach out to get him back to work.

Mr. Towne began his absence without leave prior to February 10. During the week of February 3, DTMB indicates he only logged into the state's network on February 6. He also attended a Teams meeting with me on February 3. Although Mr. Towne was asked to prepare an answer to a complaint by February 4, he failed to do so. He didn't provide a draft until February 6 - too late for client review. He then failed to contact opposing counsel to get an extension for the answer. His supervisor, after not hearing from him, was forced to contact opposing counsel and obtain a stipulation. If his supervisor had not obtained the stipulation, Mr. Towne's conduct would have placed the client agency at risk of being defaulted.

Ultimately, Mr. Towne failed to take the necessary actions to either work or be placed in an authorized leave status. Instead, he chose to stop working for an extended period without notifying his supervisor or obtaining leave approval.

CS-100
REV 08/2022

Agency Grievance No.
2025-01
(Provided by Employer)

GRIEVANCE AND GRIEVANCE APPEAL FORM

Civil Service Reference No.
(Assigned by Civil Service)

This form is used for (1) grievances, (2) agency responses, and (3) appeals of agency response. Before filing this form, see Regulation 8.01, *Grievance and Grievance Appeal Procedures,* and Regulation 8.06, *Computing Time and Filing Documents*.

GRIEVANT'S NAME			NAME OF GRIEVANT'S REPRESENTATIVE (IF ANY)		
GRIEVANT'S E-MAIL ADDRESS	GRIEVANT'S PHONE NO.		REP'S E-MAIL ADDRESS	REP'S PHONE NO.	
GRIEVANT'S MAILING ADDRESS			REP'S MAILING ADDRESS		
CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
EMPLOYEE ID NO.	GRIEVANT'S DEPARTMENT, AGENCY, CLASS AND LEVEL				

Please check the appropriate step.

- ☐ **Employee grievance at Step 1**
- ☐ **Employee grievance at Step 2**
- ☐ **Employee grievance appeal to Civil Service after Step 2**
- ☐ **Agency answer at Step 1**
- ☒ **Agency answer at Step 2**

See attached Agency Answer to Step 2

All grievance appeals to Civil Service must be in response to a department's answer or failure to answer at Step 2 and must be filed to MCSC-Hearings@mi.gov, unless a prior request for an alternative filing method is granted by the CSHO's administrative officer.

EMPLOYEE STATEMENT OF BASIS FOR THE GRIEVANCE / AGENCY RESPONSE (Attach additional sheets, if necessary.)

RELIEF SOUGHT (Attach additional sheets, if necessary.)

SIGNATURE (Either sign or type your name as an electronic signature.)	DATE

Please keep a copy for your records.

Instructions

Step-1 and Step-2 grievances. Before completing this form, review Regulation 8.01, *Grievance and Grievance Appeal Procedures,* and Regulation 8.06, *Computing Time and Filing Documents,* available at online. Your HR office can identify your Step-1 and Step-2 Officials for receiving filings and can provide information on filing grievances.

Grievance appeals must be filed by email, unless Civil Service Hearings Office's administrative officer grants a timely request for alternative filing. Communications about your grievance appeal from the CSHO will be sent by email. You must monitor the email address provided on the CS-100 for these communications.

Review the checklists below before filing. Visit the CSHO website or call 517-241-9096 for information.

Checklist for Step-1 or Step-2 grievance filings

- ☐ Is your grievance authorized? See Rule 8-1.3(a), *Types of grievances permitted.*
- ☐ Is your grievance timely? Your initial grievance must be filed within 14 days after you knew or reasonably should have known of the action being grieved. If a step-1 answer was issued within 14 days of your grievance filing, you must file any step-2 grievance within 14 days after the answer was issued. If a step-1 answer was not issued within 14 days of your step-1 grievance filing, you must file any step-2 grievance within 35 days after you filed your step-1 grievance. If your grievance is late, you must provide an explanation for your lateness.
- ☐ If you have an authorized representative, have you provided all contact information (including a valid email address), and is the representative eligible to represent you? See Regulation 8.01, § 4.K.
- ☐ Does your statement concisely describe the basis for the grievance and the remedy sought?
- ☐ Have you completely filled out, signed, and dated the CS-100?
- ☐ For a Step-2 grievance, have you included any Step-1 grievance and any Step-1 response?
- ☐ Have you submitted your grievance to the correct departmental official? Some actions can be grieved directly to Step 2. Consult your HR office to determine at which step your grievance should be filed. See Regulation 8.01, § 4.B.1.a

Checklist for grievance appeal filings to the CSHO

- ☐ Is filing a grievance appeal authorized? You cannot file a grievance appeal directly to the CSHO. A grievance appeal can only be filed after (1) a departmental Step-2 answer is issued or (2) a Step-2 grievance is filed and no timely step-2 answer is issued. If neither condition is met, your premature grievance appeal will be returned.
- ☐ Is the subject matter of your grievance appeal authorized? Your statement of grievance must include a concise statement of the basis for your grievance appeal, including the specific grounds for appeal. See Rule 8-2.2, *Limitation on Grievance Appeals.*
- ☐ Have you concisely described a result that you seek that is within the jurisdiction of the CSHO to grant?
- ☐ Is your appeal timely? If a step-2 answer was issued within 28 days of the step-2 grievance filing, you must file any appeal within 28 days after the step-2 answer was issued. If a step-2 answer was not issued within 28 days of the step-2 grievance filing, you must file any appeal within 70 days after you filed your step-2 grievance. If your appeal is late, you must provide an explanation for your lateness.
- ☐ Does your appeal contain a copy of all Step-1 and Step-2 grievances and departmental responses?
- ☐ Have you completely filled out, signed, and dated the CS-100? Sending a scanned copy of a signed form or typing your name in the signature box meets the requirement for an electronic signature.
- ☐ Did you file your grievance appeal to MCSC-Hearings@mi.gov by email? Email filing is mandatory for grievance appeals to the CSHO, unless an exception is requested and approved before the filing deadline. Subsequent communications will be by email. Keep copies of all filings for your records.

STEP-TWO EMPLOYEE STATEMENT OF BASIS FOR THE GRIEVANCE
(Continued from Page 1)

that I acted reasonably and in full good faith, yet these messages were never forwarded to HR.

B. Mischaracterization of Absence

The Department's labeling of my actions as "no call, no show" is plainly erroneous given the uncontested facts. Rather than acknowledging a simple mutual misunderstanding, the Department has insinuated—based in part on reports it has conceded do not support its conclusions—that I did not work the hours assigned to me prior to requesting leave and that my work was unsatisfactory. This allegation is irrelevant to the question of whether I was absent without proper notice and constitutes a baseless attack on my professional record. I take my duty very seriously, despite the handicap my mental health conditions impose on me. Although my efficacy was likely compromised, I continued to work a full schedule through a COVID-19 infection. When I reached a physical and emotional breaking point a short time thereafter, I nonetheless completed what I could and promptly communicated my need for leave under the Family and Medical Leave Act (FMLA)to the appropriate managers. To suggest that I wasn't working, or that poor performance justifies summary dismissal without documentation or due process, or that I failed to communicate my need for leave, are reprehensible falsehoods and flagrant violations of both the law and my rights as a public employee.

C. Inadequate Warning Prior to Dismissal

At no point prior to my dismissal on February 24, 2025, did I receive any warning suggesting that such an action was imminent. I operated under the assumption that I was on FMLA unpaid leave until investigators from the Department appeared at my door demanding my ID and state-owned equipment. I received no notice in person, by telephone, U.S. Mail, or to my personal email address. The only telephone contact I am aware of were two voicemails, both left on February 18, by Lannie VanDeusen, neither of which even *hinted* that disciplinary action was imminent. HR also reached out to my emergency contact, but said nothing about a potential dismissal; the message she received seemed primarily concerned with my wellbeing.

A written ultimatum (see below) was allegedly delivered to my residence via UPS on February 21, 2025, with an effective date of February 24, 2025, but this not received and was unknown to me until long after that date. There is no evidence that this delivery was signed for or even left on my doorstep and not a different one—a common occurrence in my apartment community, where the buildings lack clearly visible numbering and all look substantially identical. **To be clear: I never had actual or constructive notice of any kind whatsoever that I was at risk of any disciplinary action, let alone termination**, clear evidence of a grossly inadequate process and a denial of the protections guaranteed under the Fourteenth Amendment.

D. The Department's Pre-Dismissal Ultimatum

As noted above, the Department apparently issued an ultimatum demanding my immediate return to work under conditions that ignored my documented health needs and my legally recognized right to FMLA leave. By failing to acknowledge that I even had the option of requesting FMLA leave—especially in light of my known disabilities and previous use of such leave—the Department's ultimatum radically departed from its very recent prior procedure and violated both disability law and my civil rights. This coercive measure was imposed without any regard for my underlying medical condition or the procedural safeguards required for public employees.

E. Defective Notice of Dismissal

The dismissal notice provided to me failed to comply with the Michigan Civil Service rules, which explicitly require that such notices be sent via registered mail to ensure proper receipt. Mich Civ Serv R 2-6.1. HR did not fulfill this basic procedural requirement, sending notice only after I emailed that office trying to resolve what I thought was a simple misunderstanding. This defective notice of my dismissal and rights under the Civil Service rules, combined with the Department's failure to notify me verbally or through other sufficient channels that I might be terminated, constitutes a significant procedural violation that adds to the wrongful nature of the dismissal and exacerbates the harm caused. This is to say nothing of the irony and hypocrisy of the department's apparent newfound insistence on following a certain procedure for requesting FMLA leave, though it remains unclear what that procedure is.

F. General Violations of Michigan Civil Service Rules

The actions of the Department have violated numerous provisions of the Mich Civ Serv R 1-8—including, but not limited to, Rules 1-8.1, 1-8.2, and 1-8.3. Moreover, having previously alleged discriminatory harassment against a former supervisor, I specifically allege that my dismissal and the Department's refusal to act in good faith to resolve this matter may constitute a violation of Mich Civ Serv R 2-10 as reprisal or retaliatory action against a whistleblower.

III. Legal Violations

1. FMLA Violations:

Under the FMLA, 29 USC §§ 2601 *et seq*., and its Michigan equivalent, the Paid Medical Leave Act, MCL 408.961 *et seq*. (PMLA), employees with qualifying conditions are entitled to an unpaid leave of absence. My well-documented leave request, coupled with the Department's established informal practices, makes the rejection of my request—and the subsequent dismissal based on a "no call, no show" determination—a direct violation of my rights under these laws.

2. ADA Violations:

The Americans with Disabilities Act, 42 USC §§ 12101 *et seq.* (ADA), and its Michigan equivalent, the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.* (PWDCRA), mandate that employers

provide reasonable accommodations for employees with disabilities. provide reasonable accommodations for employees with disabilities. The Department's inflexible, punitive approach in ignoring and/or denying my leave request, in conjunction with its baseless recharacterization of my attendance and performance, constitutes clear discrimination under both the ADA and the PWDCRA.

3. Denial of Due Process:

As established in *Cleveland Board of Education v Loudermill*, 470 US 532 (1985), public employees are entitled to due process before dismissal. The imposition of an ultimatum without proper notice, a meaningful hearing, or adherence to a complete disciplinary process unequivocally deprives me of these constitutional rights. Whether the "no call, no show" label accurately reflects my actions or is employed as a mere pretext to conceal some other motivation does not alter the fact that the requisite procedural safeguards have not been followed, and the Department and individual personnel have actionably violated my civil rights by this summary dismissal. These violations are actionable under 42 USC § 1983 and its Michigan equivalent, the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.* (ELCRA).

IV. Conclusion

The Department's actions—characterized by its refusal to resolve this matter in good faith, the imposition of a coercive (albeit ineffectively delivered) ultimatum, procedurally defective notice, and the lack of proper or even minimally adequate communication prior to dismissal—are both legally indefensible and profoundly unjust. These measures have inflicted significant personal and professional harm and violate my rights under the FMLA, ADA, PMLA, PWDCRA, and ELCRA, as well as my fundamental constitutional guarantee of due process. One cannot help but wonder what—or who—is motivating the department to behave in such a vindictive and grossly disproportionate manner.

Should the Department fail to remedy these violations forthwith, I shall pursue all available legal remedies, including claims under Section 1983 (for which there is no statutory cap on recovery of actual and punitive damages), as well as additional claims under the FMLA, ADA, PMLA, PWDCRA, and ELCRA.

I trust that this grievance will receive the serious and prompt consideration required by law.

Kindly govern yourself accordingly.

David W. Towne

RELIEF SOUGHT (continued from Page 1)

Furthermore, I demand that the Department disclose the names of each individual who has actively opposed resolution of this matter and/or prohibited the Step One grievance officer from discussing settlement at the settlement conference or thereafter. Finally, I demand that I not be required to report to any of those identified individuals after reinstatement, and that all reasonable steps be taken to insulate me from future bias and retribution.