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FL-33

To All NS General Chairmen:

As you know, the Family and Medical Leave Act (FMLA) requires employers to grant unpaid leave to employees in certain circumstances and provides in part that employers may require the substitution of paid leave while employees are on FMLA leave. NS, when it implemented its FMLA policy in 1994, required employees on FMLA leave to substitute applicable paid leave in certain circumstances. That policy was revised in 2000 to provide that employees on FMLA leave could elect, but would not be required, to use applicable paid leave concurrently with FMLA leave.

I am writing to advise that NS has again reviewed its policy with respect to the application of FMLA and has made certain changes to that policy, effective August 1, 2004, as follows:

- Any unused paid sick leave, personal leave or vacation must be substituted when an employee is granted FMLA leave on an intermittent basis as a result of his or her own serious health condition.
- Any unused paid personal leave or vacation must be substituted when an employee is granted FMLA leave on either a block or intermittent basis as a result of the birth (other than in the case of the employee's pregnancy) or placement of a child for adoption or to care for a family member with a serious health condition.
- An employee granted FMLA leave on a block basis as a result of his or her own serious health condition (including pregnancy) may elect whether or not to substitute any available paid sick leave, personal leave or vacation.

As you may know, other railroads and a number of rail labor organizations are currently litigating in the federal court in Chicago the propriety of certain changes to their respective FMLA policies. As information, NS intends to join in that litigation in order to obtain certain declarations concerning its FMLA policy changes.

If you have questions, please do not hesitate to contact Labor Relations.

Very truly yours,