

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Disability Review and Separation	PAGE <u> 1 </u> OF <u> 6 </u>
	NUMBER: 36-LEV-06
RULE/CODE REFERENCE: OAC Chapter 123:1-30	SUPERSEDES: 36-LEV-06 dated 12/13/13
RELATED ACA STANDARDS:	EFFECTIVE DATE: March 15, 2016
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish a standardized disability review and separation policy for all employees within the Ohio Department of Rehabilitation and Correction (DRC) which complies with Chapter 123:1-30 of the Ohio Administrative Code (OAC).

III. APPLICABILITY

This policy applies to all employees within the Ohio Department of Rehabilitation and Correction.

IV. DEFINITIONS

Active Work Status – The conditions under which an employee is actually in a work status and is eligible to receive pay. It does not include use of vacation, sick leave, bereavement leave, compensatory time, personal leave, military leave, disability leave, holidays, cost savings days or any other off work leave. For purposes of disability separations only, this also does not include hours worked during a transitional work program authorized by OAC 123:1-33-07 (B) or in a temporary part-time position authorized by OAC 123:1-33-07 (A).

Disability Retirement - An action taken by an employee to retire with a disability under the retirement system with reinstatement rights of up to five years from the effective date of the retirement.

Disability Separation - Separation from State service when an employee is unable to perform the essential functions of the position due to an illness, injury, or condition with reinstatement rights of two (2) years from the last day the employee was in active work status. The separation may be voluntarily entered into by the employee or imposed by the employer.

Essential Functions - The fundamental job duties of the employment position the individual holds within the Department.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to review all cases of individuals on disability, Workers' Compensation, Occupational Injury Leave (OIL), or other leaves of absence. These reviews are undertaken to establish whether the employee is now able or expected within the foreseeable future to be able to perform the essential functions of his/her position. Employees determined to be unable to perform the essential functions of their positions, and for whom there exists no expectation that they will be able to perform those essential functions within the foreseeable future, shall be provided the opportunity for disability retirement or shall be disability separated.

VI. PROCEDURES

A. Absence Management and Disability Reviews

Employees on medical leave shall be subject to the reviews listed below, unless sufficient information/documentation has already been provided or obtained.

1. An employee off work for three (3) days shall be contacted by the Human Resources staff for an update on their medical condition and the employee's anticipated return to work date.
2. An employee off work for seven (7) days shall be contacted by the Human Resources staff and instructed to provide medical documentation from his/her physician or healthcare provider concerning his/her medical condition and anticipated return to work date.
3. An employee anticipating to be off work for more than fourteen (14) consecutive days for a medical condition shall be supplied with an Off-Work packet consistent with their situation (e.g. Adoption/Childbirth Leave, Work Injury, or Disability Leave) by their Personnel Office.
4. An employee requesting Disability Leave shall submit a completed application to the Off-Work Coordinator located in or assigned to the employee's worksite personnel office within twenty (20) days of their last day worked for processing.
5. An employee off work in excess of ninety (90) days or having exhausted time associated with the Family Medical Leave Act (Department policy 36-LEV-02) shall be reviewed for disability separation. This review shall be completed in consultation with the DRC Off-Work Coordinator and/or DRC Legal.

B. Factors to Consider About Disability Separations

1. A voluntary or involuntary disability separation may occur any time the Appointing Authority or designee determines the employee is unable to perform the essential functions of his/her position. This action may be taken even if an employee is receiving approved disability leave benefits. The Appointing Authority/designee shall continuously review disability, Workers' Compensation, OIL, and medical leaves of absence to determine if a separation is appropriate. All cases shall be aggressively reviewed where actual incapacitation is not well documented or is suspect, or where an anticipated date of return

to work has not been established, or where an employee is off work for longer than ninety (90) days. Some of the issues to consider prior to separating an employee are:

- a. The medical evidence provided by the employee's or the State's doctor;
 - b. The prognosis and recovery period indicated by the doctor's report; and
 - c. Any description of limitations impacting the employee's ability to perform the essential functions of his or her position.
2. Clarification may be requested in any case where a medical report is unclear regarding specific limitations on an employee's capacity to work or fails to identify a prognosis with expected date of return to work.

C. Voluntary Disability Separations

1. When an employee agrees he/she is unable to perform the essential functions of his/her position, the Appointing Authority/designee shall review with such employee the availability of voluntary separation from employment.
2. Where there is credible medical documentation supporting the employee's inability to perform his/her essential job functions, the Appointing Authority/designee shall grant a request for voluntary separation from employment.
3. Where there is insufficient medical documentation supporting the employee's inability to perform his/her essential job functions, the Appointing Authority/designee shall deny a request for voluntary separation from employment.
4. Where medical findings are in question, the Appointing Authority/designee may require the employee to submit to a medical or psychological evaluation. The request for such an exam shall be submitted in writing to the Bureau of Personnel.
5. When a voluntary disability separation is granted, the employee waives his/her right to a pre-separation hearing and to appeal the separation to the State Personnel Board of Review (SPBR).
6. The employee retains the right to submit a written request for reinstatement of employment for two (2) years from the date he/she was no longer in active work status due to the disabling illness, injury or condition.

D. Involuntary Disability Separations

If the employee is unable to perform his/her essential job functions, and there exists no reasonable expectation the employee will be able to perform those functions within the foreseeable future, and the employee refuses to voluntarily disability separate, the Appointing Authority shall proceed with the involuntary disability separation process as follows:

1. A medical examination is not required if the employee is hospitalized at the time of the separation or if the employee has exhausted his/her disability benefits. In other cases the Appointing Authority/designee may obtain the medical evidence necessary for a determination from a medical examination ordered pursuant to OAC 123:1-30-03, or from medical evidence presented by the employee, or from a current medical provider under Workers' Compensation, OIL, or disability.
2. The DRC Off-Work Coordinator shall work in conjunction with the institution Off-Work Analyst and/or Personnel Director to review claims for disability separation consideration.
3. Once the Off-Work Coordinator and the Off-Work Analyst and/or Personnel Director agree disability separation should be pursued, the Personnel Director shall review the facts with the Managing Officer to gain approval to proceed.
4. The Off-Work Coordinator shall prepare the facts of the case and forward to DRC Legal for approval.
5. When DRC Legal gives approval to proceed, the DRC Off-Work Coordinator shall prepare the pre-separation hearing notice and ADM4055 and forward to the Personnel Director. The Appointing Authority/designee shall hold a pre-separation meeting with the employee.
 - a. The employee shall be given written notice at least seventy-two (72) hours in advance of the meeting.
 - b. The employee may waive the meeting; however, the waiver must be submitted in writing.
 - c. The employee may bring a representative to observe the pre-separation meeting.
6. An employee's failure to show for a pre-separation meeting shall be documented as a no-show.
7. At the hearing, the employee has the right to examine the Appointing Authority's evidence, to rebut that evidence, and to present testimony and evidence regarding his or her ability to perform the essential functions of the position.
8. The Appointing Authority/designee shall weigh the evidence presented at the pre-separation meeting and determine if the employee is capable of performing the job duties. The Appointing Authority/designee shall either order an involuntary disability separation or determine the employee is fit for duty and order the employee to return to work.
9. An employee who is involuntarily disability separated is not prohibited from applying for disability leave benefits or for disability retirement.
10. When an employee is involuntarily disability separated, an Order of Involuntary Disability Separation (ADM 4055 or "124.34 Order") must be completed, signed by the Appointing Authority, and served on the employee on or before the effective date of that order. If the order is mailed to the employee, it must be mailed via certified mail at least fourteen (14)

days prior to the effective date of the order and received by the employee prior to the effective date.

11. The employee may appeal the involuntary disability separation to the State Personnel Board of Review within ten (10) days of receiving the separation order.

E. Right to Reinstatement

1. An employee may make a written request to the Appointing Authority/designee for reinstatement from a disability separation. The request shall be accompanied by substantial, credible, medical evidence that the employee is once again capable of performing the essential functions of the position.
2. A first request cannot be made until three (3) months from the date the employee was no longer in active work status due to the disabling illness, injury or condition.
3. Subsequent requests cannot be made more than once every three (3) months from the date the employee is notified of a reinstatement denial and no later than two (2) years from the date the employee was no longer in active work status due to the disabling illness, injury or condition.
4. The Appointing Authority must notify the employee of his/her decision to approve or deny a reinstatement request no later than sixty (60) days after he/she receives the request.
5. When the request is accompanied by medical documentation supporting the request, the Appointing Authority/designee shall either reinstate the employee, or require the employee to submit to a medical or psychological examination in accordance with OAC 123:1-30-03.
6. After receiving the medical evidence and/or examination results, if the Appointing Authority/designee determines the evidence appears to indicate the employee remains incapable of performing his/her essential job duties, the Appointing Authority or designee shall hold a pre-reinstatement meeting.
7. The employee shall be provided with written notice at least seventy-two (72) hours in advance of the meeting. The employee may waive the meeting; however, the waiver must be submitted in writing. At the meeting, the employee may examine the Appointing Authority's evidence, rebut that evidence and present testimony and evidence regarding his or her ability to perform the essential functions of the position.
8. An employee's failure to show for a pre-reinstatement meeting shall be documented as a no-show.
9. The Appointing Authority/designee may consider activity by a separated employee that is inconsistent with his/her disabling illness or injury when determining that employee's eligibility for reinstatement.
10. If the Appointing Authority/designee reinstates the employee, the employee shall be assigned to a position in the classification held at the time of the disability separation. If

that classification no longer exists or is not utilized by the Appointing Authority/designee, the employee shall be placed in a similar classification. If no similar classification exists, the employee may be laid off in accordance with applicable OAC and ORC provisions, and with applicable bargaining unit contracts.

11. If the employee is granted disability retirement benefits through the State retirement system, the reinstatement rules apply for up to five (5) years.
12. An employee who is not reinstated shall be notified in writing of the denial and may appeal that denial to the SPBR within thirty (30) days of receiving the notice.
13. An employee who has been disability separated and fails to apply for reinstatement within two (2) years from the date the employee was no longer in active work status due to the disabling illness, injury or condition shall be deemed permanently separated from State service.