

123:1-30-01

Involuntary disability separation.

- (A) An employee who is unable to perform the essential job duties of the position due to a disabling illness, injury or condition may be involuntarily disability separated. An involuntary disability separation occurs when an appointing authority has received substantial credible medical evidence of the employee's disability and determines that the employee is incapable of performing the essential job duties of the employee's assigned position due to the disabling illness, injury or condition.
- (B) An appointing authority shall request that an employee submit to a medical or psychological examination, conducted in accordance with rule 123:1-30-03 of the Administrative Code, prior to the involuntary disability separating the employee unless:
- (1) The employee is hospitalized at the time such action is taken,
 - (2) The employee has exhausted his or her disability leave benefits, or
 - (3) Substantial credible medical evidence already exists that documents the employee's inability to perform the essential job duties.
- (C) Pre-separation hearing. An appointing authority shall institute a hearing prior to involuntarily disability separating an employee. The employee shall be provided written notice at least seventy-two hours in advance of the hearing. If the employee does not waive the right to the hearing, then at the hearing the employee has the right to examine the appointing authority's evidence of disability, to rebut that evidence, and to present testimony and evidence on the employee's own behalf.
- (D) If the appointing authority determines, after weighing the testimony presented and evidence admitted at the pre-separation hearing, that the employee is capable of performing his or her essential job duties, then the involuntary disability process shall cease and the employee shall be considered fit to perform his or her essential job duties. If the appointing authority determines, after weighing the testimony presented and the evidence admitted at the pre-separation hearing, that the employee is unable to perform his or her essential job duties, then the appointing authority shall issue an involuntary disability separation order.
- (E) Right to reinstatement. At the time the appointing authority provides the involuntary separation order to the employee, the appointing authority shall notify the employee of the required procedures to apply for reinstatement. The effective date of separation, for purposes of reinstatement, shall be based on the date in which the employee was no longer performing in active work status due to the disabling illness, injury or condition. An employee who has been involuntarily disability separated is not prohibited from applying for disability leave benefits. The total

time of absence due to the disabling illness, injury or condition shall not exceed two years from the date of separation for purposes of reinstatement rights under this chapter. If an employee attempts to return to work but fails to perform the essential job duties for six consecutive months, the employee's effective date of separation does not change except as provided in paragraph (F) of rule 123:1-33-08 of the Administrative Code.

- (F) An employee so separated shall have the right to appeal in writing to the personnel board of review within ten days following the date the order is served.
- (G) For purposes of this rule only, "active work status" does not include those hours worked during a transitional work program authorized by paragraph (B) of rule 123:1-33-07 of the Administrative Code or in a temporary part-time position authorized by paragraph (A) of rule 123:1-33-07 of the Administrative Code.

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CERTIFIED ELECTRONICALLY

Certification

03/24/2009

Date

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