

123:1-30-04

Right to reinstatement; rights of appeal.

- (A) **Timeline for reinstatement.** An employee may make a written request to the appointing authority for reinstatement from a disability separation. An employee may not make a first request for reinstatement until three months from the date the employee was no longer in active work status. The appointing authority shall notify the employee of its decision to approve or deny the reinstatement request no later than thirty days after it receives the employee's written request. The employee shall not make subsequent requests for reinstatement more than once every three months from the date the employee is notified of a reinstatement denial. An employee is not eligible for reinstatement if the request occurs later than two years from the date that the employee was no longer in active work status due to the disabling illness, injury, or condition.
- (B) **Requirements for reinstatement.** The employee's request for reinstatement shall be accompanied by substantial, credible medical evidence that the employee is once again capable of performing the employee's essential job duties. Upon receiving this evidence, the appointing authority shall either reinstate the employee or require the employee to submit to a medical or psychological examination in accordance with rule 123:1-30-03 of the Administrative Code.
- (C) **Initial determination.** The appointing authority will review the substantial credible medical evidence submitted by the employee or the results of a medical or psychological examination conducted in accordance with rule 123:1-30-03 of the Administrative Code and make an initial determination of whether or not the employee is capable of performing the essential duties of the employee's position. If the appointing authority initially determines that the employee is once again capable of performing the essential job duties, the appointing authority shall reinstate the employee. If the appointing authority initially determines that the employee remains incapable of performing the essential job duties, the appointing authority shall institute a pre-reinstatement hearing.
- (D) **Pre-reinstatement hearing.** An employee shall be provided written notice at least seventy-two hours in advance of the pre-reinstatement hearing. If the employee does not waive the right to a hearing, then at the hearing the employee has a right to examine the appointing authority's evidence of continuing disability, to rebut that evidence, and to present testimony and evidence on the employee's own behalf.
- (E) **Determination.** The appointing authority will weigh the testimony presented and evidence admitted at the pre-reinstatement hearing to determine whether the employee is able to perform the essential job duties of the employee's assigned position. If the appointing authority finds the employee capable of performing essential duties, then the appointing authority shall reinstate the employee. If the appointing authority finds the employee incapable of performing essential duties, then the appointing authority shall not reinstate the employee.

- (F) If the appointing authority determines that an employee, who has been disability separated, has committed an act that is inconsistent with the employee's disabling illness, injury or condition, then that act may be considered by the appointing authority when determining an employee's eligibility for reinstatement.
- (G) Once an appointing authority determines that the employee is to be reinstated, then the employee has a right to be assigned to a position in the classification the employee held at the time of disability separation. If the classification the employee held at the time of disability separation no longer exists or is no longer utilized by the appointing authority, then the employee shall be placed in a similar classification. If no similar classification exists, or the employee no longer meets the minimum qualifications, the employee may be laid off in accordance with Chapter 123:1-41 of the Administrative Code and sections 124.321 to 124.327 of the Revised Code or in accordance with an applicable collective bargaining agreement executed in accordance with Chapter 4117. of the Revised Code.
- (H) If the employee has been granted disability benefits by a state retirement system, the requirements of this rule shall apply for the length of time that the applicable state retirement system requires the employee to be considered for reemployment, except that a licensed practitioner shall be appointed by the public employees retirement board and application for reinstatement shall not be filed after the date of service eligibility retirement. Employers shall restore an employee found to be physically and mentally capable of resuming service pursuant to the statutes and rules of the applicable state retirement system, but may request the employee to submit to a medical or psychological examination, conducted in accordance with rule 123:1-30-03 of the Administrative Code, prior to such restoration.
- (I) An employee refused reinstatement as provided in paragraph (E) of this rule shall be notified in writing of the refusal to reinstate and of the right to appeal in writing to the personnel board of review within thirty days of receiving notice of that refusal to reinstate.
- (J) An employee who fails to apply for reinstatement within two years from the date that the employee was no longer in active work status due to the disabling illness, injury, or condition shall be deemed permanently separated from service.
- (K) 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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