

Office of Human Resources Administrative Procedures

(2021-2) Disability Separation

Responsible Division/Office: Office of Human Resources

Responsible Officer: Stacey Luce

Revision History: 2022

Effective Date: July 1, 2021

Next Review (Generally 3-5 years): July 2024

- (A) **Explanation Statement.** This policy applies to all excluded and bargaining unit employees (with corresponding MOU's) who are unable to perform the essential duties of their position due to a disabling illness, injury or condition and therefore, may be involuntarily disability separated after all available paid and unpaid leave has been exhausted, in accordance with this process. An involuntary disability separation occurs when the University has received substantial credible medical evidence of the bargaining unit member's disability and determines that the bargaining unit member is incapable of performing the essential job duties of the bargaining unit member assigned position due to the disabling illness, injury or condition. Before disability separation can occur, the University will satisfy its obligations under the Americans Disability Act.
- (B) **Purpose.** To separate an employee from service when they are no longer medically able to perform their duties without terminating the employee through the discipline procedures.
- (C) **Definitions.** None
- (D) **Parameters.**
- (1) The University shall request that the employee submit to a medical or psychological examination prior to involuntary disability separating the employee unless:
 - (a) The employee is hospitalized at the time such action is taken, or
 - (b) Substantial credible medical evidence already exists that documents the employee's inability to perform the essential job duties

- (2) The medical or psychological examination may occur prior to the exhaustion of any paid or unpaid leaves

(E) **Procedures.**

- (1) The University shall select one or more licensed practitioners to conduct the examinations. Prior to any examination, the University shall supply the examining practitioner with facts relating to the perceived disabling illness, injury or condition. The University shall also supply physical and mental requirements of the employee's position; duty statements; position specifications; and descriptions. Both the University's Office of Human Resources and the employee shall receive the results of any examination and related documents.
- (2) Except when the employee fails to appear for the examination, the University shall pay the cost of the examinations.
- (3) An employee's refusal to submit to an examination or the refusal to release the results of the examination amounts to insubordination, punishable by the imposition of discipline up to and including removal.
- (4) An employee's unexcused failure to appear for an examination could result in discipline. The University shall pay for the cost of this examination, except that the employee will be responsible for the costs associated with an unexcused failure to appear at a scheduled examination.
- (5) If the employee disagrees with the fit for duty finding of the University's practitioner, they shall have an opportunity to use a licensed practitioner of their choosing to perform a second fitness for duty examination. The employee shall pay for the cost of this examination.
- (6) If the findings of their chosen practitioner directly conflicts with that of the University on the issue of whether the employee can perform the essential functions of the job, the employee's practitioner and the University's practitioner shall collaborate to select a neutral third practitioner to perform the fitness for duty

assessment. This selection shall be made within 14 calendar days after the receipt of the second examination results.

- (7) Should that selection not be timely made, then the University's third-party health care administrator shall select a third medical practitioner from its list of medical practitioners. The cost of the third medical opinion shall be split between the University and the employee.
- (8) The prevailing finding of two of the three practitioners shall determine the employee's fitness for duty. This determination shall be final and binding and not subject to arbitration.
- (9) A bargaining unit member so separated shall have the right to grieve the separation in accordance with the collective bargaining agreement or the MOU. If arbitrated, then the only issues before the arbitrator will be whether the procedures contained in this Section have been followed and the appropriate length of a reinstatement period, if any, and not whether the employee is capable of performing their job duties.
- (10) The reinstatement period for an employee who has been separated under the Involuntary Disability Separation provision shall have a reinstatement period of up to two years.
- (11) 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.
- (12) An employee who has been involuntarily disability separated is not prohibited from applying for disability leave benefits.
- (13) The total time of absence due to the disabling illness, injury or condition shall not exceed two years from the date of last active status work date for purposes of reinstatement rights under this provision. If an employee attempts to return to work during the reinstatement period but fails to perform the essential job duties for six consecutive months, the employee's effective date of separation does not change.