



Department of Employee Relations

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Memorandum

To: Department Heads and Personnel Officers
From: Maria Monteagudo, Employee Relations Director
RE: Notice Requirements when Separating Employees upon Expiration of a Medical Leave of Absence.

Rule 10.2 of the Civil Service Rules allows a department to grant an employee an unpaid medical leave of absence of up to a year. The same rule allows a department to extend an employee's medical leave of absence for up to an additional year. There are cases where an employee either does not return from a leave of absence, or is unable to return to work from a leave of absence. Under rule 10.3 of the Civil Service Rules, failure to return to work from a leave of absence can result in the employee being separated from service.

This memo clarifies the proper way to separate an employee who does not return from a leave of absence, who attempts to return from leave without a medical release, or who is denied a request for an extension of leave by the appointing authority.

When to Terminate

If proper notice is given to an employee that failure to return from a leave of absence may result in separation from service, and the employee does not respond to such notice, nor makes any attempt to return to work upon expiration of the leave of absence, the employee should be separated from service. This includes cases where the employee attempts to return to work after a medical leave without the appropriate medical release. Simply showing up to work after a leave without a release is not a "return to work".

If an employee responds to a notice of expiration of leave of absence but is unable to return from leave due to his/her medical status, the employee may be separated. Depending on the circumstances specific to the employee and the employee's medical condition, an extension to the leave may be granted for up to a year.

When a request for leave extension is received, careful consideration must be given to the nature and length of the request. Granting an extension of a leave is within a department's authority.

Requests for extensions that are unreasonably long or where the period of leave is undetermined may be denied. When an employee's request to extend a leave of absence is denied, the employee should be separated from service.

Giving Notice of Separation

Form CBP-129 R. 11/2010 should be used to grant leave of absences, including non-FMLA medical leaves. This form includes a statement signed by the employee that indicates that failure to return from leave, failure to ask for an extension, or reporting to work without a full release to return at the expiration of a medical leave may be grounds for separation. When this form has not been used by the Department in granting the leave or when the form does not include the employee's signature, departments must ensure that before the leave of absence expires, the employee is given written notice within a reasonable amount of time that the leave is set to expire.

The notice must include the date on which the leave is set to expire and must inform the employee of the consequences of not returning from leave. The notice should also remind the employee that failure to return from leave with a full medical release may result in separation.

When considering separating the employee, Departments must schedule a pre-separation meeting at which the employee and his/her union representative, when applicable, is given an opportunity to explain the facts of the medical leave. The employee should be asked to provide an update related to his/her medical status and any pending changes. If an employee's medical status is such that he/she is unable to attend a pre-separation meeting, the employee should be given opportunity to explain his/her medical status and answer questions through written correspondence with the department.

After the pre-separation meeting, the department will make a timely decision regarding the employee's status. When an employee is separated because he/she did not respond to a pre-separation notice and did not attempt to return from a leave, or he/she is unable to return from a leave and the department does not grant an extension of the leave, the employee is entitled by state law to a just cause hearing before the City Service Commission.

When an employee is separated upon the expiration of a leave, written notice must be provided indicating that the separation stems from failure to return after a leave of absence. The notice must inform the employee of the date of separation and of the employee's right to appeal the separation to the City Service Commission. The notice must inform the employee that they may file an appeal in writing to the City Service Commission within three days of receipt of the separation notice. In all circumstances, departments should prepare a letter documenting the facts surrounding the expiration from leave and ensuing separation. Departments should not use the Termination Form (CS 80) for these separations.

Note:

Separations from service under the aforementioned circumstances are processed as terminations within the HRMS system. The "action" is a termination. The "reason" is one of the following:

Expiration of LOA (B8) to be used when request for extension of leave is denied by the appointing authority OR the employee does not report to work after the expiration of the leave and he/she has made no contact with the department.

Failure to Return (LVE) to be used when separating an employee who has attempted to return to work without a proper release OR when there is information indicating that the employee was in fact released to return to work prior to the expiration of the leave and failed to do so.

When an employee files an appeal with the City Service Commission, the appeal hearing is limited to issues raised by the employee's failure to return to work, whether the failure to return was excusable, or a challenge to a denial of a request for an extension. Please note that a reversal of a department's decision not to extend a leave should occur only under very unusual circumstances as determined by the Commission.

When an employee is represented by a union, proper notification must be given to a union representative when such notice is required by a labor contract provision. For example, when DC48 employees are separated after an expiration of leave of absence, the union representative must receive notice prior to separation.