



## Ohio Administrative Code Rule 3349-8-52 Involuntary disability separation.

Effective: October 28, 2010

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### (A) Purpose

To establish a rule for involuntary disability separation.

### (B) Scope

This rule applies to all classified civil service employees.

### (C) Definitions

(1) Active work status (see definition on separate sheet).

(2) Consult rule 3349-7-01 of the Administrative Code.

(3) "Involuntary Disability Separation" is a severance of the employment relationship by the university when an employee is unable to perform the essential job duties of the employee assigned position due to a disabling illness, injury or condition.

(4) "Licensed Practitioner" refers to a person who is licensed to practice medicine, surgery or psychology in the state of Ohio.

(5) "Active Pay Status" for purposes of this rule includes regular hours worked, vacation leave, sick leave, personal leave, legal holiday leave, winter break leave, and civic duty leave. For purposes of this rule only, active pay status does not include hours worked during a transitional work program.

### (D) Rule statement

(1) An involuntary disability separation occurs when the appointing authority has received



substantial credible medical evidence of the employee's inability to perform the essential job duties of the employee's assigned position.

(2) The appointing authority may require an employee submit to a medical or psychological examination, conducted in accordance with this rule prior to the involuntary disability separation unless:

(a) The employee is hospitalized at the time such action is taken,

(b) The employee has exhausted available disability leave benefits, or

(c) Substantial credible medical evidence already exists that documents the employee's inability to perform the essential job duties.

(3) The appointing authority shall conduct a hearing prior to an involuntarily disability separation. The employee shall be provided with written notice at least seventy-two hours in advance of the hearing. If the employee does not waive the right to the hearing, the employee has the right to examine the appointing authority's evidence of inability to perform essential job duties, to rebut that evidence, and to present testimony and evidence on the employee's own behalf.

(4) If the appointing authority determines, after weighing the testimony presented and evidence admitted at the hearing, that the employee is capable of performing the essential job duties, then the involuntary disability separation process shall cease and the employee shall be considered fit to perform their essential job duties. If the appointing authority determines, after weighing the testimony and evidence that the employee is unable to perform their essential job duties, then the appointing authority shall issue an involuntary disability separation order.

(5) Medical or psychological examination:

(a) The appointing authority may require that an employee submit to medical or psychological examinations for purposes of disability separation or a reinstatement from disability separation. The appointing authority shall select one or more licensed practitioners to conduct the examinations.



(b) Prior to any examination, the appointing authority will supply the licensed practitioner with facts relating to the alleged disabling illness, injury or condition. The appointing authority will also supply physical and mental requirements of the employee's position, duty statements, job classification specifications, and position descriptions.

(c) Both the appointing authority and the employee shall receive the results of any examination and related documents unless a physician, psychiatrist, or psychologist determines for the university that the disclosure of the information is likely to have an adverse effect on the employee, in which case the information shall be released to a physician, psychiatrist, or psychologist who is designated by the employee or by the employee's legal guardian.

(d) Except as provided in paragraph five of this rule, the appointing authority shall pay the cost of the examinations.

(e) An employee's refusal to submit to an examination, the unexcused failure to appear for 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. An employee will be responsible for the costs associated with an unexcused failure to appear at a scheduled examination.

(6) Right to reinstatement:

(a) At the time the appointing authority provides the involuntary disability separation order to the employee, the appointing authority shall notify the employee of the procedures required to apply for reinstatement. The effective date of separation, for purposes of reinstatement, shall be the date 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.

(b) An employee may be reinstated if the total time of absence due to the disability illness, injury or condition does not exceed two years from the date of separation.

(c) 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 unless a subsequent



related disability that occurs while the employee is participating in an authorized work program will be considered the same disability. Benefits may be payable from the first day of the subsequent disability if the employee remains disabled and off work for at least fourteen consecutive calendar days. The rate of payment for a related disability will be based on the rate of the original disability claim.

(7) Right to appeal:

An employee who is involuntarily disability 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.