

Subject: MEDICAL ACTIONS

REFERENCES	SECTIONS
<p>Law & Regulation http://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml</p> <p>http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&Action=ExpandTree&AP=I1CF57861D48D11DEBC02831C6D6C108E&ItemKey=I1CF57861D48D11DEBC02831C6D6C108E&RP=%2Ftoc%2Fdefault%2Ewl&Service=TOC&RS=WEBL13.04&VR=2.0&SPa=CR-1000&pb=DA010192&fragment#I1CF57861D48D11DEBC02831C6D6C108E</p> <p>http://weblinks.westlaw.com/toc/default.aspx?Abbr=ca%2Dadc&Action=ExpandTree&AP=I6C9E1EC0D48E11DEBC02831C6D6C108E&ItemKey=I6C9E1EC0D48E11DEBC02831C6D6C108E&RP=%2Ftoc%2Fdefault%2Ewl&Service=TOC&RS=WEBL13.04&VR=2.0&SPa=CR-1000&pb=DA010192&fragment#I6C9E1EC0D48E11DEBC02831C6D6C108E</p>	<p>GC: 19230-19237, 19253.5, 19175.1, 19702, 19050.8, 21023.5, 21028, 21029</p> <p>SPB Rule: 172.3, 417.3, 53.2, 54, 54.2, 57.1-57.4, 547.1</p> <p>DPA Rule: 599.775, 599.766</p>
<p>Personnel Management Policy and Procedures Manual (PMPPM)</p>	<p>420</p>
<p>Responsible Control Agency and Program http://www.spb.ca.gov/ http://www.calhr.ca.gov/Pages/home.aspx</p>	<p>State Personnel Board CA Human Resources Department</p>
<p>SPB/DPA Policy Memos http://www.calhr.ca.gov/state-hr-professionals/Pages/policy-memos.aspx</p>	<p>PML 2001-000 dated 7/17/01 and memo dated 1/9/02</p>

Medical Actions

Purpose The purpose of this section is to provide guidance, information and resources available on how to handle situations where an employee is no longer able to perform the duties of his/her position and it is suspected that this inability is due to a medical condition.

Policy It is the policy of the DGS that a medical transfer, demotion or termination of an employee shall be based on an individual consideration of the employee's ability to safely and efficiently perform the essential functions of a position in the employee's classification.

Medical transfer or demotion shall take place only when:

- A physical or mental condition will prevent an employee from safely and efficiently performing the duties of **any** position in the class
- The DGS is unable to provide reasonable accommodation or find other placement

Medical termination shall take place only when:

- A physical or mental condition will prevent an employee from safely and efficiently performing the duties of a position in the employee's class or **any** other class to which the DGS could transfer or demote the employee
- The DGS is unable to provide a reasonable accommodation in **any** class
- The employee is ineligible or waives the right to disability retirement

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Medical Actions, Continued

Process

In order to determine an employee's capacity to work, the employee's supervisor shall contact the program's assigned Classification and Pay (C&P) Analyst to initiate the procedures. The procedures may include the following and are discussed in depth in the Personnel Management Policy and Procedures Manual (PMPPM) Section 420.

- Medical examination
 - Medical demotion, transfer and reduction in time base
 - Termination of a permanent or probationary employee for medical reasons
 - Disability retirement
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Medical Examination

The C&P Analyst may:

- Require the employee to submit to a medical examination (If a medical examination is required, the medical examination fee is paid by DGS), or
- Rely upon a written statement from the employee's physician as to the employee's condition, or
- Rely upon medical reports submitted by the employee

After considering the conclusions of the medical examination or the submitted statements, and any possible reasonable accommodation, the DGS may:

- Demote, including a reduction in time base
- Transfer
- Place on disability retirement
- Terminate

Note: Reasonable accommodation **shall** be carefully considered.

Medical Demotion, Transfer and Reduction in Time Base

If it is determined that the employee is unable to perform the work of his/her present position but is able to perform the work of another position or one of less than full time, the DGS may reduce the time base of or demote or transfer a permanent or probationary employee for medical reasons.

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Medical Actions, Continued

Medical Demotion, Transfer and Reduction in Time Base
(continued)

Classes to which the employee may be medically demoted or medically transferred normally are determined in the same manner as non-medical demotions or transfers (refer to PMPPM Sections 315 and 400). The C&P Analyst may check with the State Personnel Board's (SPB) Medical Officer to determine if the duties of the class to which the employee is being demoted or transferred are within the medical ability of the employee.

If the employee's medical problem is temporary a "Temporary Assignment of Injured Employee" may be considered (see PMPP Section 343).

Termination of a Permanent or Probationary Employee for Medical Reasons

A permanent or probationary employee may be terminated for medical reasons only if:

- s/he is not able to perform the work of his/her present position or any other position in the department and s/he is not eligible for disability retirement
 - s/he is eligible for but waives disability retirement
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Disability Retirement,

The Public Employees' Retirement System (CalPERS) determines the employee's eligibility for disability retirement.

If CalPERS determines	Then
that the employee is eligible and the employee agrees to retire	CalPERS will assist the employee in filing an application for disability retirement
the the employee is not eligible for retirement	DGS may medically terminate the employee
the employee is eligible but the employee does not wish to retire	DGS must ask the employee to sign a statement waiving disability retirement as an option ➤ if the employee signs the waiver, the DGS may medically terminate the employee
the employee is eligible but the employee does not wish to retire and s/he refuses to sign a waiver statement or the application for retirement	DGS must file the application for disability retirement on behalf of the employee
the employee is eligible for retirement but the employee waives the right to retire for disability and elects to withdraw his/her retirement contributions	DGS may medically terminate the employee

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Medical Actions, Continued

Taking action during a leave of absence (LOA)

An employee may be medically demoted, transferred, placed on disability retirement, or terminated while on:

- a regular **leave of absence (LOA)** including one for illness
- **nonindustrial leave (NDI)**

An employee **cannot** be medically terminated while on a **job incurred injury or illness leave (IDL)**. An employee may be medically demoted, transferred or placed on disability retirement while on IDL only after the steps outlined in DPA Rule 599.766 have been taken and reasonable accommodations made.

If an employee receives **temporary disability (TD)** compensation under the provisions of Division 4 (commencing with Section 3200) or Division 4/5 (commencing with Section 6100) of the Labor Code either in lieu of or at the expiration of industrial disability benefits, the employee is still considered to be on IDL (see DPA Rule 599.766 if benefits are discontinued).

When **TD or IDL** benefits cease, paid administrative leave time may be used to cover the period of time between when the benefits are discontinued and the DGS takes one of the actions cited in DPA Rule 599.766. Note: The employee **cannot** remain on IDL after all benefits including TD have been exhausted.

The Workers' Compensation Appeals Board (WCAB) or the CalPERS may declare an employee to be **permanently partially disabled** (e.g., 30% disabled or unable to perform specific duties such as lifting). If it is determined the employee is permanently partially disabled, the DGS must take one of the following actions:

- provide reasonable accommodation in the employee's class
- transfer the employee to another position in the same class or a class at substantially the same level with duties the employee can perform
- demote the employee to a position in a lower class with duties s/he can perform

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Medical Actions, Continued

Rejection during probationary period for medical reasons

A probationary employee shall be advised of the possibility of such rejection in time to allow him/her to meet the medical requirement during the probationary period, if possible.

If it is determined that the medical requirement cannot be met, a Notice of Rejection for medical reasons may be served on the employee prior to the expiration of the probationary period.

Return rights After Industrial Disability Leave (IDL)

When an employee's IDL or TD benefits have terminated, the DGS must take one of the following actions:

1. After the employee has successfully completed a vocational rehabilitation program while under IDL the DGS shall initiate one of the following actions:
 - a. restore the employee to his/her former position
 - b. demote or transfer the employee to another position, if the employee is able to perform such duties
 - c. request the SPB to assist in placing the employee in another position in State service
 - d. place the employee on a temporary assignment in another line of work with intent to transfer at a later date
 - e. place the name of the employee on all appropriate reemployment lists as determined by the SPB at such time as no immediate placement is available
 2. If the employee is medically unable to undergo or successfully complete the vocational rehabilitation program, or if the employee has successfully completed the vocational rehabilitation program but suitable employment is not available, the DGS may:
 - medically terminate the employee or
 - request disability retirement
 3. An employee whose IDL benefits have been exhausted may request a regular LOA for medical reasons.
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Medical Actions, Continued

Return rights after Non-industrial Disability Leave (NDI)

When NDI benefits are exhausted, the DGS must:

- Reinstatement the employee to his/her former position; or
 - Take any of the actions provided by Government Code (GC) Section 19253.5, which covers medical transfer, demotion, termination and disability retirement
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Reinstatement after LOA for Medical Reasons

Unless the DGS has taken medical termination, demotion, or disability retirement action and given the employee full due process prior to the expiration of the leave, the employee must be reinstated immediately at the expiration of the leave.

If the medical problem persists, the DGS can consider medical demotion, transfer, disability retirement, or termination. If the employee notifies the DGS at the expiration of the LOA that s/he is not medically able to return to work, the DGS must consider medical demotion, transfer, disability retirement, or termination.

Reinstatement after Transfer, Demotion, or Termination for Medical Reasons

An employee who has been demoted, transferred, or terminated for medical reasons has indefinite mandatory rights of reinstatement.

Reinstatement after Disability Retirement

An employee has the right to return to a position in his/her former class if CalPERS determines that the employee is no longer incapacitated for employment in that class. The employee must be released from retirement status by the CalPERS before s/he can be put back to work.

Notice

An employee who is being demoted (including reduction in time base), transferred, or terminated, must be given a written notice at least 15 days prior to the effective date of the action.

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Medical Actions, Continued

**Appeal
rights**

No later than 15 days after the service of the notice of any transfer, demotion or termination for medical reasons, the employee may appeal the action of the DGS to the SPB.

Attachment

Sample of a Notice of Medical Termination Letter (see next page)

SAMPLE

NOTICE OF MEDICAL TERMINATION

Dear:

On behalf of the Department of General Services (DGS) is providing you with information regarding medical termination. DGS received a note from your doctor (Name) stating that you have been unable to work since (Date), and that you will be unable to return to work for an indefinite period of time. There is no job that you are medically able to perform at (Dept) with or without reasonable accommodation and you do not qualify for disability retirement. Therefore, in accordance with Government Code Section 19253.5, your employment with (DGS) will be terminated for medical reasons, effective at the close of business on (Date). You will be placed on a leave of absence from (Date) until the close of business on (Date).

Between now and the effective date of this termination, you may respond orally or in writing to (DGS) regarding the termination. DGS will hold an informal hearing in order to give you the opportunity to respond to this termination, so long as you request this DGS informal hearing in time for it to be held prior to the effective date of the termination. You may request this DGS informal hearing (or present such other oral or written response) by contacting Lynn Catania at Office of Human Resources, Department of General Services, P. O. Box 989052, West Sacramento, CA 95798-9052. You are not entitled to a formal hearing with examination of witnesses at this stage of the proceedings. However, you may be represented by another at the DGS informal hearing,

Regardless of whether or not you request a DGS informal hearing or make any other oral or written response, as referred to in the preceding paragraph, you may appeal this medical termination by filing a written appeal with the State Personnel Board (SPB), P. O. Box 944201, Sacramento, CA 94244, no later than 15 days after the service of this notice. The SPB may sustain, disapprove or modify this termination.

You have an indefinite mandatory right to reinstatement should it be determined by the SPB Medical Officer that you have recovered from the medical condition for which you are being medically terminated and that you are able to return to your duties as an (Classification)

Your reinstatement rights are only to a vacant (Classification) position with the (DGS) or a vacant position in a comparable class or a lower related class within (DGS). If DGS does not have a vacant position or you are reinstated to a class other than (Classification), your name shall be placed on a departmental reemployment list for the class of (Classification)

If you have any questions, please contact (C & P Analyst) of my staff at (916) (Phone Number).

Sincerely,

(INSERT NAME)
Personnel Operations Manager

Enclosures

cc: Official Personnel Folder
SPB Appeals Division
(Office)