

Subject: MEDICAL TERMINATION

REFERENCES	SECTIONS
Law & Regulation http://leginfo.legislature.ca.gov/faces/codesTOCSelected.xhtml http://www.spb.ca.gov/	Government Code 19253.5 (a,b,c,d,e,f,g,h,i) SPB 52.3 & 172
Memo of Understanding (MOU) http://www.calhr.ca.gov/state-hr-professionals/Pages/bargaining-contracts.aspx	Refer to Employee's MOU
Personnel Management Policy and Procedures Manual (PMPPM)	420
Responsible Control Agency and Program http://www.spb.ca.gov/ http://www.calhr.ca.gov/Pages/home.aspx	State Personnel Board CA Human Resources Department
Selection Manual (Old)	Sections 5245 and 6920

Medical Termination

Policy

State Policy

SPB Rule 172 – General Qualifications:

All candidates for, appointees to, and employees in the state civil service shall possess the general qualifications of integrity, honesty, sobriety, dependability, industry, thoroughness, accuracy, good judgment, initiative, resourcefulness, courtesy, ability to work cooperatively with others, willingness and ability to assume the responsibilities and to conform to the conditions of work characteristic of the employment, and a state of health consistent with the ability to perform the assigned duties of the class. Where the position requires the driving of an automobile, the employee must have a valid state driver's license, a good driving record and is expected to drive the car safely. The foregoing general qualifications shall be deemed to be a part of the personal characteristics of the minimum qualifications of each class specification and need not be specifically set forth therein. The board may prescribe alternative or additional qualifications for individual classes and such shall be made a part of the class specifications.

Departmental Policy

It is the policy of the Department of General Services (DGS) that all employees are expected to report to work mentally and physically capable of performing their assigned duties and without jeopardizing the health and safety of themselves, other employees, or the public. Employees are expected to be free from the adverse effects of medication, controlled substances, alcohol or complications arising from either job or non-job related illnesses and/or injuries, which might impair their judgment and/or ability to perform their work.

Definition

Medical termination is available to the appointing power to terminate the appointment of an employee when he/she is unable medically to perform the essential functions of his/her appointed position.

Purpose

A medical termination may be appropriate for an employee, if the department has medical findings (obtained through a "fitness for duty"¹ or other medically objective examination) that document he/she is unable to perform the work of his/her position. This is in accordance with Government Code Section 19253.5.

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¹ Fitness for Duty must be requested and coordinated through the Office of Risk and Insurance Management (ORIM)

Medical Termination, Continued

- Government code 19253.5** Government Code 19253.5 states:
- (a)** The appointing power may require an employee to submit to a medical examination by a physician or physicians designated by the appointing power to evaluate the capacity of the employee to perform the work of his/her position.
 - (b)** Fees for the examination will be paid by the state. The employee may submit medical or other evidence to the examining physician or the appointing power. The examining physician shall make a written report of the examination to the appointing power. The appointing power shall provide a copy to the physician designated by the employee.
 - (c)** When the appointing power, after considering the conclusions of the medical examination and other pertinent information, concludes that the employee is unable to perform the work of his or her present position, but is able to perform the work of another position including one of less than full time, the appointing power may demote or transfer the employee to such a position.
 - (d)** When the appointing power after considering the conclusions of the medical examination or medical reports from the employee's physician, and other pertinent information, concludes that the employee is unable to perform the work of his/her present position, or any other position in the agency and the employee is not eligible or waives the right to retire for disability and elects to withdraw his/her retirement contributions or to permit his/her contributions to remain in the retirement fund with rights to service retirement, the appointing power may terminate the appointment of the employee.
 - (e)** The appointing power may demote, transfer, or terminate an employee under this section without requiring the employee to submit to a medical examination when the appointing power relies upon a written statement submitted to the appointing power by the employee as to the employee's condition or upon medical reports submitted to the appointing power by the employee.
 - (f)** The employee shall be given written notice of any demotion, transfer, or termination under this section at least 15 days prior to the effective date thereof. No later than 15 days after service of the notice, the employee may appeal the action of the appointing power to the board. The board, in accordance with its rules, shall hold a hearing. The board may sustain, disapprove, or modify the demotion, transfer, or termination.

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Medical Termination, Continued

**Government
code 19253.5**
(continued)

(g) Whenever the board revokes or modifies a demotion, transfer, or termination, the board shall direct the payment of salary to the employee calculated on the same basis and using the same standards as provided in Section 19584.

(h) Upon the request of an appointing authority or the petition of the employee who was terminated, demoted, or transferred in accordance with this section, the employee shall be reinstated to an appropriate vacant position in the same class, in a comparable class or in a lower related class if it is determined by the board that the employee is no longer incapacitated for duty. Such a reinstatement to a position in a different agency may be made only with the concurrence of that agency. In approving or ordering the reinstatements, the board may require the satisfactory completion of a new probationary period. When the board finds the employee who was terminated, demoted, or transferred is no longer incapacitated for duty but there is no vacant position to which the employee appropriately can be appointed, the name of the employee shall be placed upon those reemployment lists that are determined to be appropriate by the board.

(i) (1) Please refer to sections c, d e f.

(2) Notwithstanding Section 21153, upon filing the application for disability retirement, the appointing power may remove the employee from the job and place the employee on involuntary leave status. The employee may use any accrued leave eligible during the period of the involuntary leave. If the employee's leave credits and programs are exhausted or if they do not provide benefits at least equal to the estimated retirement allowance, the appointing power shall pay the employee an additional temporary disability allowance so that the employee receives payment equal to the retirement allowance. The appointing power shall continue to make all employer contributions to the employee's health plans during the period of the involuntary leave.

(3) If the application for disability retirement is subsequently granted, the retirement system shall reimburse the appointing power for the temporary disability allowance which shall be deducted from any back disability retirement benefits otherwise payable to the employee. If the application is denied, the appointing power shall reinstate the employee to his/her position with back salary and benefits pursuant to subdivision (g), less any temporary disability allowance paid by the appointing power. The appointing power shall also restore any leave credits the employee used during the period of the involuntary leave.

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Medical Termination, Continued

Procedure If the employee is unable to perform the work of his/her present position or any other position in the department, the Classification and Pay (C&P) Analyst (working very closely with the Program, Office of Legal Services, Constructive Intervention Unit and Worker's Compensation Unit), will take the following steps.

Step	Action
1	<p>A Notice of Medical Termination is initiated by the C&P Analyst. It is approved by the Office of Legal Services and sent regular and certified mail to the employee. Copies of the letter are sent to the State Personnel Board (SPB) Appeal's Division, the Program, the employee's medical file, and the Personnel Specialist. Attached to the letter are all the medical materials upon which the termination was based. The total minimum advance notice is 20 days. Under Government Code Section 19253.5, the employee must be given written notice 15 days prior to the effective date of a medical termination. Section 52.3 of the SPB requires an additional notification period of at least five working days, which is to precede the 15-day notice under Government Code Section 19253.5</p> <p>The written notice must include the following:</p> <ul style="list-style-type: none"> • the reason for the termination • a copy of all materials upon which the action is based • employee's right to be represented in proceedings under this section • employee's right to respond to the appointing power; this includes name, address, and telephone number of the person to contact for the hearing • employee's right to appeal to the SPB • employee's reinstatement rights <p>Upon the effective date of the medical termination, the letter and all copies of the materials upon which the termination was based are provided to the Personnel Specialist to process the termination transaction.</p>

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Medical Termination, Continued

Attachment Sample Notice of Medical Termination (see next page)

SAMPLE

NOTICE OF MEDICAL TERMINATION

Dear:

On behalf of the Department of General Services (DGS), the Office of Human Resources 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 the Department of General Services 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 (insert Personnel Officer's name) at Office of Human Resources, Department of General Services, P. O. Box 989052, West Sacramento, CA 95798-9052 or by telephone at (916) 376-5400. 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), 801 Capitol Mall, Sacramento, CA 95814, 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 classification or a lower related classification within DGS. If DGS does not have a vacant position or you are reinstated to a classification other than (Classification), your name shall be placed on a departmental reemployment list for the classification of (Classification)

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

Sincerely,

(PERSONNEL OFFICER'S NAME)
Personnel Officer

Enclosures

cc: Official Personnel Folder
SPB Appeals Division
(Office)