



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER	
PRS: 23	
EFFECTIVE DATE: 08/14/2014	ORIGINAL ISSUED ON: 12/16/2008
REVISION NO: 1	

SUBJECT: INVOLUNTARY OR VOLUNTARY SEPARATION FROM EMPLOYMENT

1.0 PURPOSE

The purpose of this policy is to offer guidelines surrounding involuntary or voluntary separation from employment with the Department of Public Safety.

2.0 POLICY

It is the policy of the Department of Public Safety to offer and apply fair, consistent guidelines for involuntary or voluntary separation from the Department.

3.0 APPLICABILITY

This policy applies to all Department of Public Safety Employees.

4.0 REFERENCES

NONE

5.0 DEFINITIONS

A. Department – The Department of Public Safety

6.0 PROCEDURE

A. Involuntary or Voluntary Separation

1. Employees who have suffered a job-related injury or illness which is compensable under the Workers' Compensation law and are physically or mentally unable to perform the essential functions, as defined in the Department's ADA Policy, of their pre-injury/pre-illness position shall be involuntarily or voluntarily separated from the service without prejudice provided:
 - a. The employee has been afforded applicable and proper modified/limited duty, workers' compensation benefits, and/or duty injury leave in accordance with *PRS:15 Absences From Work*, *PRS:19 Modified/Limited Duty*, and *PRS:11, State Police Duty Injury Leave*;
 - b. The employee has reached Maximum Medical Improvement prior to the completion of up to twelve (12) months of modified/limited duty and/or workers' compensation/duty injury leave (twenty-four [24] months for law enforcement officers); or, the employee has not reached Maximum Medical Improvement upon the expiration of up to twelve (12) months of modified duty and/or workers' compensation/duty injury leave (twenty-four [24] months for law enforcement officers);
 - c. All efforts to reasonably accommodate the medical restrictions of the employee have been made and documented in accordance with the Department's ADA Policy; and,
 - d. The Department has exhausted efforts to find other suitable vacant positions within the Department at the same or lower midpoint than the midpoint of the

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pre-injury/pre-illness position (for NMSP commissioned officers at the same or lower hourly salary) for which the employee meets the established requirements for the position and can perform the essential functions of the job with or without reasonable accommodation in accordance with the Department's ADA Policy. Pay will be based on the customary and proper appropriate placement analysis.

2. Employees who have suffered a non job-related injury or illness and are unable within a finite and reasonable period (less than four [4] months) to perform the essential functions, as defined in the Department's ADA Policy, of their pre-injury/pre-illness position as a result of the physical or mental disability created by the non job-related injury or illness shall be involuntarily or voluntarily separated from the Department without prejudice provided:
 - a. All efforts to reasonably accommodate the medical restrictions of the employee have been made and documented in accordance with the Department's ADA Policy; and,
 - b. The Department has exhausted efforts to find other suitable vacant positions under the provisions of section A.1.d of this policy.
 - c. Employees may be provided, at the Department's discretion, modified/limited duty of up to four (4) months during the separation process under the provisions of DPS Policy *PRS:15 Absences From Work*.

B. Separation Process

1. Notice of contemplated separation without prejudice:
 - a. To initiate the separation without prejudice of an employee who has completed the probationary period, the Department will serve a notice of contemplated separation without prejudice on the employee which:
 - i. describes the circumstances which form the basis for the contemplated separation without prejudice; gives a general explanation of the evidence the Department has;
 - ii. advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon;
 - iii. specifies what the contemplated action is;
 - iv. and states that the employee has eleven (11) calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.
 - b. When the notice of contemplated separation without prejudice is served by mail, the employee receiving service will have three (3) additional calendar days in which to file a response;
2. Response to notice of contemplated separation without prejudice:
 - a. A representative of the employee's choosing may respond in writing to the notice of contemplated separation without prejudice on behalf of the employee;
 - b. If there is a request for an oral response to the notice of contemplated separation without prejudice, the Department will meet with the employee within eleven (11) calendar days of a request for an oral response, unless the

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- employee and the Department agree in writing to an extension of time; a representative of the employee's choosing may represent the employee;
- c. The purpose of the oral response is not to provide an evidentiary hearing, but is an opportunity for the employee to present his or her side of the story; it is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to support the proposed involuntary separation without prejudice.
3. Notice of final separation without prejudice:
 - a. If the employee does not respond to the notice of contemplated separation without prejudice the Department will issue a notice of final separation within eleven (11) calendar days following the response period;
 - b. If the employee has filed a written response or has been provided an opportunity for oral response, the Department will issue a notice of final separation without prejudice no later than eleven (11) calendar days from the date of receipt of the response;
 - c. The notice of final separation without prejudice will:
 - i. Specify the action to be taken;
 - ii. Describe the circumstances which form the basis for the separation without prejudice, which may not include allegations not included in the notice of contemplated separation without prejudice;
 - iii. Give a general explanation of the evidence the Department has;
 - iv. Specify when the final separation without prejudice will be effective, which must be at least twenty-four (24) hours from the time of service of the notice of final separation without prejudice;
 - v. Inform the employee that the final separation without prejudice may be appealed to the State Personnel Board (State police commissioned officers may appeal the separation to the Department's Public Safety Advisory Commission). The appeal must be accompanied by a written statement of the grounds for the separation and received by the Board or Commission within thirty (30) calendar days of the effective date of the separation without prejudice.
 4. The Risk Management Division of the General Services Department and the State Personnel Office shall be notified immediately of any injured or ill former Classified Service employee who applies for a position and subsequently declines a job offer.

7.0 ATTACHMENTS

NONE

8.0 APPROVAL

APPROVED BY: s/ Gregory J. Fouratt DATE: August 14, 2014
DPS Cabinet Secretary