

Chapter: Suspension and Separation	Effective Date: 7/1/15
Title: Administrative Separation - Medical	Page: 1 of 5
ACA: N/A	Replaces: PRS.11.17, 12/1/11
Statutes: N/A	

(a) Policy.

The Texas Juvenile Justice Department (TJJD) may administratively separate an employee who has exhausted all available leave benefits due to an appropriately documented medical condition of the employee or the employee's family member.

If the exhaustion of leave benefits and subsequent medical separation under this policy were due to the employee's own medical condition, the employee may be eligible for [automatic rehire consideration](#). Eligibility for automatic rehire consideration is determined in a fair and consistent manner based on additional criteria established by this policy. When a former employee retains eligibility for automatic rehire consideration, he/she is entitled to an offer of rehire for an available, vacant position that is substantially similar to the position held at the time of medical separation without being required to compete with other applicants.

(b) Definitions.

Except as noted below, see the PRS Glossary for definitions of certain terms used in this policy.

(1) **Available, Vacant Position** – A budgeted, vacant position that meets the following conditions:

- (A) approval to fill the position has been granted by appropriate Budget and Human Resources staff; and
- (B) TJJD is not waiting for a selected applicant to respond to an offer of employment or to complete the pre-employment process.

(2) **Medical Separation Coordinator** – The human resources manager or designee responsible for coordinating the medical separation process.

(c) General Provisions.

(1) An employee who is medically separated under this policy may grieve the separation as an adverse employment action, but he/she is not entitled to [independent dismissal mediation](#) under [PRS.35.06](#).

(A) Generally, the only grievable issues relating to a medical separation are whether the employee, on the date of separation:

- (i) had exhausted all available leave benefits;
- (ii) was able to perform the essential duties of his/her regular position with or without a [reasonable accommodation](#); and/or
- (iii) should have been designated as eligible for automatic rehire consideration.

(B) The deadline to submit the [grievance](#) is 21 [calendar days](#) after the date the supervisor signed the Medical Separation Process: Notice of Medical Separation form, [HR-120](#) (not 21 calendar days after the date of receipt by the employee). See [PRS.35.03](#) for more information on employee grievances.

(2) A former employee who is not eligible for automatic rehire consideration following medical separation may apply for a posted position and be considered for employment through the

competitive selection and hiring process unless the former employee has been designated as ineligible for rehire in accordance with [PRS.11.31](#).

- (3) Within this policy, references to the human resources administrator (HRA) mean the appropriate HRA or his/her designee.

(d) **Medical Separation Process.**

- (1) The HRA coordinates completion of an [HR-120](#) form with the employee's supervisor when:
- (A) an employee has exhausted all available leave benefits due to an appropriately documented medical condition of the employee or a family member;
 - (B) the employee's last day of leave will occur before the medical certification expires;
 - (C) the employee has not already resigned in writing for other reasons (i.e., reasons unrelated to exhausting leave benefits); and
 - (D) exhaustion of the employee's leave benefits is the only reason TJJD would pursue separation.
- (2) The HRA:
- (A) indicates on the HR-120 whether the employee qualifies for automatic rehire consideration at the time of separation; and
 - (B) emails the HR-120 to the medical separation coordinator with copies of all relevant medical information.
- (3) The medical separation coordinator reviews the HR-120 with the Office of General Counsel (OGC).
- (4) The medical separation coordinator notifies the HRA by email when the OGC approves the HR-120.
- (5) Upon receipt of the email from the medical separation coordinator, the HRA:
- (A) provides the HR-120 to the employee's supervisor for signature;
 - (B) instructs the supervisor to return the signed HR-120 to the HRA for mailing to the employee; and
 - (C) emails the [chief local administrator](#), advising of the action.
- (6) If the employee attempts to return to work (e.g., provides a [fitness-for-duty certification](#) or shows up to work) after he/she has already been placed in an unauthorized and unpaid leave status but before the HR-120 is issued, he/she is not allowed to return to work. The HR-120 is still issued upon approval.
- (7) If the HR-120 is not approved by the medical separation coordinator and the OGC because leave should have been authorized, the employee is not medically separated.

(e) **Criteria for Automatic Rehire Consideration.**

(1) **Eligibility Criteria at Time of Separation.**

An employee is eligible for automatic rehire consideration if he/she meets the following criteria.

- (A) The employee must have exhausted leave benefits due to his/her own medical condition.
- (B) The employee must not have been medically separated during the two-year period before the current medical separation.

- (C) During the two-year period before the current medical separation, the employee must not have received the following disciplinary actions:
- (i) involuntary [demotion](#) (does not apply to an involuntary demotion initiated by the [management-directed transfer](#) process established in [PRS.05.20](#));
 - (ii) disciplinary suspension or a 12-month disciplinary probation period;
 - (iii) two or more three-month disciplinary probation periods; or
 - (iv) any disciplinary action based on unauthorized absence or abuse of leave.
- (D) The employee must be classified as eligible for rehire in accordance with [PRS.11.31](#).
- (2) **Criteria to Remain Eligible.**
- If a former employee was eligible for automatic rehire consideration at the time of medical separation, he/she must meet criteria in this section to remain eligible.
- (A) The former employee must be released to return to work no later than six months after the date of the medical separation.
- (B) No later than two business days after being released to return to work, the former employee must provide the following documents to the HRA:
- (i) a fitness-for-duty certification; and
 - (ii) medical certification(s) for the entire period of separation.
- Note: If the former employee was on leave due to an [on-the-job injury](#) at the time of the medical separation, all medical certifications and the fitness-for-duty certification must be documented on a Texas Worker's Compensation Work Status Report form, [DWC-73](#).
- (C) All medical certifications and the fitness-for-duty certification must be completed by the former employee's attending [health care provider](#).
- (D) The fitness-for-duty certification must establish that the medical condition which led to medical separation no longer prevents the former employee from performing the essential duties of his/her previous position with or without reasonable accommodation.
- (E) The former employee must still be eligible for rehire in accordance with PRS.11.31.
- (F) The former employee must meet the current minimum standards and qualifications of a position that is substantially the same as his/her last TJJD position.
- (3) **Determining Whether a Rehire Position Exists.**
- (A) If the HRA determines that a former employee meets the criteria in (e)(2) above, the HRA then determines if a position exists that would qualify for automatic rehire consideration.
- (B) The entitlement to automatic rehire consideration applies only when there is an available, budgeted vacant position that is substantially the same as the former employee's last TJJD position. This means the former employee's last position and the vacant position must:
- (i) have the same:
 - (I) department;
 - (II) [job classification](#);
 - (III) salary group; and
 - (IV) essential functions; and

- (ii) be located at:
 - (I) the same facility or office; or
 - (II) similar facilities or offices within a 30-mile radius.
- (C) Differences in department, job classification, or salary group due to reorganization or a change in the State Classification Plan that occurred while the former employee was medically separated do not disqualify the former employee from automatic rehire consideration. In such cases, the determining factor is whether the location and essential functions of an available, vacant position are the same as the former employee's last TJJD position.
- (D) If the former employee's last TJJD position was a supervisory position (e.g., JCO VI) and there is not an equivalent available vacant position, the former employee may be offered and accept a subordinate position within a similar chain of supervision (e.g., JCO IV).
 - (i) If the former employee elects to be rehired in the subordinate position, the former employee retains, for a period up to six months after the medical separation date, the entitlement to reinstatement to an available, vacant supervisory position that is equivalent to the supervisory position held before the medical separation.
 - (ii) If the former employee chooses not to be rehired in the subordinate position, this decision does not affect his/her eligibility for automatic rehire consideration.
- (E) If all budgeted positions that meet the criteria in (B)-(D) above have been eliminated, the former employee is no longer eligible for automatic rehire consideration.
- (F) If more than one former employee eligible for automatic rehire consideration becomes available to return to work at the same time and for the same available vacant position, the following factors determine which former employee will be reinstated.
 - (i) If one of the former employees is entitled to the [veteran's employment preference](#) or [foster child's employment preference](#), he/she is offered the position.

Note: The HRA must contact the appropriate human resources manager or specialist at the Austin Office to verify that the other former employee does not have a greater qualification and that it is appropriate to apply the employment preference.
 - (ii) If the employment preferences do not apply, the former employee who was required to use a greater amount of leave benefits due to on-the-job injuries in the 12 months before medical separation is offered the position.
 - (iii) If the amount of leave benefits used due to on-the-job injuries in the 12 months before medical separation is the same for both former employees, the former employee with the greater amount of consecutive service with TJJD or its predecessor agencies at the time of medical separation is offered the position.
- (G) If the former employee is released to return to work before the end of the six-month period after his/her medical separation but there are no budgeted, vacant positions that would qualify for automatic rehire consideration, he/she may consider the following options.
 - (i) He/she may delay applying through the competitive selection process based on anticipation that he/she will be offered the opportunity to be rehired into such a vacant position before the end of the six-month eligibility period. The HRA is responsible for the following until the end of the six-month period:
 - (I) contacting the former employee when an applicable, budgeted position becomes available; and

- (II) ensuring that an applicable, budgeted position is not posted or otherwise made available to other applicants until the former employee, if still eligible, is offered the opportunity to be rehired into the position.
 - (ii) He/she may apply for and compete for a vacant position that does not qualify for automatic rehire consideration. If hired into such a position, he/she will no longer be entitled to automatic rehire consideration.
 - (H) The former employee loses his/her entitlement to automatic rehire consideration if he/she declines an offer for rehire into a position that qualifies for automatic rehire consideration.
- (4) **Rehire Process.**
- (A) If the HRA determines that a former employee has retained eligibility for automatic rehire consideration and there is an available, vacant position that qualifies for automatic rehire consideration, the HRA extends a rehire offer to the former employee.
 - (B) The rehire offer is contingent upon results from a background check performed in accordance with [PRS.05.13](#), which includes a criminal history check. The former employee must meet the criminal history standards for [internal applicants](#) and current employees established in [PRS.02.08](#).
 - (C) If required for the position, the rehire offer is also contingent upon:
 - (i) the satisfactory completion of a psychological evaluation;
 - (ii) a determination, based on a review of a newly completed Pre-Employment Medical Exam Report for Hazardous Duty Positions form, [HR-036h](#), or a Pre-Employment Medical Exam Report for Non-Hazardous Duty Positions Assigned to Facilities form, [HR-036nh](#), that the employee can perform the job duties, both essential and non-essential, with or without a reasonable accommodation; and
 - (iii) a negative pre-employment drug test.
 - (D) The rehired employee receives the same salary rate as he/she received at the time of medical separation, unless an across-the-board or targeted salary rate increase for all like positions was authorized during the employee's absence.
 - (E) The rehire date is determined in the same manner as for any other rehired employee.
 - (F) The employee is:
 - (i) considered a rehired employee for the purpose of administration of benefits and performance evaluation due dates; and
 - (ii) required to attend a new employee orientation session on his/her first day of re-employment.
 - (G) Training requirements are determined on a case-by-case basis by the appropriate trainer in coordination with the chief local administrator, with consideration given to:
 - (i) the employee's months of service before medical separation;
 - (ii) the length of medical separation; and
 - (iii) the employee's training status before medical separation.
 - (H) If the rehired employee was the subject of an investigation that was not completed when he/she was medically separated and a determination has been made that a disciplinary action less severe than termination would have been appropriate, the disciplinary action process is resumed upon the employee's return to work.
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