

# Lawrence Berkeley National Laboratory

<b>MEDICAL SEPARATION PROCEDURE</b>	Document No.	HSDM-2009-003
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## 1.0 PURPOSE

This procedure establishes guidelines for terminating employees who are deemed disabled to work or who cannot be provided with a reasonable accommodation for their disability to allow them to continue their employment with LBNL.

## 2.0 REVISION HISTORY

Date	Revision No.	Change	Reference Section(s)
6/23/09	1.0	New Procedure Drafted	Not Applicable

## 3.0 PERSONS AFFECTED

- 3.1 Employee
- 3.2 Supervisor
- 3.3 Division Director
- 3.4 Human Resources Center staff
- 3.5 Employee/Labor Relations staff
- 3.6 Health Services Clinical staff
- 3.7 Health Services Integrated Disability Management staff (includes Return-to-Work Specialist)
- 3.8 Benefits Office staff

## 4.0 POLICY

A regular status employee who, due to disability, is unable to satisfactorily perform the assigned essential functions of his/her position, with or without reasonable accommodation, may be separated from employment.

- 4.1 Prior to medical separation, LBNL will engage in the interactive process in accordance with the provisions of *HSDM-2008-001, Return-to-Work Procedure* and *RPM §2.01(B)(4)—Reasonable Accommodation*.
- 4.2 A review and determination shall be made by the Return-to-Work Specialist that no reasonable accommodation exists without causing undue hardship. A non-probationary career employee separated under this policy is eligible for the

special re-employment procedure in accordance with the provisions of RPM §2.01 (C)(3)(a)—Recruitment.

- 4.3 Medical separation may also be based on the employee's receipt or approval of disability payments from a retirement system to which the employee contributes, such as UCRP.

## 5.0 DEFINITIONS

### 5.1 Medical Separation

The termination of an employee from LBNL employment due to a disability or medical condition that precludes the employee from maintaining employment and efforts to provide a reasonable accommodation were unsuccessful. Medical separation may be voluntary but if an employee's application for UCRP Disability Income benefits is approved, medical separation is mandatory

### 5.2 Interactive Process

Active dialogue between the employee and employer that discusses options for providing a job accommodation for the employee's known disability.

### 5.3 Undue Hardship

Defined as those factors involving extraordinary cost, requiring extraordinary time, or fundamentally altering the nature or operations of the business. Such factors are reasons for why an accommodation cannot be made for the employee.

### 5.4 University of California Retirement Plan (UCRP) Disability Income

Disability income benefits allowing eligible employees who have a protracted medical absence a source of income while disabled from work.

## 6.0 RESPONSIBILITIES

### 6.1 Employee

- 6.1.1 If employee is unable to return to work due to disability and desires to stay employed, he or she shall request assistance with job accommodation, if the interactive process did not previously occur.
- 6.1.2 If employee is unable to work, with or without reasonable accommodation, he or she shall apply for UCRP Disability Benefits, if eligible.
- 6.1.3 If employee objects to the *Notice of Intent to Medically Separate*, he or she has the right to have a representative (legal or non-legal) to attend the Skelly hearing with him or her.
- 6.1.4 Upon receipt of the *Notice of Medical Separation* letter (final decision), employee shall follow termination procedures.

### 6.2 Supervisor

- 6.2.1 Decides whether the employee meets the criteria for a medical separation.
- 6.2.2 Initiates the medical separation process by completing the *Request for Medical Separation of Employee* form.
- 6.2.3 Works with Return-to-Work Specialist to engage the employee in the interactive process to reasonably accommodate the employee, if not previously done.
- 6.2.4 Decides whether to continue with the medical separation process in consultation with Human Resources Center after Skelly hearing.

### 6.3 Division Management

- 6.3.1 Reviews the medical separation determination with the supervisor.
- 6.3.2 Decides whether to affirm the supervisor's decision to initiate the medical separation process.

### 6.4 Human Resources Center staff

- 6.4.1 Determines if the interactive process was completed.
- 6.4.2 If not completed, refers employee to Return-to-Work Specialist.
- 6.4.3 Sends *Notice of Intent to Medically Separate* and final *Notice of Medical Separation* to employee.
- 6.4.4 Sends final decision to employee.

### 6.5 Employee/Labor Relations staff

- 6.5.1 Reviews *Request for Medical Separation of Employee* form.
- 6.5.2 If there are no issues, advises to proceed with medical separation.
- 6.5.3 If there are issues, advises the parties accordingly.

### 6.6 Health Services, Clinical staff

- 6.6.1 Reviews all medical notes concerning employee to determine if there are any work restrictions.
- 6.6.2 Communicates work restrictions, temporary or permanent, to supervisor/division management, Human Resources Center, Return-to-Work Specialist/ADA Coordinator, and Disability Management Coordinator.
- 6.6.3 Contacts supervisor to determine if work restrictions can be accommodated.
- 6.6.4 Refers employee to Return-to-Work Specialist/ADA Coordinator if department cannot make accommodation.

### 6.7 Health Services, Integrated Disability Management staff

- 6.7.1 Communicates with Benefits Office regarding employee's benefits status.
- 6.7.2 Refers employee to Benefits Office for consultation concerning continuation of benefits.
- 6.7.3 Confirms with Benefits Office that all benefits notices have been sent to employee.

- 6.7.4 Confirms that the interactive process has been completed with the employee.
- 6.7.5 Facilitates the interactive process with the employee if not done.
- 6.7.6 Confirms documentation of the interactive process prior to initiating the medical separation process.
- 6.7.7 Communicates to supervisor/division management and Human Resources Center the permanent and stationary status and any permanent work restrictions on Workers' Compensation-designated employees.
- 6.7.8 Reviews the *Request for Medical Separation of Employee* form (Return-to-Work Specialist).

6.8 Benefits Office staff

- 6.8.1 Provides consultation to employee regarding benefits.
- 6.8.2 Provides all required notices regarding benefits entitlements or continuation of benefits.

## 7.0 PROCEDURES

Both occupational and non-occupational disability cases will be subject to these procedures during the medical separation process. (Reference: *RPM§2.21 (E)* and *RPM§2.15—Workers' Compensation Insurance*)

- 7.1 Health Services clinical staff and Integrated Disability Management staff will take the lead in verifying the disability or medical condition along with any permanent work restrictions and in initiating the Transitional or Stay-at-Work/Return-to-Work process. Specifically, they will:
  - 7.1.1 Identify cases with permanent work restrictions.
  - 7.1.2 Communicate work restrictions to the department supervisor.
  - 7.1.3 Contact affected parties (HR Center, supervisor of record) to begin the process of determining essential job functions and the physical, environmental, and mental requirements of the job to evaluate possible modification of the employee's regular job duties.
  - 7.1.4 Initiate the interactive process/reasonable accommodation procedure to assist employee in maintaining employment.
  
- 7.2 If the employee's department cannot provide an accommodation for permanent work restrictions and the employee cannot be provided an accommodation elsewhere (e.g., transferred into a job at another department for which the employee qualifies), then:
  - 7.2.1 The information is documented by the supervisor of record/HR Center or by the Return-to-Work Specialist.
  - 7.2.2 The supervisor initiates the medical separation process by completing the *Request for Medical Separation of Employee* form.
  
- 7.3 If the employee does not desire an accommodation or declines to engage in the interactive process with LBNL, then:

- 7.3.1 The information is documented by the supervisor/HR Center or by the Return-to-Work Specialist.
- 7.3.2 The supervisor initiates the medical separation process by completing the *Request for Medical Separation of Employee* form.
- 7.4 Integrated Disability Management staff will:
  - 7.4.1 Determine whether the employee has exhausted all leaves to which he or she is entitled and advise the affected parties accordingly, including the employee, supervisor, division head, HR Generalist assigned to the division/department, and the Benefits office.
  - 7.4.2 Communicate with the Benefits Office regarding benefits status and confirm that:
    - 7.4.2.1 Necessary benefits advice letters have been sent to the employee
    - 7.4.2.2 Notification has been done by email and via ePAF.
- 7.5 Employee/Labor Relations staff will review the *Request for Medical Separation of Employee* form and comment on outstanding labor-relations issues, if any.
- 7.6 If the employee is deemed appropriate to terminate, then a *Notice of Intent* letter (written notice of intention to separate the employee) shall be prepared by the Human Resources Center, signed by the Department Group Leader or Division Director, and mailed to the employee, along with Proof of Service. The employee has a right to respond orally or in writing within the designated response period (i.e., eight days or ten days from date notice is received; refer to RPM or Collective Bargaining Agreement)..
- 7.7 Notice of Separation (final decision):
  - 7.7.1 If it is determined that separation must occur, the *Notice of Separation* shall be issued after the employee's designated response period has passed.
  - 7.7.2 The *Notice of Separation* shall be prepared by the Human Resources Center, signed by the Department Group Leader or Division Director, and provided to the employee, along with his or her final paycheck, termination packet, and Proof of Service.
  - 7.7.3 All termination procedures shall be followed.
- 7.8 Upon receiving the final notice of separation, the employee shall:
  - 7.8.1 Follow all termination procedures.
  - 7.8.2 Return all UC and Lab property to the supervisor or appropriate office(s).
- 7.9 Special Re-employment after Medical Separation  
Once medical separation has occurred, placement efforts similar to those undertaken prior to medical separation shall occur, in accordance with applicable policy or collective bargaining agreement provisions.
  - 7.9.1 It is the individual's responsibility to seek opportunities within the Lab and to self-identify as a medically separated former employee.

- 7.9.2 The individual will research the Lab's jobs website to determine which departments have vacant positions for which he or she might qualify.
- 7.9.3 The individual may contact the Human Resources Center for assistance in finding departments that have vacant positions for which the individual might qualify.
- 7.9.4 If the individual qualifies, the Human Resources Center will refer the individual to the appropriate hiring department for consideration.
- 7.9.5 The Return-to-Work Specialist may be consulted to discuss the individual's qualifications for the job(s) vis-à-vis any disability that might require consideration of a reasonable accommodation.
- 7.9.6 The hiring department, Human Resources Center, and Return-to-Work Specialist will meet with the individual to discuss the position description (essential job functions) and the PEM (physical, environmental, and mental requirements of the position) and to determine what accommodations might allow the individual to perform all essential job functions.
- 7.9.7 If it is determined the individual can perform the essential job functions, with or without reasonable accommodation, the department will interview the individual and may make an offer.