

# **Managing Long-Term Leave of Absence**



**Chief Executive Office  
Risk Management  
Return To Work Unit**

# Managing Long-Term Leave of Absence

- Employees on Long-Term Leave of Absence are those on approved leave beyond 6 months.
- At the direction of the Board of Supervisors, County departments are to identify the number of employees on long-term leave of absence and whether their leaves are being actively managed.
- Non-approved leaves and job abandonment can be addressed by established performance management procedures.

# Long-Term Leave of Absence Report

## Consider the following steps when reviewing the report of employees on leave for establishing a plan of action:

1. When feasible, return employees to suitable positions consistent with their knowledge, skills, and abilities, taking into consideration work restrictions, if any, in their own department.
2. If no position in their department is suitable, the department may submit a request to the County's Department of Human Resources (DHR) Long-Term Leave Management Unit, to explore the Interdepartmental Placement of Employees using the Policies, Procedures, and Guidelines (PPG 621).
3. Identify and group employees in the LACERA Contributory Retirement plan A-D.

# Long-Term Leave of Absence Report cont...

4. Group and verify that employees transferring from Plan E to D in the LACERA Retirement plan have fulfilled the required obligation.
5. Identify and group employees in the LACERA Non-Contributory Retirement plan E.
6. Identify and group employees on non-approved unpaid leave of absence for longer than 12 months.

# County Employees Retirement Law of 1937 (CERL)

## California Government Code Section: 31450

“The purpose of this chapter is to recognize a public obligation to County employees who become incapacitated by age or long service in public employment...by making provisions for retirement compensation and death benefit as additional elements of compensation for future services and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting hardship upon the employees removed”.

# Managing Long-Term Leave of Absence (Reasonable Accommodation)

- If an employee can no longer perform the essential job functions (EJF) of his/her former position, departments have an obligation in the interactive process to consider transferring an employee to an alternative assignment or vacant position.
- For transfer, employee must meet minimum qualifications for new position; need not be the “most qualified.”
- Providing paid or unpaid leaves of absence, when the employee cannot perform the EJF of their duties or extending a leave provided by CFRA, FMLA, or other disability leave laws may be considered a reasonable accommodation.

# Reasonable Accommodation

cont...

- An employer's proposed leave-action should serve as a catalyst for reasonable accommodation, provided that such leave is likely to be effective in allowing the employee to return to work at the end of the leave to perform the EJP of the position the employee currently holds or desires, with or without further reasonable accommodation.
- Whenever an employee is able to work with any form of effective reasonable accommodation in lieu of a leave of absence, the employer should not require that the employee take a leave of absence.
- An employer is not required to provide an indefinite leave of absence as a reasonable accommodation.

# Managing Long-Term Leave of Absence

## (Purpose of the County's Civil Service Rules)

### (CSR 1.02)

These Rules are prescribed for the purpose of carrying out the Charter provisions, of assuring the continuance of the merit system, of promoting efficiency in the dispatch of public business, and of assuring all employees in the classified service of fair and impartial treatment at all times. To these ends the Rules shall be liberally construed. The commission may make and enforce any order appropriate to effectuate the purpose of these Rules.

# Managing Long-Term Leave of Absence

## (All LACERA Retirement Plan members)

### (CSR 16 - Leaves of Absence)

cont...

## 16.02 - Leaves of absence without pay

“Leaves of absence from regular duties, without pay, may be granted by the appointing power for recovery from a prolonged illness or injury or to restore health, military service, maternity, education or training, assisting another public jurisdiction, employment by a labor union or an employee organization, or for such other lawful purposes as are deemed by the appointing power to be in the best interest of the department. When such leave is for longer than 12 months, it must be approved by the director of personnel.”

# Managing Long-Term Leave of Absence

## (CSR 16 - Leaves of Absence)

cont...

### 16.04 - Expiration or Termination of Leaves of Absence

“The appointing power may terminate any leave of absence by written notice to the employee concerned whenever the conditions or reasons justifying the leave no longer exist,... An employee who fails to return to duty upon termination or expiration of leave shall be considered as **absent without leave and subject to disciplinary action...**”

# Managing Long-Term Leave of Absence

(CSR 16 - Leaves of Absence)

cont...

## Releasing Employees for Non-Medical Reasons

Employees may be Released for Cause Through Skelly Process

### 16.05 – Review and Appeals

**“Any person who is adversely affected by any action in violation of Rule 16 may request the director of personnel to review such action.** Such request for review by the director of personnel shall be made in writing within 10 business days of notification of such action. Such written request for review shall name the specific act complained of and state the reasons for the complaint and the remedy requested”.

# Managing Long-Term Leave of Absence

## County Employees Retirement Law of 1937 (CERL)

### California Government Code Section: 31720.3

In determining whether a member is eligible to retire for disability, the “Board of Retirement” shall not consider medical opinion unless it is deemed competent and **shall not use disability retirement as a substitute for the employer’s disciplinary process.**

# Managing Long-Term Leave of Absence

## (Medical Release vs. Disability Retirement)

### **Civil Service Rule 9.08 (c) vs. California Government Section 31721**

If the department has clear evidence that an employee is unable to perform the duties of his/her position and cannot be accommodated in another position within the County, the department may proceed with a request for concurrence from the Chief Executive Office (CEO) for a medical release (non-contributory Plan E member), or apply for disability retirement on the employee's behalf if the employee is eligible for disability retirement (contributory plan member).

# Consider the following for:

## LACERA Contributory Plan A-D members

- Civil Service Rule 9.07 and 9.08
- Long-Term Disability approval for “Medicare”, based on Social Security Disability criteria for “Total Disability”.
- California Government Code section (CGC) 31721
- LACERA Retirement Board notice that application has been suspended and decision cannot be made on the retirement application because the employee refused to cooperate as required, in the retirement process.
- CGC section 31725, part of the County Employees Retirement Law of 1937, provides in part, “**Permanent incapacity for the performance of duty shall in all cases be determined by the Board of Retirement**”.

# Consider the following for: cont...

## Members Transferring from Plan E to D

➤ LACERA Retirement Board notice is received stating application is denied due to a determination of ineligible criteria of the following:

- ✿ Eligible after completion of 2 continuous years of active service Or
- ✿ Earn 5 years of retirement service credit under retirement Plan D

**Effective January 1, 2011 – Post Assembly Bill (AB) 1902.**

# Consider the following for: cont...

## **LACERA Non-Contributory Plan E members**

- ➡ Civil Service Rule 9.07 and 9.08 and 9.08 (c) {Medical Release}
- ➡ Long-Term Disability approval for “Medicare”, based on Social Security Disability criteria for “Total Disability”.
- ➡ Any Occupation: For Industrial and Non-Industrial (injuries/illness)

# ANY QUESTIONS???

