

Rule XXVIII. Transfer to Inactive Service

A. Policy

As a general rule, it is expected that all employees will perform the essential functions of their assigned positions and be present for duty on a timely and regular basis, in order to continue their County employment. However, it is understood that on occasions some employees will be unable to perform the essential functions of their position and/or unable to be present for duty due to illness and/or injury. Although an employee's absence and/or inability to perform the essential functions of his/her position may be due to reasons beyond his/her control, it is also recognized that the Appointing Authorities require regular attendance and full duty performance by their employees in order to operate effectively. The focus of this rule is to reach a balance between the needs of the Appointing Authorities for present and capable workers and the need of full-time permanent employees for leaves of absences in order to recover from illness or injury.

B. Purpose

The purpose of this rule is to establish guidelines and procedures to be followed by the Appointing Authorities for transferring employees who have completed their initial probationary period to the Inactive Service when they become unable to return to work and/or unable to perform the essential functions of their position due to illness or injury.

C. Procedure for Transfer to Inactive Service

1. When an employee's treating physician provides documentation that an employee is unable to perform one or more of the essential functions of his/her job classification, even with a reasonable accommodation, the employee may be entitled to take leave in accordance with other applicable Personnel Rules, i.e., annual leave, extended leave, FMLA leave, etc. In the alternative, employees who are unable to perform the essential functions of his/her job classifications, but who are able to come to work, may, depending on the availability of such work and depending upon whether the employee is on FMLA leave, be assigned temporary duties in another vacant job classification under their Appointing Authority. An employee may be assigned temporary duties outside of a specific job classification, on an as-needed basis, for a period typically not longer than six (6) months. Such assignments shall be in a position which is either equal to or lower than their current pay grade. During the period of time these employees are performing such temporary duty, they will continue to receive their regular rate of pay.
2. At the end of the above-mentioned six (6) month period, affected employees will be required to advise their employer as to when, if ever, they expect to be able to return to full duty in their regular job classification. They will be provided a detailed description of their physical job duties by their supervisor. Their treating physician will be requested to provide the respective Appointing Authority a prognosis as to when they expect the employee will be able to return to work and perform the full duties of his/her regular job classification.

If it appears that an employee will be able to return to full duty in his/her regular job classification within ninety (90) days or less, the employee will be allowed to continue performing duties temporarily in the vacant classification or other assigned temporary work. This may continue until the employee is able to return to his or her regular job classification, or until the additional ninety (90) day period has expired.

3. If, at the end of the six (6) month period, or at the end of the ninety (90) day extension, an employee is still unable to perform the essential functions of his/her regular job classification, and if there is no indication as to when he or she will be able to do so, the Appointing Authority may ask the employee what, if any, accommodations may be made to enable him/her to return to full duty in his/her regular job classification. Within ten (10) working days of the date that the employee receives notice of the above, if no accommodation is requested, or if the accommodation requested is one which the employer cannot make, the employee may be

offered placement in a vacant position at or below the pay grade he or she was previously in, provided a vacancy exists for which the employee is fully capable of performing the essential functions with or without a reasonable accommodation.

4. If the employee rejects an offer for placement in another vacant position for which he/she is qualified, the employee may be treated as having voluntarily resigned from his/her employment, under the provisions of Personnel Rule XXII, if he/she does not return to work in the position offered within three (3) working days of his/her receipt of such offer, and such action shall not be grievable or appealable under the Personnel Rules.
5. If an employee is unable to return to work after an additional ninety (90) day period, or if there is no vacancy available for which the employee is qualified, such employee may be assigned to the Inactive Service at their request. Employees in the Inactive Service are carried in a non-pay status, and will be removed from their regular job classification enabling the employer to hire a permanent replacement. They will not accrue annual leave, but will continue to receive long-term disability benefits, or worker's compensation benefits, for as long as they are eligible for such benefits. They also will be eligible for continued COBRA health insurance coverage at their own expense. Employees transferred to the Inactive Service will be responsible for one hundred (100%) percent payment of their premiums in order to continue COBRA health insurance coverage, basic level of life insurance, long-term disability, and any other applicable benefits during the period of time that they are in the Inactive Service. Under these circumstances, employees who do not request transfer to the Inactive Service may be treated as having resigned under the provisions of Personnel Rule XXII after they are absent three consecutive working days without authorization, and such action shall not be grievable or appealable under the Personnel Rules. Employees may not remain in the Inactive Service for longer than twelve (12) months, except for the situation discussed in paragraph D.1. below.

D. Return to Duty

1. Employees in the Inactive Service who receive a medical certification returning them to work will be given preference over other job applicants for their previous job classification, if they are able to perform the essential functions of that job classification with or without a reasonable accommodation. If there is no vacancy in that job classification, they will be placed at the top of the eligible register for that position, and offered alternative employment, as described below. Employees in this category retain a right of first refusal for up to twelve (12) months, following their return to work date, for a vacancy in their previous job classification.

If an Inactive Service employee is unable to return to the duties of the previous job classification due to inability to perform the essential functions of that class, with or without a reasonable accommodation, he/she will be offered any vacancy for which he/she is qualified, and can perform the essential functions with or without a reasonable accommodation. This job must be at the same pay grade or lower than the one which the employee previously held. If no vacancy exist, at that time, for which they are qualified, the employee may be extended in the Inactive Service for a period of not more than ninety (90) days in order to allow time for such a vacancy to appear. If, at the end of that ninety (90) day period, there is still no vacancy for which the employee is qualified, they may be treated as having resigned under Personnel Rule XXII, once they are absent for three consecutive working days without authorization, and such action shall not be grievable or appealable under the Personnel Rules.

2. Employees in the Inactive Service at the end of twelve (12) months from the time they are placed in such status, who are still unable, or unwilling, to return to work as described above, will be treated as having resigned under the provisions of Personnel Rule XXII, once they are absent for three consecutive working days without authorization, and such action shall not be grievable or appealable under the Personnel Rules.

Employees in the inactive service shall be paid for their accumulated Extended Illness leave in accordance with Rule XIV. Inactive employees who are re-employed within one (1) year shall be credited with their remaining leave balance accrued at the time of their entry into the Inactive Service and shall not have their eligibility for earning longevity of annual leave interrupted.

3. The date that an employee returns to work from inactive service will normally become the employee's anniversary date for rating purposes.

E. Compensation for Unused Leave

Employees who are transferred to the Inactive Service will be eligible, at their request, to receive payment for any accrued leave time in accordance with the applicable Personnel Rules governing payment upon separation from service. If employees in the Inactive Service return to Active Service, they will not be eligible to buy back their leave time.