

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
PD-24 (rev. 5), “ADMINSTRATIVE SEPARATION”
OCTOBER 1, 2019

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TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE

NUMBER: PD-24 (rev. 5)
DATE: October 1, 2019
PAGE: 1 of 10
SUPERSEDES: PD-24 (rev. 4)
February 1, 2014

EXECUTIVE DIRECTIVE

SUBJECT: ADMINISTRATIVE SEPARATION

AUTHORITY: Tex. Gov't Code §§ 493.001, 493.006–.007; BP-02.08, “Statement of Internal Controls”

APPLICABILITY: All employees of the Texas Department of Criminal Justice (TDCJ)

EMPLOYMENT AT WILL CLAUSE:

This directive **does not** constitute an employment contract or a guarantee of continued employment. The TDCJ reserves the right to change the provisions of this directive at any time.

Nothing in this directive limits the executive director’s authority to establish or revise human resources policy. This directive guides the operations of the TDCJ and **does not** create a legally enforceable interest for employees or limit the executive director’s, deputy executive director’s, or division directors’ authority to terminate an employee at will.

POLICY:

The TDCJ is committed to ensuring employees are not administratively separated on the basis of race, color, religion, sex (gender), national origin, age, disability, or genetic information. The TDCJ has zero tolerance for all forms of unlawful discrimination in the administrative separation process. No employee shall be subjected to harassment or retaliation for opposing or reporting unlawful discrimination in the administrative separation process, or for associating with a person who opposed or reported such discrimination.

PROCEDURES:

I. General Provisions

- A. Administrative separation is an administrative procedure used to separate a TDCJ employee when an employment condition exists, including, but not limited to, a condition identified on the List of Reasons for Administrative Separation (Attachment A).

- B. Administrative separation is not a disciplinary action.
- C. An employee may not request mediation for, or grieve, an administrative separation through TDCJ grievance procedures.
- D. An employee who has been administratively separated from employment may be considered for reemployment if the employee:
 - 1. Qualifies for reemployment consideration; and
 - 2. Meets the vacant position's minimum qualifications.

II. Coordination of the Administrative Separation Process

Employee Relations, Human Resources Division, shall coordinate the administrative separation approval process and encourage reviewing authorities to respond in a timely manner so that a final decision is made within 15 calendar days from receipt of the recommendation.

III. Submission of Recommendation and Employee Notification

The warden or department head shall:

- A. Complete a PERS 443, Recommendation for Administrative Separation (Attachment B);
- B. Provide a PERS 460, Notification of Administrative Separation Recommendation (Attachment C), to the employee in person or via certified mail, return receipt requested. Documentation of the employee's receipt of the notification shall include the employee's signature and date of signature on the form. If mailed, the certified mail receipt, or a copy of the tracking status notification from <http://www.usps.com>, shall be attached to the copy of the form maintained by the human resources representative. If the employee refuses to sign, a witness date and signature shall be indicated in the signature space;
- C. Immediately fax or hand deliver a copy of the PERS 443 and support documentation, for example the PERS 301, Notification of Family and Medical Leave, to the Employee Relations section director or designee; and
- D. Notify the Employee Relations section director or designee via mainframe email, eform HR_ADM_SEP, that the PERS 443 was faxed or hand delivered.

IV. Employee Status Pending Final Approval

A. Ineligibility for Employment in the United States

1. If an employee has been recommended for administrative separation in anticipation of ineligibility for employment in the United States, the employee shall be allowed to:
 - a. Use any accrued compensatory time and holiday time until the employee's last date of employment eligibility in the United States or the work authorization expiration date to help prevent the employee from losing these accrued leave balances; or
 - b. Continue working until the employee's last date of employment eligibility in the United States.
2. The employee shall be separated no earlier and no later than the employee's last date of employment eligibility in the United States.
 - a. If, prior to administrative separation, the employee provides documented proof that the employee's authorization to work in the United States has been renewed or extended, the administrative separation process will stop, and the Employee Relations section director or designee shall:
 - (1) Void the PERS 443;
 - (2) Send an email to the employee's warden or department head and the human resources representative stating the reason(s) the recommendation was not approved;
 - (3) Instruct the human resources representative to provide a copy of the email to the employee, place a copy of the email on top of the PERS 443, and file the documents in the employee's unit or department human resources file; and
 - (4) Provide guidance regarding the course of action to be taken, including, if applicable, the proper procedures for the employee to return to work.
 - b. If the work authorization expiration date occurs prior to final approval of the PERS 443, the employee shall immediately be administratively separated from employment. However, the PERS 443 shall continue through the approval process for TDCJ records.

B. All Other Reasons

An employee who has been recommended for administrative separation for any other reason is required to use accrued compensatory time and holiday time. If the employee has exhausted all accrued compensatory time and holiday time, the employee may request use of accrued overtime or vacation time by completing a PERS 24, TDCJ Leave Request. If the employee has exhausted all accrued leave balances except for sick time or elects to not use accrued overtime or vacation time, the employee may be placed on leave without pay pending administrative separation, in accordance with PD-49, "Leaves Other than Medical and Parental."

V. Recommendation Review and Approval Process

A. Review by the Executive Director

Any separation decision by the executive director is final and not subject to review.

B. Review by Human Resources Section Directors

1. The Employee Relations section director shall review a recommendation based on employment ineligibility due to:
 - a. An outstanding warrant; or
 - b. An employee is in a position requiring the use of firearms and is unable to do so.
2. The Employee Services section director shall review a recommendation based on failure to comply with TDCJ procedures for use of leave.
3. The Employment section director shall review a recommendation based on any other reason identified on the List of Reasons for Administrative Separation.

C. Review by Other Authorities

If the appropriate Human Resources section director concurs with the recommendation, the PERS 443 shall be forwarded to the Human Resources Division director for determination as to whether the recommendation is technically sufficient. The Human Resources Division director shall then forward the recommendation to the deputy executive director or appropriate division director for approval or disapproval.

1. If the reviewing authority concurs with the recommendation, the PERS 443 shall be forwarded to the next reviewing authority.

2. If the reviewing authority does not concur with the recommendation, the reviewing authority shall immediately return the PERS 443 to the Employee Relations section director or designee.

D. Procedure Following Non-Concurrence by Reviewing Authority

Upon receipt of a reviewing authority's non-concurrence, the Employee Relations section director or designee shall:

1. Send an email to the employee's warden or department head and the human resources representative stating the reason(s) the recommendation was not approved;
2. Instruct the human resources representative to provide a copy of the email to the employee, place a copy of the email on top of the PERS 443, and file the documents in the employee's unit or department human resources file; and
3. Provide guidelines to the warden or department head regarding the course of action to be taken, including, if applicable, the proper procedures for the employee's return to work.

E. Approval Notification and Distribution

If the PERS 443 receives final approval, the Employee Relations section director or designee shall:

1. Provide the warden or department head written notification of the final approval;
2. Instruct the human resources representative to provide a copy of the email to the employee, place a copy of the email on top of the PERS 443, and file the documents in the employee's unit or department human resources file;
3. Enter the payroll status change in the TDCJ Payroll/Personnel System (PPS) Payroll Status Change Update (PSCUPD) screen; and
4. Distribute a copy of the approved PERS 443 to the employee and the Employee Services section for placement in the employee's Master Human Resources File.

Bryan Collier
Executive Director

LIST OF REASONS FOR ADMINISTRATIVE SEPARATION

Reasons for administrative separation include, but are not limited to, the following:

1. Ineligibility for Employment in the United States:

An employee must be eligible for employment in the United States, and an employee will not continue to be employed by the TDCJ if the employee's eligibility for employment expires.

2. Failure to Meet the Basic Eligibility Criteria for Employment:

An employee will be recommended for administrative separation if it is determined the employee did not meet the TDCJ's basic eligibility criteria for employment at the time of employment. If falsification of records is involved, the employee will be subject to disciplinary action in lieu of administrative separation.

3. Failure to Meet Conditions of Employment:

An employee shall be recommended for administrative separation if, due to a reason other than a medical-related reason or permanent medical condition incurred after employment, the employee does not meet the conditions of employment: (1) as identified in documents available to the employee prior to employment in the current position, such as job postings and job descriptions; (2) as agreed to by the employee orally during the interview; or (3) as agreed to by the employee in documentation provided by the employee, such as the job application packet. If falsification of records is involved, the employee shall be subject to disciplinary action in lieu of administrative separation.

Failure to meet conditions of employment includes, but is not limited to, the following:

- 3a.** An employee is in a position requiring a valid driver license and the employee's driver license is suspended or revoked.
- 3b.** An employee is in a position requiring a professional license or certification and:
 - 3b(1).** The employee does not possess the required license or certification;
 - 3b(2).** The required license or certification is revoked or expired; or
 - 3b(3).** The employee did not obtain this credential within the time period agreed upon at employment.
- 3c.** An employee indicated willingness to work days other than Monday through Friday on the employee's job application but refuses to do so for any reason, except when an accommodation has been granted.

- 3d. An employee is in a position requiring a college degree and it is determined the institution from which the employee claimed to have a college degree is not accredited by an organization recognized by the Council for Higher Education Accreditation or the United States Department of Education.
- 3e. An employee is in a position requiring the employee to be able to use firearms and the employee refuses to use firearms or the employee is unable to qualify with firearms in accordance with AD-12.45, "Annual Firearms Qualification."
- 3f. An employee is in a position requiring the employee to be able to use firearms and the employee can no longer possess a firearm due to a probation order that is not related to domestic violence.
- 3g. An employee is in a position requiring the employee to be able to use firearms and the employee can no longer possess a firearm due to a conviction involving domestic violence.
- 3h. An employee is in a position requiring the employee to be able to use firearms and the employee is the subject of a protective order that prohibits the possession or use of a firearm.

If the protective order identifies a date that a determination shall be made as to whether the protective order becomes permanent, a PERS 443, Recommendation for Administrative Separation, shall not be completed or submitted. Pending the determination of permanence, the employee shall be placed in a leave with pay or LWOP status in accordance with the procedures in Section IV.B of this directive. Upon the protective order becoming permanent, a PERS 443 shall be completed and submitted for approval.

- 3i. An employee has a warrant outstanding 30 calendar days after the employee was notified in writing that the employee would be administratively separated if the warrant was not resolved.

If the employee is arrested as a result of the warrant, the employee's status shall be determined in accordance with the procedures in PD-27, "Employment Status Pending Resolution of Criminal Charges or Protective Orders." If the employee is convicted, the employee shall be subject to disciplinary action in accordance with PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees."

- 3j. An employee is in a position requiring completion of annual in-service training and the employee is not able to satisfactorily complete in-service conducted in accordance with AD-12.20, "Implementation and Operation of TDCJ In-Service and Staff Survivor Training." The TDCJ shall comply with the provisions of applicable federal and state laws relating to training entitlements for members of the uniformed services in accordance with PD-97, "Training and Staff Development."

4. Failure to Resolve a Nepotism Violation:

An employee shall be administratively separated if the employee has received a PERS 581, Notification of Nepotism Violation, in accordance with PD-26, "Nepotism," has failed to resolve the situation, and no other solution is acceptable.

5. Working Full Time for Another State Agency:

An employee shall be administratively separated if the employee is working full time for another state agency.

6. Failure to Provide Certification:

An employee who has been appropriately notified of the requirement to provide a current certification to support the employee's continued absence and claim of illness or injury or request for state parental leave shall be administratively separated if all of the following conditions are met:

- a. The employee is in a leave status and has not returned to duty;
- b. The employee is not currently on Family and Medical Leave (FML) or State Parental Leave, or has exhausted the FML or State Parental Leave entitlement to 12 workweeks of job-protected leave; and
- c. The employee fails to provide a current certification within the required timeframe in accordance with the applicable TDCJ leave policy.

7. Disapproval of LWOP-Medical:

An employee who has been disapproved for LWOP-Medical may be administratively separated if all of the following conditions are met:

- a. The employee is in a leave status and has not returned to duty;
- b. The employee is not currently on FML, was not eligible for FML, or has exhausted the FML entitlement; and
- c. The warden or department head has disapproved the employee's request for LWOP-Medical and provided written justification for the disapproval.

8. Decision of Executive Director Regarding Direct Report:

A direct report of the executive director may be administratively separated from employment at the discretion of the executive director.

Date received by
Employee Relations

**Texas Department of Criminal Justice
Recommendation for Administrative Separation**

Employee Name: _____ Payee ID: _____
Last First MI

Payroll Job Title: _____ Unit or Dept.: _____

The specific reason for administrative separation as listed in the List of Reasons for Administrative Separation, such as 3a – “Failure to Meet Conditions of Employment” - Driver License Suspension:

Appropriate documentation to support the reason for administrative separation attached to this form? Yes No

Description or summary of the facts justifying administrative separation:

WARDEN or DEPARTMENT HEAD:

Printed Name: _____ Signature: _____
Last First MI Date (mm/dd/yyyy)

HUMAN RESOURCES SECTION DIRECTOR: EMPLOYMENT EMPLOYEE RELATIONS EMPLOYEE SERVICES

DATE RECEIVED: _____ CONCUR _____ NON-CONCUR _____

(COMMENTS)

Printed Name: _____ Signature: _____
Last First MI Date (mm/dd/yyyy)

HUMAN RESOURCES DIRECTOR: DATE RECEIVED: _____ CONCUR _____ NON-CONCUR _____

(COMMENTS)

Printed Name: _____ Signature: _____
Last First MI Date (mm/dd/yyyy)

DEPUTY EXECUTIVE DIRECTOR OR APPROPRIATE DIVISION DIRECTOR: DATE RECEIVED: _____

APPROVED _____ DISAPPROVED _____

(COMMENTS)

Printed Name: _____ Signature: _____
Last First MI Date (mm/dd/yyyy)

Distribution:

Original or Fax: Employee Relations, Human Resources Division

Approved Form: Employee and Employee Master Human Resources File

**Texas Department of Criminal Justice
Notification of Administrative Separation Recommendation**

Employee Name

Payee ID

Payroll Job Title

Unit or Dept.

You are being recommended for administrative separation for the following reason: _____ (Reason code from the List of Reasons for Administrative Separation)

Additional Information:

The PERS 443, Recommendation for Administrative Separation, shall be forwarded for review and final approval by executive staff in accordance with PD-24, "Administrative Separation." If the PERS 443 is approved, a copy of the approved PERS 443 shall be mailed to you. In addition, a copy of the electronic payroll transaction shall be mailed to you upon processing.

Administrative separation is not a disciplinary action, and you may not grieve an administrative separation through TDCJ grievance procedures. If the PERS 443 is approved and you reapply for a position with the TDCJ, you may be considered for reemployment. To be considered for reemployment, you must be eligible for reemployment and meet the minimum qualifications established for the position for which you apply.

If you have any questions, please contact me or your human resources representative.

Warden or Department Head

Date (mm/dd/yyyy)

EMPLOYEE ACKNOWLEDGEMENT

I acknowledge receipt of this notification. I verify the following is my current address and phone number:

Mailing Address: _____

Phone Number, including area code: _____

Employee Signature: _____

Date: _____
(mm/dd/yyyy)

Note to Employee: With few exceptions, you are entitled upon request: (1) to be informed about the information the TDCJ collects about you; and (2) under Texas Government Code §§ 552.021 and 552.023, to receive and review the collected information. Under Texas Government Code § 559.004, you are also entitled to request, in accordance with TDCJ procedures, that incorrect information the TDCJ has collected about you be corrected.

Distribution:

Original: Employee

Copy: Employee Relations, Human Resources Division

Copy: Unit or Department Human Resources File - Payroll Section