

DHHS POLICIES AND PROCEDURES

Section V:	Human Resources
Title:	Employee Relations
Chapter:	Reinstatement from Dismissal
Current Effective Date:	4/1/04
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Purpose

The purpose of this policy is to establish consistent procedures in effecting the reinstatement of department employees with back pay pursuant to State Personnel Act and related policies.

Policy

The following procedures shall apply to reinstatement decisions made at Steps 2 and 3 of the Department's Employee Grievance Policy and to reinstatement orders by the State Personnel Commission and the courts.

Implementation

1. **Processing the Reinstatement** - The employee shall be reinstated in accordance with the provisions of the applicable grievance decision, settlement agreement, State Personnel Commission Order or court order. The unit (division/facility/school) effecting the reinstatement shall prepare a personnel action form (PD-105) for each of the following:
 - A. A Form PD-105 reflecting the date of the employee's actual return to duty. The explanation in the comments section shall include a statement that the employee was reinstated as a result of a specified grievance decision, that the decision involves a back pay award, and that this PD-105 is submitted to allow for the employee's earliest possible inclusion on the next regular unit payroll for salary due from the date of return to duty. It shall also state that the back pay award will be processed separately in accordance with applicable state personnel and budget regulations.
 - B. A revised PD-105 reflecting the date of reinstatement. The explanation in the comments section of the form shall state that the reinstatement results from a grievance decision, agreement or order, and shall include the date and authority of the action. A copy of the relevant decision or order shall be forwarded to the Classification/Compensation Section and to the Office of State Personnel.

- C. A Form PD-105 to reflect legislative increases and other actions affecting the employee's status during the back pay period also shall be prepared as necessary.
2. **Computing and Processing a Back Pay Award** - Back pay shall be determined by computing the gross pay which the employee would have earned during the period specified for back payment in the grievance decision, settlement agreement, State Personnel Commission order or court order. The back pay award is subject to the following conditions and adjustments:
- A. **Offset for Other Earnings** - The gross back pay amount will be reduced by any income from salary or wages earned by the employee during the back pay period as a result of the loss of the employee's state job. Earnings derived from approved secondary employment which the employee had before and during the back pay period, and under the arrangement existing prior to the dismissal, will not be deducted from the gross pay. The employee shall provide a notarized statement as to whether or not the employee had such earnings. The amounts and sources of earnings and the dates of employment shall be specified when applicable.
- B. **Unemployment Insurance** - The amount of any unemployment insurance benefits received during the back pay period will be deducted from the adjusted gross back pay amount. The employee shall provide a notarized statement as to whether or not the employee received unemployment insurance benefits during the period covered by the back pay award. The amounts and dates of benefits shall be specified when applicable.
- C. **Shift Premium Pay** - Shift premium compensation shall be paid if the employee would have received such pay had the employment not been interrupted and under the scheduling arrangements in effect at the time of dismissal.
- D. **Overtime Compensation and Holiday Premium Pay** - There shall be no payment of overtime compensation or holiday premium pay for any time during the specified back pay period.
- E. **Longevity Pay** - If the employee's longevity eligibility date occurred during the period of unemployment, the back pay award shall include the difference between the pro-rated longevity payment made at the time of dismissal and the amount of longevity pay that would have been payable had employment not been interrupted. If the employee returns to duty prior to his/her longevity eligibility date, no adjustment for longevity pay shall be made in the back pay award. Rather, the pro-rated longevity payment made at the time of dismissal shall be deducted from the full amount otherwise payable on the next longevity eligibility date.

- F. Legislative Increases - Legislative cost of living salary increases to which the employee would have been entitled had the employment not been interrupted shall be included in computing the back pay. However, there shall be no performance salary increases effected during the back pay period unless specifically provided under the applicable grievance decision, settlement agreement, State Personnel Commission or court order. This includes career growth awards and performance bonuses.
- G. Standard Payroll Withholding and Contributions:
1. A back pay award shall be subject to all required withholding for applicable State and federal taxes, retirement contributions, etc.
 2. Based on the above, the unit shall complete an Office of State Personnel Statement of Back Pay form (copy attached) in four copies and forward it, with the required accompanying statements, to the Employee Relations Section, Division of Human Resources, Department of Health and Human Services (DHHS). The section will review and process the forms for approval by State Personnel and State Budget officials.
 3. The Employee Relations Section will return a copy of the approved form directly to the unit.
 4. The unit will use the approved Statement of Back Pay form as the basis for preparing a special, one-item payroll for the back pay award. A copy of the approved form shall be submitted with the standard payroll documents to payroll. There are two (2) categories of back pay:
 - a. Back Pay when an employee is not returned to duty. Prepare a PD-105 reinstating the employee and another PD-105 separating the employee. Be specific and document on the forms the correct reason for separation. Forward to the Classification/Compensation Section for review. Include a copy of the grievance decision, settlement agreement, State Personnel Commission order or court order.
 - b. Back Pay when an employee is returned to duty. Prepare a PD-105 reinstating the employee to duty. Again, be specific and document justification for reinstatement (i.e. grievance decision, settlement agreement, State Personnel Commission order or court order).

5. For Items (a) and (b) above, transmit the PD-105 to the Classification/Compensation Section and mail a copy of the grievance decision, settlement agreement, State Personnel Commission order, or court order.
 6. Prepare and process applicable PD-105s granting applicable salary increase(s) and salary range revision(s).
 7. Indicate on the PD-105 that a back pay award is being processed.
3. Leave - Unless specifically provided for in a settlement agreement, State Personnel Commission order or court order, leave credits of employees reinstated from dismissal shall be treated as follows:
- A. Vacation Leave - The employee would have received a lump sum payment for up to 240 hours of accumulated vacation leave at the time of separation in accordance with state policy. Any amount of accumulated leave above the 240 hours shall be credited to the employee's leave balance at the beginning of the period of interrupted employment. The employee shall then be credited with vacation leave that would have been earned during the period of interrupted employment.
 - B. Sick Leave - The employee shall be reinstated with credit for all sick leave accumulated at the time of dismissal. The employee also shall be credited with sick leave that would have been earned during the period of interrupted employment.
4. **Health Insurance** - Employees reinstated from dismissal shall be entitled to either retroactive coverage under the state health insurance plan or to reimbursement up to the amount the state contributes for employee only coverage. The employee shall have the right to elect between these two (2) choices; provided that if the employee elects reimbursement, the employee may do so only if the employee had secured alternate health insurance coverage during the period of interruption of employment. The employee shall not be reimbursed for the cost of coverage of dependents or spouse during the period between dismissal and reinstatement. It is the responsibility of the employee to provide proof of insurance expenses incurred during the period of unemployment. The unit human resources manager is responsible for submitting any unresolved issues and questions related to coverage under the State Health Plan to this office. After appropriate review and consultation with the plan administrator and other involved parties, the unit human resources manager will be advised of the resolution of the issues.
5. **Retirement Credit**

- A. The State Retirement System will allow retirement credit for the period of interrupted employment upon receipt of the required employee and employer contributions and interest. Such contributions are made on the basis of the gross back pay amount.
- B. If the employee has withdrawn his/her contributions from the Retirement System, the unit effecting the reinstatement shall contact the Retirement Systems Division of the Department of State Treasurer to determine the cost for repayment of the withdrawn account and the amount of employee and employer contributions and interest due.

For questions or clarification on any of the information contained in this policy, please contact [Human Resources](#). For general questions about department-wide policies and procedures, contact the [DHHS Policy Coordinator](#).