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DIRECTOR OF PERSONNEL

# COUNTY OF LOS ANGELES DEPARTMENT OF HUMAN RESOURCES

## HEADQUARTERS

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June 27, 2023

To: All Department Heads

From: Lisa M. Garrett   
Director of Personnel

## **REVISIONS TO CIVIL SERVICE RULE 9 – MEDICAL STANDARDS FOR EMPLOYMENT AND RELATED COUNTYWIDE HUMAN RESOURCES POLICIES**

Over the past several years, the Department of Human Resources (DHR) has been leading the transition to a new Countywide framework for Disability Management & Compliance (DMC). The new framework serves to standardize the County's approach to this work and, most importantly, ensure full alignment with applicable State and federal law. I am proud to share that we have now reached another major milestone in this critical process.

On May 23, 2023, the County of Los Angeles (County) Board of Supervisors approved revisions to *Civil Service Rule (Rule) 9 – Medical Standards for Employment* (Attachment I) to better reflect applicant, employee, and employer rights and best practices in the field of disability management. This represents the first major change in the Rules that govern the County's civil service system in over 30 years, which further reinforces the importance of our disability management processes.

Key changes to Rule 9 include:

- Reiterating that the Director of Personnel has the authority to establish medical standards of employment, which includes standards for medical examinations and medical inquiries for applicants and employees.
- Acknowledging that all County medical standards comply with applicable State and federal law, most notably the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the California Fair Employment and Housing Act (FEHA), and applicable implementing regulations.
- Clarifying that if medical standards established under the Rule conflict or contravene the provisions of applicable federal or California laws or regulations in any way, those laws or regulations prevail.

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- Striking existing language in the Rule that prescribes the medical examination, review of medical findings, determination of qualifications, and accommodation of incapacitated employees and applicants so these processes can be more comprehensively addressed through policy.

In alignment with the updates to Rule 9, DHR is now revising the Countywide Policies, Procedures, and Guidelines (PPGs) that govern the County's accommodation and medical examination processes. As a part of that comprehensive review and revision, the following policies have been deemed to be *no longer operative and will sunset, effective immediately*:

- **PPG 601: Return to Work**
- **PPG 607: Executive Medical Examinations**
- **PPG 619: Revised Medical Examination Procedure for Applicants for Temporary or Part-Time Light Duty Positions**
- **PPG 621: Interdepartmental Placement of Employees Returning to Work Following Approved Leave**

The expired policies are now being replaced with four new PPGs that were developed through close partnership with the Chief Executive Office, County Counsel, and external disability management experts. These new PPGs, which oversee the major activities found within the County's Disability Management and Compliance Framework, are attached to this memo for your reference. These policies will also be uploaded to the County's Human Resources Policy website at <https://my.lacounty.gov/county-policies>. A brief description of each policy is also provided below:

- **PPG 625: PEPO Medical Examination (*Attachment II*)**  
Establishes the standards and procedures for conducting Pre-Employment / Post-Offer Medical Examinations (PEPO) for certain applicants who have received conditional job offers from the County.
- **PPG 626: Fitness for Duty Evaluations (*Attachment III*)**  
Supports the County's commitment to a safe and healthy work environment and the protection of the public by ensuring that each employee can perform their essential job functions in a safe, secure, and effective manner. This policy prescribes the circumstances under which an employee may be referred for a Fitness for Duty Evaluation (FFDE).
- **PPG 627: Interactive Process and Reasonable Accommodation (*Attachment IV*)**  
Describes the County's framework for holding an Interactive Process Meeting (IPM) to determine appropriate reasonable accommodation(s), as needed, in accordance with the requirements of the ADA and FEHA, as well as other related State or federal laws and regulations.

- **PPG 628: Medical Release or Reassignment (*Attachment V*)**

This policy describes the circumstances under which an employee may be medically released from County service or reassigned to a different employment position based on the results of a Fitness for Duty Evaluation or other competent medical or legal evidence.

Trainings on the new policy components, which include a description of the updated interactive process meeting, accommodations, medical and psychological evaluations, and medical reassignment expectations, will be provided to Departmental Human Resources Managers and Departmental DMC Coordinators through DHR's Occupational Health and Leave Management Division.

Should you have any questions, please contact me or Maggie Martinez, Assistant Director DHR, at [MMartinez@hr.lacounty.gov](mailto:MMartinez@hr.lacounty.gov) or (213) 351-2921.

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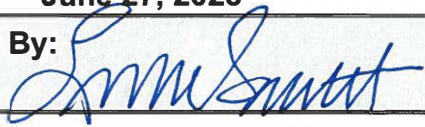
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Attachments (5)

c: Chief Deputies  
Administrative Deputies  
Departmental Human Resources Managers



*County of Los Angeles*  
*Department of Human Resources*  
**POLICIES, PROCEDURES, AND GUIDELINES**

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| <b>Subject:</b><br><br><b>MEDICAL RELEASE OR REASSIGNMENT</b> | <b>Policy Number:</b><br>628  | <b>Pages:</b><br>9 |
|   | <b>Effective Date:</b><br>June 27, 2023   |                    |
|   | <b>Approved By:</b><br> |                    |

## **PURPOSE**

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This policy describes the circumstances under which an employee may be medically released from County service or reassigned to a different employment position based on the results of a Fitness for Duty Evaluation or other competent medical or legal evidence.

## **POLICY**

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A reassignment to a different employment position based on an employee's medical/psychological condition may be required in situations where, based on the results of a Fitness for Duty Evaluation or other competent medical or legal evidence, an individual has been found unable to perform the essential job functions of their employment position with or without reasonable accommodation and without risk of harm to themselves or others.

A medical release may be required in situations where, based on the results of a Fitness for Duty Evaluation or other competent medical or legal evidence, an individual has been found unable to perform the essential functions of their position or any other vacant, available position within the County with or without reasonable accommodation and without risk of harm to themselves or others. Medical releases are without prejudice as to reemployment should the employee's condition improve.

## **DEFINITIONS**

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The following definitions are provided solely as a guide to assist in the interpretation and application of this policy and are based on related federal and state laws and regulations, and cases interpreting those laws and regulations. The following definitions may be subject to change due to a change in applicable law.

**Department Disability Management & Compliance Personnel:** Departmental personnel responsible for the oversight, coordination and appropriate management of departmental activities related to employees or Applicants with qualifying disabilities.



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|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
|---|---|

**Essential Functions:** The job duties so fundamental to the employment position the employee with a disability holds or desires that the individual cannot do the job without performing them.

**Fitness for Duty Evaluation (FFDE):** A FFDE is a medical and/or psychological evaluation that is job-related and consistent with business necessity undergone by an employee at the direction of their department as authorized by the Department of Human Resources. The FFDE is performed by a licensed health care provider who evaluates only the individual's ability (emotional, mental, and physical) to perform the essential functions of the employee's job. Evaluation results indicate whether the employee can safely (without risk of harm to the health and safety of self and/or others) and effectively perform the essential job functions of their position with or without reasonable accommodation(s). *(See Policy, Procedure, and Guideline No. 626, Fitness for Duty Evaluations).*

**Interactive Process:** A timely, good faith communication between the department and an employee to explore whether or not the employee needs Reasonable Accommodation for their disability to perform the essential functions of the job without risk of undue harm to themselves or others, and, if so, how the employee can be reasonably accommodated. An employee's representative may be included in the interactive process when necessary because of their disability or other circumstances.

**Interactive Process Meeting (IPM):** A meeting which takes place between the Department Disability Management & Compliance Personnel and the employee and their supervisor or manager. The IPM is designed to discuss issues such as issuance of work restrictions, changes in work restrictions, and is intended to evaluate and determine a plan of action involving reasonable accommodation, if any, for the employee.

**Medical Release:** A release of an employee from County service based on a determination, after an Interactive Process, that the employee is unable to fully perform the essential functions of their present position or any available position in the County, with or without reasonable accommodation and without risk of harm to themselves or others. This determination must be based on the results of a Fitness for Duty Evaluation or other competent medical or legal evidence.

**Position Reassignment:** A change in an employee's position based on a determination, after an Interactive Process, that the employee is unable to fully perform the essential functions of their present position, with or without reasonable accommodation and without risk of harm to themselves or others. This determination must be based on the results of a Fitness for Duty Evaluation or other competent medical or legal evidence.

**Reasonable Accommodation:** A modification or adjustment in the workplace that is: (1) effective in enabling an employee with a disability to have an equal opportunity to be considered for a desired employment position; (2) effective in enabling an employee to

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|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
|---|---|

perform the essential functions of the position the employee holds or desires; or (3) effective in enabling an employee with a disability to enjoy equivalent benefits and privileges of employment as are enjoyed by similarly situated employees without disabilities.

## **GUIDELINES**

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### **I. Essential Functions**

Each position should be carefully examined to determine which functions or tasks are essential to performance. Factors which should be considered in determining if a function is essential include, but are not limited to, the following:

- Whether the reason the position exists is to perform that function.
- The number of other employees available to perform the function or among whom the performance of the function can be distributed is limited.
- The degree of expertise or skill required to perform the function, and whether the function is specialized, and the individual was hired based on their ability to perform it.

Evidence of whether a particular function is essential includes, but is not limited to, the following:

- The employer's or other covered entity's judgment as to which functions are essential.
- Accurate, current written job descriptions.
- The amount of time spent performing the function.
- The legitimate business consequences of not requiring the employee to perform the function.
- The terms of a memorandum of understanding.
- The actual work experiences of present or past employees in the employment position.
- Reference to the importance of the performance of the job function in prior performance reviews.

Note: The County may use Essential Job Function Analysis (EFJA) or Essential Function Position Analysis (EFPA) documents to identify essential job functions for some positions. The EFJA/EFPA describes the typical job duties/tasks and the physical/environmental factors of the job.

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|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
|---|---|

## **II. Position Reassignment**

1. An employee may be reassigned to a different employment position if a licensed healthcare provider finds, based on a Fitness for Duty Evaluation or other competent medical or legal evidence, that the employee is unable to fully perform the essential functions of their employment position, with or without reasonable accommodation and without risk of harm to themselves or others.
2. Following the conclusion of an Interactive Process that results in a determination that an employee is unable to fully perform the essential functions of their current employment position with or without reasonable accommodation and without risk of harm to themselves or others, the following alternate work searches will be conducted to identify alternate employment positions:
  - A. Department will conduct an alternate work search for appropriate and available positions within the department. For a position to be an appropriate position:
    - It must be a vacant, funded position (departments are not required to create a position);
    - It need not be a higher-level position, i.e., a promotion;
    - The employee must qualify for the position, including meeting the minimum qualifications of the position and satisfying civil service requirements; and
    - It must be medically appropriate for the employee, with or without a reasonable accommodation.
  - B. If an appropriate alternate employment position is not identified through the department's alternative work search, the department will engage with the Department of Human Resources for a Countywide alternate work search. This alternate work search will focus on identifying appropriate and available positions in other departments that meet the above criteria.

## **III. Disability Retirement and Medical Release**

1. Departments should not pursue disability retirement or medical release from County employment until the departmental and Countywide alternate work searches have concluded.
2. Departments should consider the Long-Term Disability (LTD) benefit status of an employee when making a determination whether to request approval for an employee's medical release or disability retirement. The County's LTD Plan offers

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|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
|---|---|

a monthly income replacement benefit for qualifying employees that become disabled and are unable to work.

3. Departments may commence the medical release or disability retirement processes (1) following the conclusion of an Interactive Process that results in a determination that an employee is unable to perform the essential functions of their current employment position with or without reasonable accommodation and without risk of harm to themselves or others, and (2) the departmental and Countywide alternate work searches have not identified other appropriate employment positions, or that the employee has refused any of the positions that were offered through the departmental and/or Countywide alternate work search. In the event that an employee is in a contributory retirement plan, disability retirement processes should be pursued initially.

A. Employee is in a Contributory Retirement Plan (Plan A, B, C, D or G)

For participants in Retirement Plans A, B, C, D or G, an eligible employee, or the hiring department on behalf of an eligible employee, shall file for disability retirement benefits in accordance with the Los Angeles County Retirement Association (LACERA) rules. Employees who are deemed to be eligible for a disability retirement by LACERA's Board may not be released from County service until LACERA's disability retirement process has been finalized.

For employees not eligible for a disability retirement pursuant to LACERA rules, the department may submit a written request for approval from the Director of Personnel, or their designee, to medically release the employee from County service when the:

- i. Employee's condition meets Social Security disability criteria;
- ii. Employee has indicated no interest in participating in the disability Interactive Process; and/or
- iii. Employee has findings from a Fitness for Duty Evaluation (FFDE), or other competent medical or legal evidence, that the employee is unable to perform the job duties of their employment position due to a medical/psychological condition of a continuing nature.

Note: Departments **must file** a disability retirement application with LACERA and not medically release an employee eligible for a disability retirement. Additionally, an employee may not be medically released from County employment pending the completion of the employee's appeal rights for a LACERA denial of their disability retirement application.



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|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
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**B. Employee is in a Non-Contributory Retirement Plan (Plan E)**

For participants in Retirement Plan E, the County department may submit a written request for approval from the Director of Personnel to medically release the employee from County service when the:

- i. Employee's condition meets Social Security disability criteria;
- ii. Employee has indicated no interest in participating in the disability Interactive Process; and/or
- iii. Employee has findings from an FFDE, or other competent medical or legal evidence, that the employee is unable to perform the job duties of their employment position due to a medical/psychological condition of a continuing nature.

Note: Disability retirement is not available to participants in a non-contributory retirement plan.

4. If there is no suitable position in which the employee can perform the essential functions of a job with or without restriction, the Department may release the employee, subject to the applicable provisions of Los Angeles County Civil Service Rule 18 - *Suspension, Discharge, Reduction and Resignation*, and the medical release will be without prejudice as to reemployment should the employee's restrictions change and/or the employee's condition improve.

## **PROCEDURES**

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### **IV. Medical Release**

For an employee meeting the criteria for medical release from County service, the department must:

1. Submit a written request to the Director of Personnel for approval to medically release the employee from County service. The written request must provide information and supporting documentation demonstrating that the employee meets all criteria and requirements to be medically released, and that all required processes have been completed prior to the request being submitted to the Director of Personnel.

Documentation submitted by the department is to demonstrate:

- A licensed healthcare provider finds, based on a FFDE or other competent medical or legal evidence, that the employee is unable to fully perform the essential functions of their current employment position, or any other

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|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
|---|---|

available County position, with or without reasonable accommodation and without risk of harm to themselves or others;

- A completed Interactive Process that resulted in a determination that the employee is unable to fully perform the essential functions of their current employment position, with or without reasonable accommodation and without risk of harm to themselves or others; and
  - The departmental and Countywide alternate work searches did not identify appropriate alternate employment positions available to the employee, or if an appropriate position was found, that the employee declined it.
2. Obtain written approval from the Director of Personnel or designee to proceed to medically release the employee from County service.

#### **V. Disability Retirement**

For an employee meeting the criteria to be eligible for disability retirement, the department must:

1. Verify with LACERA that the employee meets their retirement plan requirements for disability retirement;
2. Inform the employee that the department will apply for a disability retirement with LACERA on their behalf;
3. Apply for a disability retirement on behalf of the employee with LACERA; and
4. Obtain LACERA's determination approving or denying the disability retirement application.
5. In the event that the disability retirement application is denied by LACERA, resume the Interactive Process with the employee to explore options which take into consideration the reason(s) for the denial of the disability retirement application; such options include but are not limited to identifying appropriate reasonable accommodation(s) or medical release.

#### **VI. Appeal Rights**

The County provides permanent employees with *Skelly*-type procedural safeguards before such employees may be involuntarily released for medical reasons. As such, an employee, and/or their representative, has the right to respond in writing or orally to the facts contained in the department's written notice of intent to medically release the employee from County service. Employees that choose to respond in writing must do so within 10-business days from the date the employee is notified of the proposed action. Employees that choose to respond in person may arrange for a *Skelly* Meeting by

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|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
|---|---|

contacting the departmental point of contact listed on the department's written notice of intent within 10-business days from the date the employee is notified of the proposed action.

The final written notification of a department's decision to medically separate an employee from County service must include the following appeal rights language:

If you disagree with the determination of the Department to medically release you, you may file an appeal with the Department of Human Resources. The appeal must be in writing and must provide specific facts and information which demonstrate where the error occurred. Any appeal that fails to contain such information will be deemed incomplete and will be denied. The appeal must be received by the County's Appeals Program within 10-business days from the postmark date on the envelope in which this notice was mailed, by using this web address: <https://eappeals.lacounty.gov>. For technical support related to online appeal submissions go to <http://apps.hr.lacounty.gov/eAppeal>.

## AUTHORITIES

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- Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq., as amended by the ADA Amendments Act of 2008 and its implementing regulations at 29 C.F.R. §1630 et seq.
- California Government Code Section 31721
- California Fair Employment and Housing Act, California Government Code §12940 et seq.
- California Government Code § 1031
- California Code of Regulations, Title 2, §11065 (Definitions)
- California Code of Regulations, Title 2, §11067 (Defenses)
- California Code of Regulations, Title 2, §11068 (Reasonable Accommodation)
- California Code of Regulations, Title 2, §11069 (Interactive Process)
- California Code of Regulations, Title 2, §11071 (Medical and Psychological Examinations and Inquiries)
- County of Los Angeles Civil Service Rule 3 – *Administration*
- County of Los Angeles Civil Service Rule 9 – *Medical Standards for Employment*
- County of Los Angeles Civil Service Rule 15 – *Assignment, Interdepartmental Transfer, and Change of Classification*
- County of Los Angeles Civil Service Rule 16 – *Leaves of Absence*

|   |   |
|---|---|
| <b>Subject:</b><br><br><b>MEDICAL RELEASE<br/>OR REASSIGNMENT</b> | <b>Policy Number: 628</b><br><br><b>Effective Date: June 27, 2023</b> |
|---|---|

- County of Los Angeles Civil Service Rule 18 – *Suspension, Discharge, Reduction and Resignation*
- Department of Human Resources Policies, Procedures, and Guidelines No. 627 - *Interactive Process & Reasonable Accommodation*
- Department of Human Resources Policies, Procedures, and Guidelines No. 626 - *Fitness for Duty Evaluations*
- Department of Human Resources Policies, Procedures, and Guidelines No. 900 - *Due Process or “Skelly” Meetings*
- *Hastings v. Department of Corrections* (2003) 110 Cal.App.4th 963
- *White v. County of Los Angeles* (2014) 225 Cal.App.4th 690
- *County of Los Angeles Department of Public Social Services v. Civil Service Commission of Los Angeles County* (2019) 35 Cal.App.5th 273, review denied (July 31, 2019)

#### **DATE ISSUED**

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Original Issue Date: **June 27, 2023**





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## PPG 628 – MEDICAL RELEASE OR REASSIGNMENT

### Frequently Asked Questions

#### 1. What is the purpose of a medical reassignment or release?

A medical reassignment (i.e., reassign the employee to an alternative position) may be required in situations where, based on the results of a Fitness for Duty Evaluation or other medical or legal evidence, an individual has been found to be unable to permanently perform essential functions of their position, with or without reasonable accommodation, and without risk of harm to themselves or others.

A medical release may be necessary in situations where, through a Fitness for Duty Evaluation or other medical or legal evidence, an individual has been found to be unable to perform essential functions of their position or any other vacant and available position within the County of Los Angeles (County) without risk of harm to themselves or others. A medical release should only be considered once all other alternatives are deemed inappropriate or unavailable.

#### 2. How does a department determine whether a function is essential?

A department determines whether a function is essential by reviewing the core purpose of the position, determining whether the function(s) is critical and fundamental to the successful performance of the position, and the degree of expertise or skill required if the function is specialized and the individual who was hired based on their ability to perform the function.

The County may use an Essential Job Function Analysis, Essential Position Analysis, or job description documents to identify essential job functions.

#### 3. What could lead to a position reassignment?

After the Fitness for Duty and Interactive Process, and if the findings suggest a position reassignment is necessary, the department will conduct an alternate work search for appropriate and available positions within the department. An appropriate position must be a vacant, funded position, that adheres to the employee's restrictions/limitations and is at or around the same salary level. The employee must qualify for the position including meeting minimum qualifications and satisfying civil service requirements. Also,

it must be medically appropriate for the employee, with or without reasonable accommodation.

If an appropriate alternate employment position is not identified through the department's alternative work search, the department will engage with the Department of Human Resources for a Countywide alternate work search.

#### **4. Could disability retirement be an option instead of a medical release?**

Yes. However, departments should not pursue disability retirement or a medical release from County Employment until the departmental and Countywide alternate work searches have concluded. Departments may commence the medical release or disability retirement process:

- 1) Following the conclusion of an Interactive Process that results in a determination that an employee is unable to permanently perform the essential functions of their current position with or without reasonable accommodation and without risk of harm to themselves or others, and
- 2) The departmental and Countywide alternate work searches have not identified other appropriate employment positions, or if the employee has refused any of the positions that were offered through the departmental and/or Countywide alternate work search.

For participants in Los Angeles County Employee Retirement Association (LACERA) Retirement Plans A, B, C, D, or G, an eligible employee, or the hiring department on behalf of an eligible employee, shall file for disability retirement benefits in accordance with LACERA rules. Departments must file a disability retirement application with LACERA and not medically release an employee who is eligible for disability retirement.

#### **5. How can an appeal be filed for a medical release?**

The County provides permanent employees with a Skelly-type process in the event that employees may be involuntarily released for medical reasons. Employees and/or their representatives have the right to respond in writing or orally to the facts contained in the department's written notice of intent to medically release. Employees who choose to respond in person may arrange for a Skelly Meeting by contacting the departmental point of contact listed on the department's written notice of intent within ten (10) business days from the date the employee was notified of the proposed action.

If the employee disagrees with the determination of the department, they may file an appeal with the Department of Human Resources. The appeal must be in writing and

must provide specific facts and information that demonstrate when an error occurred. The appeal must be received by the County's Appeals Program within ten (10) business days from the postmarked date on the envelope in which the notice was mailed by using this web address: <https://eappeals.lacounty.gov>. For technical support related to online appeal submission, please go to <http://apps.hr.lacounty.gov/eAppeal>.