

SAMPLE LETTERS

**U.S. Office of Personnel Management
Office of Workforce Relations
1998 Symposium on Employee and Labor Relations**

SAMPLE LETTER

Notice of Proposal to Separate

Dear

This is to notify you that it is proposed to separate you from your position with the (agency) not earlier than 30 calendar days from the date of your receipt of this letter. This notice of proposed separation is based on your inability to perform a critical duty of your position because of your medical condition and to promote the efficiency of the service. As of (date), (name of medical officer and address), has established for you a permanent limitation of not being required to give briefings. This action is being proposed in accordance with (agency rule(s)).

The reasons for this proposed action are as follows:

- a. You are assigned to the position of (position) in (agency, branch, office). A critical duty of your position requires you to prepare and give briefings to top-level executives in (agency office) and (Bureau/Office) in order to present proposals and gain approval of recommended actions. (Name) has established for you a permanent limitation of not being required to give briefings. As a result of your permanent limitation, you are unable to perform the aforementioned critical duty of your position.
- b. On (date) (name) stated that there were no positions available within (Bureau/Office) and (Office) for which you qualified for reassignment that were also consistent with your permanent limitation. On (date), the Affirmative Employment Section in the 2750 ABW Civilian Personnel Office was asked to consider you for reassignment to any vacancy for which you qualify in accordance with your permanent limitation. (During a placement counseling session on (date), you told (name) and (name) of the 2750 ABW Civilian Personnel Office that you were not willing to accept a change to lower grade with retained pay.)

On (date), the Affirmative Employment Section reported that their placement efforts had not been successful. In addition, it has not been possible to restructure a position in order to place you on another job.

- c. Therefore, in view of your inability to perform a critical duty of your position because of your medical condition and the inability of management and the 2750 ABW Civilian Personnel Office to place you on another position consistent with your qualifications and permanent limitation, your separation is being proposed.

You may reply to this letter personally, in writing, or both to me (address, Room No. telephone No.). You may also submit affidavits or other documentary evidence in support of your reply. In addition, you may be accompanied by an attorney, a union representative, or other representative of your choosing in accordance with the criteria outlined in (agency regulations) when making your reply. It is necessary that a memorandum be made of the principal points of any oral reply you make. Therefore, you must inform any of the above named supervisors at the beginning of your conversation that you intend your conversation to be an oral reply to this proposed action.

If you do not agree with this proposed action, you have the opportunity to present any evidence which you feel would tend to support your contention that this action should not be taken. You may furnish with your reply or as a part of your reply an evaluation of a duly licensed physician if you so desire. Your designated licensed physician can review the medical file or obtain copies of the medical findings at no cost to him/her if requested in writing. Any evidence that you submit will be taken into consideration before arriving at a final decision.

You will be allowed 21 calendar days from the date of your receipt of this notice to reply. Consideration will be given to extending this time limit if you submit a written request stating your reasons for desiring more time. This right to reply is a significant right granted to you. If you believe this proposed action is unwarranted, it is important that you reply stating completely all the reasons supporting your belief.

If you wish to review the regulations pertinent to this action, or review the material being relied upon to support this action, or obtain advice and assistance in preparing your reply, you may contact your Employee Relations Specialist (name, address, room number, and telephone number). An appointment will be arranged by the undersigned upon your request.

If you are otherwise in an active duty status, you will be allowed eight hours of official time off from your job without charge to leave for reviewing all the material being used to support the reasons in this notice, for preparing a written reply, for making an oral reply, and for securing

affidavits and other documentary evidence in support of your reply. Your request for official time off from your job must be requested by you from the undersigned.

This proposed action is nondisciplinary in nature. It is proposed as a result of your inability to perform a critical duty of your position because of your medical condition and to promote the efficiency of the service.

No decision to separate you has been made or will be made until you reply, or until the time limit for your reply has expired if you do not elect to reply. Any reply you make will be given careful consideration before a final decision is made. Whether or not you reply, a written notice of final decision will be given to you.

If you do not understand the above reasons for this proposed action, contact me for further explanation.

No action, based on the reasons set forth herein, will be taken to separate you from duty status in your present position during this 30 calendar day advance notice period. You are reminded that you are eligible to apply for disability retirement because you are physically disqualified from your current position and have more than five years of civilian service. If you are interested in applying for disability retirement or wish to obtain more information, you should contact (name, room number and telephone number).

Sincerely,

SAMPLE LETTER

Proposal to Remove for Unavailability for Duty

Dear

This is notice that I propose to remove you from your position as (title, grade) and from the Federal service due to your unavailability for duty. This action is being proposed in order to promote the efficiency of the service and will be effected no earlier than 30 calendar days after the date you receive this memorandum. This action is being processed in accordance with Part 752 of Title V of the Code of Federal Regulations and Chapter 752 of the Federal Personnel Manual for the following specific reasons.

You were injured on a car accident in (date), and have been unable to perform the duties of your position since that time. In (date), your physician provided medical documentation which stated that you would be totally disabled for at least an additional 18 months. Subsequently, on (date), you were notified by letter, of your options to resign, file for a disability retirement, or be separated for unavailability.

You returned to duty on (date), with your doctor's written permission allowing you to return to work on an interim basis. Your doctor recommended that you be allowed to work in a sedentary position with no lifting, climbing ladders or steps, for no more than 12 hours a week and not to exceed 4 hours a day. You were permitted to return to work in that capacity on an interim basis pending receipt of more comprehensive medical documentation regarding your progress and some indication of when you could return to part-time and subsequently to full-time duty. Based on your request for an extension, you were given until (date) to provide the medical documentation.

On (date), you failed to report for duty indicating you could not meet the demands of the position on a part-time basis. You are currently being carried on LWOP. On (date), I received further medical documentation from your physician, dated (date), your physician, estimates that you will be able to return to work after a period of three months of very extensive physical therapy. However, he estimates you will only be able to work 20 hours a week.

I have been extremely flexible in accommodating your continued absence for almost two years (through Voluntary Leave Transfer, LWOP, return to work part-time, etc.); however, there is a critical need to fill your position on a full-time basis. Your continued absence has had an adverse impact on our operations, due to the fact that we have a critical shortage of available personnel to perform your duties.

Since you are presently unavailable and, as indicated by your physician, that you will continue to be unavailable/unable to work on a full-time basis for at least the next six months (approximately (date)), this has resulted in our inability to (1) conduct onsite surveys of all reprographic program/operations to ascertain whether procedures used are consistent with agency policies and procedures; (2) provide technical assistance to other components within (office); (3) analyze changes in Federal laws, rules and regulations to determine the impact on (office's) reprographic program and; (4) schedule and coordinate the use o reprographic equipment, chemicals and supplies. These are critical requirements of the position. The Division currently has a critical personnel shortage due to the periodic absence of 1 employee and the extended absence of another, both of whom are on workers compensation. Therefore, your position must be filled on a full-time, continuous basis if the mission of the Division is to be satisfactorily accomplished.

It is my understanding that you currently meet the basis eligibility requirements for disability retirement. It is strongly recommended that you contact (name, office, address and telephone number), to discuss your benefit entitlement and application procedures.

In accordance with the Master Agreement between (agency) and (union), you have the right to reply to this proposal orally, in writing, or both, within 10 workdays after you receive this notice. In any case, no final decision will be made until your reply is received or if no reply is made, until after the 10 workdays allowed have passed. You may submit affidavits and any other documentary evidence in support of your response. Replies should be made to the deciding official (name, room number, and telephone number).

You have the right to be represented by the Union, an attorney, or other representative of your choice. If you elect a representative other than the Union, you will bear any and all costs associated with such representation. If you select a representative, you must notify (name) in writing, of your representative's name and affiliation.

If you are in a duty status, you and your representative (agency employees only) are entitled to a reasonable amount of official time to prepare and present your reply and to secure affidavits and other evidence. You must make arrangements with me if you wish to use official time for this purpose.

You and your representative have the right to review the materials relied upon in support of this proposed action. Please call me on (telephone number) if you wish to review these materials.

Please sign and return the attached copy of this notice as acknowledgment of receipt of the original.

SAMPLE LETTER

Proposed Removal for Physical Inability to Perform

Dear

This letter is to inform you that I propose to remove you from your position as a (name of position) at the (agency) no sooner than thirty (30) calendar days from the date you receive this letter. The reason for your removal is physical inability to perform the full range of duties of your position, with or without accommodation, due to a medical condition caused by a work-related injury, as described below.

As a result of an on-the-job injury on (date), in which you injured your back, you were incapacitated from the performance of the full range of your official duties. On (date), I requested you to provide medical documentation from your paint shop and to make an informed decision on whether to continue to carry you in a Leave Without Pay (LWOP) status, as you had already used up your sick and annual leave. In response on (date), Dr. (name) indicated that "a ruptured lumbar disc is a permanent injury and there will not be full recovery." He also stated, "at this present time, it is my opinion that he [you] had already reached maximum improvement and thus is stuck with a permanent disability which in my opinion will not allow him [you] to return to his [your] previous position description as a painter leader on a permanent basis." As a follow up, (Name) OWCP Rehabilitation Specialist, provided a status report on (date), stating that you were "unable to return to his [your] former employment, but is [are] released to return to employment with restrictions."

Based on the above, the (name) performed a search of available positions to determine if you could be returned to employment in another position. Based on a review of your Official Personnel Folder and your last SF-171, you have only worked as a (title of position) and as a plant worker and bus operator in the private sector. Based on your limited qualifications and your physical restrictions, the (agency) found and offered you a position involving four duties which appeared within your capability. On (date) (name, title, and office), interviewed you for this position which was located in her office, discussing the four potential duties with you. Then, (name) from the Personnel Office submitted a formal job offer to your physician, dated (date), with a description of the four different duties restructured to meet your physical restrictions: transportation; mailroom; mailroom (sorting), and printing. However, on (date),

your doctor rejected that formal offer, stating that you were incapable of performing the referenced duties, as they would place you at risk for worsening your symptoms. In addition, you contacted (name) to say that you were turning down the job offer.

Based on the medical information on file and the fact that you have been on Workers' Compensation in excess of one year, your inability to perform the full range of your duties as a painter leader has continued beyond a reasonable time. It is evident that you are unable to perform your duties because of a medical condition as substantiated by medical statements from your physician. Your inability to perform is due to compelling reasons beyond your control.

As a (agency) employee, you have the responsibility to perform the full scope of duties of your position. Because of your disability, you are unable to do so. This significantly impacts the efficiency of the Paint shop and the (agency), in that the Paint Shop's ability to provide effective and responsive service is severely hampered by the absence of its personnel. The duties of your officially assigned position remain and the requirement exists for them to be performed on a regular, full-time basis.

Due to your absences from duty, other employees have been utilized to perform the duties of your position in addition to their own. In (date), I made another employee the acting leader and attempted to hire a temporary employee to fill in behind you. However, because your disability is permanent, with no foreseeable end, this proposed removal is necessitated to promote the efficiency of the (agency) by enabling the (agency) to fill the leader position permanently and hire an employee to perform the duties required of a painter.

You may respond to this proposal, orally and/or in writing to (name) Maintenance Manager, (title). You may have an attorney or other representative present at your own expense. You will be allowed fifteen (15) calendar days from the date you receive this letter to submit your answer. Consideration will be given to extending this period if you submit a request, in writing, to (name) stating your reasons for desiring more time. You may be allowed official time to prepare your response. Full consideration will be given to any answer you submit. You may contact (name) in the Personnel Office at (room) to review any materials relied upon in making this proposal.

As soon as possible after your answer is received or after the expiration of the fifteen (15) calendar day limit, a written decision will be issued to you.

Should this proposed action ultimately be taken, it will not affect your eligibility to apply for disability retirement benefits. For your information, you are able to make application within one (1) year after separation from the Federal Service. (Name) recently mailed you an estimate of your disability retirement benefits. If you have any questions or need any additional information

concerning disability retirement or your entitlement to other benefits, please call (name).

Sincerely,

SAMPLE LETTER

Decision Notice for Medical Inability to Perform

This is notice that I have decided to remove you from your position of Visual Information Specialist, GS-1084-6, and the Federal service, in order to promote the efficiency of the service.

By letter dated March 1, 1997, Ms. I.M. Boss proposed that you be removed from your position and from the Federal service based on your medical inability to carry out the duties of your position. You were also informed of your right to respond to the proposal either orally, in writing, or both, and were given 21 days in which to make and/or submit your response. You submitted a written response on March 19, 1997, and I have given careful consideration to the issues you raised in your letter as well as the evidence presented by the proposing official in support of the removal action.

In your response, you reiterated that you believe your supervisor had acted in a discriminatory manner by not accepting your personal choice of pursuing a holistic, non-traditional medical treatment for your back pain. You outlined your many efforts to keep your supervisor informed of your message therapy treatment throughout the period of your absence. You noted that, in response to an earlier proposed action, you had submitted a detailed medical report from Dr. I.M. Theman, Chief of Osteopathy with the University Medical Center which supported your need for continued approved leave and questioned your supervisor's authority to take any further action following receipt of this medical documentation.

I note that a copy of Dr. Theman's assessment of your condition was included as supporting documentation for the proposed removal. In it, Dr. Theman states that he examined you on February 5, 1997, and found that initial tests results indicated the beginning stages of degenerative disc disease. He recommended an aggressive treatment program including surgery to replace 3-5 lower discs. Dr. Theman stated in his report that he could not estimate a return to work date until he evaluated your initial recovery from surgery but that he felt you may be able to return to work someday.

The information in your response was not sufficient to overcome the evidence presented by the proposing official that current medical information indicates that you are not physically able to perform the duties of your position. Further, the medical documentation you have submitted does not provide any projected recovery date and, in fact, states that a prognosis for recovery cannot even be developed until after you have surgery to repair the damage from the degenerative disc disease. As you have repeatedly indicated, you do not wish to pursue the more traditional medical approach recommended by Dr. Theman and want to maintain your efforts to restore your health through holistic treatment programs, including the on-going massage therapy. While I wish you success in your treatment, I must examine the practical impact of a potential long-term absence. Your absences are having a negative impact on the work of the organization and have created an inefficient situation where two other employees are detailed to cover your

assignments, resulting in backlogs of work at their home offices. With no projected date of return to duty, it is not reasonable for this agency to continue to keep you on the roles and approve an unspecified amount of leave without pay to cover your absence. Based on the medical information submitted by your treating physician, there is no likelihood of a change in your medical status at any time in the near future unless you elect to have the recommended surgery. Further, even with the surgery, your physician was unable to state that you would certainly be able to return to work. Having considered both the evidence supporting the proposed action and your response, I have decided that your removal is necessary for the efficiency of the service.

In determining that it is necessary to remove you from your position, I have considered lesser actions such as suspension or demotion but neither are appropriate. I am well aware that you are not absent by choice and, therefore, a disciplinary action would serve no purpose. I realize that your performance was highly regarded during the first few years that you were with our organization, but your current inability to be at work on a regular basis overshadows past performance. I appreciate your desire to stay on the job but you have offered no viable means of accommodating your condition other than a continuing approval of leave without pay. As I have stated, that is not possible due to the negative impact your absences are having on the organization.

My decision to remove you from your position and from the Federal service is a final one and the effective date of the removal action will be April 15, 1997.

You have the right to either appeal this action to the Merit Systems Protection Board (MSPB) or to grieve this action through the negotiated grievance procedure, but you may not use both procedures. Attached is a copy of the MSPB appeals form and a copy of the MSPB regulations, for your information. Your appeal may be filed immediately after the effective date of April 15, 1997, but must be filed no later than 30 calendar days after the effective date of this action and should be addressed to: MSPB Atlanta Regional Office, 401 West Peachtree Street, NW, 10th Floor, Atlanta, GA 30308-3519.

Also attached for your information is a copy of the negotiated grievance procedures found at Article 26 of the Collective Bargaining Agreement between Local 1234 and the agency. Should you choose to grieve the removal action, follow the timeframes and procedures outlined in Article 26 for submission of your grievance.

If you wish to file an application for disability retirement with the U.S. Office of Personnel Management, please contact Ms. I. Can Help at 555-1214. Ms. Help is the agency's Benefits Counselor and she will provide you with information concerning your potential disability benefits and application procedures, as an employee covered under the Federal Employees'

Retirement System (FERS). Your application for disability retirement must be received by the U.S. Office of Personnel Management no later than one year from the date of your separation.

I am requesting that you sign and date the acknowledgment copy of this memorandum as a record that you received it. Your signature does not mean that you agree or disagree with the contents of the memorandum and, by signing it, you do not forfeit any of your grievance or appeal rights.

SAMPLE LETTER

Notice of Decision to Remove - Inability to Maintain Regular Work Schedule

This is notice that I have decided to remove you from your position of Administrative Assistant, GS-301-9, and the Federal service, in order to promote the efficiency of the service.

By letter dated January 20, 1997, Ms. I.M. Boss proposed that you be removed from your position and from the Federal service due to your inability to maintain a regular work schedule. You were also informed of your right to respond to the proposal either orally, in writing, or both, and were given 21 days in which to make and/or submit your response. You submitted a written response on February 5, 1997, and I have given careful consideration to the issues you raised in your letter as well as the charges and evidence presented by the proposing official.

In your response, you indicated that the agency has an obligation to continue approving your leave under the donated leave transfer program, and when that is exhausted, to approve LWOP because your absences are due to a medical condition. You noted that the Americans with Disabilities Act of 1990 protects you from removal because the agency is obligated to provide you with reasonable accommodation in the form of approved leave. Finally, you indicated that your physician believes your condition of chronic asthma will be improving and you will not need as much leave in the future.

After reviewing your response, I contacted you and asked you to submit an updated medical report from your physician to support your statement that your condition has changed and that he believes there is an improved prognosis. The February 20, 1997, notice from your doctor confirmed the diagnosis of chronic asthma and stated that there was no way to estimate the onset of asthmatic attacks nor the duration. He indicated that he has recently adjusted your medication in the hopes of reducing the incapacitation you experience during attacks.

The information in your response was not sufficient to overcome the evidence presented by the proposing official and I believe that your removal for inability to maintain a regular work schedule would promote the efficiency of the service. Your absences are having a negative impact on the work of the office and have resulted in missed deadlines and backlogs of work. I cannot continue to approve overtime for other staff nor is the hiring of a temporary employee a solution. Based on the medical information submitted by your treating physician, there is no likelihood of a change in your medical status at any time in the near future. Although the doctor indicated that he hoped a change in medication would reduce the level of incapacitation during your asthma attacks, he did not indicate that the absences would be any less frequent than those you are currently experiencing.

In determining that it is necessary to remove you from your position, I have considered lesser actions such as suspension or demotion but neither are appropriate. I am well aware that you are not absent by choice and, therefore, a disciplinary action would serve no purpose. I realize that

your performance has been good during the first few years that you were with our organization, but your current inability to be at work on a regular basis overshadows past performance. Since this action is not disciplinary in nature, previous adverse actions taken against you were not relevant to my decision. I appreciate that you wish to stay on the job but you have offered no viable means of accommodating your condition other than a continuing approval of leave without pay. As I have stated, that is not possible due to the negative impact your absences are having on the organization. Further, nothing in the Americans with Disabilities Act nor the leave transfer program requires your supervisor to continue approving leave when medical documentation supports that the condition causing your absences is chronic and there is no reasonable expectation of improvement in the near future.

My decision to remove you from your position and from the Federal service is a final one and the effective date of the removal action will be March 30, 1997.

You have the right to either appeal this action to the Merit Systems Protection Board (MSPB) or to grieve this action through the negotiated grievance procedure, but you may not use both procedures. Attached is a copy of the MSPB appeals form and a copy of the MSPB regulations, for your information. Your appeal may be filed immediately after the effective date of March 30, 1997, but must be filed no later than 30 calendar days after the effective date of this action and should be addressed to: MSPB Atlanta Regional Office, 401 West Peachtree Street, NW, 10th Floor, Atlanta, GA 30308-3519.

Also attached for your information is a copy of the negotiated grievance procedures found at Article 26 of the Collective Bargaining Agreement between Local 1234 and the agency. Should you choose to grieve the removal action, follow the timeframes and procedures outlined in Article 26 for submission of your grievance.

If you wish to file an application for disability retirement with the U.S. Office of Personnel Management, please contact Ms. I. Can Help at 555-1214. Ms. Help is the agency's Benefits Counselor and she will provide you with information concerning your potential disability benefits and application procedures, as an employee covered under the Federal Employees' Retirement System (FERS). Your application for disability retirement must be received by the U.S. Office of Personnel Management no later than one year from the date of your separation.

I am requesting that you sign and date the acknowledgment copy of this memorandum as a record that you received it. Your signature does not mean that you agree or disagree with the contents of the memorandum and, by signing it, you do not forfeit any of your grievance or appeal rights.