

FITNESS FOR DUTY POLICY - EXAMPLE #1

Reason for Policy: The COMPANY is committed to promoting a safe and healthy environment for its employees, students, patients and visitors. Such an environment is possible only when each employee is able to perform his or her job duties in a safe, secure, and effective manner, and remains able to do so throughout the entire time they are working. Employees who are not fit for duty may present a safety risk to themselves and to others.

Policy Summary: This policy outlines the responsible parties and necessary actions when an employee's fitness for duty is in question, the steps necessary to assess the employee's physical or mental capabilities, necessary follow-up, and return to work.

Policy Statement: This policy covers only those situations in which an employee is (1) having observable difficulty performing his/her duties in an effective manner that is safe for the employee and/or for his or her co-workers, or (2) posing a serious safety threat to self or others. The policy prescribes the circumstances under which an employee may be referred to an independent, licensed health care evaluator for a fitness for duty evaluation should either of those situations be present.

An employee shall not be allowed to work unless he/she maintains a fitness for duty required for the safe performance of essential job functions, with or without reasonable accommodation. Each employee is required to report to work in an emotional, mental and physical condition (including free of the effects of alcohol and drugs) necessary to perform his or her job in a safe and satisfactory manner.

This policy does not apply to employees with short term, infectious/communicable diseases (e.g., flu, colds). If an employee exhibits symptoms of an infectious/communicable disease, the supervisor may ask the employee to leave the workplace in order to have his/her symptoms evaluated by the employee's own health care provider or by COMPANY's occupational medicine provider.

A fitness for duty evaluation is designed to address behavioral changes in an employee that may pose a potential threat to self or others in the workplace. Application of this policy is not intended as a substitute for COMPANY policies or procedures related to chronic performance or behavioral problems or as a substitute for discipline. Supervisors shall continue to address performance or behavioral problems through the performance appraisal process and to implement appropriate corrective or disciplinary action.

The COMPANY is required to comply with federal disability law (primarily the Americans with Disabilities Act of 1990 [ADA]). In general, the ADA prohibits: (1) employers from requiring an employee to submit to a medical examination; and (2) employer inquiries into whether an individual has a disability. However, the protections afforded to employees by the ADA are not without limits. Federal law permits the COMPANY to require a medical examination of an employee if the requirement for the examination is job-related, consistent with business necessity, and if the COMPANY has a reasonable belief that:

- (1) the employee's ability to perform essential job functions may be impaired by a medical condition; or
- (2) an employee may pose a direct threat (i.e., significant risk of substantial harm to the

health and safety of self or others) due to a medical condition.

1. Fitness for Duty Requirements:

An employee is expected to perform essential job functions in a safe and effective manner, and to discuss with his/her supervisor any circumstances that may impact his/her ability to do so. The COMPANY may require professional evaluation of an employee's physical, emotional or mental capacities to determine his or her ability to perform essential job functions. Such evaluations are conducted by an independent, licensed health care professional and are undertaken only after review by the coordinating team. The employee's department is responsible for paying the cost of an evaluation(s). To the extent allowed by law, the COMPANY shall protect the confidentiality of the evaluation and the results.

Employees who have the responsibility for on-call shifts must meet the fitness for duty standard during the entire on-call period.

Non-compliance with a request for a fitness for duty evaluation shall be cause for disciplinary action.

The employee's satisfactory work performance is the basis for continued employment. Participation in a treatment or rehabilitation program does not guarantee continued employment and may not necessarily prevent disciplinary action for violation of COMPANY policies. An employee must comply with all treatment recommendations resulting from a fitness for duty evaluation to be allowed to return to work. A salaried employee referred for an evaluation will be prohibited from appearing for work pending the completion of the evaluation and approval for return to work. During this time, applicable leave policies shall apply. A wage employee (including a temporary employee) referred for an evaluation will be prohibited from working or appearing for work until an evaluation is completed and the employee has been approved to return to work (compensation during this time shall be discontinued).

3. Coordinating Team:

Before initiating an evaluation, the coordinating team shall consult with the employee's supervisor to gain a clear understanding of the behavior/circumstances that have raised questions about the employee's fitness for duty. A member of the coordinating team shall also notify the employee of the opportunity to provide any relevant previous medical or psychological treatment information. The coordinating team shall determine the appropriateness of fitness for duty testing within a reasonable time after notification from the supervisor, usually within three business days.

While the employee is prohibited from appearing for work until completion of the FFD evaluation and approval to return to work is provided, the coordinating team shall use its discretion to determine whether to allow the employee to work off-site or to represent the COMPANY in any work-related capacity.

4. Results of the Evaluation:

The results of FFD evaluations performed by qualified, licensed health care professionals shall be presumed to be valid. Results of the evaluation will be received by COMPANY as appropriate. The employee shall be notified of the results of the FFD by the evaluator and/or COMPANY. Only necessary information shall be shared with the coordinating team. A member of the coordinating team will communicate whether the employee may return to work to the employee's supervisor and the respective dean or vice president.

After an evaluation, information given to the employee's supervisor and respective dean or vice president shall be limited to whether the employee may:

- return to full duty;
- not return to full duty, in which case the employee will be referred to Human Resources for a benefits discussion; or
- return to full duty with reasonable accommodations to meet the evaluator's recommendations.

5. Return to Work:

In conjunction with the employee's supervisor, the coordinating team shall discuss whether any reasonable and necessary accommodations need to be made. Continued employment shall be contingent upon compliance with recommendations provided by the evaluator, such as periodic testing, participation in professional counseling and treatment programs. During this time, applicable leave policies and health plan benefits shall apply. In consultation with the coordinating team, the supervisor and employee should engage in an interactive process to determine if any reasonable accommodations (e.g., re-assignment of duties for a specific period of time, a flexible work schedule) should be implemented. Failure to comply with the recommendations or agreed upon accommodations may result in disciplinary action up to and including possible termination from employment.

6. Confidentiality/Privacy of Fitness for Duty Evaluations:

Under the Health Insurance Portability and Accountability Act (HIPAA), any document containing medical information about an employee is considered a medical record and is regarded as confidential. Records of fitness for duty evaluations shall be treated as confidential medical records and maintained by COMPANY as appropriate. This information may be shared only on a "need to know" basis. Employees may obtain a copy of the medical report from COMPANY upon written request.

7. Responsibilities:

An *employee* is responsible for:

1. Performing his/her job responsibilities in a safe and effective manner, with or without reasonable accommodations during the entire time at work;
2. Notifying the supervisor when not fit for duty;
3. Notifying the supervisor when a coworker is observed acting in a manner that indicates the coworker may not be fit for duty;

4. Informing the upper level manager or calling the COMPANY Human Resources for further guidance, if the supervisor's behavior is the focus of concern.
5. Providing relevant medical and psychological information when given the opportunity to do so; and
6. Complying with this policy and any authorized request to submit to an evaluation.

A *supervisor* is responsible for:

1. Observing the attendance, performance, and behavior of the employees under his/her supervision;
2. Notifying COMPANY Human Resources or their local HR between the hours of 8 a.m. and 5:00 p.m. when an employee is exhibiting behavior that suggests he/she may not be fit for duty;
3. Following this policy's procedures for completing an initial observation report when presented with circumstances or knowledge that indicate that an employee may not be fit for duty;
4. Removing and escorting an employee deemed not fit for duty from the worksite unless he/she poses an immediate safety threat in which case the supervisor should call 911;
 1. Arranging transportation for the employee from the work site if necessary;
5. Maintaining the confidentiality of an employee's medical information; and
6. Implementing any reasonable accommodation deemed necessary.

The *Coordinating Team, or a member of,* is responsible for:

1. Soliciting information from the supervisor regarding employee behaviors or performance, and from the employee regarding any relevant previous medical or psychological treatment information;
2. Identifying who will conduct the fitness for duty evaluation;
3. Receiving the results of the fitness for duty evaluation;
4. Communicating the results to the employee if not done so by the evaluator;
5. Maintaining confidentiality except as detailed in the Confidentiality/ Privacy section above;
6. Coordinating payment by the employee's department for the fitness for duty evaluation;
7. Implementing any recommendations proposed by the FFD evaluation;
8. Discussing recommendations and subsequent accommodations with the supervisor; and
9. Communicating with the employee as to their rights, responsibilities and employment status.

The *employee's department* is responsible for: Paying the costs associated with a recommended fitness for duty evaluation.

Return To Work Policy - EXAMPLE #2

POLICY REGARDING PROCEDURE FOR RETURN-TO-WORK PHYSICALS AND REINSTATEMENT TO SERVICE

I. All employees must be referred to the Human Resources Department for a Return to Work Physical Examination Request in each of the following instances:

- A. If the employee is returning to service after an absence of thirty days or more (other than vacation); or
- B. If the employee has suffered an on-duty injury
- C. If the employee has undergone surgery or a medical operation; or
- D. If the employee has been hospitalized for any reason; or
- E. If the employee has suffered an off-duty injury

II. Employees may be referred to the Human Resources Department for a Return to Work Physical Examination Request at the Company's discretion in the following instances:

- A. If the employee is returning to service after an absence related to use of the Company's EAP program, or:
- B. If the employee is returning to service after starting treatment with prescription medications, or:
- C. In any other situation where, in the opinion of the COMPANY's duly authorized management employees or officers, the particular facts of an employee's situation suggest that a Return to Work Physical Examination may be necessary or beneficial

Upon completion of the required medical examination, the Clinic will inform the Human Resources Department whether the employee is released to perform his free and unrestricted duties. The Human Resources Department will then inform the appropriate Department as to the employee's return-to-work status.

Also, all employees returning to service who have been off duty due to medical/physical reasons will be required to furnish the Human Resources Department their doctor's statement in the form of our Return to Work Doctor's Report to the COMPANY. When an employee under your jurisdiction has been absent from duty under circumstances which will require the completion of this form, arrange to mail a copy of the form to the employee before their return to duty. This will avoid the inconvenience of the employee making an unnecessary second appointment with their personal physician for the sole purpose of completing our form.

III. In addition to the above, all employees returning to duty after an absence of 90 days must successfully complete the reinstatement process outlined below before being referred to the Human Resources Department for the scheduling of the return-to-work physical exam.

- A. The Department Head must meet with the employee in a counseling session to discuss all relevant aspects of the employee's reassuming duty and any guidance items which may be appropriate. The results of this session shall be communicated in writing to the Human Resource and filed in the employee's personnel file.
- B. The employee shall be referred to his/her Department Head for all necessary rules examination and proficiency testing required to establish the employee's qualification to work in his/her craft or class of work. The results of this testing shall be communicated in writing to the Human Resources Department and filed in the employee's personnel file.

The above-mentioned situations and criteria should not be regarded as a comprehensive list of situations requiring a Return to Work physical. The Company reserves the right to require a Return to Work physical or any other examinations it deems necessary for any employee in connection with any absence.

Note: This document is provided as example only and does not constitute legal advice.