

GUIDELINES
FOR
Fitness for Duty
Examinations



Employer-Employee Relations
Human Resources Division
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NOTE TO READER: These guidelines represent relevant concerns and recommended administrative procedures for requiring fitness for duty examinations. ***This document is not a rule, regulation, or contract, and should not be construed as creating contractual obligations.***

The District reserves the right to revise, amend, supplement, or rescind these guidelines at any time at its sole and absolute discretion. In all questions of actual legal compliance, ***actual policies, rules, regulations, procedures and collective bargaining agreements will always be the official documents upon which any ruling will be based or any interpretation made.***

For complete information contact the Personnel Office at your campus or the Division of Human Resources.

Introduction

This paper focuses on what to do when you are presented with a situation that leads you to believe one of your employees may not be fit to be at the work.

Although not every situation will end up with an employee in a fitness for duty (FFD) examination process, the steps described in this paper, in conjunction with labor agreements, District policies, and laws and regulations which pertain to us, should assist in understanding what fitness for duty is, what should be considered when initiating a fitness for duty examination, and how the process works.

What is Fitness for Duty?

Fitness for duty has a variety of meanings, all of which revolve around the key question of whether or not someone has the ability to perform the *essential functions* of the particular job one is applying for, or currently holds. For the purposes of this paper, the focus will be on the fitness for duty process as it pertains to existing employees.

Regarding fitness for duty evaluations for existing employees, there are different times when fitness for duty evaluations may occur. Some instances that may call for a fitness for duty evaluation are:

- When an employee returns to work from an extended leave due to illness or injury;
- When the manager believes that an employee's work performance is being adversely affected by his/her state of health;
- When the manager has reason to believe that an employee's state of health may make the employee a danger to him or herself, other staff or students.
- When the manager believes that medical excuses or medical clearances presented by the employee are exaggerated or false.

Returning from Leave: In a situation where the employee is returning to work following an extended leave due to a non-occupational illness or injury, the fitness for duty evaluation may be obtained through a clearance from the employee's personal physician as to whether or not an employee is able to perform the essential functions of his or her job without restriction. Should the employee not be able to return to duty without restriction, it is generally appropriate to work with the employee through an accommodation process to determine the restriction(s) and whether reasonable accommodation is possible. The reasonable accommodation interactive meeting is coordinated by the campus compliance officer.

Health Concern: Where an employee's behavior or state of health is affecting his/her performance, or may be a safety concern, a fitness for duty

examination may be appropriate. The fitness exam may be based on a series of incidents causing increasing concern, or single serious incident. A fitness for duty examination can provide information about an employee's ability to function and perform his/her job duties in the work environment. Additionally, the fitness examination may protect the workplace and reduce an employer's liability. This type of situation will be the primary discussion for the rest of this paper.

WHAT SHOULD BE CONSIDERED WHEN INITIATING A FITNESS FOR DUTY EXAMINATION?

Some specific situations that may warrant consideration for a fitness for duty examination are:

- Potential for workplace violence;
- Paranoid thinking;
- Abusive behavior to co-workers or customers;
- Bizarre or unusual behavior in the workplace;
- Anticipated return from an extended medical leave;
- Impaired concentration
- Suspected substance abuse

For issues relating to poor performance, use performance management practices such as the performance evaluation, U-Notice, and work plans. A fitness examination is not the appropriate approach to performance deficiencies *unless*:

- The employee raises a medical issue as an excuse for the poor performance;
- Some type of disability or limitation is readily observable by management

Start with a conversation.

When an employee is demonstrating behavior that is not normal for that employee, we recommend that the employee's supervisor/manager have a conversation with the employee to see what is going on. This early communication may assist in getting the employee back on the right track sooner rather than initiating an overly involved process. Additionally, it is advised that at the onset of any situation similar to the ones described above that you contact your Employer-Employee Relations (EER) professional at the District Office.

If, after consultation with your EER professional, a recommendation is made to initiate a fitness for duty examination, the employee may, depending on the nature of the concern for the employee's fitness, either continue working while awaiting the fitness examination, or be placed on Paid Administrative Leave in

order to protect the employee's due process rights and reduce the chances of the employee suffering a loss of pay. Since there are a number of steps to follow, this may mean the employee will be out on paid leave for an extended time of weeks, if not months. While on paid leave, the employee is responsible for following all directives from his/her employer, which includes attending the scheduled examinations; moreover, failure by the employee to follow these directives may be grounds for a charge of insubordination.

Labor Agreement/Agency Policy Considerations:

The following is an example of actual contract language from the current Memorandum of Understanding between the District and AFT Local 1521A, Article 19 – Leaves and Absences:

Article 19.H.6.f

An employee shall be required to report for health examination to the District's employee health service, **when in the judgement of his/her supervisor, the apparent health condition of the employee warrants it.** If the report of the physician shows that an employee in service or returning to service is not medically qualified to perform his/her duties, the employee may be required to take sufficient leave to rehabilitate himself/herself. Written notice of non-approval and the reason therefore shall be provided to the employee together with information concerning the employee's right to appeal to the Office of Labor Relations for an Administrative Review.

As can be seen in the above language, whether to submit an employee for a fitness examination is initially left to the discretion of the immediate supervisor. However, because the exam is scheduled by human resources, EER staff will usually consult about the appropriateness of a fitness examination. Even with a detailed fitness for duty process to follow, there is no guarantee that it will be easy or even clear cut. In fact, it is more likely that the fitness for duty process will be viewed by the affected parties as an intense and protracted process lasting well beyond the initial examination.

Manager Jones: My employee showed up this morning, early as usual. Everything seemed fine. He walked by the office to get his work assignment for the day and said "hello". I had a brief conversation with him about the game on Sunday.

Joe HR: So far so good. By the way, what is this employee's name and classification?

Manager Jones: Oh, his name is Tim Smith and he has worked for me as a Courier for about ten years. He is one of my better employees; however, this morning, I think that he just snapped. He was walking around saying "good morning" to everyone here at work and then all of a sudden, he paused and held his index and middle fingers to his ear, kind of like he was taking a pulse, and said out loud for everyone to hear, "Oh my god, they are here!!! Everyone needs to get a weapon and help me fight them. Come with me!" When this all happened, everyone was a little freaked out, but most of us just thought that he was pulling our legs.

Joe HR: Did you ask this employee what was going on?

Manager Jones: Yes, I asked who "they" were and what was going on. He told me that the aliens had been talking to him these past couple of weeks, but not to worry, he was ready for them. It seemed as though he was very serious about what he was saying and believed what he was telling us.

Joe HR: Did he say or do anything else?

Manager Jones: Tim went to his back pack and pulled out these hats covered with foil and some short sticks covered with foil. He told everyone to grab a foil-covered hat so that the aliens could not tell what they were thinking and to get one of the foil-covered sticks to help him destroy the aliens. I know that I am not a doctor, but I think that Tim has just lost it.

Joe HR: Where is Tim now?

Manager Jones: Shortly after all of this transpired he had another outburst and said that it was a "false alarm," but that he would keep us up to date on what's going on and went back to work. The other employees are a little freaked out and don't want to be around him. Not to mention, I am not about to have him deliver any letters at this time and run the risk of him scaring some of our other employees. Right now, I have him sorting the mail. I don't think that he should be at work. What can we do?

Joe HR: Well, there are a few ways that we can handle this situation, but first tell me something. Does Tim seem to be under the influence of anything?

Manager Jones: No, but he keeps putting his two fingers to his ears like he can hear something.

Joe HR: Do you believe that whatever Tim is going through is affecting his ability to perform his job duties?

Manager Jones: Like I said, there is no way that I can send Tim on his route while he is talking about these "aliens".

After getting the initial information from the manager, it is time for Joe, an Employer-Employee Relations professional, to evaluate what Manager Jones told to him and figure out the best way to advise him. Considering that something is not right about this situation and that the employee cannot

perform his job, a fitness for duty may be called for in this scenario. Be sure to advise and consult with your own management before initiating any action.

As previously mentioned, there may be provisions in labor agreements, agency policies or laws and regulations that the employer must follow. Based on language from our various MOU's, let us proceed through the scenario.

Joe HR: Okay Manager Jones, it seems we have no clue as to what caused Tim to act the way he has and whatever the case may be, it does not appear that he should be at work. I recommend we consider initiating a fitness for duty examination process.

Manager Jones: Well, let's get started. I will tell Tim to go see his doctor right away.

Joe HR: It actually doesn't work that way. There are a few things that I need to tell you about the fitness for duty process. First, since we as the employer are initiating this examination, and you believe that he should not be at work, Tim will need to be placed on paid administrative leave.

Manager Jones: Sounds good, let's just get him out of here.

Joe HR: Also, this process is not always quick. It may take some time. Getting an appointment scheduled with our physician sometimes takes a few days. Some of my previous experience with fitness for duty examinations leads me to believe that there may be a need for our physician to recommend that Tim be seen by a specialist. That being said, the initial examination, the examination with the specialist, potential testing, time for evaluation and a review of the tests with our physician may take between three weeks and three months.

Manager Jones: Does that mean I will be paying Tim's salary that whole time?

Joe HR: Unfortunately, yes.

Manager Jones: What does this exam do for me?

Joe HR: It is not a matter of what the exam does for you, but what it does for Tim. It may help Tim get the type of help he needs. As for us, it may assist in reducing our liability should anything happen at work that could have been prevented.

Manager Jones, there are a few things that I would like you to keep in mind:

Should Tim be deemed "not fit" to return to the workplace by our physician, he may be placed on a medical leave and have the option to be evaluated by his own personal physician. If his physician were to concur with our physician, then Tim would stay on medical leave. At some later date, he may be eligible for disability-related retirement.

Lastly, should this process be inconclusive and Tim be deemed fit for duty, he may be held accountable for his outburst or future outbursts of this nature which may lead to some type of disciplinary action.

So if you would like, I can call our physician and get the initial examination set up; however, I will need you to notify Tim in writing that he is being placed on paid administrative leave pending the results of a fitness for duty examination. If you would like, I can email you a template to fill out and issue to Tim.

Conclusion:

To some of us in the field of Employer-Employee Relations, this fitness for duty scenario between Manager Jones and Joe HR may sound familiar. Sometimes the employee doesn't realize that the action(s) he or she engaged in was inappropriate. These cases can be the most time consuming, complicated and interesting of the issues we have to handle in the field of Employer-Employee Relations.

Additionally, because an employee's health and employability are concerned, you can expect that the employee will be concerned and even frightened to be subjected to a fitness examination. Exercise special sensitivity when communicating to employees about these matters, and needless to say, maintain the highest confidentiality.

Employer-Employee Relations staff welcomes your questions, and is available to consult whenever you have a question regarding fitness examinations.