

DHHS POLICIES AND PROCEDURES

Section V:	Human Resources
Title:	Safety and Benefits
Chapter:	Fitness for Duty/Risk Evaluation
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Purpose

The purpose of this policy is to provide the Department of Health and Human Services (DHHS) divisions/facilities/schools a means of obtaining a specialized evaluation to determine an employee's medical or psychological fitness to perform their essential job functions. The evaluation is a means to address extraordinary situations where an employee may pose a hazard or risk to themselves or others in the workplace.

This policy is not intended to replace any existing psychological/physical examination procedure that is a part of an agency's routine requirements.

Policy

It is the policy of the department to provide to management a tool to address extraordinary situations where an employee may pose a hazard or risk to themselves or others in the workplace. The policy is intended to address issues in a timely and confidential manner to ensure workplace operations are not disrupted.

Implementation

1. Coverage - This policy applies to all DHHS full-time and part-time employees with either a permanent, probationary, trainee, or time limited appointment.
2. Responsibility for Cost - The cost of the evaluation shall be the responsibility of the division/facility/school requesting the evaluation. Any cost associated with treatment recommended as a result of the evaluation shall be the responsibility of the employee.
3. Basis for Obtaining a Fitness for Duty/Risk Evaluation - A management decision to require a fitness for duty/risk evaluation may be established when an employee:
 - A. Displays behavior that may pose a hazard or risk to themselves or to others;
 - B. Exhibits emotional or psychological behavior that has the potential to endanger the safety and security of persons or property; and

- C. Creates disruption in the workplace.
4. Fitness for Duty/Risk Evaluation Procedure:
- A. When considering a Fitness for Duty/Risk Evaluation, management shall first consult with their agency human resource (HR) office. The agency HR office shall consult with the department's employee relations office to discuss the need for an evaluation.
 - B. Once a decision has been made to conduct a Fitness for Duty/Risk Evaluation, management shall use the DHHS Employee Assistance Program (EAP) to coordinate and obtain the evaluation. The agency HR office shall provide the following information to the EAP consultant in advance of the referral:
 - 1. Precipitating events
 - 2. Documented performance and/or behavior concerns
 - 3. Pending or previous disciplinary action
 - 4. Employee's job description and essential job functions
 - C. EAP will monitor the employee's compliance with treatment recommendations and progress toward fitness for duty and will maintain communication with the agency HR office. When the employee is approved to return to work, EAP will assist the agency HR office in obtaining the necessary medical information from the treating resource.
 - D. Management shall communicate with the employee in person and shall provide the employee a letter outlining:
 - 1. Workplace concerns
 - 2. Specific reason(s) for the Fitness for Duty/Risk Evaluation and any other concerns that negatively impact the workplace
 - 3. Expectations for compliance in resolving the concern(s)
 - 4. Consequences for failure to accept all conditions of the referral
5. Consequences or Failure to Accept or Follow Conditions of the Referral
- A. Disciplinary action up to and including dismissal shall occur if the employee:
 - 1. Fails to comply with a management directive to undergo a Fitness for Duty/Risk Evaluation; or
 - 2. Fails to comply with EAP recommendations or any other conditions of the evaluation, or
 - 3. Fails to make the required improvements in performance or conduct.

- B. As an option, management may temporarily defer a decision as to what level of disciplinary action will be taken. This deferral allows management the time necessary:
 - 1. To make a decision as to the appropriate disciplinary action in consultation with the agency HR Office, or
 - 2. For the employee to demonstrate willingness to follow a management directive, or
 - 3. For the employee to demonstrate willingness to comply with recommendations.
6. Findings of the Fitness for Duty/Risk Evaluation. The evaluative summary findings will recommend one (1) of the following courses of action:
- A. Fit to return to duty without specific recommendations. The evaluator has determined that the employee is fit for duty and does not pose a hazard or risk to self or others.
 - B. Fit to return to duty with specific recommendations. The evaluator has determined that the employee is fit for duty and does not pose an immediate hazard or risk to self or others. However, the evaluative findings recommend that all employees should undergo treatment as a condition of employment.
 - C. Not fit to return to duty until specific recommendations have been met. The evaluator has determined that the employee is not fit for duty and may pose a hazard or risk to themselves or others. Management shall consider the recommendations in the evaluative summary and shall state the terms and conditions that must be met before the employee shall be allowed to return to work.
7. Leave
- A. Management shall provide reasonable time off for the employee's EAP appointment and Fitness for Duty/Risk Evaluation.
 - B. The employee shall use any appropriate leave credits to attend recommended treatment appointments. If the employee does not have any accrued leave, the agency shall explore other leave options including voluntary shared leave or leave without pay.
 - C. The agency shall advise the employee of their leave options should an evaluative summary recommend that an employee not return to work. These options include Family Medical Leave, Voluntary Shared Leave and Short Term Disability based on the course of action described under "Findings of the

Fitness for Duty/Risk Evaluation.”

8. Investigatory Placement with Pay. Certain situations may occur which would support the Investigatory Leave Pay policy when determining whether an employee should remain on the worksite. Management’s decision should consider the best interests of the agency and the employee in deciding to use the Investigatory Placement with Pay provisions. These provisions may be appropriate to:
 - A. Investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action.
 - B. Avoid disruption of the workplace and to protect the safety of persons or property.
 - C. Provide time to schedule and conduct a per-disciplinary conference.

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](#).