



## **A Policy Guide for Fitness for Duty Examinations**

Among the vexing issues employers face in dealing with problematic employees is that of fitness for duty. Where employees exhibit performance, behaviors or conduct that may endanger the safety of themselves or others in the workplace, the employer has an obligation to minimize such risks. This may be accomplished by removing employees from the workplace when the danger appears imminent and/or directing them to obtain a fitness for duty examination by an appropriate mental health practitioner.

This policy guide sets a simple process for fitness for duty examinations. It provides a mechanism for assessing whether employees' conduct, behavior, or other factors indicate that their continued presence on the job may pose a threat to themselves, other employees, or the public, or interfere with the agency's ability to effectively provide services.

Anyone, who reasonably believes that an employee's conduct, behavior, or other factors indicate that the employee's continued presence on the job may pose such a threat, should immediately notify their supervisor. Upon receiving such information, the supervisor shall contact the agency Human Resources Office.

Human Resources shall determine, after applying reasoned judgment, whether a fitness for duty examination is warranted. If so, it should be scheduled for the earliest opportunity. Prior to the appointed time and date Human Resources must send the following statement to the physician:

Notification to Healthcare Provider

**Title II of the Genetic Information Nondiscrimination Act (GINA) “prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees of their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. ‘Genetic information,’ as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic test, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.”**

The employee should receive a written order for the evaluation. This order should include a brief description of the reasons for the examination, specifying the date, time and place, and the name of the mental health practitioner. The examination does not provide treatment. It determines fitness for duty. The results are provided to the agency as a confidential personnel record. The report and information received shall be limited to a conclusion about whether the employee is fit for duty.

Employees shall be notified that their refusal to cooperate or comply with the order for evaluation shall be deemed insubordination, and shall be grounds for disciplinary action, up to and including termination.

Finally, fitness for duty issues are complex. Each situation must be analyzed on its individual merits. Accordingly, agencies should consider the unique facts and circumstances of each case before directing employees to undergo a fitness for duty examination. They may also utilize the State's Employee Assistance Program or other mental health care professionals if they are uncertain about whether a fitness for duty examination is warranted. The Office of Management and Budget, Human Resource Management section can help agencies throughout the process to achieve the best possible outcomes.

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