HRM-037 Evaluating Employee Fitness for Duty

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Contact Office UVA Human Resources

Oversight Executive
Vice President and Chief Human Resources Officer

Applies To Academic Division.

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Reason for Policy

The University of Virginia 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 their 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.

Definition of Terms

Clinician Wellness Program (CWP)

Description

A Health System program that collaborates with the Faculty and Employee Assistance Program to identify and manage matters of individual credentialed staff physical and mental health as part of a peer review process and separate from credentialed staff disciplinary functions. The Program aids credentialed staff (and non-credentialed School of Medicine faculty) in retaining or regaining optimal professional functioning, consistent with protection of patients and standards of appropriate and professional clinical behavior.

Coordinating Team

Description

The appropriate parties/offices (based on the specific situation) responsible for coordinating and facilitating the fitness for duty evaluation. The coordinating team typically includes individuals from UVA Human Resources, the Faculty and Employee Assistance Program, the Office of the Provost, and UVA-WorkMed, and if applicable, the Office of Threat Assessment, the Clinician Wellness Program, and the Office of Equal Opportunity & Civil Rights.

Faculty and Employee Assistance Program (FEAP)

Description

University program that provides comprehensive, confidential, onsite employee assistance services (such as short-term counseling, assessment, and referral services) to University employees and their families. (For more information, see FEAP website.)

Fitness for Duty (Fit for Duty, FFD)

Description

Possessing the physical, emotional, and mental capacities to safely and effectively perform the essential functions of an employee's job, with or without reasonable Americans with Disabilities Act accommodation, in a manner that does not present a direct threat of harm to self or others. Fitness for duty includes, but is not limited to, being free of alcohol- or drug-induced (whether or not legitimately prescribed) impairment that affects job functioning.

Fitness for Duty Evaluation (FFD Evaluation, Evaluation)

Description

A professional assessment of an employee's physical, emotional, or mental capacities, that is carried out by an independent, licensed healthcare provider with expertise to determine if an employee is or is not capable of effectively performing their essential job functions without posing a threat to their own safety or the safety of others.

UVA–WorkMed

Description A comprehensive occupational health and employee wellness program.

Credentialed Staff (Provider)

Description Any health care professional who holds clinical privileges at a UVA Health entity.

Office of Threat Assessment (OTA)

Description

The OTA provides threat assessment expertise to the University's Violence Prevention Committee and Threat Assessment Team. OTA also oversees the assessment, intervention, and action protocol of threatening behavior, in accordance with University Policy and the Virginia Code §23.1-805.

Policy Statement

This policy covers only those situations in which an employee is (1) having *observable* difficulty performing their duties in a safe and effective manner, or (2) posing a serious safety threat to self or others. (As used throughout this policy, employee refers to the employment categories of faculty, professional research staff, University staff employees, and classified employees.) The policy prescribes the circumstances under which an employee may be referred to an independent, licensed health care evaluator for a fitness for duty (FFD) evaluation should either of those situations be present. In addition, FFD for credentialed staff employed by the Academic Division are governed by both this policy and applicable bylaws.

An employee shall not be allowed to work unless they maintain 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 their job in a safe and satisfactory manner. [Refer to University policy STU-001: Use of Alcoholic Beverages and Prohibition of Other Drugs.]

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 their symptoms evaluated by the employee's own health care provider or by UVA-WorkMed.

[Note: University employees working at the Medical Center must comply with Medical Center policies regarding infection control and infectious disease evaluation.]

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 University 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 University is required to comply with federal disability law (primarily the Americans with Disabilities Act of 1990 [ADA]). Qualified employees with disabilities are protected from discrimination, including harassment, and are entitled to reasonable accommodations to known physical and mental impairment, if necessary, to assist the employee in performing their job. This policy is not intended to supersede or modify the procedures applicable to employees seeking reasonable accommodation under the 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 University to require a medical examination of an employee if the requirement for the examination is job-related, consistent with business necessity, and if the University has a reasonable belief that:

- the employee's ability to perform essential job functions may be impaired by a medical condition; or
- 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 their supervisor any circumstances that may impact their ability to do so. The University may require

professional evaluation of an employee's physical, emotional, or mental capacities to determine their 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 University 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 University 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 at the worksite pending the completion of the evaluation and approval for return to in-person 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).

2. **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.

   Depending on the nature of the case, one or more of the following units may participate in determining the type of evaluation needed:
   - Faculty and Employee Assistance Program (FEAP) for psychological and behavioral issues.
   - UVA-WorkMed for physical and infectious disease issues.
   - Clinician Wellness Program (CWP) for impairment, mental, and physical issues of the credentialed staff.
   - The Office of Equal Opportunity & Civil Rights (EOCR) - ADA team for disability related concerns.

   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 University in any work-related capacity.

3. **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 FEAP, UVA-WorkMed, CWP, or UVA HR Employee Relations representative, as appropriate. The employee shall be notified of the results of the FFD by the evaluator and/or FEAP, UVA-WorkMed, or the Clinician Wellness Program. 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. [Refer to Section 6 for Confidentiality.]

Information given to the employee's supervisor and respective dean or vice president after an evaluation, shall be limited to whether the employee is:

- Fit to return to full duty.
- Fit to return to full duty with reasonable accommodations to meet the evaluator's recommendations.
- Not fit to return to full duty, in which case the employee will be referred to UVA Human Resources for a benefits discussion.
- Not fit for duty and referred for treatment. (The coordinating party arranges treatment, approves the treatment facility, and works with the treatment facility to determine when the employee may return to work.)

4. **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.
5. **Acts or Threats of Violence and the Office of Threat Assessment:**
   Virginia law (§23-9.2:10.C-D) and University policy HRM-028: Preventing and Addressing Threats or Acts of Violence require the establishment of a multidisciplinary team overseen by the Office of Threat Assessment (OTA) which is responsible for implementing the University's assessment, intervention, and action protocol in cases suggesting a potential risk of violence. All acts of violence, threats of violence, or other seriously disruptive behaviors must be reported immediately to University Police and/or to the OTA. [Refer to University policy HRM-028: Preventing and Addressing Threats or Acts of Violence.]
6. **Confidentiality/Privacy of Fitness for Duty Evaluations:**
   Records of fitness for duty evaluations shall be treated as confidential records and maintained by FEAP, UVA-WorkMed, or CWP, as appropriate and in accordance with any applicable confidentiality rules. This information may be shared only on a "need to know" basis required for employment decisions. Employees may submit a written request for a copy of the medical report from the evaluating entity.

7. **Responsibilities:**
   An ***employee*** is responsible for:
   - Performing their job responsibilities in a safe and effective manner, with or without reasonable accommodations during the entire time at work.
   - Notifying the supervisor when not fit for duty.
   - Notifying the supervisor when a coworker is observed acting in a manner that indicates the coworker may not be fit for duty.
   - Informing the upper-level manager or calling the UVA Human Resources Solution Center (434-243-3344) for further guidance if the supervisor's behavior is the focus of concern. (Threats or acts of violence should be reported immediately to the University Police Division by calling 911.)
   - Providing relevant medical and psychological information when afforded the opportunity.
   - Paying the cost of required treatment.
   - Complying with this policy and any authorized request to submit to an evaluation.

A ***supervisor*** is responsible for:

- Observing the attendance, performance, and behavior of the employees under their supervision.
- Notifying UVA Human Resources (434-243-3344), their local HR Business Partner, FEAP, or the Clinician Wellness Program weekdays between the hours of 8:00 a.m. and 5:00 p.m. or FEAP (434-243-2643) after 5:00 p.m. when an employee is exhibiting behavior that suggests they may not be fit for duty.
- Following this policy's procedures for completing an *Initial Observation Report form* when presented with circumstances or knowledge that indicate that an employee may not be fit for duty.
- Removing and escorting an employee deemed not fit for duty from the worksite unless they pose an immediate safety threat in which case the supervisor should call 911.
    - Arranging transportation for the employee from the work site if necessary.
- Maintaining the confidentiality of an employee's medical information.
- Implementing any reasonable accommodation deemed necessary.

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

- Soliciting information from the supervisor regarding employee behaviors or performance and from the employee regarding any relevant previous medical or psychological treatment information.
- Identifying who will conduct the fitness for duty evaluation.
- Receiving the results of the fitness for duty evaluation.
- Communicating the results to the employee if not done so by the evaluator.
- Maintaining confidentiality except as detailed in the Confidentiality/Privacy section above.
- Coordinating payment by the employee's department for the fitness for duty evaluation.
- Implementing any recommendations proposed by the FFD evaluation.
- Discussing recommendations and subsequent accommodations with the supervisor.
- 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.

8. **Compliance with Policy:**
   Failure to comply with the requirements of this policy (including but not limited to the fitness for duty treatment, accommodation, authorized evaluation, and recommendation specifics set out above) may result in disciplinary action up to and including termination in accordance with relevant University policies.

   Direct questions about this policy to UVA Human Resources.

Procedures

Employee Fitness for Duty Initial Observation Report
Fitness for Duty Procedures

Related Information

HRM-028: Preventing and Addressing Threats or Acts of Violence
STU-001: Use of Alcoholic Beverages and Prohibition of Other Drugs
Disciplinary Suspension or Termination of Academic Faculty, Policy on
Medical Center Policy: Fitness for Duty Policy

Major Category Human Resource Management

Next Scheduled Review Saturday, September 11, 2027

Revision History

Revised 9/11/24; Revised for DEI considerations 11/16/21; Updated definitions/Added Compliance Section 5/25/21; Updated 3/26/21.

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.

Approved By Executive Vice President and Chief Operating Officer

Approved Date Monday, April 22, 2013