



## **PERSONNEL POLICY**

### **SUBJECT: FITNESS FOR DUTY**

DATE: January 1, 2017

Number: 312-16

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#### **I. Statement of the Policy**

The County has a strong commitment to providing a safe work environment for its employees and ensuring that each employee is able to perform the essential functions of his or her position, with or without a reasonable accommodation. In addition, the County is committed to complying with relevant regulations and contractual obligations; protecting the health and safety of the County's employees, customers and the public; protecting and enhancing the County's reputation; minimizing the County's exposure to liability; and improving the County's productivity.

The County is committed to complying with all relevant regulations and statutes. If any portion of this policy is contrary to any applicable law, the County will abide by the applicable law. In the event that applicable state law regarding fitness for duty examinations is more restrictive than federal law, the more restrictive state law will apply. Disability-related accommodations will be provided in regard to fitness for duty situations in accordance with applicable law.

Employees of the County are expected to report for work fit for duty, and, in the event an employee appears unfit, action will be taken. The nature of that action should depend on the situation. Depending on the facts and circumstances, the employee may be removed from work, and/or given a drug or alcohol test, and/or sent for a job-related fitness for duty examination, and/or placed on Official Leave pending certification that they are safe to resume their job duties. The County's fitness for duty procedures are set forth in the accompanying Fitness for Duty Procedure. Fitness for Duty Evaluation should not be used as a substitute for standard disciplinary measures if discipline is appropriate due to behavior or performance problems that have occurred.

These policies do not create a contract of employment. Employment for non-classified employees remains "at will".

## **II. Background and Applicability**

This Policy and accompanying Procedure shall apply to all Fulton County employees. This Policy and accompanying Procedure in no way give any employee a property interest in employment with Fulton County.

## **III. Definitions**

- Fitness for Duty ("FFD") Evaluation is defined as an examination performed by a licensed physician, psychologist, psychiatrist or other appropriate health care provider that determines an employee's ability to perform the essential functions of his/her particular job and/or, if circumstances warrant, to evaluate accommodations related to a disability (as defined by law) and/or to determine whether the employee's disability poses a direct threat to the safety of the employee or others.
- Appointing Authority is defined as the person or persons authorized by law or delegated the authority to make appointments to fill positions, and who is the executive head of a department.

## **IV. Establishment and Implementation of Procedure**

The County Manager, in consultation with the Chief Human Resources Officer and the County Attorney, is authorized to establish and modify, as needed, a procedure for implementing this policy.



## PERSONNEL PROCEDURE

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#### I. Responsibilities

Primary responsibility for fitness for duty rests with each employee. Employees are expected to inform their supervisors of any physical or mental impairment that is affecting their ability to work, including the use of medications that may impair their ability to work. In doing so, employees are not required to disclose a disability that they don't wish to disclose. Instead they should explain how their work safety or work performance is being affected by whatever circumstances exist. Only if employees wish to explain the nature of the disability or seek a reasonable accommodation should they discuss the disability.

Further, subject to applicable law, employees may be submitted to a fitness for duty examination if an observation of an employee's performance or behavior results in a concern regarding the individual's fitness to work that impacts the health and safety of themselves or others in the workplace. For example, a medical examination may be appropriate during employment under the following situations:

1. After observing signs or symptoms indicating that an employee may have a medical condition that impairs his or her ability to perform essential job functions and/or potentially poses a direct threat to the employee or others, which could include some or all of the following signs or symptoms:

- Complaints about behaviors or observed behaviors, involving on-duty conduct, including inappropriate behavior, threatened use of force, inappropriate verbal conduct, or any conduct suggesting an inability to effectively exercise self-control and self-discipline.
- An abrupt or negative change in customary behavior, resulting in an inability to effectively perform the essential functions of the position.
- Observed physical problems that are affecting the ability to perform the essential functions of the job, such as problems lifting, walking up stairs, focusing or talking in a manner that suggests unusual behavior or the

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effect of a physical or psychological problem.

- Suicidal, homicidal or violent statements or behaviors, or personal expressions of mental instability.
- Unexplained and excessive drowsiness, tiredness, confusion, or hyperactivity.
- Change in behavioral patterns or inattention to personal hygiene or health that affect performance on the job or create problems in interacting with others.
- Inappropriate use of alcohol, medications, or other drugs, including symptoms of illegal drug use.
- Memory loss that affects performance on the job or creates problems in interacting with others.
- A pattern of conduct indicating a possible inability or decrease in ability to defuse tense situations, a tendency to escalate such situations or create confrontations.

2. After receiving reliable information from a credible third party that an employee may have a medical condition that poses a direct threat to the employee or others.

3. Following an employee's return from leave when the County has a reasonable belief the employee may pose a direct threat to his/her safety or the safety of others due to a medical condition.

4. As part of a uniform policy to require fitness for duty certification upon return from a leave of absence related to an employee's own health condition. Return from an FMLA leave will be done consistent with FMLA regulations, but in appropriate circumstances, a direct threat or other permitted medical analysis may be done where it is legitimate to do so under the Americans with Disabilities Act or other applicable law. What the County should do in regard to the above circumstances depends on the situation. Depending on the facts and circumstances, the employee may be removed from work, and/or given a drug or alcohol test, and/or a threat assessment may be appropriate, and/or the employee may be sent for a job-related fitness for duty examination, and/or the employee may be placed on Official Leave pending certification that he or she is safe to resume his or her job duties.

***It is the responsibility of an employee's immediate supervisor to determine whether there is a need for requesting a Fitness for Duty evaluation, a drug or alcohol test or when there is a threat of imminent danger to the employee or others, which may warrant calling police services at 911. All such calls will be reported immediately to the appropriate Appointing Authority. If a supervisor needs assistance in evaluating a particular situation, he or she should contact the Office of the County Attorney or the Department of Human Resources Management's HR Policy Advisor.***

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## **II. Procedures**

### **A. General Provisions**

Required medical examinations will only elicit information necessary to determine whether the employee can perform the essential functions of the job with or without a reasonable accommodation and, in some circumstances, without posing a direct threat to himself/herself or others. The scope of any medical or fitness for duty examination will be limited to the employee's specific limitations or observed behaviors that affect the performance of essential job functions, raise the possibility of potential accommodations and/or pose a direct threat to the employee or others.

### **B. Request for Fitness for Duty Evaluation**

1. When conditions warranting evaluation have been identified, the supervisor should, at any appropriate time, describe in a confidential written memorandum, the circumstance(s) that indicate that the employee's mental or physical fitness may be in question. Supervisors should describe how the employee's ability to perform essential job functions is affected or poses a direct threat by the observed behavior at work. Any written documents from the employee's treating physician(s), psychologist(s), psychiatrist or other qualified health care provider that the employee has provided should be attached to the memorandum and forwarded to the appropriate Appointing Authority (such documents should not, however, be sent to persons who have no legitimate need to know of such information). This material should be sent in a sealed envelope marked "CONFIDENTIAL MEDICAL INFORMATION".

2. The Appointing Authority shall forward to the Chief Human Resources Officer or his/her designee, in a sealed envelope marked "CONFIDENTIAL MEDICAL INFORMATION," the supervisor's memorandum and any attachments, along with a transmittal memorandum and a copy of the relevant job description.

3. The Chief Human Resources Officer or designee shall be responsible for the following actions:

- The Chief Human Resources Officer or designee shall review the package for completeness. Complete packages will be forwarded to the Director of Health and Wellness for a determination as to whether the circumstances warrant a Fitness for Duty Evaluation. A medical analysis will be conducted by the Director of Health and Wellness or designee. If the Director of Health and Wellness or designee concludes that an evaluation is needed, the Chief Human Resources Officer or designee shall coordinate the necessary arrangements for the evaluation.
- If the FFD evaluation request is not approved, the Chief Human Resources Officer shall notify the Appointing Authority and, where appropriate, the employee.

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### **C. Notice to Employee of Fitness for Duty Evaluation Directive**

1. Once the determination is made that an FFD evaluation is necessary, the Appointing Authority or his/her designee shall notify the employee in writing via certified mail or other appropriate means, that an FFD evaluation is required. The notification shall include reasons for the evaluation. To the degree reasonably possible, it should also specify the date, time and place of the evaluation. The employee may be required to sign a limited medical release for any information obtained during the FFD process at the first FFD appointment. An employee's refusal to sign the limited medical release may result in disciplinary action, up to and including dismissal. In most circumstances, the employee immediately shall be placed on Official Leave with pay pending the outcome of the evaluation.

2. The physician, psychologist, psychiatrist or other qualified health care provider conducting the evaluation shall be chosen by the Department of Human Resources Management. In some circumstances, the medical professional may have to consider or apply certain standards or qualifications, such as DOT-related fitness for duty situations. The evaluator should be familiar with Fitness for Duty evaluation procedures and testing protocols, and must be willing to submit her/his findings in writing. For all cases that involve a specialized field, such as law enforcement, the examining evaluator should have expertise in performing Fitness for Duty evaluations for employees working in the specialized field. The employee's Appointing Authority is responsible for advising the Chief Human Resources Officer or his/her designee of any special requirements or knowledge related to the employee's essential job functions. All costs associated with this evaluation shall be the responsibility of the County.

### **D. The Fitness for Duty Report**

1. Contents of the report should include the following:
  - A statement that indicates whether the employee is "Fit for Duty" or "Unfit for Duty" in his/her present job;
  - a list of all tests/analyses conducted in the evaluation;
  - an estimated length of time an employee may be found Unfit or Fit, and any professional recommendations for accommodations if the situation involves a disability; and
  - an explanation of the specific reason(s) the evaluator reached his/her conclusion.

Note that additional information may need to be provided in the Report if the fitness for duty examination deals with a disability and accommodations should be considered or for purposes of determining whether a "direct threat" exists under the Americans with Disabilities Act.

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2. The report from the physician, psychologist, psychiatrist or other qualified health care provider conducting the evaluation shall be sent directly to the Chief Human Resources Officer or his/her designee, who shall contact the Appointing Authority to discuss the results. The report will be placed in a sealed envelope marked "CONFIDENTIAL MEDICAL INFORMATION" and retained in the employee's separate and secure medical file located in the Department of Human Resources Management (this document should not be placed in a regular personnel file). This document may only be used or disclosed in legitimate and appropriate circumstances to the extent authorized or permitted by law.

The Appointing Authority or his/her designee shall notify the employee in writing via certified mail or by other appropriate immediate means, of the results of the evaluation. Depending upon the evaluation findings, one of the following actions will take place:

- a. Employees who are found "Fit for Duty" shall resume normal job duties immediately
- b. If the evaluation determines that the employee is "Unfit for Duty" and is unable to perform all of his/her essential job duties, the Appointing Authority's certified letter to the employee shall include the following, as applicable:
  - (i) An explanation that Family Medical Leave Act (FMLA) information and forms are enclosed and that the employee may be eligible and may choose to complete and return the forms to the FMLA leave Administrator or designee;
  - (ii) An explanation that the employee may request a leave of absence from his/her Appointing Authority in accordance with Fulton County policy;
  - (iii) An explanation that the employee may be eligible for one or more accommodations under the Americans with Disabilities Act (ADA), and that the employee may contact the Office of Diversity and Civil Rights Compliance (DCRC) for further assistance; and
  - (iv) An explanation that the employee may be eligible for Long-term Disability or Disability Retirement, and that the employee may contact the Finance Department for further assistance.

#### **E. Confidentiality**

1. The sealed Fitness for Duty report shall be placed in the employee's medical file located in the Department of Human Resources Management (such a report should not be placed in a regular personnel file).

2. The report and any information released to the Chief Human Resources Officer or his/her designee shall be confidential and shared only on a "need to know" basis with the Appointing Authority and other officials.

3. Due to the nature of Fitness for Duty Evaluations and the necessity to coordinate such evaluations with the requirements of the Americans with Disabilities Act, the Family Medical Leave Act, Workers' Compensation laws, and other laws, policies and procedures, it is understood that Fitness for Duty evaluation cases should

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be treated on an individual basis and may involve consultation with the County Attorney's Office as needed.

**F. Refusal to Undergo Fitness for Duty Evaluation.**

An employee who refuses or attempts to delay to submit to a Fitness for Duty evaluation may be subject to disciplinary action up to and including dismissal.

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