

VIRGINIA MILITARY INSTITUTE
Lexington, Virginia

GENERAL ORDER)
NUMBER 88)

27 July 2023

Employee Fitness for Duty

1. Purpose

The purpose of this policy and the procedures in the Appendix is to outline 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, required follow-up actions, and the procedure for return to work. Virginia Military Institute is committed to promoting a safe and healthy environment for its employees, cadets, and visitors. Such an environment is possible only when each employee is able to perform his or her job duties in a safe, secure, and effective manner, and remains able to do so throughout the entire time on duty. Employees who are not fit for duty may present a safety risk to themselves and to others.

2. Definitions

A. Fitness for Duty Team: The parties responsible for coordinating and facilitating the fitness for duty evaluation. The Fitness for Duty Team typically may include a representative from Human Resources, Cadet Counseling, the VMI Infirmary, and the appropriate Senior Executive.

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

C. Fitness for Duty Evaluation: A professional health 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 essential job functions without posing a threat to the employee's own safety or the safety of others.

3. Policy

This policy covers those situations in which an employee is (1) having observable difficulty performing job duties in an effective manner that is safe for the employee and for co-workers, or (2) posing a serious safety threat to self or others. The policy prescribes the circumstances under which an employee may be referred to an independent, licensed health care evaluator for a fitness for duty evaluation should either of those situations be present.

An employee shall not be allowed to work unless able to maintain fitness for duty, as defined above.

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 seek assessment of such symptoms by the employee's own health care provider.

Application of this policy is not intended as a substitute for 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 evaluation process and to implement appropriate corrective or disciplinary action.

VMI is required to comply with federal disability law, specifically the *Americans with Disabilities Act of 1990 (ADA)*, the *Rehabilitation Act of 1973 (Revised)*, and the *Americans with Disabilities Act Amendments Act (ADAAA)*. In general, the ADA prohibits employers from requiring an employee to submit to a medical examination and 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 an employer to require a medical examination of an employee if the requirement for the examination is job-related, consistent with business necessity, and if the employer has a reasonable belief that:

- 1) the employee's ability to perform essential job functions may be impaired by a medical condition; or
- 2) 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.

3.1 Fitness for Duty Requirements

An employee is expected to perform essential job functions in a safe and effective manner, and to raise with the employee's supervisor any circumstances that may impact the safe and effective performance of essential job functions. VMI may require professional evaluation of an employee's physical, emotional or mental capacities by an independent, licensed health care professional to determine the employee's ability to perform essential job functions, as detailed below and in the procedures in the Appendix. The employee's department is responsible for paying the cost of such evaluation(s). To the extent allowed by law, VMI shall protect the confidentiality of the evaluation and the results.

Non-compliance by an employee with a request for a fitness for duty evaluation may be cause for disciplinary action.

A full-time employee referred for an evaluation will be prohibited from working pending the completion of the evaluation and approval for return to work. During this time, applicable leave policies shall apply. A wage employee referred for an evaluation will be prohibited from working until the evaluation is completed and the employee has been approved to return to work. Compensation of a wage employee shall be suspended during this time. An employee must comply with all treatment recommendations resulting from a fitness for duty evaluation to be allowed to return to work. Participation in a treatment or rehabilitation program does not guarantee continued employment and may not necessarily prevent disciplinary action for violation of federal or state law or VMI policies.

3.2 Fitness for Duty Team

Before determining whether a fitness for duty evaluation is warranted, the Fitness for Duty 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 Fitness for Duty Team also shall notify the employee of the opportunity to provide any relevant medical or psychological treatment information. The Fitness for Duty Team shall determine the appropriateness of a fitness for duty evaluation within a reasonable time after notification from the supervisor, typically within three business days. The Fitness for Duty Team may recommend that the evaluation be conducted by a licensed health care provider of a specific specialty or with certain credentials.

While the employee is prohibited from appearing for work until completion of the fitness for duty evaluation and approval to return to work, the Fitness for Duty Team shall have the discretion to determine whether to allow the employee to work off-site, if feasible, or to represent VMI in any work-related capacity.

3.3 Results of the Evaluation

The results of a fitness for duty evaluation performed by a licensed health care professional in accordance with the Fitness for Duty Team's recommendations will be received by the team and shall be presumed to be accurate. The employee shall be notified of the results of the fitness for duty evaluation by the evaluator or a member of the Fitness for Duty Team.

After review of the evaluation by the Fitness for Duty Team, the team shall make a recommendation on whether the employee may return to work and under what circumstances, and communicate such information to the employee's supervisor and respective senior executive. The Fitness for Duty Team's recommendation shall be limited to whether the employee may:

- return to full duty;
- not return to full duty, in which case the employee will be referred to Human Resources to discuss and review options through available benefits; or
- return to full duty with reasonable accommodations consistent with the evaluator's recommendations and in accordance with the interactive process requirements of General Order 86.

3.4 Return to Work

Continued employment shall be contingent upon compliance with recommendations provided by the evaluator, such as periodic testing and participation in professional counseling and treatment programs. During this time, applicable leave policies and health plan benefits shall apply. Failure to comply with the recommendations of the Fitness for Duty Team or agreed upon accommodations may result in disciplinary action up to and including possible termination from employment.

3.5 Acts or Threats of Violence and the Threat Assessment Team

In accordance with Virginia Code § 23.1-805, VMI's Threat Assessment Team (TAT) assesses threats of violence and provides recommendations of interventions to address such threats. All acts of violence, threats of violence or other seriously disruptive behaviors must be reported

immediately to the VMI Police and to the TAT. In certain circumstances, the TAT may serve as the FFD Team and request a fitness for duty evaluation in accordance with this policy as an appropriate means of intervention to address threatening behavior by an employee.

3.6. Confidentiality/Privacy of Fitness for Duty Evaluations

Any document containing medical information about an employee is considered a medical record and is protected by the Virginia Health Record Privacy Act, Virginia Code § 32.1-127.1:03. Information from a fitness for duty evaluation may be shared only on a “need to know” basis.

4. Responsibilities

4.1 Employee

The employee is responsible for:

- 1) Performing his/her job responsibilities in a safe and effective manner, with or without reasonable accommodations during the entire time at work;
- 2) Notifying his/her supervisor when not fit for duty;
- 3) Notifying his/her supervisor when a coworker is observed acting in a manner that indicates the coworker may not be fit for duty (the Human Resources Office should be contacted if a supervisor’s behavior raises concern of fitness for duty);
- 4) Providing relevant medical and psychological information when given the opportunity to do so; and
- 5) Complying with this policy and any authorized request to submit to an evaluation.

4.2 Supervisors

Supervisors are responsible for:

- 1) Observing the attendance, performance, and behavior of employees under their supervision;
- 2) Notifying the Human Resources Office when an employee is exhibiting behavior that suggests he/she may not be fit for duty;
- 3) Following this policy’s procedures for completing an Initial Observation Report form when presented with circumstances or knowledge that indicates that an employee may not be fit for duty;
- 4) Removing and escorting an employee deemed not fit for duty from the worksite unless he/she poses an immediate safety threat, in which case the supervisor should call 911;
- 5) Arranging transportation for the employee from the worksite if necessary;
- 6) Maintaining the confidentiality of an employee’s medical information; and
- 7) Implementing any reasonable accommodation deemed necessary in accordance with the recommendations of the Fitness for Duty Team and General Order 86.

4.3 Fitness for Duty Team

The Fitness for Duty Team, or a member thereof, is responsible for:

- 1) Soliciting information from the supervisor regarding employee behaviors or performance, and from the employee regarding any relevant medical or psychological treatment information;
- 2) Making recommendations of the specialty or credentials of the individual who will conduct the fitness for duty evaluation;

- 3) Receiving the results of the fitness for duty evaluation;
- 4) Communicating the results to the employee if not done so by the evaluator;

4.4 Human Resources Office

The Human Resources Office is responsible for:

- 1) Coordinating payment by the employee's department for the fitness for duty evaluation;
- 2) Implementing any recommendations of the fitness for duty evaluation;
- 3) Discussing recommendations and any reasonable accommodations with the supervisor;
and
- 4) Communicating with the employee regarding the employee's rights, responsibilities, and employment status.

FOR THE SUPERINTENDENT:

John M. Young
Colonel, Virginia Militia
Chief of Staff

DIST: E

OPR: Human Resources

Appendix 1

Fitness for Duty Procedures

These procedures are intended to be a guide for implementing General Order 88. That policy applies to all employees and “covers only those situations in which an employee is (1) having observable difficulty performing his/her duties in an effective manner that is safe for the employee and/or for his or her co-workers, or (2) posing a serious safety threat to self or others.”

Required Steps

1. Co-workers or others whose observations lead them to question an employee’s fitness for duty must report their observations to the employee’s supervisor.
2. The supervisor will investigate and document those observations using the Fitness for Duty Initial Observation Report. The Report should be forwarded to the Human Resources Office who will share the Report with other members of the Fitness for Duty (FFD) Team.
3. The supervisor will contact the Human Resources Office to discuss the need for a possible Fitness for Duty Evaluation (FFDE). The FFD Team shall determine the appropriateness of an FFDE based on the reported behaviors/circumstances that have raised questions about an employee’s fitness for duty, and shall facilitate the evaluation.
4. The FFD Team shall determine the appropriateness of an FFDE within a reasonable time after notification from the supervisor, usually within five business days. A member of the FFD Team shall notify the employee of the opportunity to provide any relevant previous medical or psychological treatment information, but this information does not substitute for an FFDE if an FFDE is determined to be necessary.

After the FFD Team hears the facts and discusses the issue(s) and the FFDE is the recommended course of action, the Human Resources Office will coordinate next steps to include the following actions:

1. The supervisor will meet with the employee and ask him/her to explain the observed behaviors or impairment and notify him/her in writing (letter generated by the Human Resources Office) of the observations made and inform the employee of being placed on leave pending the FFDE. The supervisor will document the employee’s response and this information will be shared with the FFD Team.
2. The employee is placed on leave and removed from duty while undergoing the FFDE (effort is made to complete this process within two work weeks). During this time applicable leave policies shall apply to questions regarding pay.
3. The Human Resources Office will coordinate an initial appointment for the FFDE with the appropriate specialist. The Human Resources Office will send the evaluator the

employee's job description and any background information or documentation of events or behaviors that caused need for the FFDE.

4. The Human Resources Office manages any questions related to leave status. The employee will not return to work until all aspects of the FFDE are completed. However, while the employee is prohibited from appearing for work until completion of the FFDE and approval to return to work is provided, the FFD Team shall use its discretion to determine whether to allow the employee to work off-site or to represent VMI in any work-related capacity. The employee must be medically released by the FFD evaluator(s) prior to returning to work in the performance of normal duties.
5. The employee will be required to sign a written release of information for communication with the appropriate FFD Evaluator and HR representative, and also any treatment provider involved in the FFD process, to include but not limited to the employee's primary care physician, psychiatrist, therapist, and/or VMI's Threat Assessment Team. If the employee refuses to sign the release of information for this communication, the process stops. Failure to complete the FFDE may result in disciplinary action, up to and including termination.
6. Once the FFDE takes place, the evaluator provides the Human Resources Office with a summary of their assessment. The assessment also may require further testing or evaluation but generally will be a statement that the employee can:
 - a. return to work;
 - b. cannot return to work until certain conditions are met; or
 - c. is not fit to return to work.

The evaluator's full report will be delivered to the Human Resources Office, along with a written summary statement. The written summary statement will be shared with the FFD Team, but the full report will remain in Human Resources because it usually contains sensitive and personal information less relevant to the findings of the FFDE.

1. If the employee is released to return to work (RTW), the Human Resources Office and the supervisor will set a date for this return. The supervisor or the Human Resources Office will communicate the findings to the employee.
2. The Human Resources Office, the supervisor, and the employee will hold an RTW meeting in which the transition is discussed both logistically and in terms of the supervisor's expectations and behaviors for the employee. If the evaluator finds that the employee should not presently return to work without conditions or other reasonable accommodations being made, a representative from the Human Resources Office shall communicate this information to the employee. The Human Resources Office will communicate with the supervisor and will send a written letter to the employee outlining the expectations for compliance with the FFD process. The Human Resources Office will outline with the employee what conditions must be met for RTW to occur. The Human

Resources Office also shall refer the employee to discuss the possibility of short or long-term disability, health insurance questions, etc.

3. If the employee is deemed to be unable to return to work, the employee is then placed into a leave without pay status and the employee can utilize other income replacement options that consist of using available leave balances and/or applying for short-term disability.
4. If the employee complies with the FFD evaluator's recommendation for treatment, a follow-up evaluation will be scheduled to determine if the employee is suitable for an RTW.
5. If the employee is not released to RTW during this time period, the employee must coordinate applicable leave with the Human Resources Office.
6. Throughout the FFDE process, it is the responsibility of the employee to maintain communications with the Human Resources Office regarding required treatment. Failure to do so may result in disciplinary action up to and including termination.
7. Employees may obtain a copy of the FFD report from the Human Resources Office upon written request.

The Human Resources Office coordinates payment with the respective department.



EMPLOYEE FITNESS FOR DUTY INITIAL OBSERVATION REPORT

This form must be completed by the supervisor prior to requesting a Fitness for Duty Evaluation for an employee. The form must be submitted to the HR Office.

Date of Incident: _____ Time of Incident: _____ Location: _____

Employee Name: _____ Job Title: _____

OBSERVATIONS: (Check all that apply)

BEHAVIOR

- Stumbling, unsteady gait
- Drowsy, sleepy, lethargic
- Agitated, anxious, restless
- Irritable, moody
- Hostile, belligerent
- Angry, shouting, threatening
- Depressed, withdrawn
- Unresponsive
- Clumsy, uncoordinated
- Tremors, shakes
- Flu-like symptoms
- Suspicious, paranoid
- Hyperactive, fidgety, distracted
- Inappropriate, uninhibited behavior
- Memory loss, confusion
- Threatening to harm self or others

APPEARANCE

- Flushed complexion
- Sweating
- Cold, clammy, sweats
- Bloodshot eyes
- Tearing, watery eyes
- Dilated (large) pupils
- Constricted (pinpoint) pupils
- Unfocused, blank stare
- Disheveled clothing
- Distinct smell

SPEECH

- Slurred, thick
- Incoherent
- Exaggerated enunciation
- Loud, boisterous
- Rapid, pressured
- Excessively talkative
- Nonsensical, silly
- Cursing, inappropriate speech

Describe the reasons/circumstances requiring a Fitness for Duty evaluation:

Describe how employee's behavior affects ability to effectively and safely perform job duties and provide other observations related to Fitness for Duty:

After contacting the HR Office, check all that apply:

- Relieved employee from duty
- Removed from worksite
- Confirmed safe transportation plan
- Informed employee of responsibilities

Supervisor's Printed Name

Signature

Date

ALL ACTS OF VIOLENCE, THREATS OF VIOLENCE OR OTHER SERIOUSLY DISRUPTIVE BEHAVIORS MUST BE REPORTED IMMEDIATELY TO THE VMI POLICE AND THE THREAT ASSESSMENT TEAM