

Fitness for Duty Policy FAQ's

Who does this policy apply to?

This policy applies to all University employees, including part-time and/or temporary employees.

When does this policy apply?

This policy applies when the University has objective information indicating that an employee is not able to perform their essential job duties or poses a direct threat because of a medical condition. Concerns about employee performance or conduct when there is no information suggesting that the issue arises from a medical condition will continue to be addressed through relevant performance or conduct policies.

What does "fitness for duty" mean?

An employee is fit for duty when they are able to perform their essential job functions, with or without a reasonable accommodation, in a manner that does not pose a direct threat. An employee's essential job functions are the fundamental duties of the position or the primary reasons the position exists. For all jobs at the University, regular attendance, ability to work without disruption to the workplace, and ability to comply with applicable conduct standards are essential job functions. A direct threat is a significant risk of substantial harm that cannot be eliminated or reduced by a reasonable accommodation.

Does the fitness for duty policy address suspected drug and alcohol abuse?

If a manager suspects an employee is using illegal drugs or alcohol in violation of relevant University policy, the University may address those concerns through relevant employee disciplinary policies. Further, tests to determine whether an employee is currently using illegal drugs or alcohol are generally not considered fitness for duty evaluations and may be required of employees pursuant to relevant University policy. However, the University may, in its discretion, address the current use of illegal drugs or alcohol under the fitness for duty policy if the employee is not able to perform their essential job duties or poses a direct threat because of a medical condition related to drug or alcohol use, such as a substance use disorder. In such circumstances, the employee may go through a fitness for duty evaluation and the University may require the employee to agree to certain terms in a last change agreement before the employee is allowed to return to work. Managers are encouraged to consult with the ADA Coordinator regarding the appropriate next steps in situations where there is information suggesting the employee has a substance use disorder.

What kind of information is sufficient to request a fitness for duty evaluation?

A reasonable belief that a fitness for duty evaluation is necessary can come from a supervisor/manager's personal knowledge, such as when the supervisor/manager knows about a particular employee's medical condition, has observed performance problems, and reasonably can attribute the problems to the medical condition or when a supervisor/manager has personally observed articulable symptoms reasonably related to a medical condition that appear to be impacting performance or posing a direct threat concern. A reasonable belief can also come from credible, firsthand information from a reliable source. The following examples illustrate the type of information that is and is not sufficient to request a fitness for duty evaluation.

Example 1: For the past three months, Naima, a Technical Support Technician, has responded to a third fewer Help Desk tickets than the average employee in her unit. She also has made numerous mistakes in troubleshooting user issues. When questioned about her poor performance, Naima tells her supervisor that the medication she takes for her lupus makes her lethargic and unable to concentrate. You offered her the Employee Resource Memo and referred her to the ADA Coordinator to explore accommodations, but Naima said she was not interested, and the performance problems have continued. Based on Naima's explanation for her performance problems and her decision not to seek accommodations, the supervisor has a reasonable belief that her ability to perform the essential functions of her job will be impaired because of a medical condition. Naima's supervisor, therefore, should contact Employee & Management Relations.

Example 2: Robert is a P2P Shuttle driver whose primary job responsibility is to drive a P2P van around campus. One day while driving, a shuttle passenger notices that Robert appears to become light-headed and sweaty, has to pull over abruptly, and seems to have some difficulty catching his breath. The passenger reports the incident to Robert's supervisor, who asks Robert whether he is feeling all right. Robert says that this has happened to him a few times during the past several months, but he does not know why. The supervisor has a reasonable belief, based on objective evidence, that Robert will pose a direct threat and, therefore, should contact Employee & Management Relations.

Example 3: Candice is a faculty member. When her mother died suddenly, she used three weeks of leave to deal with family matters. During her extended absence, a rumor circulated that Candice had been given additional time off to be treated for depression. Shortly after Candice's return to work, Syed, who has the office next door to Candice, approached their dean to say that he had heard that some faculty were uncomfortable around Candice. According to Syed, people in the office claimed that Candice was talking to herself, staring into space, and appeared disheveled. Syed said that he had not observed this behavior himself but was not surprised to hear about it given Candice's alleged recent treatment for depression. The dean sees Candice every day and has observed this behavior, but the dean also knows that Candice has been successfully performing her job duties since she returned from her leave. In this case, the employer does not have a reasonable belief that Candice's ability to perform essential functions is impaired or that she poses a direct threat because of a medical condition. While there is some information suggesting that Candice may be experiencing symptoms of depression, there is no evidence that she is unable to perform her essential job duties, and her colleagues' discomfort is not sufficient to indicate that she poses a direct threat. The dean may discuss the behavior with Candice and offer her the Employee Resource Memo but should not ask health-related questions.

If I am concerned that an employee is not fit for duty because of a medical condition, what should I do?

When you are concerned about employee fitness for duty due to a medical condition, it is important that you address that concern in a way that respects the employee's privacy. Any employee, student, or community member who observes behavior or learns information that suggests an employee is not fit for duty should report such behavior to their supervisor/manager. If an employee is concerned that their supervisor/manager is not fit for duty, the employee should report such behavior to the next level of supervisor or directly to E&MR).

What if I am concerned about my own fitness for duty?

If an employee believes their medical condition is impacting their ability to safely carry out their essential job functions, they may request to meet with the University's Americans with Disabilities Act Coordinator (ADA Coordinator) and/or a Benefits and Leave Consultant to discuss options for accommodations and/or leave. Employees who are having difficulty performing their essential job functions for other reasons should contact their supervisor/manager or departmental HR Consultant or consult the Employee Resource Memo for available resources.

What happens when someone reports a concern about an employee's fitness for duty?

When a dean, chair, department head, or supervisor observes behavior or receives information suggesting an employee may not be fit for duty, they first must consider whether the information they have received is sufficient for them to have a reasonable belief that the employee's ability to perform their essential job functions will be impaired by a medical condition or that the employee poses a direct threat due to a medical condition. They will consult with their E&MR consultant to discuss whether such a reasonable belief exists and whether a request for a fitness for duty evaluation is warranted. If so, they will submit a written request for a fitness for duty evaluation to the ADA Coordinator. The ADA Coordinator will assess the request, gather more information if needed, and make a determination as to whether the employee should undergo a fitness for duty evaluation. For more details about this process, please review the [Procedure for Employee Fitness for Duty](#).

What do I do if I observe an immediate threat?

If any employee observes violence in progress or immediate threats to the physical safety of any individual, they should call 911 to contact UNC Police and, if possible, isolate or evacuate themselves and any other individuals at risk of physical harm. More information about reporting can be found in the University's [Reporting Workplace Violence](#) guide.

What happens if the ADA Coordinator determines that a fitness for duty evaluation is needed?

The E&MR Consultant and the employee's supervisor will notify the employee in writing that they are required to undergo an evaluation with a health care professional. The notice will include essential details for the employee to understand the scope and time frame of the evaluation and the employee's rights and responsibilities. For more details, review the [Procedure for Employee Fitness for Duty](#).

What happens if the ADA Coordinator determines that a fitness for duty evaluation is not required?

If the ADA Coordinator determines that an evaluation will not be required, the E&MR Consultant will provide guidance to the referring individual/supervisor on appropriate next steps to address the concern that prompted the request for an evaluation.

Will the employee be allowed to work while going through the evaluation?

This will be determined on a case-by-case basis. In some instances, before or after a determination that an evaluation is required, the University may place the employee on paid leave for up to thirty (30) days pending the results of the evaluation, which may be extended in some circumstances. In other instances, the University may, in its discretion, temporarily reassign the employee to other duties pending the results of the evaluation. A partial temporary reassignment to other duties may be combined with partial paid leave to fulfill the employee's

FTE. The period of temporary reassignment will generally last no more than thirty (30) days but may be extended with written notice to the employee. Other interim measures may be taken, as appropriate to the situation.

Who will conduct the fitness for duty evaluation?

The evaluation may be conducted by the employee's healthcare provider or, in the University's discretion, a healthcare professional of the University's choice. In all cases, the evaluation must be conducted by an appropriate healthcare professional who has expertise in the employee's specific condition and can provide medical information that allows the University to determine the effects of the condition on the employee's ability to perform their job without posing a direct threat. If the University chooses the health care professional, the University will pay all costs associated with the evaluation.

What happens when the evaluation is completed?

Upon completion of the evaluation, the health care professional will be asked to respond to questions posed by the ADA Coordinator and to complete a Fitness for Duty Evaluation Form. The ADA Coordinator will review these evaluation results and, if necessary, consult with the health care professional. If it is determined that the employee is fit for duty, the employee will be allowed to return to work within three (3) business days. If it is determined that the employee can be fit for duty with accommodations or with requirements in place, the employee will be referred to the ADA Coordinator to determine what reasonable accommodations can be provided under the University's [Policy on ADA Reasonable Accommodations for Employees, Applicants and Visitors](#) and/or to their E&MR Consultant to identify other requirements needed to make the employee fit for duty. The employee will be allowed to return to work upon establishment of those reasonable accommodations and/or other requirements. If the University determines that accommodations cannot reasonably be provided or if the requested accommodations would impose an undue hardship on the University, the employee is not fit for duty.

What happens if it is determined that an employee is not fit for duty?

If the employee is not fit for duty, the employee will not be allowed to return to work. The E&MR Consultant and the Employee's Benefits and Leave Consultant will discuss options for voluntary separation from the University with the Employee. If the employee declines to seek a voluntary separation from the University, the employee may be involuntarily separated from the University, consistent with applicable University policies and procedures.

What happens if an employee does not comply with the fitness for duty process?

An employee who fails to undergo a fitness for duty evaluation as directed or fails to adhere to any condition(s) of employment established as a result of the evaluation, including failing to engage with any process to determine what accommodations or requirements may make the employee fit for duty, may not be allowed to return to work and may be subject to disciplinary action, up to and including separation from the University, consistent with applicable University policies and procedures.

Can an employee appeal the requirement of an evaluation?

An employee may have the option to appeal the requirement of an evaluation or any employment action resulting from the results of the evaluation. For more information about possible appeal options, employees should consult the applicable policy below.

EHRA Non-Faculty Employees: For information about the EHRA Non-Faculty grievance process, consult the applicable policy on the UNC HR [Dispute Resolution & Grievance website](#).

Faculty Employees: For information about the Faculty Grievance Committee or the Faculty Hearings Committee, consult the applicable policies on the UNC-Chapel Hill [Faculty Handbook website](#).

SHRA Employees: For more information about the SHRA grievance process, consult the applicable policy on the UNC HR [Dispute Resolution & Grievances website](#).

[Who will have access to the information obtained in the course of the evaluation?](#)

Employee medical information obtained under this policy will be maintained in separate files in the University's Equal Opportunity and Compliance Office and will be treated as a confidential medical record. Information about necessary work restrictions or accommodations for the employee may be shared with supervisors and managers on a need-to-know basis. Supervisors and managers do not receive copies of the evaluation or of the medical information contained in or provided for the evaluation.

[What should I do if I believe someone has referred me for an evaluation for a harassing or discriminatory purpose?](#)

Reports of harassment or discrimination based on protected status, including disability, can be made to the Equal Opportunity and Compliance Office by contacting eoc@unc.edu or reportandresponse@unc.edu or by submitting an incident report at eoc.unc.edu/report-an-incident.