



Title: Fitness for Duty

Effective Date: September 23, 2024

Revision Date: March 3, 2025

Responsible Office: University Human Resources

I. Scope

This policy applies to all employees of William & Mary (the “University”) including faculty, staff, and student employees at all schools and campuses, regardless of employment classification or full-time or part-time status.

This policy applies to situations in which an employee is: (1) having *observable* difficulty performing essential job functions in an effective manner, or (2) posing a serious safety threat to self or others. The policy describes 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. The Fitness for Duty policy provides for a phased process that moves with deliberate speed, since all parties have an interest in swift resolution.

This policy does not apply to employees experiencing short-term illnesses (e.g., cold, flu, allergic reaction, nausea, vomiting).

II. Purpose

The University is committed to maintaining a safe and healthy work environment for all employees, students, and visitors. For the University to accomplish this, all employees must be capable of performing their job duties in a safe, secure, and effective manner. Employees must also safeguard the health and safety of those around them. The essential duties for an employee are based on their position description and departmental, program, and university needs.

A fitness-for-duty evaluation is conducted to address unusual behavioral changes in an employee that may pose a potential safety threat to self or others in the workplace or that impairs the employee’s ability to perform the essential functions of their job, with or without an accommodation. The Fitness for Duty Team conducts the initial assessment of concerns about an employee’s ability to perform the essential functions of their job.

This policy is not intended as a substitute for university policies or procedures related to performance or behavioral conduct problems or as a substitute for discipline measures. Supervisors shall continue to address unsatisfactory performance or misconduct through the performance review process 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 for known physical and mental impairments, 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 accommodations under the ADA.

In general, the ADA prohibits: (1) employers from requiring an employee to undergo 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 physical, mental, or emotional 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 physical, mental, or emotional condition.

This policy does not limit the University's right to take employment action under its normal disciplinary and performance management policies and procedures. Employees who fail to perform their job functions and/or engage in misconduct may face disciplinary action up to and including termination notwithstanding a referral for a fitness-for-duty evaluation.

The employee's work performance is the basis for continued employment. Participation in a treatment or rehabilitation program does not guarantee continued employment and will not necessarily prevent disciplinary action for violation of university policies.

III. Definitions

Decision-Making Authority means the appropriate senior administrator charged with making a final decision on Fitness for Duty. The Decision-Making Authorities shall be the Executive Vice President (EVP) for Finance & Administration in the case of non-instructional employees, and the Provost in the case of instructional faculty or officers. If

the employee referred for a FFD evaluation is EVP, Provost or President, the employee's supervisor will be the Decision-Making Authority.

Peer Assembly means the elected body representing non-instructional employees or faculty: Faculty Assembly, Staff Assembly, or Professionals & Professional Faculty Assembly.

Fitness for Duty (Fit for Duty, FFD) means possessing the physical, emotional, and mental capacities to safely and effectively perform the essential functions of an employee's job, with or without a 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 (regardless of it being legitimately prescribed) impairment that affects job functioning.

Fitness for Duty Evaluation (FFD Evaluation) means a professional assessment of an employee's physical, emotional, or mental capacities. It is conducted by an independent, licensed healthcare provider with expertise to determine whether an employee is capable of effectively performing their essential job functions without posing a threat to their own safety or the safety of others.

Fitness for Duty Review Team (FFD Team) means the appropriate parties/offices (based on the specific situation) responsible for coordinating and reviewing the fitness-for-duty evaluation. This team is charged with representing the interests of the university and of all its members: students, faculty, and staff. The University Counsel's Office will advise the team as needed.

The FFD Team comprises:

- Team leader and convener (non-voting): a representative of the Decision-Making Authority
- A representative from University Human Resources (UHR)
- The dean/department/unit head of the employee being referred for review
- Three members selected by the appropriate Decision-Making Authority from the Peer Assembly

Independent Medical Evaluator means an independent, licensed health care professional who has not previously provided primary or specialty care for the employee.

IV. Policy

An employee must maintain fitness for duty required for the safe and effective 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 necessary to perform their job safely and unimpaired, which includes being free of the effects of alcohol and drugs, including prescription or over-the counter medications that may impair cognitive or physical functioning.

Employees must remain Fit for Duty throughout the entire time they are working, including during “on-call” periods, if applicable.

An employee shall be required to undergo a FFD Evaluation when the University has objective evidence that an employee is unable to perform the essential functions of their job due to an emotional, mental or physical condition or poses a direct threat to themselves or others.

V. Procedure

A. Initial Observation and Reporting

An employee who becomes aware that they themselves are not fit for duty, or an employee who observes a coworker, supervisor, direct report, or another employee exhibiting behaviors that indicates the employee may not be fit for duty shall notify the subject employee’s immediate supervisor or UHR (employeerelations@wm.edu or 757-221-3169) of a fitness-for-duty concern.

Upon notification of a fitness-for-duty concern, the supervisor and/or reporting employee shall complete an Initial Observation Report Form and submit the form to UHR within one (1) business day of receipt of the concern.

Upon completion of the Initial Observation Report Form, UHR shall notify the referred employee of the fitness-for-duty concern and share the form with the employee, together with a copy of this policy and process.

All acts of violence, threats of violence, or other seriously disruptive behaviors must be reported immediately to W&M Police (757-221-4596) and/or to the Threat Assessment Team (TAT) tat@wm.edu.

B. FFD Team Review

Before initiating an evaluation, the FFD Team shall review the Initial Observation Report Form within five business days of receipt and consult with the employee's supervisor to gain a clear understanding of the behavior or circumstances that have raised questions about the employee's fitness for duty. The FFD Team shall review information available in the employee's file and recommendations from any threat assessment conducted in compliance with Virginia Code §23.1-805. A member of the FFD Team shall also notify the employee of the opportunity to provide any relevant previous medical or psychological treatment information.

The FFD Team shall determine the necessity of a fitness-for-duty assessment within a reasonable time after receipt of the Initial Observation Report Form, usually within three business days.

The FFD Team shall make a recommendation in writing to the appropriate decision-making authority, who will review their recommendation and either approve such a fitness-for-duty assessment or terminate the process at this point. The referred employee shall be notified in writing of the determination of the Decision-Making Authority.

C. Employee Status during Review

Based on the recommendation from the FFD review team, the Decision-Making Authority will determine whether the employee will be placed on administrative leave during the fitness-for-duty evaluation process. The FFD Team will recommend whether to allow the employee to work off-site or to represent the University in any work-related capacity. The employee will be paid as normal if they are on administrative leave or required to work remotely during this time.

D. Evaluation

1. Independent Medical Evaluator and Payment

The fitness-for-duty evaluation, if required by the University, will be referred to and conducted by an Independent Medical Evaluator, selected by mutual agreement between the employee and the University through the Chief Human Resources Officer. If mutual agreement is not reached within five (5) business days, or if the employee refuses to or is incapable of participating in the selection, the Chief Human Resources Officer will choose the Independent Medical Evaluator. The Independent Medical Evaluator will not be a treating physician of the employee and will not have provided treatment to the employee in the past 24 months. The University will be responsible for costs associated with the FFD

evaluation. The employee is entitled to request a second opinion, or an additional evaluation from another provider of their choice and is responsible for paying the cost of any such additional evaluations.

2. Results of the Evaluation

Results of the evaluation will be received by UHR and submitted to the FFD Team for a final recommendation to the decision-making authority. The employee shall be notified of the results of the FFD evaluation by UHR. Only necessary and relevant information shall be shared with the FFD Team.

After a final recommendation by the FFD Team and a final determination by the decision-making authority, UHR will communicate the decision to the employee. Information given to the employee's supervisor and respective dean or vice president shall be limited to whether the employee may:

- a. return to full duty;
- b. not return to full duty, in which case the employee will be referred to UHR for a discussion on available options; or
- c. return to full duty with reasonable accommodations to meet the Independent Medical Evaluator's recommendations.

3. Return to Work

In conjunction with the employee's supervisor, UHR shall discuss whether any reasonable accommodations are needed for an employee returning to work. Continued employment shall be contingent upon compliance with recommendations provided by the Independent Medical Evaluator, such as periodic testing, participation in professional counseling and treatment programs, for as long as the Independent Medical Evaluator prescribes.

4. Confidentiality

To the extent allowed by law, the University shall protect the confidentiality of the evaluation and the results. Employee medical information provided by the employee to the University is maintained on a confidential basis in accordance with applicable law.

When conducting a mandated FFD evaluation, the University may ask the employee to sign consent forms that permit production of medical health information to the Independent Medical Evaluator. If the employee releases medical health information to the Independent Medical Evaluator, the employee may opt to not have the medical health information released to the University.

Access to the information obtained in the course of the evaluation will include the following:

- The Independent Medical Evaluator will have access to information obtained in the course of the FFD assessment process. Medical health information from other medical professionals will also be released to the University unless the employee opts out of this release through signed consent forms.
- To the extent allowed by law, the University shall protect the confidentiality of the evaluation and the results. Employee medical information about the employee provided to the University is maintained on a confidential basis in accordance with applicable law.

The employee under review will have access to the final evaluation report.

VI. Enforcement

- A. Failure to Comply** A referred employee's failure to fully comply with the FFD process, recommendations, treatment requirements, or proscribed limitations may be cause for disciplinary action, including suspension or termination through the university's applicable policy.
- B. Retaliation** against any employee who brings forth a good faith concern, asks a clarifying question, or participates in this process is strictly prohibited and individuals will be referred to the Office of Compliance & Equity for potential investigation under university policy.
- C. Extension of Timeline** - The FFD Review Team may extend any timeline in this procedure for extenuating circumstances upon written notice to the supervisor and the referred employee.

VII. Authority and Amendment; Implementation

The President has delegated authority to the Chief Human Resources Officer to provide guidance on policy interpretation and to make updates as needed to the policy. The Chief Human Resources Officer will consult with the elected assemblies (faculty and non-instructional staff) on proposed revisions or amendments to the Fitness for Duty Policy.

This policy was adopted on September 23, 2024, and revised on March 3, 2025.