



# OLD DOMINION UNIVERSITY

## University Policy

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### Policy #6028

### FITNESS FOR DUTY POLICY

**Responsible Oversight Executive:** Vice President for Human Resources, [Diversity, Equity & Inclusion](#)

**Date of Current Revision or Creation:**

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#### A. PURPOSE

The purpose of this policy is to set forth the process that must be utilized to determine an employee's fitness for duty.

#### B. AUTHORITY

[Code of Virginia Section 23.1-1301, as amended](#), grants authority to the Board of Visitors to establish rules and regulations for the institution. Section 7.01(a)(6) of the [Board of Visitors Bylaws](#) grants authority to the President to implement the policies and procedures of the Board relating to University operations.

#### C. DEFINITIONS

Coordinating Team - The appropriate parties/offices (based on the specific situation) responsible for coordinating and facilitating the fitness for duty evaluation. The Coordinating Team may include designated parties from the following areas based on the specific dynamics of the situation: Department of Human Resources, the Office of Institutional Equity and Diversity, the Office of the Provost, University Counsel, ODU Police and such others that may be necessary to determine the appropriate course of action.

Employee Assistance Program (EAP) - A program provided by the Commonwealth of Virginia to persons enrolled in the health benefit program that provides comprehensive, confidential, employee assistance services (such as short-term counseling, assessment, and referral services) to covered University employees and their families.

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 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 (FFDE) - A professional assessment of an employee's physical, emotional or mental capacities that is carried out by an independent, licensed health care provider with expertise to determine if an employee is or is not capable of safely and effectively performing his/her essential job functions.

Fitness for Duty Referral - The informal act of notifying the Department of Human Resources Employee Relations staff about employee behavior that suggests the need for an FFDE.

#### **D. SCOPE**

This policy applies to all employees. Employees include all staff, administrators, faculty, full- or part-time, and classified or non-classified persons who are paid by the University. This policy does not apply to student employees.

This policy covers only those situations in which an employee is (1) exhibiting observable behavior that impacts the effective and safe performance of his/her duties, or (2) posing a serious safety and/or security threat to self or others. This policy does not apply to employees with short-term, infectious/communicable diseases (e.g., flu, colds).

#### **E. POLICY STATEMENT**

Old Dominion University is committed to promoting a safe and healthy environment for its employees, students, 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 he or she is working. Employees who are not fit for duty may present a safety risk to themselves and to others.

An employee is expected to perform essential job functions in a safe and effective manner, and to discuss with his/her supervisor any circumstances that may impact his/her ability to do so. The University may require professional evaluation of an employee's physical, emotional or mental capacities to determine his or her 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 is not 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.

A Fitness for Duty evaluation is not required for 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 his/her symptoms evaluated by the employee's own health care provider.

An employee shall not be allowed to work unless he/she maintains 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 necessary to perform his or her job in a safe and satisfactory manner and free from the effects of alcohol or drugs. Employees who have the responsibility for on-call shifts must meet the fitness for duty standard during the entire on-call period.

A fitness for duty evaluation may address behavioral changes in an employee that may pose a potential threat to self or others in the workplace. Only the Coordinating Team may determine that a fitness for duty evaluation is necessary. Failure to comply with the recommendations or to

utilize the agreed-upon accommodations will be addressed as a performance deficiency in accordance with the applicable employee handbook and may result in disciplinary action up to and including possible termination from employment.

The employee's satisfactory work performance is the basis for continued employment. An employee must comply with all treatment recommendations resulting from a fitness for duty evaluation to be allowed to return to work. An employee referred for an evaluation will be prohibited from appearing for work pending the completion of the evaluation and approval for return to work. The employee may be placed on paid leave pending the completion of the assessment and release to return to work. During this time, applicable leave policies shall apply.

The University complies with Federal disability law (primarily the [Americans with Disabilities Act of 1990 \[ADA\]](#)). Federal law permits the University to require a health care 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:

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 or safety of self or others.

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 or annual evaluation process and to implement appropriate corrective or disciplinary action.

## **F. PROCEDURES**

### **1. Coordinating Team:**

Upon receipt of a fitness for duty referral, the Department of Human Resources will convene the Coordinating Team. Before initiating an evaluation, the Coordinating Team shall consult with the employee's supervisor to gain a clear understanding of the behaviors/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, usually within three business days.

While the employee may be prohibited from appearing for work until completion of the fitness for duty 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.

## 2. Results of the Evaluation:

The results of fitness for duty evaluations performed by qualified, licensed health care professionals shall be presumed to be valid. Results of the evaluation will be received by the Department of Human Resources. The Department of Human Resources representative to the Coordinating Team will communicate to the employee, the employee's supervisor and the department head whether the assessment results indicate that the employee is fit for duty and may return to work. [Refer to [Section 4](#) for Confidentiality.]

After an evaluation, information given to the employee's supervisor and department head shall be limited to whether the employee may:

- return to full duty;
- return to conditional limited duty;
- not return to full duty, in which case the employee will be referred to the Department of Human Resources for a benefits discussion.

The University will evaluate all claims of disability and provide reasonable accommodation if a disability exists.

Any final decision leading to dismissal or sanction of an employee is grievable under the appropriate grievance policy.

## 3. Return to Work:

If appropriate, the Coordinating Team will refer the employee to the Office of Institutional Equity and Diversity to engage in the accommodations process. 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. In consultation with the Office of Institutional Equity and Diversity, 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.

## 4. Confidentiality/Privacy of Fitness for Duty Evaluations:

Under the [Health Insurance Portability and Accountability Act \(HIPAA\)](#), any document containing medical information about an employee is considered a medical record and is regarded as confidential. Records of fitness for duty evaluations shall be treated as confidential medical records and maintained by the Benefits section of the Department of Human Resources. This information may be shared only on a "need to know" basis. Employees may obtain a copy of the medical report from the provider upon written request.

## 5. Responsibilities:

An employee is responsible for:

- a. Performing his/her job responsibilities in a safe and effective manner, with or without reasonable accommodations, during the entire time at work;
- b. Notifying the supervisor when not fit for duty, if known;

- c. Notifying the supervisor when a coworker is observed acting in a manner that indicates the coworker may not be fit for duty;
- d. Informing the upper-level manager or calling the Department of Human Resources 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 Department by calling 683-4000 or 911.);
- e. Providing relevant medical and psychological information when given the opportunity to do so; and
- f. Complying with this policy and any authorized request to submit to an evaluation.

A supervisor is responsible for:

- a. Observing and documenting the attendance, performance, and behavior of the employees under his/her supervision;
- b. Notifying the appropriate unit/department head when an employee is exhibiting behavior that suggests he/she may not be fit for duty;
- c. Arranging for the removal of an employee deemed not fit for duty from the work site unless he/she poses an immediate safety threat in which case the supervisor should call the ODU Police Department at 683-4000 or 911;
- d. Arranging transportation for the employee from the work site if necessary;
- e. Providing relevant information to assist with the process;
- f. Maintaining the confidentiality of an employee's medical information;
- g. Notifying the Office of Institutional Equity and Diversity of any requests for accommodations received from the employee; and
- h. Implementing any reasonable accommodation deemed necessary.

Member(s) of the Coordinating Team are responsible for:

- a. Ensuring that the appropriate unit/department head has been consulted;
- b. Soliciting information from the supervisor regarding employee behaviors or performance, and from the employee regarding any relevant previous medical or psychological treatment information;
- c. Identifying who will conduct the fitness for duty evaluation;
- d. Receiving the results of the fitness for duty evaluation and ensuring that the results have been communicated to the employee;
- e. Implementing any recommendations proposed by the fitness for duty evaluation;
- f. Referring the employee to the Office of Institutional Equity and Diversity, as appropriate;
- g. Communicating with the employee as to his/her rights, responsibilities and employment status;
- h. Maintaining confidentiality except as detailed in the Confidentiality/Privacy section above.

## **G. RETENTION**

Records of fitness for duty evaluations must be retained with other employee medical records for 30 years after separation, then destroyed in compliance with the [Commonwealth's Records Retention and Disposition Schedule \(General Schedule 103, Series 100484\)](#).

## H. RESPONSIBLE OFFICER

~~Senior Associate Vice President and Chief Human Resources Officer~~  
~~Director of Human Resources for Employee Relations and Strategic Initiatives~~

## I. RELATED INFORMATION

[Virginia Department of Human Resource Management Policy 1.60 – Standards of Conduct](#)

[Board of Visitors Policy 1014 - Threat Assessment](#)

[University Policy 3020 – Whistleblower Retaliation Policy](#)

[University Policy 5406 - Accommodations for Individuals with Disabilities Old Dominion](#)

[University Teaching and Research Faculty Handbook](#)

[Old Dominion University Administrative and Professional Faculty Guidebook](#)

[Old Dominion University Classified Employee Guidebook](#)

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