

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources**

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District Personnel Manual Issuance System

E-DPM Instruction No. 20B-5

SUBJECT: Procedures for Fitness-for-Duty
Medical Examinations

Date: January 3, 2011

NOTE: This Electronic-District Personnel Manual (E-DPM) instruction supersedes DPM Instruction No. 20-1, *subject as above*, dated February 7, 2008, for the sole purpose of correcting the number of the issuance from "20-1" to "20B-5" (because the last issuance for Chapter 20B of the DPM was DPM Instruction No. 20B-4, *Employee Assistance Program*, dated September 17, 1993). No substantive changes were made to the February 7, 2008 issuance.

1. Purpose/Scope

- a. Set forth the policies and procedures for agencies under the personnel authority of the Mayor to follow in requesting/obtaining specialized medical examinations to determine employees' physical or psychological fitness to perform the essential functions of their positions.
- b. Provide management with the tools to address extraordinary situations where or when an employee:
 - (1) May pose a hazard or risk to him or herself or others;
 - (2) Has been "off from work" for an extended period of time due to illness; or
 - (3) Is unable to perform duties of his or her position of record that were previously performed.

Note: E- DPM Instructions that are strictly procedural in nature have direct applicability only to agencies and employees under the personnel authority of the Mayor. Other personnel authorities or independent agencies may adopt any or all of these procedures or guidance materials for agencies and employee under their respective jurisdictions. [See DPM Chapter 2, Part II, Subpart 1, §1.3]

Inquiries: Policy and Planning Administration, DCHR (202) 442-9700

Distribution: Heads of Department and Agencies, HR Advisors, and DPM Subscribers

Retain Until Superseded

2. **Authority**

- a. **Statutory**: D.C. Official Code § 1-620.07; the Americans with Disabilities Act of 1990, approved July 26, 1990 (P.L. 101-336; 42 U.S.C. § 12101 *et seq.*), as amended; any other applicable District of Columbia or federal law; and equal employment opportunity considerations.
- b. **Regulatory**: Chapter 20 of the D.C. personnel regulations, Health; and any other applicable District of Columbia or federal regulation.

3. **Policy**

- a. In accordance with D.C. Official Code § 1-620.07, the Mayor is required to establish an **employee health services program** which shall provide for, among other services, the following:

“[P]re-employment and other physical examinations, including “fitness-for-duty examinations.”

- b. In developing and implementing the employee health services program, maximum use is to be made of **existing** District government medical and health services facilities, resources, and expertise.

4. **Definitions**

For the purposes of this instruction, the following terms have the meaning ascribed:

Administrative action – official reprimands, suspensions, reductions in grade, or removals under the corrective and adverse action provisions for the Career Service contained in Chapter 16 of the D.C. personnel regulations, General Discipline and Grievances; or other similar penalties, up to and including removal, for employees in services other than the Career Service.

Agency head – the highest ranking official of an agency or his or her designee.

Associated physician or practitioner – occupational healthcare providers under contract with the Police and Fire Clinic.

Essential functions of the position – the fundamental job duties of a position. A job function may be considered “*essential*” for several reasons, including but not limited to the following:

- Because the reason the position exists is solely to perform that function;
- Because of the limited number of employees available among whom the performance of that job function can be distributed; or

- Because the function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Impairment – a measurable change in a physical or cognitive function as the result of an illness, injury, or the use of drugs or alcohol. The impairment can be permanent or temporary.

Medical condition – a health impairment that results from injury or disease or any other physical or mental impairment that may affect an employee’s capacity to safely and satisfactorily perform his or her assigned duties.

Medical documentation or documentation of a medical condition – a statement from a licensed physician or other appropriate practitioner which provides one (1) or more of the following:

- a. The history of the specific medical condition(s), including references to findings from previous examinations, treatment, and responses to treatment;
- b. Clinical findings from the most recent medical evaluation, including any of the following that have been obtained:
 - (1) Findings of physical examination;
 - (2) Results of laboratory tests including drug and alcohol screening, X-rays, echocardiograms, and other special evaluations or diagnostic procedures; and
 - (3) In case of psychiatric disease evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;
- c. Assessment of the current clinical status and plans for future treatment;
- d. Diagnosis;
- e. An estimate of the expected date of full or partial recovery;
- f. An explanation of the impact of the medical condition on the individual’s capacity to carry out his or her assigned duties;
- g. Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized;
- h. Narrative explanation of the medical basis for any conclusion that duty restrictions or accommodations are or are not warranted and, if they are, an explanation of their therapeutic or risk-avoiding value; or

- i. Narrative explanation of the medical basis for any conclusion that indicates the likelihood that the employee is, or is not, expected to suffer injury or harm with or without accommodation, by carrying out the tasks or duties of a position for which he or she is assigned.

Medical Specialist – a physician who is board-certified in a medical specialty.

Physician – a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct medical examinations.

Police and Fire Clinic – the medical facility that provides occupational and preventive medical services to police officers employed by the Metropolitan Police Department, firefighters employed by the Fire and Emergency Medical Services Department, U.S. Park Police, and uniformed Secret Service agents. The Police and Fire Clinic will also handle fitness-for-duty examinations pursuant to Chapter 20 of the regulations and this instruction.

Practitioner – a person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by a State to provide the service in question.

Qualified individual with a disability – An individual with a disability who satisfies the requisite skill, experience, education, and other job related requirements of the position such individual holds or desires and who, with or without a reasonable accommodation, can perform the essential functions of such position.

Reasonable accommodation – modifications, adjustments, or aids that enable an incumbent (employee) with a disability (medical condition) to perform the essential functions of his or her position.

Review of medical documentation – assessment of medical documentation by or in coordination with a physician, to ensure that the following criteria are met:

- a. The diagnosis or clinical impression is justified in accordance with established diagnostic criteria; and
- b. The conclusions and recommendations are consistent with generally accepted medical principles and practice.

Safety-sensitive position * – pursuant to the provisions of Title I of the Child and Youth, Safety and Health Omnibus Amendment Act of 2004 (Act), effective April 13, 2005 (D.C. Law 15-353; D.C. Official Code § 1-620.31 *et seq.*), a position in a “covered agency” in which the incumbent employee has direct contact with children or youth, is entrusted with the direct care and custody of children or youth, and whose performance of his or her duties in the normal course of employment may affect the health, welfare, or

safety of children or youth. Under the Act, employees in these positions are subject to mandatory drug and alcohol testing.

*[*For more specific information on safety-sensitive positions, including the list of covered agencies, please refer to Chapter 39 of the D.C. personnel regulations, Testing for the Presence of Controlled Substances and Alcohol.]*

5. Procedures

a. Evidence of Impairment on the Job Caused by Suspected Drug Use or Alcohol Use

If by observation of an employee's behavior or impairment, or after receiving credible information, the manager/supervisor determines that the employee has demonstrated behavior/impairment that can contribute to poor or unsafe work practices, the following should take place:

- (1) In situations where there is suspected drug or alcohol use and the employee is not in a safety-sensitive position, or is not subject to drug or alcohol testing under any other law, regulation, or established procedure:
 - (a) Immediately place the employee on administrative leave and issue a written statement to the employee detailing the reason(s) for his or her placement on administrative leave. If there is concern for the employee's safety, the manager/supervisor must either place the employee in a taxicab or contact emergency medical services immediately; and
 - (b) Refer the employee to the Employee Assistance Program (EAP).
- (2) In situations where the employee occupies a safety-sensitive position, the provisions of Chapter 39 of the regulations, Testing for the Presence of Controlled Substances and Alcohol, shall apply. If the employee occupies a position subject to drug and alcohol testing under any other law, regulation, or established procedure, such law, regulation, or established procedure shall apply.

b. Evidence of Employee Inability to Perform the Duties of the Position Caused by Suspected Mental or Physical Condition

Each employee is responsible for maintaining his or her health so that the employee can perform the duties and responsibilities of his or her position of record. If a supervisor has reason to question the general fitness of an employee to perform such duties due to a mental or physical condition, the supervisor should refer the employee for a fitness-for-duty examination, and request that the employee provide an assessment from his or her private physician.

- (1) In situations where an employee has recently returned to work after a long absence due to illness, or when an employee demonstrates difficulty performing tasks that he or she had performed in the past successfully, the following procedures are to be followed:
 - (a) The employee's supervisor/manager should consult with the agency's Human Resources (HR) Advisor and provide detailed documentation regarding the "deterioration of performance." The documentation should include performance evaluations; notice(s) of counseling, if any; and any other relevant employee records/documentation.
 - (b) If there is sufficient evidence to suggest serious performance issues due to a mental or physical condition, the agency HR Advisor will contact staff in the Employee Relations Unit within the D.C. Department of Human Resources (DCHR), to determine if the employee should be first referred to his or her private physician (healthcare provider) for medical assessment, or directly to the *Police and Fire Clinic (Clinic)* for a fitness-for-duty examination.
 - (c) If it is determined that the employee should be referred to his or her private physician for medical assessment:
 1. The agency HR Advisor, in consultation with the employee's manager/supervisor, will prepare a letter to the employee outlining the observations, concerns, and efforts management has made to assist the employee in improving his or her performance and requesting that the employee obtain a medical assessment from his or her private physician (see Attachment No. 1).
 2. The letter to the employee shall include the following:
 - a. A letter to the employee's private physician including the medical assessment form to be completed by the employee's private physician; and
 - b. A copy of the employee's job description (for review by the employee's private physician).
 3. If the employee fails to comply with the request to provide the private physician's assessment of his or her medical condition, the agency will submit a request to the DCHR for a fitness-for-duty examination to be conducted by an occupational health physician or practitioner associated with the *Clinic*.
 4. Upon receipt of the private physician's assessment, the agency HR Advisor will contact staff in the Employee Relations Unit, DCHR, to

determine whether the private physician's assessment should be referred to the *Clinic* for a second (2nd) medical opinion (a physical evaluation may be required for the second opinion). The second (2nd) medical opinion shall be considered (constitute) a fitness-for-duty-examination.

5. If it is determined that a fitness-for-duty examination is needed, the agency HR Advisor will prepare a memorandum from the agency head to the Director, DCHR, to formally request the examination (see Attachment No. 2). Upon receipt of the memorandum, the DCHR will arrange for the evaluation. The agency is responsible for notifying the employee in writing.
 6. If the private physician's medical assessment and recommendations are sufficient, and depending on the facts of the case, the second-level manager/supervisor, agency HR Advisor, and DCHR will determine the specific course of action to be taken. Any action taken must be in accordance with D.C. personnel regulations as well as any other relevant District of Columbia and federal laws and regulations.
- (2) When an employee requests a change or accommodation in job duties because of health-related issues unsupported by medical documentation, it is appropriate for the employing agency to request a private physician's assessment, or require that the employee undergo a fitness-for-duty examination (See Attachment No. 3).

6. **Sanctions**

The following employee actions will result in administrative action, up to and including removal:

- a. Refusal to provide the private physicians' assessment of the employee's medical condition or to undergo a fitness-for-duty examination;
- b. Refusal to comply with the recommendations of the EAP or any other conditions specified by the employing agency; and
- c. Failure to make the required improvements/changes in performance or conduct after receiving official written notification of such improvements/changes.

7. **Employees Returning to Work after Medical Leave**

- a. An employing agency reserves the right to request a fitness-for-duty examination prior to an employee returning to work after a prolonged period of sick leave, authorized leave without pay (LWOP); medical leave under the D.C. Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C.

Official Code § 32-501 *et seq.*); or medical leave under the federal Family Medical Leave Act, as appropriate.

- b. An employing agency reserves the right to make additional medical inquiries or require follow-up medical examinations to ensure that an employee can safely perform all the functions of his or her job. Any action taken by the agency must be in compliance with District of Columbia and federal laws and regulations as well as D.C. personnel regulations.

8. Effective Date

This instruction is effective immediately.



Judy D. Banks
Interim Director

Attachments:

- Sample Letter to Employee Requesting Medical Assessment by Private Physician (Including a Sample Letter to the Employee's Private Physician and Sample Physician's Work Status Recommendation Form)
- Sample Memorandum to the D.C. Department of Human Resources (DCHR) Requesting Authorization of Fitness-for-Duty Examination
- Sample Memorandum Responding to an Employee's Request for Accommodation/Change of Work Status

AGENCY LETTERHEAD

(Date)

(Employee's Name)

(Position Title)

(Work Location)

(Address)

Re: Fitness-for-Duty

Dear _____:

The District government is charged with ensuring that all employees work in an environment where they can perform the essential functions of their positions in a safe and satisfactory manner. Further, the District government is concerned with the wellness of its employees and the impact that their physical and mental health may have on their ability to perform their jobs.

In recent months, your supervisor has become concerned with the apparent change in your health and the impact this change has had on your ability to perform the essential functions of your position as (Position Title) in the (Employing Agency/Administration). Specifically, your supervisor has observed the following [*Describe Observations Below.*]:

[Optional if some form of counseling/discipline occurred: On _____, you received documented counseling concerning your performance (Discuss Further). However, as of the date of this letter you have not complied with the documented counseling requirements.]

Because of the above-referenced observations, we are requesting that your personal physician assess your medical condition and your ability to perform the functions of your job.

Enclosed is information for your physician explaining this request and providing a summary of the essential duties of your position. You are directed to return your physician's assessment to (Employing Agency Representative's Name) by (Date). Please be advised that if you do not submit your physician's assessment by (Date) you will be referred to an occupational health physician/practitioner associated with the Police and Fire Clinic (Clinic) for evaluation, in accordance with Chapter 20 of the D.C. personnel regulations, Health. The Clinic provides occupational and preventive medical services mainly to uniformed personnel in the Metropolitan Police Department and the Fire

Letter to (Employee's Name)

Fitness-for-Duty

Page 2

and Emergency Medical Services Department, as well as other District government employees as needed. The District government also reserves the right to seek a second (2nd) opinion.

If you or your physician have any questions concerning this letter, please contact (Employing Agency Representative's Name) at (Telephone Number).

Sincerely,

Agency Head (or Designee)

Enclosures

AGENCY LETTERHEAD

(Date)

(Private Physician's Name)

(Private Physician's Address)

(_____)

(_____)

**Re: Request for Information from Private Physician Concerning Fitness-for-Duty of
(Employee's Full Name)**

Dear (Private Physician's Name):

The District government requires that all its employees, regardless of their duties, be capable of performing the full range of the duties of their position. The individual referenced above is employed with the (Employing Agency) in the position of (Position Title), and currently has a medical condition that may impact (his/her) ability to perform the full range of the duties of (his/her) position of record. Thus, we are seeking your professional assistance as the employee's private physician, in making decisions regarding the employee's work status and duty assignments while the medical condition exists.

We are requesting that you use the form enclosed to recommend the appropriate work status for the employee. The information below is intended to provide you with a brief summary of the essential functions of the position of (Position Title) your patient currently occupies:

While not all-inclusive, to be considered fully successful, (Mr./Ms. Employee's Last Name) must be able to perform all of the following essential duties (functions):

1. _____
2. _____
3. _____

While the District government can direct the referral of an employee to an associated physician/practitioner, deference is given to the recommendations of the employee's private physician in determining the appropriate duty status for the employee while the medical condition exists. Accordingly, we are requesting that you examine your patient and provide (Employing Agency Representative's Name), (Position Title) with the (Agency), with the information enclosed and your recommendation whether the employee's present medical condition would prevent (him/her) from performing the full range of duties of the position.

If in your medical opinion the employee should be "restricted" or "accommodated" in some manner, please set forth the nature and scope of the restriction/accommodation along with your prognosis on how long the restriction/accommodation should apply. *[Please note that an accommodation does not*

Letter to (Physician's Name)
(Fitness-for-Duty: Employee's Name)
Page 2

include eliminating any of the essential functions of the position but rather providing assistance or tools to aid the employee in performing all of the essential functions of the position.] If you are not a specialist in occupational medicine, you are encouraged to seek the opinion of an occupational physician prior to making your recommendation.

Finally, please be advised that the District government can make arrangements for you to consult with the occupational medical staff at the Police and Fire Clinic (Clinic). The Clinic provides occupational and preventive medical services mainly to uniformed personnel in the Metropolitan Police Department and the Fire and Emergency Medical Services Department, as well as other District government employees as needed.

Thank you for your cooperation in resolving this matter. Should you have any questions, please contact (Employing Agency Representative's Name) at (Telephone Number).

Sincerely,

Agency Head (or Designee)

Enclosure: Physician's Work Status Recommendation

PHYSICIAN'S WORK STATUS RECOMMENDATION

I, _____, have received and read the *Request for Medical Assessment* and position documentation for my patient, _____.

(Name - Print)

(Patient's Name - Print)

Having read this information, and having been given the opportunity to seek additional information concerning the duties of a _____, I am making the following recommendations concerning the work status of my patient:

(Position Title)

For the period beginning _____ through _____, he/she may continue to perform all duties required for the position.

(Date)

(Date)

He/she is unable to perform the duties required, but may perform the following duties, with the restrictions/accommodations specified herein:

He/she is unable to work.

Other:

(OVER)

It is my understanding that my patient's employing agency is relying on my medical recommendation in determining the appropriate work assignments and accommodations. In this regard, the recommendation(s) noted above is/are my best medical judgment of the physical/mental capabilities of my patient to perform the duties of his/her position.

Physician's Address/Telephone Number:

Physician's Signature

Physician's Name:

(Print or Type)

Date

AGENCY LETTERHEAD

MEMORANDUM

TO: Director
D.C. Department of Human Resources

FROM: Agency Head (or Designee)

DATE: _____

SUBJECT: Request for Fitness-of Duty Evaluation for Employee (Name)

I am hereby requesting to have (Employee's Full Name), (Position Title, Series, Grade) in the (Employing Agency/Administration), examined by a medical doctor to determine (his/her) fitness for duty.

The main duties and responsibilities for this position require *[List key skills, i.e., communicating with customers, etc.]*. Some of the duties required to perform satisfactorily are listed below:

1. *[Identify essential functions and include copy of official Position Description.]*
- 2.
- 3.

Mr./Ms. (Employee's Last Name) has been unable to effectively perform the majority of the duties for (Specify Period). (He/she) has difficulty *[Describe condition, i.e., difficulty speaking or comprehending, etc.]*. The ability to *[Describe essential skill, i.e., communicate verbally and in writing, etc.]* is critical for every member of our team, as we are responsible for *[Describe what the administration/division/unit is responsible for, i.e., providing information to customers, etc.]*.

If you have any questions concerning this request or need other information, please feel free to contact me at (Telephone Number) or have your appropriate staff person contact (Employing Agency Representative's Name) at Telephone Number.

Sincerely,

Agency Head (or Designee)

AGENCY LETTERHEAD

(Date)

(Employee's Full Name)

(Employee's Position Title)

(Employee's Address)

Re: Response to Employee's Request for Accommodation/Change of Work Status

Dear (Mr./Ms. (Employee's Last Name)):

This is in response to your request for an accommodation/change of work status, dated (Date). The District government is charged with ensuring that all employees work in an environment where they can perform the essential functions of their jobs in a safe and satisfactory manner. Further, the District government is concerned with the wellness of its employees and the impact that their physical and mental health may have on their ability to perform their jobs.

[Discuss the accommodation or change requested, and indicate there is no medical certification on file.]

As the agency does not have any medical information on file, we are requesting that your personal physician complete an assessment. Included in this letter is information for your personal physician explaining the purpose of this request and providing a summary of the essential duties of your position.

You are instructed to return your physician's assessment to (Employing Agency Representative's Name and Position Title) in the (Agency/Administration), by (Date). Please be advised that if you do not submit your physician's assessment by (Date) you will be referred to an occupational health physician/practitioner with the Police and Fire Clinic for evaluation, in accordance with Chapter 20 of the D.C. personnel regulations, Health. Additionally, the District government reserves the right to seek a second opinion.

If you or your physician have any questions, please contact (Employing Agency Representative's Name), at (Telephone Number).

Sincerely,

Agency Head (or Designee)

Enclosure