

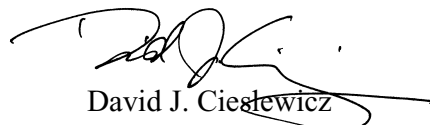
SUBJECT: FITNESS FOR DUTY EXAMINATIONS

Purpose: Madison General Ordinance 3.32(5)(c) establishes the City's right to direct employees to undergo a physical or mental examination by a physician of the City's choice to determine the employee's fitness to perform his or her assigned duties. MGO 3.32(5)(c) further directs the Human Resources Director to establish a written procedure for conducting Fitness for Duty Examinations. The administration of this policy and responsibility for coordinating fitness for duty examinations is the sole responsibility of the Human Resources Director or designee.

Procedure: When a department or division head has reason to believe that an employee's fitness for duty is in question, the department or division head shall contact the Human Resources Director to determine the most appropriate short-term and long-term actions. This may be a situation where an employee appears unfit for duty but continues to work, or an employee who claims to be unfit for duty but the City believes that they are able to work. With the approval of the Human Resources Director, the department or division head may require an employee to undergo a physical or mental examination to determine whether the employee is able to work. The assessment is generally referred to as an Independent Medical Evaluation (IME) and follows the procedures outlined below:

1. The Human Resources Director or designee shall select a physician/psychiatrist to examine the employee to determine the employee's physical and/or mental capability to perform the duties and responsibilities assigned to the employee. The employee will be placed on paid administrative leave and will be directed to attend the evaluation. The Human Resources Department will provide written notification of the evaluation appointment and location to the employee. Information about the essential functions of the position held by the employee along with detailed information about issues surrounding the City's concerns over the employee's ability to perform assigned duties will be provided to the physician/psychiatrist. The results of the examination shall be submitted to the Human Resources Director (or designee) and to the employee.
2. Should the evaluator agree with the employee's treating physician regarding his/her ability to work, the employee will remain in their current status by either returning to work or making arrangements to use accrued leave balances.
3. Should the examination contradict the opinion of the employee's treating physician, the employee may, within ten (10) days of notification of the result of the examination, seek a review of this initial examination as follows:
 - a. The employee may select and employ a licensed physician/psychiatrist at his/her expense to conduct an examination for the same purpose as the examination conducted by the City's physician. The employee shall provide a copy of the City's IME report to the selected physician. A copy of the findings of the physician/psychiatrist chosen by the employee shall be furnished to the Human Resources Director (or designee). In the event the physician concurs with the findings of the City's physician/psychiatrist no further review of the matter shall be afforded. The employee will no longer remain on paid administrative leave but will be required to return to work or begin using any accrued leave time that may be available.

- b. In the event the physician/psychiatrist chosen by the employee disagrees with the findings of the City's IME, the employee, within ten (10) days of the date of his or her physician's report, may request a third opinion. In this situation the employee shall request that the Human Resources Director ask the two fitness for duty evaluators to agree upon and request a third licensed and disinterested physician/psychiatrist to review the findings of the two completed examinations, and examine the employee for the same purpose. The fee for the third examination shall be borne in equal parts by the City and the employee. The findings of the majority of the three physicians/psychiatrists shall settle the matter and will be final and binding.
4. If the examination establishes that the employee is physically or mentally unfit as a result of a condition of a temporary or curable nature, and the affected employee is willing to have the cause or causes of such condition treated and rectified, then, depending on the particular circumstances of each case:
 - a. The employee may continue working while undergoing medical treatment if the examining physician or a majority of the three physicians certify that the employee is capable of safely and effectively performing the essential functions of the position that they hold; or
 - b. The employee shall be taken out of service and granted a leave of absence, if eligible, for the purpose of undergoing medical treatment until such time as the examining physician/psychiatrist or the majority of the three examiners certify that the employee is again able to safely and effectively perform assigned duties. During this absence the employee will be entitled to use any accrued leave and/or may be eligible for an unpaid medical leave of absence, provided, however, such leave of absence shall not extend for a period of more than six (6) months.
 - c. In the event the examining physician/psychiatrist or a majority of the three examiners are unable to make the required certification, the employee will remain in a leave status until said leave expires. The employee will then be subject to either the applicable provisions of Sec. 3.32(13) relating to layoff or rights outlined in the applicable collective bargaining agreement regarding disability layoff. If it is determined that the employee has permanent physical or mental restrictions that preclude the employee from returning to his/her position, the employee may be eligible for accommodation under City APM 2-22, Workplace Accommodations, or a disability retirement.
5. Any employee who refuses or fails to complete a Fitness for Duty Examination shall immediately be placed on an unpaid leave of absence. Repeated refusal or failure to complete the examination will result in discipline up to and including termination of employment.


David J. Cieslewicz
Mayor

APM No. 2-40
January 12, 2010