

1 **DRS:3-3-21 Fitness for Duty [NEW]**

2 (a) Purpose. This procedure is established to promote a safe and healthful working
3 environment for the agency's employees by ensuring that employees are fit for duty,
4 both physically and mentally, and capable of performing essential job functions in a
5 safe, appropriate and effective manner.

6 (b) This policy is not intended to limit the agency's ability to discipline employees in
7 accordance with its policies and procedures, to refer employees to an Employee
8 Assistance Program, or to enforce policies and procedures pertaining to workplace
9 violence, leave programs, worker's compensation and employee health evaluations.

10 (1) The definition of health care provider (HCP) for the purpose of this policy is the
11 same definition used under DRS 3-3-11 Family & Medical Leave (FMLA).

12 (2) Fitness for duty medical examination. An employee whose behavior or
13 physical condition constitutes a serious threat to themselves or others at work may
14 be required to submit to a physical or mental health examination to determine
15 current fitness for duty. The affected supervisor consults with the Division
16 Administrator or Superintendent and Human Resources to make this
17 determination.

18 (c) If it is determined a fitness for duty medical examination is required, the supervisor
19 completes DRS-A-191 Request for Fitness for Duty Medical Examination form and
20 submits to Human Resources.

21 (1) The employee referred for fitness for duty medical examination must sign the
22 notification letter requesting the Fitness for Duty Medical Examination.

23 (2) DRS pays the costs of the fitness for duty medical examination when DRS
24 requires the employee to be evaluated by a DRS selected psychologist or
25 physician. With DRS approval, the employee may select the psychologist or
26 physician and must pay all costs incurred.

27 (3) The examination may not include collection of family medical history. DRS will
28 tell any contracted health care providers not to collect genetic information as part of
29 an employment-related medical exam, and, if we find out that family medical
30 histories are being collected, DRS will take measures within its control (including
31 not using the services of that health care provider) to prevent this from happening in
32 the future.

33 (4) Failure of the affected employee to comply with the examination or cooperate
34 with the evaluator is deemed insubordination and grounds for disciplinary action, up
35 to, and including termination.

36 **(d) Responsibilities.**

37 (1) Employees

38 (A) Employees will report to work fit for duty and capable of safely performing
39 their essential job functions.

40 (B) Employees will respond appropriately to requests for fitness for duty
41 examinations (FFDE) to include medical information and medical certification
42 regarding their ability to work or statements from HCPs relevant to job
43 accommodations.

44 (C) "Responding appropriately" includes: obtaining requested medical exams,
45 information, certification or statements from health care providers with relevant
46 information regarding the employee's fitness, ability to work and medical
47 condition.

48 (2) Supervisors

49 (A) Requests for employee medical information must be in accordance with
50 this procedure and all applicable laws. Medical inquiries/examinations of
51 employees must be job related and consistent with business necessity

52 (B) Employment records containing medical information are confidential and
53 must be maintained in accordance with this procedure and applicable law.

54 (3) Reasonable Accommodation

55 (A) Employees who are unable to continue performing essential job functions
56 due to a disability or impairment, as defined by the Amended Americans with
57 Disabilities Act (ADAAA) and DRS administrative rule 612:1-11-16 will be
58 provided reasonable accommodation in accordance with the ADAAA.

59 (B) Any request by an employee for an adjustment or change at work for a
60 reason related to a medical condition will be treated as a request for
61 accommodation.