ADMINISTRATIVE PRACTICES MANUAL

SUBJECT: FITNESS FOR DUTY EVALUATION

1. Policy Statement

Dane County has a responsibility to ensure its employees can perform the essential duties of their position. When there are concerns that an employee cannot complete their duties or poses a threat to themselves or others, the County can direct the employee to complete a Fitness for Duty Evaluation (FFDE).

This policy describes how the County will conduct a FFDE. FFDEs are not punitive and must be job-related and consistent with business necessity under the Americans with Disabilities Act (ADA) and Wisconsin Fair Employment Act (WFEA). Other County policies and practices must be applied before an FFDE is considered. This policy is not an alternative to discipline. Nonetheless, failure to cooperate with the policy may result in discipline, up to and including termination of employment.

2. Conditions for a FFDE (Fitness for Duty Evaluation)

The following are examples of behaviors or conditions, which could lead to a FFDE under this policy.

2.1. Health: Physical or mental health, including but not limited to an abrupt change in behavior that negatively impedes an individual's ability to perform essential duties of the position or assigned task.

2.2. Threat of Injury to Self: Suicidal statements and/or observed indications of self-harm or mental instability directed at oneself.

2.3. Threat of Injury to Others: A pattern of conduct or sudden behavior which is violent and/or threatening or acting in a manner that is perceived as a threat by a reasonable person.

2.4. Other: A single or combination of factors that call into question the employee's ability to perform the essential duties of a position or assigned task safely or effectively. This may include situations where excessive use of leave raises a reasonable belief that the employee is incapable of performing their position.

3. Process of Making a Determination and Initiating a FFDE (Fitness for Duty Evaluation)

3.1. If a manager forms a reasonable belief, based on objective evidence, that the employee may have a mental or physical condition that impairs the employee from performing the essential functions of their job or poses a danger to themselves or others, the manager shall contact the Risk Manager regarding the concern.

3.2. The Risk Manager will convene the Fitness for Duty Team (Team) to discuss the situation.

3.3. Members of the Team include:

- Corporation Counsel – provide legal advice on compliance
- Employee Relations – to provide human resources advice
- Risk Management – to organize the FFDE process and communicate the recommendations of the Team to the Director of Administration

3.4. The Team will review the objective evidence and produce a recommendation to the Director of Administration.

3.5. Upon receiving the Team's recommendation and based on the objective evidence and a reasonable belief whether a physical or mental health condition impairs the employee's ability to perform their essential job functions or poses a threat, the Director of Administration will decide whether to proceed with the FFDE.

3.6. If a FFDE is not ordered, then the County shall follow the options listed under this policy in sections 5.4.1 through 5.4.3.

3.7. If a FFDE is ordered, the employee will receive a written notice communicating the FFDE and placement on paid administrative leave. The notice shall provide the reason(s) for the FFDE, contact information for the medical or mental health provider (Medical Provider) selected to perform the FFDE, and timeline to complete the FFDE. Additional stipulations may also be included in the notice.

3.8. The initial FFDE will be conducted by a qualified Medical Provider of the County's choosing. The County will share with the Medical Provider information regarding the essential functions of the position and the objective evidence collected by the County.

3.9. The employee's Employee Group Representative and/or Union Representative (if applicable) and the employee's supervisor/manager will be copied on the notice for the FFDE and paid administrative leave. In the absence of a signed waiver, the County will not share protected information with the Employee Group or Union Representative.

3.10. Except as otherwise provided in this policy, all costs associated with an initial FFDE will be paid by the County.

4. Employee Responsibilities

4.1. Once the County has determined that a FFDE is required, the employee shall comply with the directives of the County on how to complete the FFDE.

4.2. The Employee shall also comply with all directives given to them by the Medical Provider(s).

4.3. If the employee does not comply with the County's directives, the employee will be removed from paid administrative leave and will be placed on unpaid administrative leave. Unpaid administrative leave shall run concurrently with Employee Handbook Leave or Ordinance Leave, as applicable to the employee. The employee may use accrued benefit time while on unpaid administrative leave. If the employee fails to comply with the County's directives, the employee will be subject to discipline.

4.4. The employee may be required to sign documents related to the Health Insurance Portability and Accountability Act (HIPAA), as well as other documents communicating rights and responsibilities, to both Dane County and the Medical Provider. The employee's refusal to sign documents constitutes noncompliance, and a choice to exercise any rights outlined in the documents does not negate the requirement that the FFDE be completed in the specified timeline.

4.5. The employee is solely responsible for all travel, and costs associated with travel, to and from the FFDE.

5. Post Evaluation

5.1. To maintain confidentiality, only the Risk Manager will receive a copy of the FFDE report. Any information shared by the Risk Manager will be on an as-needed basis.

5.2. The employee will receive written notice, regardless of the Medical Provider's determination, concerning their fitness for duty.

5.3. The employee will be provided with a copy of the FFDE report from the Risk Manager.

5.4. If the employee is determined to be fit for duty, along with any recommendation(s) provided by the Medical Provider, management, Employee Relations, Corporation Counsel, and the Risk Manager, the County may:

5.4.1. Return the employee to full duty with no further action.

5.4.2. Refer the employee to internal and/or external resources.

5.4.3. Resume or institute disciplinary proceedings as appropriate, up to and including termination of employment.

5.5. If the employee is determined not to be fit for duty, yet the behavior may be remedied, and the employee agrees to complete the recommendations provided by the Medical Provider, the County may:

5.5.1. Return the employee to duty under the Stay at Work Policy while undergoing treatment, consistent with the recommendations of the Medical Provider. Any temporary adjustments to the employee's duties will be at management's sole discretion based on operational needs and subject to the terms of the Stay at Work policy.

5.5.2. Remove the employee from duty and grant an unpaid leave of absence for the purpose of undergoing or continuing treatment until such time as a Medical Provider certifies, based on the FFDE findings, that the employee is able to perform the essential duties of the position and a follow-up FFDE confirms a return to fitness. During this absence, the employee will be entitled to use accrued benefit time available to them or other benefits provided by the County.

5.6. If the employee is determined not fit for duty and the behavior or condition cannot be remedied, the County shall:

5.6.1. If the employee's behavior or condition makes it unsafe to return to work under any conditions, the County will follow established leave processes including, but not limited to, FMLA leave, Employee Benefit Handbook Leave or Ordinance Leave, disability layoff, disability retirement, and other applicable options.

5.6.2. For the employee not subject to 5.6.1, the County will follow established leave processes including, but not limited to, FMLA leave, Employee Benefit Handbook Leave or Ordinance Leave, disability layoff, disability retirement, and other applicable options and invite the employee to engage in the ADA interactive process.

5.7. If the employee is determined not fit for duty, the behavior or condition may be remedied but the employee refuses to follow medical recommendations, the County will follow established leave processes including, but not limited to, FMLA leave, Employee Benefit Handbook Leave or Ordinance Leave, disability layoff, disability retirement, and other applicable options.

5.8. If an employee found unfit wishes to dispute the FFDE report, the employee may seek, at the employee's sole expense, a second opinion. The employee must provide written notification to the County, within five (5) business days from their receipt of the FFDE report, their intent to seek a second opinion. The second opinion evaluation shall be scheduled and completed as soon as practical. Any second opinion must be provided by a Medical Provider of comparable expertise (e.g., if a Clinical Psychologist performs the initial FFDE, then the employee's chosen Medical Provider must also be a Clinical Psychologist). The second opinion must also be based on an evaluation that is comparable to the initial FFDE. The employee will be placed on unpaid administrative leave while obtaining a second opinion.

5.9. If there is a dispute between the first and second opinions, then the County and the Employee may request a third FFDE. The Medical Provider shall be mutually agreed upon and comparable to the first and second opinion FFDEs. The cost of the third FFDE shall be equally divided between the parties. The employee will be placed on paid administrative leave while the third evaluation is conducted.

6. Follow-up Evaluation

6.1. An employee who is found unfit in a FFDE and undergoes the treatment necessary to remedy the behavior or condition, with the intent to return to full duty, requires a follow-up FFDE. The follow-up FFDE process will proceed upon receipt of a certification from the employee's healthcare provider and based on the initial FFDE findings and completion of the initial FFDE treatment recommendations or comparable progress as determined by the employee's healthcare provider, that the employee is again fit for duty and is able to perform the essential duties of the position. The follow-up FFDE will be comparable to the original evaluation process. Additions to the follow-up evaluation may include:

6.1.1. Documentation concerning the employee's progress, performance, and recent behavior, as well as additional relevant information.

6.1.2. Documentation applying the standards in section 5.6.1, 5.6.2 and 5.7.

6.2. If after a return to full duty the employee again exhibits behaviors that warrant review by the Fitness for Duty Team, then the Team will collaborate to determine if another FFDE is warranted.

END OF POLICY