



COUNTY OF LOS ANGELES DEPARTMENT OF HUMAN RESOURCES

HEADQUARTERS

KENNETH HAHN HALL OF ADMINISTRATION
500 W. TEMPLE STREET, ROOM 579 • LOS ANGELES, CALIFORNIA 90012
(213) 974-2406 • FAX (213) 621-0387

BRANCH OFFICE

510 S. VERMONT AVENUE, 12TH FLOOR • LOS ANGELES, CALIFORNIA 90020
(213) 866-5846 • FAX (213) 637-0821

LISA M. GARRETT
DIRECTOR OF PERSONNEL

June 27, 2023

To: All Department Heads

From: Lisa M. Garrett 
Director of Personnel

REVISIONS TO CIVIL SERVICE RULE 9 – MEDICAL STANDARDS FOR EMPLOYMENT AND RELATED COUNTYWIDE HUMAN RESOURCES POLICIES

Over the past several years, the Department of Human Resources (DHR) has been leading the transition to a new Countywide framework for Disability Management & Compliance (DMC). The new framework serves to standardize the County's approach to this work and, most importantly, ensure full alignment with applicable State and federal law. I am proud to share that we have now reached another major milestone in this critical process.

On May 23, 2023, the County of Los Angeles (County) Board of Supervisors approved revisions to *Civil Service Rule (Rule) 9 – Medical Standards for Employment* (Attachment I) to better reflect applicant, employee, and employer rights and best practices in the field of disability management. This represents the first major change in the Rules that govern the County's civil service system in over 30 years, which further reinforces the importance of our disability management processes.

Key changes to Rule 9 include:

- Reiterating that the Director of Personnel has the authority to establish medical standards of employment, which includes standards for medical examinations and medical inquiries for applicants and employees.
- Acknowledging that all County medical standards comply with applicable State and federal law, most notably the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, the California Fair Employment and Housing Act (FEHA), and applicable implementing regulations.
- Clarifying that if medical standards established under the Rule conflict or contravene the provisions of applicable federal or California laws or regulations in any way, those laws or regulations prevail.

To Enrich Lives Through Effective and Caring Service

- Striking existing language in the Rule that prescribes the medical examination, review of medical findings, determination of qualifications, and accommodation of incapacitated employees and applicants so these processes can be more comprehensively addressed through policy.

In alignment with the updates to Rule 9, DHR is now revising the Countywide Policies, Procedures, and Guidelines (PPGs) that govern the County's accommodation and medical examination processes. As a part of that comprehensive review and revision, the following policies have been deemed to be *no longer operative and will sunset, effective immediately*:

- **PPG 601: Return to Work**
- **PPG 607: Executive Medical Examinations**
- **PPG 619: Revised Medical Examination Procedure for Applicants for Temporary or Part-Time Light Duty Positions**
- **PPG 621: Interdepartmental Placement of Employees Returning to Work Following Approved Leave**

The expired policies are now being replaced with four new PPGs that were developed through close partnership with the Chief Executive Office, County Counsel, and external disability management experts. These new PPGs, which oversee the major activities found within the County's Disability Management and Compliance Framework, are attached to this memo for your reference. These policies will also be uploaded to the County's Human Resources Policy website at <https://my.lacounty.gov/county-policies>. A brief description of each policy is also provided below:

- **PPG 625: PEPO Medical Examination (*Attachment II*)**
Establishes the standards and procedures for conducting Pre-Employment / Post-Offer Medical Examinations (PEPO) for certain applicants who have received conditional job offers from the County.
- **PPG 626: Fitness for Duty Evaluations (*Attachment III*)**
Supports the County's commitment to a safe and healthy work environment and the protection of the public by ensuring that each employee can perform their essential job functions in a safe, secure, and effective manner. This policy prescribes the circumstances under which an employee may be referred for a Fitness for Duty Evaluation (FFDE).
- **PPG 627: Interactive Process and Reasonable Accommodation (*Attachment IV*)**
Describes the County's framework for holding an Interactive Process Meeting (IPM) to determine appropriate reasonable accommodation(s), as needed, in accordance with the requirements of the ADA and FEHA, as well as other related State or federal laws and regulations.

All Department Heads

June 27, 2023

Page 3

- **PPG 628: Medical Release or Reassignment (*Attachment V*)**

This policy describes the circumstances under which an employee may be medically released from County service or reassigned to a different employment position based on the results of a Fitness for Duty Evaluation or other competent medical or legal evidence.

Trainings on the new policy components, which include a description of the updated interactive process meeting, accommodations, medical and psychological evaluations, and medical reassignment expectations, will be provided to Departmental Human Resources Managers and Departmental DMC Coordinators through DHR's Occupational Health and Leave Management Division.

Should you have any questions, please contact me or Maggie Martinez, Assistant Director DHR, at MMartinez@hr.lacounty.gov or (213) 351-2921.

LMG:PAM:CAH

MGM:JAWT:DMM

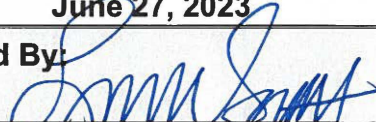
Attachments (5)

c: Chief Deputies
Administrative Deputies
Departmental Human Resources Managers

S:HRDS\CSR 9\LMG to DHs re CSR 9 and PPG Updates – 06-27-2023



County of Los Angeles
Department of Human Resources
POLICIES, PROCEDURES, AND GUIDELINES

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626	Pages: 8
	Effective Date: June 27, 2023	
	Approved By: 	

PURPOSE

The County of Los Angeles (County) is committed to promoting a safe and healthy work environment for its employees and the protection of the public. Such an environment is only possible when each employee is able to perform their essential job functions in a safe, secure, and effective manner. This policy prescribes the circumstances under which an employee may be referred to a licensed health care provider for a Fitness for Duty Evaluations (FFDE).

This policy is not intended to serve as a substitute for Countywide or departmental policies or procedures related to addressing performance or behavioral problems, which should be addressed through the administrative process. The policy does not apply to employees with short-term, infectious/communicable diseases (e.g., flu, colds).

POLICY

Each employee is expected to report to work in an emotional, mental, and physical condition (including free of the effects of alcohol and drugs) necessary to safely and fully perform the essential functions of their job. Fitness for Duty Evaluations (FFDE) are performed to determine an employee's ability to perform their essential job functions.

Federal and State law permit the County to require a medical and/or psychological examination of an employee where the examination is job-related, consistent with business necessity, and if the County has a reasonable belief, based on objective observations that:

1. The employee may have a medical or psychological condition that impacts their ability to fully and safely perform the essential job functions of their job, or
2. The employee may have a medical or psychological condition that could result in a Direct Threat to themselves or others.

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626 Effective Date: June 27, 2023
----------------------------------------------------------------	-----------------------------------------------------------------------

Additionally, a FFDE may be required when a County department has been unable to obtain reasonable medical documentation or information, including work restrictions, from an employee's personal health care provider, has conflicting information between health care providers, or has a concern, based on an objective observation that an employee's ability to perform their essential job functions does not appear to be consistent with work restrictions.

DEFINITIONS

The following definitions are provided solely as a guide to assist in the interpretation and application of this policy and are based on related federal and state laws and regulations, and cases interpreting those laws and regulations. The following definitions may be subject to change due to a change in applicable law.

Fitness for Duty Evaluation (FFDE): A FFDE is a medical and/or psychological evaluation that is job-related and consistent with business necessity undergone by an employee at the direction of their department as authorized by the Department of Human Resources (DHR). The FFDE is performed by a licensed health care provider who evaluates only the individual's ability (emotional, mental, and physical) to perform the essential functions of the employee's job. Evaluation results indicate whether the employee can safely (without risk of harm to the health and safety of self or others) and effectively perform the essential job functions of their position with or without reasonable accommodation.

Direct Threat: A significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a "direct threat" shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the Department will consider the following factors:

- a. The duration of the risk;
- b. The nature and severity of the potential harm;
- c. The likelihood that the potential harm will occur; and
- d. The imminence of the potential harm.

Fitness for Duty Re-Evaluation (FFD Re-Evaluation): An FFD Re-Evaluation is a medical and/or psychological re-evaluation undergone by an employee after a previous FFDE has been completed. An FFD Re-Evaluation may be warranted when there is a reasonable possibility that evaluation results could differ based on a potential change of

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626 Effective Date: June 27, 2023
----------------------------------------------------------------	-----------------------------------------------------------------------

the employee’s medical or psychological condition which was evaluated during the initial FFDE, or there is new information that was not available during the initial FFDE.

FFDE Review Committee: A committee comprised of a panel of representatives from DHR and County Counsel that will review and determine approval for FFDE requests.

Job-Related: A FFDE is job-related only if it is tailored to assess the employee’s ability to carry out the essential functions of the job or to determine whether the employee poses a danger to the employee or others during working hours due to their disability.

Business Necessity: There is a business necessity for a FFDE only if the need for an inquiry into the employee’s disability or a medical examination is vital to the needs of the Department. The business necessity standard is high; a Department representative must be faced with significant evidence that causes the representative to doubt whether the employee, because of disability, is capable of performing the essential duties of their job.

GUIDELINES

I. Requesting a FFDE

1. County departments may request a FFDE to obtain a professional evaluation of an employee’s physical, emotional, or mental capacities when the department believes an employee is unable to fully or safely perform their essential job functions. Examples of what might lead a County department to believe an employee is unable to fully or safely perform their essential job functions may include but are not limited to:
 - a) An employee’s self-disclosure of a medically related performance issue(s);
 - b) Objective observation of performance issues that may be related to a medical or psychological condition;
 - c) Excessive absence due to illness or injury; and/or
 - d) Objective observations of unsafe behavior or conduct that may lead to a significant risk of substantial harm that cannot be eliminated by a reasonable accommodation.

2. A FFDE is intended to:
 - a) Determine the employee’s ability to fully and safely perform essential job functions for their job position.
 - b) Determine work restrictions and/or limitations of the employee.

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626 Effective Date: June 27, 2023
----------------------------------------------------------------	-----------------------------------------------------------------------

- c) Determine the duration of work restriction and/or limitations of the employee.
 - d) Clarify conflicting information from health care providers.
 - e) Determine the types of duties the employee may perform during the period of disability or illness, or to assess medical leave needs for the employee.
 - f) Physically examine temporarily disabled employees to ascertain their FFD in their appointed classification, e.g., examination(s) by specialists.
 - g) Ascertain an employee's ability to fully and safely perform the essential job functions of their position upon return from a leave of absence exceeding 30 calendar days due to an illness or disability. *(Note: Such leaves of absence could include return to work after leave under the Family Medical Leave Act (FMLA), the Americas with Disabilities Act (ADA), Short-term Disability (STD), Long-term Disability (LTD), or leaves related to work-related injury or illness.)*
3. All FFDE requests must be submitted by authorized representatives of County departments to the Director of Personnel or their designee (hereafter referred to as Director of Personnel). The review of such requests will be conducted by the FFDE Review Committee under the authority of, and as the designee of, the Director of Personnel. FFDEs are conducted by a licensed health care provider designated by the County and are undertaken only after review and approval by the FFDE Review Committee. In the event a FFDE has been approved, the employee's employing department is responsible for all FFDE costs incurred.
 4. An employee referred for a FFDE may be prohibited by their employing Department from working their normally assigned job pending the completion of the FFDE and a finding that the employee may return to work with or without work restrictions. During this time, applicable leave policies will apply.
 5. An FFD Re-Evaluation may be requested by an employee or the employing department. The Director of Personnel has the discretion to either accept or decline such requests. With the approval of the Director of Personnel, an employee may be required to submit to an FFD Re-Evaluation.

II. FFDE Findings

The findings from a FFDE performed by qualified, licensed health care providers designated by the County will be presumed to be valid. The results of the evaluation will be received by the Director of Personnel. DHR will communicate the highlighted findings to the designated representative of the employee's County department and to the employee. The findings will be utilized to determine whether the employee may:

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626 Effective Date: June 27, 2023
----------------------------------------------------------------	-----------------------------------------------------------------------

- a) Be released to work with no work restrictions;
- b) Be released to work with work restrictions;
- c) Be placed on a leave of absence as an accommodation where temporary medical or psychological conditions may prohibit the employee’s ability to fully and safely perform the essential job functions without risk of harm to themselves or others;
- d) Be returned to suitable work through a change of classification or reduction to another job position in the employee’s department through the departmental alternate work search process*;
- e) Be returned to suitable work through a change of classification or reduction to another job position in another County department through the Countywide alternate work search process*;
- f) Apply for disability retirement, in accordance with the employee’s eligibility under the appropriate provisions of the Government Code*; or
- g) Be released from County service through the retirement or the medical release process, in accordance with Policies, Procedures and Guidelines Number 628 - *Medical Release or Reassignment* and subject to the applicable provisions of County of Los Angeles Civil Service Rules; such a release would be without prejudice as to reemployment should the employee’s condition improve*.

*Note: These options would be considered based on a determination that the employee cannot fully and safely perform the essential functions of their job, and where a leave of absence would not mitigate this finding.

III. Obligation to Engage Employee in the Interactive Process Following FFDE

Following the conclusion of a FFDE or FFD Re-Evaluation, the employee, their representative, if applicable, and the Department will engage in the Interactive Process (see Policies, Procedures and Guidelines Number 627 - *Interactive Process & Reasonable Accommodation*).

After receiving the FFDE/FFD Re-Evaluation findings, the Department will provide the employee with written notice of the findings and schedule an IPM. During the IPM participants will discuss issues such as issuance of work restrictions, changes in work restrictions, and evaluate and determine a plan of action involving reasonable accommodation, if any, for the employee.

IV. Confidentiality / Privacy of FFDE’s

Federal and state law strictly limit the use of information obtained from medical examinations and inquiries from employees. To the extent allowed by law, the County will protect the confidentiality of the FFDE and its findings. Under the Health Insurance

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626 Effective Date: June 27, 2023
----------------------------------------------------------------	-----------------------------------------------------------------------

Portability and Accountability Act (HIPAA), any document containing medical information about an employee is considered a confidential medical record. All medical records regarding the FFDE will be maintained by the licensed health care provider that conducted the FFDE. With the exception of psychological FFDE reports, copies of medical reports may be obtained from the licensed health care provider by employees or their authorized designee upon written request and with an appropriate release.

In accordance with the Genetic Information Nondiscrimination Act of 2008 (GINA), the County and all contracted health care providers will not request, require, or purchase the genetic information of employees, or family members of employees, as a part of the FFDE process.

REQUEST FOR RECONSIDERATION

Any employee who disagrees with the findings of the FFDE may submit a written request for reconsideration to the Director of Personnel.

To request a reconsideration, the employee must, at their own expense, complete a separate FFDE through their own qualified health care provider, and submit the results of this evaluation for review to the independent, licensed health care provider designated by the Director of Personnel.

If the findings of the employee's FFDEs conflict, the health care provider designed by the County for this review will consider the following:

- a. The area of expertise of each medical professional who has provided information;
- b. The insight each health care provider has about the job's essential functions and the work environment in which they are performed;
- c. Whether the medical opinion is based on current, objectively verifiable information about the risks associated with a particular condition; and
- d. Whether the medical opinion is contradicted by information known to or observed by the County (for example, information about the employee's actual experience in the job in question or in prior similar jobs).

The independent, licensed health care provider, after review of the case, applying appropriate medical standards, shall make a determination and report the findings to the Director of Personnel, who will then issue a final determination.

The Director of Personnel will communicate the findings to the employee or their designated representative, and to the employee's County department. The Director of Personnel's determination will be final.

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626 Effective Date: June 27, 2023
----------------------------------------------------------------	-----------------------------------------------------------------------

REFERENCES

EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA)

AUTHORITIES

- Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et seq., as amended by the ADA Amendments Act of 2008 and its implementing regulations at 29 C.F.R. § 1630 et seq.
- County of Los Angeles Civil Service Rule 3 – *Administration*
- County of Los Angeles Civil Service Rule 9 – *Medical Standards for Employment*
- California Government Code § 1031 California Government Code § 1031
- California Fair Employment and Housing Act, California Government Code § 12940 et seq.
- California Code of Regulations, Title 2, Section 11065 (Definitions)
- California Code of Regulations, Title 2, Section 11067 (Defenses)
- California Code of Regulations, Title 2, Section 11068 (Reasonable Accommodation)
- California Code of Regulations, Title 2, Section 11069 (Interactive Process)
- California Code of Regulations, Title 2, Section 11071 (Medical and Psychological Examinations and Inquiries)
- California Code of Regulations, Title 11, Section 1954 (Peace Officer Medical Evaluation)
- *White v. County of Los Angeles* (2014) 225 Cal.App.4th 690
- *County of Los Angeles Department of Public Social Services v. Civil Service Commission of Los Angeles County* (2019) 35 Cal.App.5th 273, review denied (July 31, 2019)
- Policies, Procedures, and Guidelines Number 627 - *Interactive Process & Reasonable Accommodation Policy*
- Policies, Procedures, and Guidelines Number 628 - *Medical Release or Reassignment*
- Policies, Procedures, and Guidelines Number 810 - *Ordered Absence from Regular Work Location*
- The Genetic Information Nondiscrimination Act of 2008

Subject: FITNESS FOR DUTY EVALUATIONS	Policy Number: 626 Effective Date: June 27, 2023
------------------------------------------------------------	-------------------------------------------------------------------

DATE ISSUED/REVIEW DATE

Original Issue Date: June 27, 2023



PPG 626 – FITNESS FOR DUTY EVALUATIONS (FFDE)

Frequently Asked Questions

1. When should a County of Los Angeles (County) department request a Fitness for Duty Evaluation (FFDE)?

A department may request a FFDE through the Department of Human Resources after all other measures such as protected leave and/or disability compliance have been reviewed, or any performance issues have been addressed through the administrative process. Requesting a FFDE may be appropriate if the department believes the employee may have a medical or psychological condition that is impacting their ability to perform their job duties fully and safely or if the employee may have a medical or psychological condition that could result in a direct threat to themselves or others.

2. How can a FFDE be requested?

A FFDE can be requested by an authorized representative of County departments to the Director of Personnel or their designee. The request will be reviewed by the FFDE Review Committee, which operates under the authority of the Director of Personnel.

3. Who will conduct the Fitness for Duty Evaluation?

FFDEs are conducted by a licensed healthcare provider designated by the County and are undertaken only after review and approval by the FFDE Review Committee.

4. What are the possible outcomes of the FFDE?

The findings from the FFDE are used to determine whether the employee can fully and safely perform their essential job functions. The findings will inform whether the employee can be returned to work with or without work restrictions, or should be placed on a leave of absence as a reasonable accommodation for a temporary medical or psychological condition. Alternatively, if the FFDE determines that the employee cannot fully and safely perform their job, the employee may be returned to suitable work through a change of classification or reduction to another position in their current department or in another County department via the departmental or Countywide alternate work search process.

If the FFDE finds that the employee is unable to perform the essential job functions of their position or any other vacant, available position within the County (with or without

reasonable accommodation) fully and safely, then it is possible that the employee may be released from County service either by disability retirement or the medical release process, in accordance with PPG 628 – Medical Release or Reassignment.

5. Does an Interactive Process meeting (IPM) need to be conducted after the FFDE?

After the FFDE has been completed, the employee, their representative, if applicable, and the Department will engage in an IPM. In the IPM, participants will discuss the findings of the FFDE that has been provided to the requesting department, evaluate them, and determine a plan of action that involves exploring the opportunity for reasonable accommodation.

6. What can be done if the employee disagrees with the finding of the FFDE?

If the employee disagrees with the findings of the FFDE, they may submit a written reconsideration to the Director of Personnel. The Director of Personnel has the discretion to either accept or decline such requests. The employee must, at their own expense, complete a separate FFDE or independent medical evaluation through their qualified healthcare provider and submit the results of this evaluation for review by the County-designated licensed healthcare provider.

Once the case is reviewed by the County-designated licensed professional, they will make a determination and report the findings to the Director of Personnel who will then issue a **final** determination to the County department, the employee, and/or their representative.