

(Approved by the President, November 16, 2001)

I. General

These are the policy and procedures supervisors should follow when dealing (a) with an emergency situation in which an employee appears impaired or demonstrates violent, abusive or threatening behavior while at work or (b) with a non-emergency situation in which a supervisor has reason to believe an employee may be unfit to perform the duties and responsibilities of his position. Fitness for duty refers to the physical and/or mental readiness of an employee to perform the essential functions of his or her job. A fitness for duty examination may require psychological, medical and or substance abuse assessment.

II. Emergency Referrals for Acute Impairment or Violent, Abusive or Threatening Behavior

1. An immediate and acute impairment may occur as the result of substance abuse, use of alcohol or other substance (legal or illegal) or as the result of a medical or psychological condition. When a supervisor/administrator suspects an employee is impaired (e.g., unconscious, staggering, incoherent, or exhibiting other similar physical symptoms of impairment) the supervisor should undertake the following:

- a) Take reasonable steps to assure the safety of all persons, including the impaired employee. Either accompany the employee to the Health Center or, in the event of emergency circumstances, call 911 on campus and request assistance. If the employee is violent, verbally abusive or otherwise threatening, call 911; do not attempt to physically restrain the employee or interfere with his or her free movement in any way.
- b) Complete the Fitness for Duty Checklist form as soon as practical, documenting all facts relevant to the referral.
- c) Contact the Employee Relations unit of the Department of Personnel Services as soon as practical to discuss appropriate actions. In the event the employee is a faculty member, contact the Office of the Associate Provost for Faculty Affairs.
- d) Inform the employee that he or she is being relieved of his or her duties pending receipt of appropriate medical certification from the University Health Center that the employee is physically fit to perform his job safely.

2. If there is reasonable basis to believe that the employee suffers from alcohol or drug impairment, the employee may be asked to consent to alcohol and drug testing. If the employee does not consent, such testing shall not be performed. Alcohol and drug testing may be performed at the University Health Center; in the event the Health Center is closed, alcohol testing may be performed by Campus Police.

3. Whether or not the employee consents to alcohol or drug testing, the employee shall not return to work in the absence of a certification from the University Health Center that he or she is fit to perform his duties safely.

4. If the employee is not able to return to work that day or the next scheduled workday, he or she must call in to request appropriate leave as required under regular University policies. If the supervisor does not hear from the employee on the next business day, the supervisor should call the employee to inform him or her of his or her obligations to provide appropriate medical documentation.

5. Application of this policy is not a substitute for discipline. In any situation involving misconduct, disciplinary action may occur notwithstanding a referral for a fitness for duty examination.

6. The time off from work required for a fitness for duty examination and any subsequent time off work before the employee is certified fit for duty should be determined and charged in accordance with the circumstances and the results of the fitness for duty evaluation. For example, impairment due to medical or psychological conditions may be charged to accrued sick leave; impairment due to alcohol or illegal drugs may be recorded as unapproved unauthorized absence; violent, abusive or threatening behavior that is not due to medical or psychological conditions may be charged to accrued paid leave (personal or annual leave) if the employee requests and is approved for such leave. If the employee leaves the workplace without permission, unauthorized absence may be appropriate.

III. Non-Acute (Chronic) Cases of Suspected Impairment

1. It is the employee's responsibility to maintain his or her health in such a way that the employee can perform the duties and responsibilities of his or her job. However, if a supervisor has reason to question the general fitness of an employee to perform his or her duties and responsibilities due to a mental or physical condition, the supervisor may refer the employee for a fitness for duty examination. Examples when a fitness for duty examination may be appropriate include, but are not limited to, the following:

a) When an employee has been off work for a prolonged period of sick leave, advanced sick leave, extended sick leave, authorized leave without pay, or Family and Medical Leave, the supervisor may seek a fitness for duty examination to determine the nature and extent of the illness, the employee's prognosis for recovery, the length of time necessary for recovery and an estimated date for return to work on either a full-time, part-time or modified duty basis.

b) When a supervisor questions an employee's ability to perform the duties and responsibilities of his or her job due to a mental or physical condition, the supervisor may seek a fitness for duty examination to determine the employee's fitness to perform those duties.

c) When an employee requests a change or accommodation in job duties because of a health-related problem, which is unsupported by medical documentation or supported by unclear, insufficient or questionable medical documentation, it may be appropriate for a supervisor to seek a fitness for duty examination. Determination of an employee's eligibility for the requested change or accommodation may involve a determination of the applicability of the Americans With Disabilities Act (ADA). Accordingly, a department receiving such an employee request should immediately consult with the Department of Personnel Services, or, in the case of a faculty member, with the Office of the Provost in conjunction with the President's Legal Office.

2. To initiate a fitness for duty examination, the supervisor should first confer with the Employment Relations unit of the Personnel Services Department and then send a memorandum to the Director of Personnel Services requesting a fitness for duty examination and setting forth in detail the basis for the request. The memorandum should specify any incidents or other background information relating to the employee's performance of workplace duties, which may provide useful information to the University physician performing the evaluation. The request should also include copies of the official position description and other information which describes the essential functions of the employee's position. Finally, the request should include copies of any other relevant employee medical documentation and leave records. Employee Relations staff are available to assist the supervisor in compiling the appropriate documentation to accompany the request. The Director of Personnel or designee shall review and approve all requests for fitness for duty examinations.

In the case of a faculty referral, the supervisor should first confer with the Associate Provost for Faculty Affairs and then send similar paperwork for review and approval by the Provost.

3. Part One: Medical Evaluation. If the request is approved, the Department of Personnel Services (or the Office of the Provost, as appropriate) shall forward a request for a medical fitness for duty examination to the University Health Center. A copy of this request shall be sent to the employee along with a cover memorandum from the unit supervisor instructing the employee to schedule an appointment for a medical evaluation.

The employee shall also be informed that he or she may elect to have the fitness-for-duty examination performed by the University Health Center at University expense or by a physician of his or her own choosing at personal expense. If the employee opts for an examination by the University Health Center, the University physician(s) shall examine the employee and consult with the employee's private care physician(s) as necessary. On occasion, it may be necessary for the University physician to require several visits or follow-up visits in order to complete the medical evaluation. If the employee chooses to have the fitness-for-duty examination performed

by a physician of his or her own choosing, a copy of the private physician medical evaluation shall be sent to the University Health Center for review, and the University shall have the option of seeking a second medical opinion at University expense.

4. Part Two: Administrative Evaluation. The Health Center should submit a copy of all medical evaluations to the Employee Relations unit of the Department of Personnel Services and the employee's unit supervisor. The head of the unit, in consultation with the Employee Relations Section of the Department of Personnel Services, will then make an administrative determination about the employee's fitness to work, taking into consideration the medical evaluations, the essential duties of the employee's position and any limitations on fitness to work, if applicable. In the case of a fitness-for-duty evaluation of a faculty member, the completed medical evaluation shall be sent to the Office of the Provost and the head of the respective academic unit.

A copy of the University's administrative determination, signed by the unit supervisor, shall be sent to the employee. Outcomes of an administrative evaluation may include the following: fit to work without limitations; fit to work with limitations; not fit to work.

a. Fit to work without limitations: If the evaluation determines that the employee is fit to work without limitations, the unit supervisor shall notify the employee in writing.

b. Fit to work with limitations: If the evaluation determines that the employee is fit to work with limitations, the unit supervisor shall meet with the employee and determine the conditions and requirements for continued employment based on consultation with the following: the Employee Relations unit of the Department of Personnel Services (or, if the employee is a faculty member, with the Office of the Provost), the employee, the University Health Center and the employee's private physician (if appropriate). Following consultation between the employee and the University, the employee shall be informed in writing of any conditions imposed by the University for a return to work, including continued monitoring of any medical condition.

c. Not fit to work: If the evaluation determines that the employee is not fit for work, his or her employment status shall be determined on a case by case basis. The employee's unit supervisor shall notify the employee in writing of the medical and administrative evaluations and work with the employee, in consultation with the Employee Relations unit of the Department of Personnel Services (or, if the employee is a faculty member with the Office of the Provost), to determine appropriate options. Such options may include, but are not limited to, depending on the employee's eligibility, temporary total disability benefits, Family and Medical Act leave, sick leave entitlement (including advanced and extended sick leave), disability retirement, resignation, charges for removal or other agreed-upon solutions.

5. The time off from work required for a University-directed fitness for duty examination in a non-acute (chronic) case shall be charged to work time. Any subsequent time off work before the employee is certified fit for duty should be determined and charged in accordance with the circumstances and the results of the fitness for duty evaluation. For example, impairment due to medical or psychological conditions may be charged to accrued sick leave; violent, abusive or threatening behavior that is not due to medical or psychological conditions may be charged to accrued leave with pay, if requested and approved. In the event the employee qualifies for leave pursuant to the University's policy on Family and Medical Leave, the employee should be notified in writing within 48 hours that such leave (whether paid or unpaid) shall be counted as FMLA leave. See USM VII-7.50 Policy on Family and Medical Leave and USM II-2.31 Policy on Family and Medical Leave for Faculty.

6. When an employee is found to be unfit for duty, his or her employment status will be determined on a case by case basis.

IV. Rights and Obligations of Employee.

1. Nothing in this policy overrides rights provided to employees through other applicable contracts or policies, including faculty tenure rights and the right to grieve the application of this policy under applicable grievance procedures.

2. The costs of any fitness for duty examination by the University Health Center, including alcohol and substance abuse testing, and associated costs will be borne by the University, and not by the employee. The costs of any fitness for duty examination performed by a physician of the employee's own choosing shall be borne by the employee.

3. Employees are expected to cooperate fully with any request for an examination, including providing information (or releases for medical records) reasonably needed and requested by the University health care professionals. Failure to cooperate may result in the University's inability to determine an employee's fitness to work, and, thus, may result in appropriate administrative and/or disciplinary action.

4. Medical records and/or reports of fitness for duty examinations are confidential and should be maintained separately from the employee's official personnel record. Only employees with a "need to know" will be provided with access to medical information. The employee's unit supervisor shall be informed about the results of the medical evaluation and any recommended actions necessary to support the employee in the performance of the essential functions of his University duties as well as other information about the employee's condition necessary for proper supervision.