

Law Enforcement Fitness for Duty Evaluations: The Definitive Guide

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Fitness for Duty Evaluations have become more common for public safety positions. Courts throughout the United States have ruled that due to the level of trust and power given to law enforcement officers, law enforcement agencies have a responsibility to ensure that officers are fit to perform their duties.

When an employer has a reasonable belief that an employee has a psychological condition that impairs their ability to perform essential job functions or poses a direct safety threat, they can require the employee to undergo a fitness for duty evaluation.

The goal of this blog post is to go over what a Fitness for Duty Evaluation requires, the relevant case law surrounding fitness for duty evaluations, how an evaluation is conducted, and potential outcomes after an evaluation.

What is a Fitness for Duty Evaluation?

According to the Americans with Disabilities Act of 1990 (ADA), when an employer has a reasonable belief, based on objective evidence, that a police officer may have a psychological condition that impairs his or her ability to perform essential job functions or poses a direct threat, a Fitness for Duty Evaluation is “job-related and consistent with business necessity”.

Case law has established that the employer doesn’t need to wait for objective evidence of impaired performance before justifying a Fitness for Duty Evaluation when an employee is involved in dangerous work.

In [Brownfield v. City of Yakima \(2010\)](#), a federal circuit court upheld the validity of a police chief’s order for a Fitness for Duty Evaluation even before there was any evidence of impaired work performance. The court noted that “Police officers are likely to encounter extremely stressful and dangerous situations during the course of their work. When a police department has good reason to doubt an officer’s ability to respond to these situations in an appropriate manner, a Fitness for Duty Evaluation is consistent with the business necessity”

The “business necessity standard” articulated in the ADA requires ***objective evidence*** giving rise to reasonable concerns about a ***particular*** individual’s medical fitness to justify an employer-mandated Fitness for Duty Evaluation.

What are the Reasons for Requesting a Fitness for Duty Evaluation?

Now that we've gone over some of the relevant laws that define what a Fitness For Duty Evaluation is, let's talk about what might be some of the reasons an evaluation would be requested.

If it's suspected that psychological disorder, personality disorder, or cognitive disorder are preventing an employee from safety and effectively carrying out the essential duties of their job, a Fitness for Duty Evaluation can be requested.

There generally needs to be a marked negative change in an officer's demeanor or job performance to trigger a Fitness for Duty Evaluation. Changes can include a pattern of interpersonal conflicts with co-workers or supervisors, insubordination, excessive use of sick leave, being intoxicated or hungover on duty, a pattern of poor judgment, sexual inappropriateness, or bizarre or threatening behavior.

Here is an example of a reason why an officer might be referred for a Fitness for Duty Evaluation:

"Officer Jones has been late to shift 5 times this past month, he has been observed on several occasions to be fatigued and in physical distress, as well as to behave in an absent-minded and distracted way, and there have been 3 citizen complaints of abuse of force during the past evaluation period. These represent a deterioration from previous evaluation periods and reflect a pattern of substandard performance in this agency. Upon interview, Officer Jones denies any problem."

The goal of a Fitness for Duty Evaluation is to answer two questions:

1. Does an employee have a psychological problem?
2. Can the employee perform the essential duties of their job in a safe and effective manner?

Both conditions have to be present for an employee to be found unfit for duty.

If an employee has a psychological problem (e.g. depression, anxiety, alcohol abuse) but **no** work problems (or potential for work problems), then they can be referred for mental health treatment and continue to work without restriction. In this situation, the employee **can't** be compelled to seek treatment and treatment would have to be at their discretion.

On the other hand, if an employee has work-related problems but **no** psychological problems, the issues can be handled through remedial or disciplinary channels.

What's considered a psychological problem?

Psychological problems generally fall into these three categories:

1. Clinical syndromes such as depression, anxiety, PTSD, substance or alcohol abuse.
2. Personality disorders.
3. Cognitive disorders (conditions that impact memory, intelligence, problem-solving, and/or reasoning). These are conditions that are due to neurological conditions such as stroke, head injury, brain tumors, dementia, or chronic alcoholism.

Bad personality traits (e.g. unassertiveness, self-centered, authoritarian, indecisiveness) are not considered “psychological problems” and can’t cause someone to be unfit for duty. If an officer with these traits is not able to complete their duties or is having problems at work, it needs to be handled through the department’s disciplinary process.

Officers are required to comply with Fitness for Duty Evaluations and can’t refuse to participate in the evaluation.

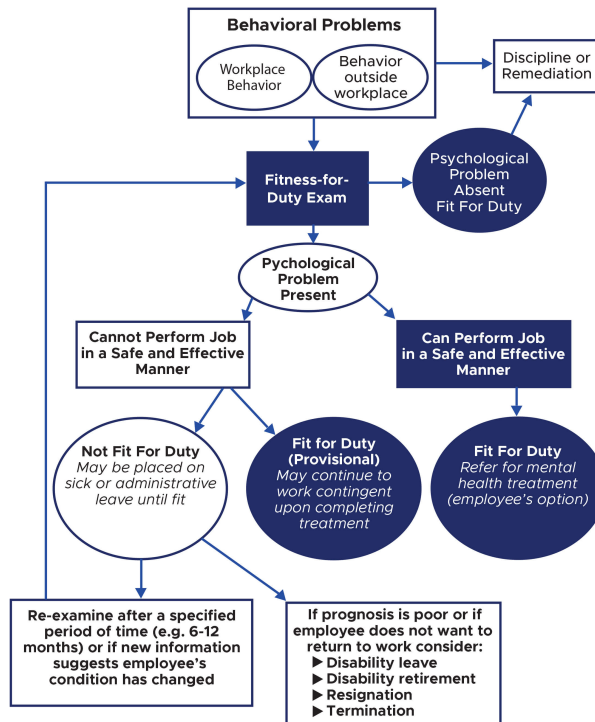
How is a Fitness for Duty Evaluation Completed?

A Fitness for Duty Evaluation typically involves the following:

- The employer will provide us with the following:
 - A written description of the objective evidence giving rise to concerns about the employee’s fitness for duty and any particular questions that the employer would like the evaluator to address.
 - Background and collateral information regarding the employee’s past and recent performance, conduct, and functioning. This includes their job description, performance evaluations, previous remediation efforts, commendations, internal affairs investigations, citizen complaints, use-of-force incidents, disciplinary actions, medical records, or prior psychological evaluations.
- We will administer one or more psychological tests to assess psychological and personality functioning.
- If there are suspected cognitive deficits, we will administer neuropsychological tests to assess for impairments in cognitive functioning.
- We will conduct an in-depth interview to give the employee an opportunity to describe the problems they are having from their perspective.
- After we complete the evaluation, we will write a comprehensive report summarizing our findings, provide recommendations, and submit it to the employer.

What are the potential outcomes of a Fitness for Duty Evaluation?

Possible Outcomes for Fitness for Duty Evaluations



The goal of a Fitness for Duty Evaluation is to answer two questions:

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Both conditions have to be present for an employee to be found unfit for duty.

With that said, there are three potential outcomes following a Fitness for Duty Evaluation.

1. The officer is found fit for duty:

In this case, an officer may continue to work without any restrictions. We can recommend that the officer seek counseling or therapy but they can't be mandated to attend.

For example, the officer has a psychological problem (e.g. acute adjustment disorder following a breakup) but that problem isn't causing significant work-related problems.

2. The officer is found provisionally fit for duty:

If the psychological problem is mild, the prognosis is favorable, and work problems might be minor, we can recommend that the officer return to work contingent on entering and completing appropriate mental health treatment.

For example, the officer has mild anxiety or depression and is somewhat unproductive or irritable at work but not engaging in behaviors that can put themselves or others at risk. In this case, the officer can be mandated to attend treatment but they can continue to work while attending treatment.

The department would have to follow up to determine if the employee is following through with treatment.

3. The officer is found unfit for duty:

If we find that a serious psychological problem exists, we have to determine if the problem will interfere with the employee's ability to safely and effectively perform the essential duties of their job.

Serious mental health conditions like major depressive disorder with suicidal ideation, severe PTSD with frequent flashbacks or unwanted recollections of past events, alcohol dependence, and cognitive disorders would generally not allow the safe and effective performance of essential job functions.

In these cases, an officer can be placed on leave until they recover sufficiently to return to work or pursue other options such as disability leave, disability retirement, or resignation.

In order for an officer to return to work, a second Fitness for Duty Evaluation would have to be conducted to determine if the officer can safely and effectively perform their essential job duties.

Can an officer get reasonable accommodations to continue to work?

Law enforcement is unique because of the responsibilities and demands that are placed on officers. It's rare that an officer can perform their essential job functions or fulfill the business necessity of the organization even with accommodations.

There aren't really any accommodations that would allow an individual to fulfill certain job duties such as carrying a gun or making split-second decisions in a critical situation.

If an officer has a mild psychological problem, modifications such as time off for doctor appointments, flexible scheduling, or changes in supervisory methods can help them return to work.

An officer can be placed on "light duty" and do clerical and non-law enforcement related functions but this isn't required per the ADA since the officer is not able to function in their own job without this accommodation.

Conclusion

When an employer has a reasonable belief that an employee has a psychological condition that impairs their ability to perform essential job functions or poses a direct safety threat, they can require the employee to undergo a fitness for duty evaluation.

The goal of a Fitness for Duty Evaluation is to answer two questions:

1. Does an employee have a psychological problem?
2. Can the employee perform their job in a safe and effective manner?

A Fitness for Duty evaluation by a qualified expert can help a law enforcement agency identify if an employee can safely and effectively perform their duties as a police officer.

[You can click this link to learn more about how to retain us to complete a Fitness for Duty Evaluation.](#)