



Universal Policy
Psychological Fitness for Duty (PFFD)

Updated: July 28, 2020; Previous Version: December 17, 2015

Application

This Universal Policy sets forth the procedures addressing psychological fitness for duty (PFFD) for all classified employees within the state personnel system and non-classified employees in Executive Branch departments. This does not include non-classified employees in institutions of higher education and those reporting to elected officials other than the Governor and Lieutenant Governor. Institutions of higher education and elected officials may opt to implement and follow this Universal Policy, at their discretion.

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I. Definitions

ADA Interactive Process - Per the EEOC¹, the interactive process is “an informal process to clarify what the individual needs and identify the appropriate reasonable accommodation” upon an employer receiving a request for reasonable accommodation. The ‘interactive process’ may be necessary when an employee (or other appropriate party on behalf of the employee) is requesting reasonable accommodation due to psychological impairment.

Appointing Authority/designee - Person within an agency who has the authority to make personnel decisions as provided in State Personnel Director’s Administrative Procedures 1-8 and 1-9². As applied to non-classified employees, this refers to the person within an agency who has the authority to make personnel decisions affecting the subject non-classified employee.

CSEAP - Colorado State Employee Assistance Program is the state employee assistance program provider.

¹ [US Equal Employment Opportunity Commission, 2019.](#)

² Code of Colorado Regulations, State Personnel Board and State Personnel Director, [4 CCR 801-1.](#)

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Direct Threat - Per EEOC guidelines³, a ‘direct threat’ is “significant risk of substantial harm” as displayed by the employee-of-concern through their behaviors or interactions associated with their workplace and job duties.

EEOC - [US Equal Employment Opportunity Commission](#)

Employee-of-concern - Employee that demonstrates behavioral problems, concerning personal conduct, and/or unacceptable work performance that may lead the employer to request a Psychological Fitness for Duty (PFFD) evaluation.

Employer - Also referred to as ‘referring agency’, ‘agency/department’ throughout this document. The employer is the agency or department that employs the employee-of-concern who is the subject of PFFD evaluation.

Evaluator, Evaluation - A licensed psychologist or psychiatrist - as identified by CSEAP (though not employed, contracted, or otherwise compensated⁴ by CSEAP) - who engages the employee in psychological testing (evaluation) to determine fitness for duty.

Expert guidance - Use of a subject matter expert, such as appropriate staff of CSEAP, Division of Human Resources Consulting Services, or the Office of the Attorney General, to offer guidance in decision-making associated with PFFD.

Health care treatment - For the purposes of PFFD, ‘treatment’ refers to psychological or emotional care, as provided by a licensed mental health professional, typically as recommended by the PFFD evaluator.

Impaired/Impairment - For the purposes of this Universal Policy on PFFD, ‘impaired’ or ‘impairment’ refers to the employee’s noticeable and/or observable inability to perform their essential work functions (e.g. tasks, organization of tasks or duties, interacting with others in or the environment associated with work duties, etc.) due to mental health, psychological, neurological, or physiological concerns.

Performance management, performance management process ([Board rule 6-3](#)⁵) - Communication of performance expectations and standards including corrective and disciplinary actions ([Board Rule 6-8 through Board Rule 6-15](#)⁶).

PFFD - Psychological Fitness for Duty; For the purposes of this Universal Policy on PFFD, the acronym ‘PFFD’ is used throughout this document to describe the policy and/or evaluations associated with PFFD.

³ [US Equal Employment Opportunity Commission, 2000.](#)

⁴ The referring agency (employer) pays for the cost of the evaluator/evaluation; this payment is coordinated by CSEAP though managed directly between the referring agency (employer) and the evaluator (or employer of the evaluator).

⁵ Code of Colorado Regulations, State Personnel Board and State Personnel Director, [4 CCR 801-1.](#)

⁶ Code of Colorado Regulations, State Personnel Board and State Personnel Director, [4 CCR 801-1.](#)

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Psychological - The mental and/or emotional state of a person.

Subject matter expert(s) - Professionals from various departments or agencies that can provide subject matter information or guidance on PFFD, performance management, the ADA interactive process, or other topics that may frequently be suggested or discussed as part of the process of pursuing PFFD.

Threat assessment - A process of identifying, assessing, and managing threats to the workplace. This process includes the work of agency-appointed professionals, in consultation with subject matter experts from other agencies or organizations, to receive threat reports, investigate and analyze the threat(s), and manage threats appropriately. Threats may be direct (see ‘direct threat’ as defined above) or indirect including vague or veiled spoken, written, or otherwise communicated messages that appear to be threatening in nature.

II. Statement of Purpose

The purpose of this policy is to establish consistent procedures for Psychological Fitness for Duty (PFFD) evaluations. The decision to conduct PFFD evaluations is an extraordinary action and should be made carefully on a case-by-case basis and in consultation with the employing agency, the Colorado State Employee Assistance Program (CSEAP), and, as appropriate, the Division of Human Resources (DHR) Consulting Services and the Office of the Attorney General. Under no circumstances does this policy establish a requirement that a PFFD evaluation be conducted when general wellbeing concerns arise regarding an employee. Likewise, this policy does not serve as a substitute for the ADA interactive process.

This policy is intended to provide a mechanism for the objective assessment of an employee’s psychological capacity to perform the essential functions of their position when, based on the employee’s conduct, behavior, and circumstances, there is a reasonable belief that the employee’s ability to perform essential job functions is impaired, or the employee may pose a direct threat to the safety of self, other employees, or the public.

Use of PFFD does not relieve workplaces from conducting a threat assessment or from following standards set in Universal and/or agency Workplace Violence policies. Likewise, agencies should apply standards established in Universal and/or agency Drug and Alcohol Use policies when an employee is suspected of using substances in a manner that poses work-related safety and health risk to self, other employees, or the public. This policy does not substitute for effective [performance management](#) and, in the event it is used to the exclusion of appropriate performance management, may hinder the overall performance management process.

PFFD evaluations must be “job-related ... consistent with business necessity” ([EEOC, 2000](#)) and managed with attention to both employee confidentiality and workplace safety. Because understanding and managing a PFFD evaluation involves a complex set of tasks dependent on a professional level of knowledge and subject matter expertise on mental and behavioral health, CSEAP is responsible for the overall coordination of the PFFD evaluation process for the State.

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III. Overview

1. An appointing authority/designee may request a PFFD evaluation when they reasonably believe, based upon objective information, that expert guidance is needed to determine if psychological or cognitive factors, which may or may not include substance use, are causal or contributing to impairment or threat as follows⁷:

- (a) An employee’s ability to perform essential functions of their position is impaired due to a psychological condition; and/or
- (b) an employee poses a direct threat to self or others due to a psychological condition.

2. If an employee’s performance or behavioral problems rise to the level of unacceptable work performance or unacceptable personal conduct, management retains full authority and discretion, and are strongly encouraged, to address these behavioral and/or performance concerns per their performance management policies and, as applicable, the [State Personnel Board Rules and Personnel Director’s Administrative Procedures](#) regardless of utilization of the PFFD process.

3. Refusal by the employee to comply with a request for a PFFD evaluation may be grounds for corrective and/or disciplinary action, up to and including termination, at the discretion of the Appointing Authority.

4. In the absence of sufficient information to support the need or justification for a PFFD evaluation, CSEAP will assist the appointing authority/designee in identifying other appropriate options for addressing behaviors of concern.

IV. Responsibilities of Parties

Employee Responsibilities

Employees are responsible for safely and satisfactorily performing their job duties during the entire time they are employed by the State of Colorado.

Employees are expected to inform their Appointing Authority/designee if they become aware of a condition or circumstance that may impair their ability to perform their job duties or that may pose a direct threat to self or others.

Employees are expected to comply with this policy and participate meaningfully and timely in the PFFD evaluative process as directed by their Appointing Authority.

Employees bear financial responsibility for health care treatment (*health care treatment* is distinct from the cost of the PFFD evaluation, which is the responsibility of the employing department) associated with PFFD recommendations. In addition, employees bear the financial responsibility for a second opinion should they

⁷ [U.S. Equal Employment Opportunity Commission Guidance on Disability Related Inquiries and Medical Examinations of Employees under the ADA, 2000.](#)

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request this as part of the process - *the state agency must approve the provider and process of obtaining a second opinion.*

State Agency/Departmental (Employer) Responsibilities

The state agency initiates the request for PFFD by contacting CSEAP. The Appointing Authority (or designee) should be primarily responsible for making the request for PFFD. The Appointing Authority will be encouraged to include their Human Resources professional(s) and, as appropriate, the Office of the Attorney General, in identifying alternatives to PFFD, including performance management and/or the ADA interactive process, if applicable. The agency’s Human Resources professionals may be involved in employer coordination of the PFFD process including managing appropriate leave throughout the process.

The cost of the PFFD evaluation is the responsibility of the employing department or agency (employer).

A copy of the PFFD evaluation report is retained in the employee’s medical file in the employer’s Human Resources office and is stored separately from the employee’s personnel file.

If an employee is dissatisfied with the result of the PFFD evaluation, the employee may request a second opinion. The provider for and process of obtaining a second opinion is subject to the approval of the state agency. Any second opinion must be provided by a similarly credentialed professional, follow a similar process (as the original evaluation), and must include a review of the original evaluation and supporting information. The cost of the second opinion is borne by the employee.

The employer is responsible for drafting or writing return to work agreements.

CSEAP Responsibilities

CSEAP is responsible for the overall coordination of the PFFD evaluation process and for providing consultation to appointing authorities/designees and human resource professionals.

CSEAP will provide consultation to the referring department (employer) in order to assist the employer in determining the appropriateness of using the PFFD process, understanding the results of the evaluation, and, as applicable, offering strategies for an employee’s return to work⁸.

CSEAP will meet with the employee-of-concern (party referred for PFFD) to explain the PFFD process, coordinate the referral to a third party evaluator, provide evaluation results, and assist with multi-party communication as appropriate and necessary. Due to potential for conflict of interest, CSEAP does not administer psychological evaluations and does not provide any treatment/intervention as recommended by the evaluator. Referral to the PFFD process does not preclude the employee from using other available CSEAP services; however, any other CSEAP services provided to the employee-of-concern are separate from and exclusive of the PFFD process.

⁸ CSEAP does not draft or write return to work agreements - this is the responsibility of the employer in consultation with CSEAP and/or the PFFD evaluator.

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DHR Consulting Services Responsibilities

Division of Human Resources (DHR) Consulting Services is responsible for providing human resource (HR) consultation to agency HR leaders, including Human Resource professionals, on complexities associated with personnel policies and procedures. DHR Consulting Services is available to state agency HR professionals throughout the PFFD process.

V. Governing Orders and Policies

[Executive Order D000291](#) - Substance Abuse Policy for Colorado State Employees

[Executive Order D02309](#) - Establishing a Policy to Address Workplace Violence, Including Domestic Violence Affecting the Workplace

[Executive Order D 2013-003](#) - Establishing Policies for Non-Classified Employees in Executive Branch Departments

[State Department of Personnel Board Rules and Personnel Director's Administrative Procedures](#)

[Universal Policy Drug and Alcohol Policy for State Employees](#)

[Universal Policy to Address Workplace Violence Including Domestic Violence Affecting the Workplace](#)

VI. Disclaimers

Subsequent revision to rule or law could cause conflicts in this information. If a rule or law conflicts with this Universal Policy information, the law and rules are the official source upon which to base ruling or interpretation. This document is an interpretation - not a contract or legal advice. If you need further interpretation, please contact your agency Human Resources department or unit.

VII. Citations

Equal Employment Opportunity Commission, [EEOC Guidance on the ADA and Psychiatric Disabilities](#), 2019.
Equal Employment Opportunity Commission, [Enforcement Guidance, Disability-related Inquiries ...](#), 2000.

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This signature page is required for validation of review.

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Certified current:	

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