

POLICY 9.19 - PSYCHOLOGICAL FITNESS FOR DUTY EVALUATIONS

<p>POLICY OF STATE OF DELAWARE DEPARTMENT OF CORRECTION</p>	<p>POLICY NUMBER 9.19</p>	<p>PAGE NUMBER 1 of 4</p>
	<p>RELATED ACA STANDARDS: NONE</p>	
<p>CHAPTER: 9 HUMAN RESOURCES AND EMPLOYEE-MANAGEMENT RELATIONS</p>	<p>SUBJECT: PSYCHOLOGICAL FITNESS FOR DUTY EVALUATIONS</p>	
<p>APPROVED BY THE COMMISSIONER AND EFFECTIVE THIS DATE:  11/23/2016</p>		
<p>APPROVED FOR PUBLIC RELEASE</p>		

I. AUTHORITY: State of Delaware Merit Rule 12.4; Applicable Collective Bargaining Agreements

II. PURPOSE: To establish Department of Correction guidelines for referral of employees for psychological evaluations to determine if they are fit to perform all or some of the responsibilities of their jobs.

III. APPLICABILITY: All Department of Correction employees.

IV. DEFINITIONS:

Fitness for Duty: Employee’s ability to perform job tasks which are essential to the effective performance of a particular job, and to interact with other staff and offenders as necessary.

Psychological Evaluation: Assessment by a licensed psychologist which includes administration of appropriate psychological tests, at least one in-person interview with the employee, and a review of any other information deemed appropriate.

V. POLICY: It is the policy of the Department of Correction to minimize the risk that psychological impairments of employees jeopardize the safety and security of other employees, the public or offenders. When employee performance, behavior, conduct or other documentation establishes that the potential for such an inordinate risk exists, the Department will utilize the services of a licensed clinical or forensic psychologist to evaluate the employee and take necessary and appropriate actions.

VI. PROCEDURES:

A. When Wardens, Human Resources or Section Administrators become aware of employee behavior or conduct or have other documentation (e.g., Incident Reports, employee correspondence) that suggests that an employee is experiencing psychological problems that interfere with or prevent an employee

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from functioning on the job or otherwise present a danger to the workplace for psychological reasons, they will report that behavior or conduct and transmit the appropriate documentation to the Director of Human Resources (HR Director) by the next workday. Wardens and Section Administrators have the discretion to remove the employee from the workplace prior to consultation with the HR Director. The employee will be on paid leave pending a determination from the HR Director.

- B.** Employees involved in a critical incident that may be deemed traumatic (i.e. inmate suicide, attempted inmate suicide or discharge of a weapon) should be recommended by the Warden or Section Administrator for an Officer Wellness Assessment. The HR Director will contact the licensed psychologist with a detailed account of the incident to determine if the employee should be removed from the workplace pending the outcome of the evaluation.
- C.** The HR Director will contact a licensed forensic or clinical psychologist to determine if the behavior or conduct warrants a fitness for duty psychological evaluation. The HR Director and psychologist will also determine if the employee should be removed from the workplace, or if other interim measures are warranted (e.g., pulling weapon's card) pending the outcome of the evaluation. If employees are removed from the workplace, they will receive their regular pay or be placed on sick leave, annual leave or rescheduled holidays, depending on the circumstances, as long as they cooperate with the evaluation process. If employees fail to cooperate with the evaluation process, they will be subject to discipline in accordance with their union contract, or the Merit Rules for employees not covered by a collective bargaining agreement.
- D.** If a fitness for duty psychological evaluation is deemed to be justified, the HR Director will prepare a letter to the Department-selected psychologist. The letter must specify the reasons for the evaluation and describe the employee's job responsibilities with supporting documentation attached. The employee will receive a courtesy copy of the letter with instructions to contact the psychologist. On the advice of the psychologist, the HR Director may omit selected information from the letter.
- E.** Prior to transmitting the letter, the HR Director or designee will discuss the recommendation with the employee to explain the reasons for the referral and the employee's responsibilities relative to the process and respond to any questions from the employee. The HR Director will also consider any information provided by the employee. If the employee is in a collective bargaining unit, the employee may have union representation, if desired.
- F.** The requesting budget unit will pay all costs associated with the evaluation.
- G.** The employee will schedule the evaluation in accordance with instructions included in the referral letter. Employees who continue to work during the

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evaluation process will schedule appointments on their workdays and will be excused from the workplace for the time of the interview with reasonable travel time to and from the interview. Non-day shift employees will be excused for the same equivalent of time on the day of the appointment. Employees are encouraged to utilize a State vehicle to attend the appointment. If a State vehicle is unavailable, employees will be reimbursed for travel expenses in the same manner as external training.

- H.** Employees will comply with requests from the psychologist for other medical or mental health documentation. Such documentation will not be shared with the Department except on a need-to-know basis.
- I.** The psychologist will provide the evaluation report to the HR Director. The employee may designate report recipients; however, the Department will not provide a copy of the report directly to the employee. In most instances, the Department will provide a copy through the employee's legal counsel or health care provider. The report will remain confidential, and information will only be shared on a need-to-know basis. The report will be maintained in a file separate from the employee's Personnel File.
- J.** An employee may request a second opinion from a licensed forensic or clinical psychologist of the employee's choosing. However, the evaluation must be conducted on the employee's time, and the employee must bear all costs of the second opinion. The second opinion must be in the form of a psychological evaluation.
- K.** If the first and second opinion psychologists do not agree, the two psychologists will select a psychologist for a third opinion. The third evaluation will be conducted on 50% employee time and 50% Department time, and the cost will be shared equally between the Department and the employee. The third opinion must also be in the form of a psychological evaluation.
- L.** The Warden or Section Administrator will meet with the HR Director to discuss the results of the evaluation(s).
- M.** The Department and employee must comply with the final results of the evaluation process. If it is determined that the employee cannot continue to work in his or her position, the Department will offer the following options:
 - 1. Disability pension or Short-Term/Long Term Disability if the employee is eligible.
 - 2. Immediate separation.
 - 3. A delayed separation of up to 90 days (longer with consent of the Department) while the Department attempts to identify an alternate position (same paygrade or lower) in the Department or elsewhere in State government. The alternate position must satisfy the requirements of the evaluation.

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If it is determined that the employee may be able to return to the workplace following treatment or therapy, the employee may request to use sick or annual leave or leave without pay, as appropriate. Such requests must be for reasonable time periods, not to exceed one (1) year. In lieu of leave, the Department may consider temporary light or alternative duty assignments, in accordance with Policy 9.15.

The Department will also consider reasonable accommodations, as recommended by the psychologist, to retain employees in their present positions. Accommodations must allow employees to perform all of the essential functions of their jobs.