

## **Practical Steps for Addressing Fitness-For-Duty (FFD)**

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### **Introduction**

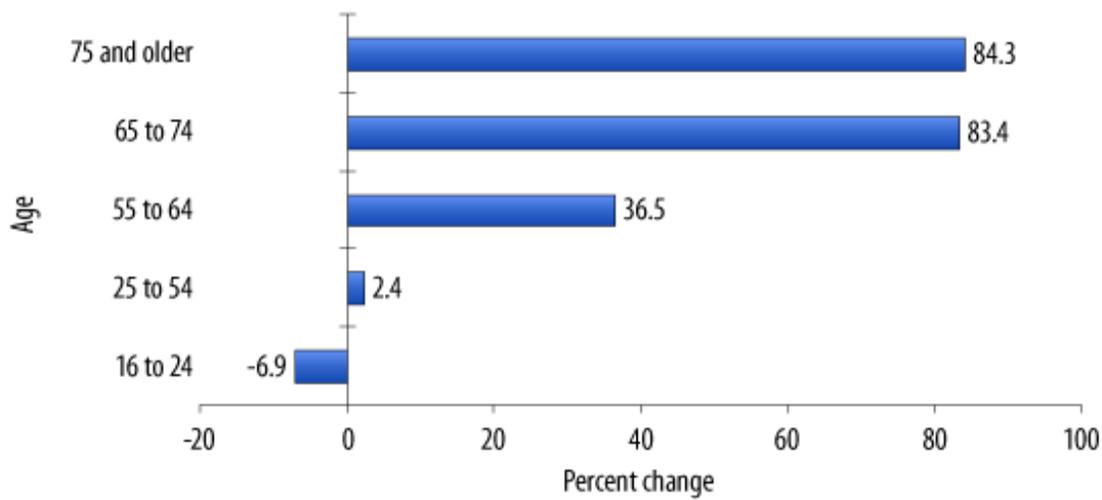
Every company must have a healthy and productive workforce in order to be successful. An employee who is fit-for-duty (FFD) means that the individual has the physical, mental, and emotional capabilities to perform the essential functions of the job. Performance of these job tasks must not threaten the safety or health of the individual, co-workers, or the general public.

### **The Challenges of an Aging Workforce**

In 2009, the U.S. Administration on Aging estimated that almost 40 million people in the U.S. were over the age of 65 (12.9% of the U.S. population). This number will swell to 72 million people by 2030 and will represent approximately 19% of the U.S. population. The University of North Carolina Institute on Aging anticipates that 45% of Americans will retire at a later age than they originally expected, and that 70%-75% of Americans will continue to work after they officially “retire.”

The motivation to continue to work beyond the age of 65 will be driven by two factors. First, many Americans have not been able to save enough money for a comfortable retirement, and will need to supplement their income. Second, many older individuals realize the social and psychological benefits of continuing to work and to be productive. The net effect will be that a growing percentage of older Americans will be part of the U.S. workforce (see Figure 1).

## Projected percentage change in labor force by age, 2006-2016



Source: U.S. Bureau of Labor Statistics

www.bls.gov

**Figure 1. Projected percentage change in labor force by age, 2006-2016.**

Since an older workforce will have a longer list of chronic medical conditions than their younger counterparts, evaluating and maintaining fitness-for-duty for these older workers will be an even greater challenge going forward. A recent study in the United Kingdom and Europe demonstrated that the incidence of lost time work related injuries, days away from work, and work-related injury recurrences all increased with the age of the workers.<sup>1</sup>

## The Challenges of Presenteeism

Another factor to consider in discussing fitness-for-duty is the problem of “presenteeism”. This term relates to an employee who appears to be physically, mentally, and emotionally capable of being at work but is less productive due to a health problem. Unlike absenteeism, presenteeism often goes unnoticed because the employee is physically present at work. Also, in many job categories, productivity is difficult to measure, and so a loss of productivity can easily go unnoticed. Presenteeism can result from:

- Stress
- Illness
- Medications
- Substance abuse
- Mental illness
- Family issues

A recent study in the United Kingdom surveyed over 6000 employees at seven different organizations and found that nearly 60% of employees reported presenteeism over a three-month

<sup>1</sup> Berecki-Gisolf J, Clay, FJ, Collie, A, McClure, RJ. “The Impact of Aging on Work Disability and Return to Work.” *Journal of Occupational and Environmental Medicine*, March 2012, Vol. 54, Number 3.

period.<sup>2</sup> Presenteeism can have a significant, yet hidden, economic impact. It is estimated that the loss in productivity costs in excess of \$150 billion per year in the U.S.<sup>3</sup> Presenteeism also takes a toll on safety. A study in 2012 showed that workers who had paid sick leave were 28% less likely to sustain a non-fatal injury than workers who did not have sick-leave.<sup>4</sup>

## Triggers for Fitness-For-Duty Exams

Many events can raise a “red flag” about a worker’s fitness-for-duty. A significant health problem will sometimes be uncovered in routine exams such as a pre-placement, return-to-work, medical surveillance, hazmat, commercial driver, or respirator certifications. In some cases, the employee directly or indirectly raises concerns about his or her FFD. For example, the employee:

- May minimize obvious health problems
- May exaggerate health problems
- May be taking frequent sick-leave or unpaid leave
- May be trying to return to work too quickly after an injury or illness
- May be making more errors than usual at work
- May be manifesting reduced productivity
- May be experiencing more work-related injuries or near-misses

In other cases, the employer may raise concerns about the employee’s FFD. For example, the employer:

- May want to minimize the risk of injury to the employee or to co-workers
- May be concerned about the employee putting the public at risk
- May be concerned about company liability or incurring workers’ compensation costs
- May want to clarify poor job performance versus a legitimate health problem

## Fitness-For-Duty Policy

A fitness-for-duty policy must take into account other relevant legal requirements such as the provisions of the Americans with Disabilities Act (ADA), the Family Medical Leave Act (FMLA) and guidelines of the Equal Employment Opportunity Commission (EEOC). A high quality FFD policy should include the following tenets:

1. Must be uniformly applied to all employees and not be discriminatory
2. Must be based on the specific and well-defined essential job functions
3. Should provide a concise FFD form for the treating healthcare provider to complete
4. Should be readily available to employees and supervisors
5. Managers and supervisors should receive appropriate FFD policy training

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<sup>2</sup> Robertson, I, Leach, D, Doerner, N. Smeed, M. Poor Health but Not Absent. *Journal of Occupational and Environmental Medicine*. November 2012, Vol. 54, Number 11.

<sup>3</sup> Widera, E., Chang, A., and Chen, H.L. “Presenteeism: A Published Health Hazard.” *J Gen Intern Med*, 2010 Nov 25 (11): 1244-7.

<sup>4</sup> Asfaw, A., Cryan, R., Rosa, R. “Paid Sick Leave and Non-Fatal Occupational Injuries.” *American Journal of Public Health*, September 2012, Vol. 102, No. 9, e59-e64.

FMLA does allow a company to seek clarification of the returning employee's FFD. The employer must have the employee's written consent. The employer can delay the employee's return-to-work from a medical leave until the FFD form is completed by the provider. If the treating provider needs to obtain additional evaluation or testing, the employee (and not the employer) is responsible for any out-of-pocket expenses.

## **Pitfalls of FFD Evaluations by “Treating Physicians”**

The treating physician may not always provide an impartial and informed opinion with regard to his or her patient's FFD. This is because the employee is the physician's “customer” and the physician may assume the role of the employee's “advocate.” In addition, the treating physician may be unfamiliar with the employee's company and with the specific job tasks being performed. The physician may be provided inaccurate or incomplete information about the essential job functions by the employee. The treating physician typically does not know to what extent the employer can accommodate job restrictions.

An occupational health physician (OHP) can be an invaluable resource in the FFD process. The OHP is more knowledgeable about the work environment and can be more impartial in making FFD determinations. The OHP is better able to make specific recommendations for work restrictions and job accommodations. The OHP is more willing to review job descriptions and to contact employers for more information or to discuss FFD concerns.

Many companies, both large and small, utilize the services of a corporate medical consultant (CMC). The CMC is typically a board-certified occupational health physician specialist who becomes very familiar with the company's business activities, and with the specific jobs being performed day to day. The CMC is aware of the physical demands of each job, any potential hazards of the job, and the ability of the company to accommodate work restrictions. The CMC understands the workforce demographics, labor environment, recent hiring or layoffs, and whether or not an employee is having job performance issues. The CMC is in the unique position to consider what is in the best interest of *both* the employee and the employer so a “win-win” scenario can be achieved. The CMC is also able to contact the treating physician or specialist to clarify complex medical issues.

## **Fitness-For-Duty Requires a Multidisciplinary Team**

Many stakeholders at a company share an interest and critical role in the FFD process. It is essential to identify a team that includes:

- The occupational health physician (OHP) and/or the corporate medical consultant (CMC)
- Human Resources
- Environmental Health and Safety
- Legal/Labor Relations
- Supervisor/Manager
- Risk Manager

The FFD team should avoid some of the common pitfalls in FFD evaluations. For example, the team should avoid inconsistency in applying the FFD policy to employees. Non-healthcare professionals should not seek, nor be privy to, confidential employee health information unless specifically released to the employer by the employee. FFD evaluations should never be used punitively or as a substitute for appropriate intervention by the Human

Resources department for poor job performance. Lastly, the employer is not required to change the essential job functions in order to accommodate an employee. The employer must only provide reasonable accommodation in order for the employee to perform the essential job functions.

## Conclusions

The U.S. workforce is aging, which inevitably will result in more frequent questions about employees' fitness-for-duty and the need for medical evaluation and job accommodation. A less obvious FFD concern is the problem of presenteeism, which is an often under-recognized problem in the workplace that negatively impacts productivity. Companies must have a comprehensive program for assessing FFD in their employees whenever FFD concerns arise. A multidisciplinary approach is essential in order to reach a "win-win" for the employee and the employer.

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