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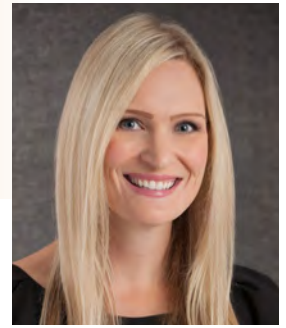
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## Technology & Integration

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# Fitness-for-Duty Examinations and the Interactive Process

Simply put, a fitness-for-duty (FFD) examination is a tool to use when you are stuck. This can be when a case is not progressing toward return to work, involves multiple comorbid conditions, or even when it appears to be a “simple” case.

This is the time to begin the interactive process, which requires clear medical information as a basis for reasonable accommodation decisions. Obtaining this data is often a roadblock for employers. The key to FFD examinations is understanding how and when to best use this tool and what information it should yield.

An employer can coordinate an FFD examination with a qualified healthcare provider whenever the need to do so is job-related, is consistent with business necessity,<sup>1</sup> and there are objective facts<sup>2</sup> that pose concerns about safety or an employee’s ability to fully perform the duties of the job. FFD examinations are used when employers need clarification on work restrictions, leave needs and/or duration, and:

- an employee is unwilling to have their healthcare provider supply this information, or the provider is unable or refuses to do so;
- a provider supplies unclear information;
- the provider’s information seems

unreliable, inconsistent, or illogical based on past information (a judgment call that carries more risk); or

- multiple healthcare providers are involved, causing confusion.

The Equal Employment Opportunity Commission (EEOC) requires an employer to have “reasonable belief” based on “objective evidence” that an employee’s work may be impacted by a disability. Concern for an employee’s general welfare is not grounds for an FFD examination. Further, an FFD examination would not be used unless an employee has triggered the Americans with Disabilities Act (ADA), and there is a concern the actual or perceived medical condition is impacting the employee’s ability to fully or safely perform the work assigned.

The ADA allows an employer only two lines of inquiry:

- 1) Does the employee have a disability that substantially limits performance at work, and if so, what are the employee’s work restrictions, functional limitations, or leave needs, and
- 2) the duration of work restrictions, functional limitations, or leave needs.

You are not asking for the name of the employee’s disability or treatment specifics.

Before conducting an FFD examination, first attempt to gather this infor-

mation from the employee’s healthcare provider via a letter and questionnaire. If the provider does not respond or is not sufficiently clear, you should request clarification before advancing to an FFD examination.

Exceptions to this practice include when an employee refuses to allow their provider to participate or does not have a provider, or a significant, immediate safety concern exists. In these cases, employers may go straight to an FFD examination. Document in detail the business needs that require this, and include notes on why medical clarification was unavailable from the employee’s healthcare provider.

The employer pays for the FFD examination, which may not yield the medical opinion you prefer — but the FFD examiner’s opinion supersedes all others. Your goal is to make the right decision based on objective facts from a neutral healthcare provider. Once you have this clear data point and know how the disability impacts the traditional job performance, you are prepared to move forward and confidently make reasonable accommodation decisions.

## References

1. 42 USC § 12112(d)(4)(A). See second page.
2. The EEOC’s objective fact guidance can be retrieved from <https://www.eeoc.gov/policy/docs/guidance-inquiries.html>.