

Functional Capacity Evaluation

1. What is a Functional Capacity Evaluation (FCE)?

Also referred to as a functional capacity assessment, an FCE is a comprehensive, objective medical evaluation of an individual's abilities when an agency wishes to ensure an employee can safely perform work-related functional tasks. FCEs may be used for a variety of reasons, including:

- evaluating whether an injured or ill employee can safely perform the duties of the position he or she occupies due to an observed impairment
- determining if the employee may return to work at less than full duty or if a workplace accommodation is appropriate
- supporting an employee's request for a reasonable accommodation when the disability or need for an accommodation is not known or obvious and determining an effective, reasonable accommodation under the Americans with Disabilities Act (ADA)

2. When may an agency require an FCE?

An agency that reasonably believes an employee poses a direct threat to him or herself or others, may require an employee to be examined by an appropriate health care professional. The determination that an employee poses a direct threat must be based on an individualized assessment of the employee's present ability to safely perform the essential functions of the job. This assessment must be based on a reasonable medical judgment that relies on the most current medical knowledge and/or best objective evidence.

3. May an agency require an FCE when an employee requests a reasonable accommodation under the ADA?

No. An agency is only entitled to reasonable documentation to establish that an employee has a disability under the ADA that necessitates a reasonable accommodation.

An employer cannot ask for documentation when: (1) both the disability and the need for reasonable accommodation are obvious, or (2) the individual has already provided the employer with sufficient information to substantiate that they have an ADA disability and need the reasonable accommodation requested.

However, when a disability and effective accommodation are not obvious, an agency may require reasonable documentation through the "interactive process" to determine: (1) whether the accommodation is needed, and (2), if needed, what accommodation would be effective. If the medical opinion obtained through an employee's health care provider contradicts information known to or observed by the agency, an FCE may be required at the agency's expense.

4. What medical information does the FCE request? Does this violate an employee's privacy rights? [Equal Employment Opportunity Commission \(EEOC\) disability-related inquiry or medical examination standards](#) provide disability-related inquiries or medical examinations are limited to those inquiries which are *"job-related and consistent with business necessity."*

The agency is entitled only to the information necessary to determine whether the employee can perform the functions of the position he or she occupies and must include a medical release signed by the employee.

An employee's job-related functional duties may include physical demands of the position, such as bending, balancing, lifting, and reaching, as well as cognitive/mental work-related demands of the employee's job duties, such as concentration, memory, independent decision making and relevant environmental factors (e.g., cold, hot, noise levels, etc.).

5. Who completes the FCE?

FCEs are completed by licensed physicians and medical practitioners.

6. Who pays for the FCE?

The agency is responsible for the cost of the evaluation and related fees if the agency requires the employee to undergo an FCE.

7. Does the employee have to request appropriate accrued leave to attend an FCE appointment?

Employees shall be released from work without charge to leave or loss of pay for the evaluation and reasonable travel time when an FCE is required by the agency.

Employees electing to obtain an FCE, such as a second opinion, must request appropriate leave and obtain approval for attending such evaluations.

Employees on a continuous leave of absence shall be charged appropriately accrued paid or unpaid leave. Leave utilized for this reason shall be charged to the employee's leave entitlement.

8. May an agency require an employee, who it reasonably believes will pose a direct threat to him or herself or others, be examined by an appropriate health care professional of the agency's choice?

Yes. The determination that an employee poses a direct threat must be based on an individualized assessment of the employee's present ability to safely perform the essential functions of the job. To meet this burden, an agency may want to have the employee evaluated by a health care professional of its choice who has expertise in the employee's specific condition and can provide medical information that allows the agency to determine the effects of the condition on the employee's ability to perform his or her job. An agency also must pay all costs related to the FCE request.

An agency should be cautious about relying solely on the opinion of its own health care professional that an employee poses a direct threat where that opinion is contradicted by documentation from the employee's own treating physician, who is knowledgeable about the employee's medical condition and job functions, and/or other objective evidence. In evaluating conflicting medical information, the agency may find it helpful to consider: (1) the area of expertise of each medical professional who has provided information; (2) the kind of information each person providing documentation has about the job's essential functions and the work environment in which they are performed; (3) whether a particular opinion is based on speculation or on current, objectively verifiable information about the risks associated with a particular condition; and, (4) whether the medical opinion is contradicted by information known to or observed by the agency (e.g., information about the employee's actual experience in the job in question or in previous similar jobs).

9. May an agency require an employee to have an FCE performed by a health care professional of the agency's (rather than the employee's) choice when the employee requests a reasonable accommodation?

The ADA does not prevent an agency from requiring an employee to go to an appropriate health care professional of the agency's choice if the employee provides insufficient documentation from his or her treating physician (or other health care professional) to substantiate that he or she has an ADA disability and needs reasonable accommodation. However, if an employee provides insufficient documentation in response to the agency's initial request, the agency should explain why the documentation is insufficient and allow the employee an opportunity to provide the missing information in a timely manner. The agency also should consider consulting with the employee's doctor (with the employee's consent) before requiring the employee to go to a health care professional of their choice.

10. How long does an employee have to get the FCE completed by a health care professional?

The agency should request the health care professional return the FCE to the agency human resources representative directly, within fifteen (15) calendar days, whenever possible. The employee must be permitted at least fifteen (15) calendar days to have the FCE returned. However, circumstances may exist beyond the employee's control that prevent the employee from providing the required FCE within the established timeframe. Agencies should work with an employee who is demonstrating a good faith effort in obtaining the documentation.

11. What happens if an agency disagrees with the assessment of the initial FCE?

An agency that reasonably believes an employee poses a direct threat to themselves or others, or when a medical opinion from the employee's own treating physician/practitioner contradicts information known to or observed by the agency, may require the employee to obtain a second or third opinion by a health care professional of the agency's choice. An agency requiring an FCE must pay for the FCE and related office fees associated with the employee's visit(s) to the agency health care professional.

12. What happens if the employee disagrees with the FCE results?

An employee who chooses to obtain a second or third opinion is responsible for the cost associated with the evaluation. An agency is only required to pay for an FCE when it is performed at the request of the agency.

13. Can medical and disability-related inquiries be made following an employee's return from a leave of absence?

An agency's ability to request an FCE following a leave of absence depends on the conditions of the leave.

When an employee seeks to return to work from leave due to medical necessity that was not designated as leave under the federal Family and Medical Leave Act (FMLA), such as extended sick leave, or unpaid leave under the provisions of the *Administrative Rule*, an agency may require the employee to provide medical documentation indicating they have been released by the treating health care provider to return to work at full or less than full duty. If the medical release contradicts information known to or observed by the agency, or an agency has a reasonable belief the employee's ability to perform the functions of

the position is impaired by a medical condition, the agency may require at the agency's expense the employee to obtain an FCE prior to their return to work.

An employee returning to work following a leave of absence protected under the federal FMLA may be required, in accordance with the FMLA regulations, to obtain a Fitness-for-Duty certification to be restored to employment at the employee's expense.

Employees returning from FMLA leave may only be required to obtain a Fitness-for-Duty certification if the agency notified the employee of the requirement at the time of the FMLA designation. The notification requirement is available on the DOP-L10, Designation Notice. An agency should determine if a new designation notice requiring Fitness-for-Duty certification prior to return is appropriate when the conditions for which an employee requested leave under FMLA changes (E.g., anticipated need changes from intermittent leave to continuous).

FMLA regulations distinguish the Fitness-for-Duty certification apart from a medical evaluation that may be required at the agency's expense. Following the employee's return from FMLA leave, if an agency has a reasonable belief the employee's ability to perform the functions of the position he or she occupies is impaired by a medical condition, the agency may make disability-related inquiries or require the employee to submit to an FCE.

14. Where can I find additional information about disability-related inquiries, medical examinations, and job accommodations?

Additional resources may be found by visiting:

Equal Employment Opportunity Commission (EEOC) [EEOC Disability-Related Resources](#)

[EEOC Enforcement Guidance: Disability-Related Inquiries and Medical Examinations Under the Americans with Disabilities Act \(ADA\)](#)

[EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA](#)

[Job Accommodation Network \(JAN\)](#), [JAN Interactive Process](#)

U.S Department of Labor (DOL) [Disability Resources](#), [Employee Rights](#), [Employers' Responsibilities](#), [Job Accommodations](#)

DOL, [Family and Medical Leave Act](#)

For more information on returning to work following a medical leave of absence or workers' compensation, please see the DOP's [Supervisor's Guide to Returning to Work](#).