

330.100 Evaluation of the Ability to Work

Executive Order No. 42, issued 12/18/2014; Amended 7-28-20.

- A. **Purpose:** This policy addresses the process and criteria to be used when determining what actions are appropriate with respect to a faculty member, either regular or non-regular, who may be unable to perform the essential functions of the faculty member's position, despite reasonable accommodations. This policy applies, and can be implemented, only in those situations in which observable conduct has raised a serious concern as to whether a faculty member is able to perform the faculty member's essential functions. In accordance with the process and criteria described below, the faculty member may be referred for a fitness for duty evaluation. Application of this policy is not intended as a substitute for other University policies or procedures related to performance, including those imposed because of clinical or professional requirements. In addition, application of this policy is not a substitute for discipline or action taken because of performance deficiencies unrelated to ability.
- B. **Scope:** This policy is applicable to faculty members, either regular or non-regular, described in Section 310.020A of the Collected Rules and Regulations of the University of Missouri as holding academic staff appointments. This policy is intended to be consistent with the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the Missouri Human Rights Act and should be interpreted to assure compliance with those mentioned laws.
- C. **Special Considerations for Faculty Members:** Faculty members have rights that stem from the University's Collected Rules and Regulations, from the application of the general principles of academic freedom, and from the role of faculty members in the shared governance structure within the University of Missouri. This policy is not intended to compromise this special status but rather is intended to clarify and protect the rights of such faculty members and of the University of Missouri and its constituents.
- D. **Rights and Obligations of Faculty Members:**
1. Faculty members shall incur no loss of pay or benefits solely because the evaluation process discussed below is underway until and unless official action is taken to alter the faculty member's employment status in conformity with other provisions of the Collected Rules and Regulations of the University of Missouri.
 2. Nothing in this policy overrides rights provided to faculty members and others with academic staff appointments under the Collected Rules and Regulations or other applicable contracts, including the right to grieve or appeal the application of this policy under the existing Academic Grievance Procedure found in Section 370.010 of the Collected Rules and Regulations.
- E. **Rights and Obligations of the University:**
1. The costs of the fitness for duty evaluations by the health care providers designated by the University and the associated costs will be borne by the University, and not by the faculty member.
 2. If the outcome of the evaluation is Able to Work with Limitations (see Section F.3. *Procedures* below) the University shall make reasonable efforts to accommodate those limitations if it can do so without undue hardship.
- F. **Procedures:**
1. Evaluation: A faculty member of the University may be required to be examined by appropriate licensed/certified health care professional(s) designated by the University in order to determine the faculty member's ability to perform the essential functions of the assigned duties and responsibilities. Such an evaluation may be required when the campus Provost, in consultation with the appropriate academic unit head, the chief campus human resources administrator and a representative of the Office of the General Counsel, determines that the faculty member's documented job performance or conduct gives reasonable cause to believe that a physical or mental condition may be adversely affecting the faculty member's ability to perform essential duties or may be posing a threat to the health or safety of the faculty member or others.

2. **Process:** The head of the academic unit may request that this policy be invoked for a particular faculty member by notifying the campus Provost of the documented facts suggesting a need for such an evaluation. A Provost's designee, along with the dean or designee of the school or college where the faculty member holds an appointment, and two tenured faculty members appointed by the chair of the campus faculty senate or council, including at least one faculty member from the same school or college as the faculty member whose fitness for duty evaluation is being sought, will comprise an "evaluation panel" to review the request ensuring that the academic unit head has documented 1) that an inability to perform the essential functions of the faculty member's job may exist, 2) that the academic unit and the faculty member have been involved in efforts to resolve the problem, and 3) that a mutually satisfactory resolution has not been achieved.

Attempts must be made to resolve the problem at the level at which the University faculty member carries out primary professional duties, normally the unit in which the faculty member is appointed. These procedures are not intended to prevent the faculty member or the academic unit head from seeking other recourse as provided by the Collected Rules and Regulations.

If the evaluation panel concurs that an evaluation is warranted, the evaluation panel will appoint an impartial Coordinator for this process. The Coordinator will be selected from a panel of six tenured faculty members appointed by the provost after consultation with the chair of faculty council/senate. Two of the six original members will serve one-year terms, two will serve two-year terms and two will serve three-year terms. Thereafter, all members shall serve three-year terms with the provost appointing two members annually after consultation with the chair of faculty council/senate. The Coordinator, in consultation with the General Counsel's office, will take the following steps:

- a. Advise the academic unit head on the preparation of background documents related to the reasons for the evaluation.
 - b. Inform the faculty member in writing that an evaluation is required and provide information on the faculty member's and University's rights and obligations under this policy.
 - c. Prepare a list of between three and five names of appropriate health-care professionals, at least one of whom is not employed by the University, for the evaluation process. The person to be evaluated, or in the event that the person is unable or unwilling, an authorized representative with legal authority to make health-care decisions for the person to be evaluated, shall select from the list the health-care professional(s) to perform the evaluation. If the person to be evaluated or the person's authorized representative has not selected the health-care professional(s) to perform the evaluation within two weeks following receipt of the list of health-care professionals, the Coordinator will select the health-care professional(s) to perform the evaluation and inform the person to be evaluated of the selection.
 - d. Inform the faculty member of the time and place of the required evaluation. Repeated failure to attend an evaluation scheduled at a mutually agreeable time shall constitute evidence regarding the faculty member's ability to perform the essential functions of the faculty member's job and may justify disciplinary action.
 - e. Forward to the evaluation panel and the faculty member, a report specifying the focus, the method, the results and the conclusion of the evaluation, relative to the faculty member's ability to perform the essential functions of the faculty member's job.
3. **Outcome of the Evaluation:** The Coordinator will then forward the results of this evaluation to the Provost who will review all the materials and make the final determination as to the faculty member's ability to work. That determination will include one of the following: able to work without limitation; able to work with limitations; unable to work.
 - a. *Able to work without limitation:* If the Provost determines that the faculty member is able to work without limitations, the Coordinator will notify the faculty member and the academic unit head.
 - b. *Able to work with limitations:* If the Provost determines that the faculty member is able to work with limitations, the Coordinator will consult with the faculty member and the appropriate academic unit head and will notify the faculty member of accommodations available which do not impose an undue hardship on the University.

- c. *Unable to work*: If the Provost determines that the faculty member is not able to perform the essential functions of the faculty member's job, the Coordinator will notify the academic unit head and work with the faculty member as to the faculty member's options which must be agreeable to the Provost and which may include, but are not limited to, application for long term disability benefits, leave of absence or resignation.
4. **Return to Work**: If the Provost determines that the faculty member is not able to perform the essential functions of the position and the faculty member takes a leave of absence, a follow-up evaluation will be required to certify that the faculty member is able to return to work and under what conditions prior to the faculty member's return to work.
5. **Confidentiality and Access to Information**: Reports and other information about the evaluation and any follow-up treatments shall be kept by the Provost and will not be included in the faculty member's personnel file. Upon written request, the faculty member may inspect report(s) by the designated health-care professional(s) who conducted the faculty member's evaluation in accordance with applicable laws. The Provost will provide those in the faculty member's reporting chain with only that information about the faculty member's condition necessary for the proper supervision of the faculty member. In the event of the initiation of an appeals process, the hearing group may be provided access to any materials related to the evaluation with the agreement of the faculty member.



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