



Policy Title: Return to Work/Fitness for Duty

Policy Number: BU-PP 447

Date Issued: March 16, 2020

**Responsible Executive: Vice President & Chief
Human Resources Officer**

Date Last Revised: March 16, 2020

Responsible Office: Human Resources

Return to Work/Fitness for Duty BU-PP 447

Policy Statement

Baylor University (the “University”) strives to assist employees to return to work at the earliest possible date following an Occupational Injury or Disease, or an absence due to a “serious health condition, injury, or illness” once they are Fit for Duty (e.g., after FMLA or during periods a person who is on intermittent FMLA can work). Prior to being allowed to return to work after such an absence, faculty and staff must submit an acceptable release from an appropriate health care provider that certifies the employee can perform all of the essential functions of the job, with or without accommodation. Additionally, while some minor absences from work for medical reasons may not require such a medical release, the University reserves the right in all circumstances, consistent with applicable law to determine whether such a release is necessary, and if so, require such a release. Modifications of this policy may be made by the Vice President and Chief Human Resources Officer associated with a natural or manmade disaster, such as a change to the requirement for medical documentation as outlined in the University’s standard processes and procedures.

This policy is not intended to supersede or modify the procedures applicable to employees eligible for reasonable accommodation under the Americans with Disabilities Act (“ADA”) or leave benefits under the Family and Medical Leave Act (“FMLA”). Inquiries about the ADA or FMLA should be directed to the Human Resource Department (“HR”).

This policy is not intended to supersede or modify the procedures applicable to employees eligible for Workers Compensation for an Occupational Injury or Disease. Inquires about Workers Compensation should be directed to University Compliance and Risk Services (UCRS).

Reason for the Policy

The University is committed to providing a safe work environment to protect the health and safety of its faculty and staff, students, clients, and the public. All faculty and staff must be physically and psychologically capable of performing all of the essential functions of their jobs. Medical and mental health inquiries will be job-related and consistent with business necessity as supported by objective evidence.

Individuals/Entities Affected by this Policy

All Baylor faculty and staff

Exclusions

NONE

Related Documents and Forms

University Policies and Documents

[00 – BU-PP Introduction and Important Notice](#)

[403 – Health Leave](#)

[406 – Non-Compensated Leaves of Absence](#)

[408 – Family and Medical Leave Act \(FMLA\)](#)

[412 – Group Long-Term Disability](#)

[415 – Americans with Disabilities Act \(ADA\) and Pregnant Workers Fairness Act \(PWFA\)](#)

[423 – Paid Caregiver Leave](#)

[446 – Worker’s Compensation Insurance](#)

Other Documents

Americans with Disabilities Act

Family and Medical Leave Act

Pregnancy Discrimination Act

Texas Workers’ Compensation Act

28 Texas Administrative Code (TAC) §129.6

Texas Department of Insurance Rules

Forms and Tools

Appendix A – [Fitness for Duty Certification form](#)

Definitions

These definitions apply to terms as they are used in this policy.

Accommodation	In accordance with the ADA, an accommodation can be a change or modification to a position or workplace, allowing the employee with a disability to perform his or her essential job duties or enjoy the benefits and privileges of employment. Accommodations are designed to meet the specific circumstances of the individual. Workplace modifications associated with Occupational Injuries or
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	Disease will be in accordance with those associated laws. Employees may see the Baylor policy on Workers Compensation for more details.
ADA	The Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA) are federal laws that require employers with 15 or more employees to not discriminate against applicants and individuals with disabilities and, when needed, to provide reasonable accommodations to applicants and employees who are qualified for a job, with or without reasonable accommodations, so that they may perform the essential job duties of the position. See BU-PP 415 – Americans with Disabilities Act (ADA) and Pregnant Workers Fairness Act (PWFA)
Bona Fide Offer of Employment	The offer of modified duty position applicable only to an employee who is returning to work. For those returning following a Workers’ Compensation covered occupational injury or disease, the Bona Fide Offer of Employment will be in accordance with the requirements of 28 Texas Administrative Code (TAC) §129.6
Essential Functions of the Job	In accordance with the ADA, Essential functions are the basic job duties that an employee must be able to perform, with or without reasonable accommodation.
FMLA	The Family and Medical Leave Act (FMLA) entitles eligible employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave. See BU-PP 408 – Family and Medical Leave Act (FMLA)
Fit for Duty	The employee is physically and psychologically capable of safely performing all essential job functions of their position from the time the employee reports to work and throughout the entirety of the employee’s scheduled work shift with or without a reasonable accommodation.
Fitness for Duty Evaluation	An assessment conducted by the treating health care provider which authorizes the employee to return to work and states the level of fitness for duty. Such evaluation may include, but is not limited to, medical exams.
Health Care Provider	A Doctor of Medicine or osteopathy, dentist, podiatrist, psychiatrist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a licensed clinical social worker that is authorized to practice in the State of Texas or any other person determined by the Secretary of Labor to be capable of providing health care services.
Modified Duty	Modified duty (or light duty) is a temporary, modified work assignment within the worker’s physical abilities, as supported by medical documentation, and the employee’s knowledge, and skills and where there is an existing identified temporary operational need for such work.
Occupational Injury or Disease	For the purposes of the Texas Workers’ Compensation Act, workplace deaths, on-the-job injuries or diseases that arise out of and in the course and scope of employment which causes damage or harm to the physical structure of the body. This definition includes a repetitive trauma injury. An occupational disease specifically does not include an ordinary disease of life to which the general public is exposed outside of employment except where that disease is related to a compensable injury or occupational disease.
Serious health condition, injury, or illness	The Family and Medical Leave Act (FMLA) defines these terms and they are set out in the University’s FMLA policy.

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Contacts

Subject	Contact	Telephone	Office email/web site
Policy Questions	Human Resources	254-710-2000	askHR@baylor.edu https://hr.web.baylor.edu

Responsibilities

Employee	<p>Those with an Occupational Injury or Disease must comply with the University's Workers Compensation Policy as it relates to returning to work after a workplace injury or illness.</p> <p>For employees with non-occupational injuries or disease and as a condition of restoration to work following medical leave, the employee who has taken leave is required to follow up with their health care provider to request a fitness for duty evaluation. During the evaluation, their health care provider must complete the Baylor University Fitness for Duty Certification that specifies the date they will be released to return to work, and if applicable, restrictions and duration of the stated restrictions. Employee may be required to provide periodic updates until fully released or determination of final work status.</p> <p><i>The completed form must be returned to Human Resources at least two business days prior to their estimated return to work date for evaluation to ensure there is time to process accommodations needed. The employee cannot return to work without the release from the treating health care provider.</i></p> <p><i>Contact University Compliance and Risk Services for matters related to Occupational Injury or Disease.</i></p>
Human Resources (HR)	<p>Human Resources will oversee the administration and documentation of the University's policy. HR will work with the employee and the supervisor to ensure all correct and required restrictions and accommodations are put in place prior to employee's return to work if required. Additionally, HR will maintain cohesive appropriate records.</p>
Supervisor	<p>Supervisors with an employee who has an Occupational Injury or Disease will comply with the University's Workers Compensation Policy.</p> <p>The supervisor is to confirm the employee has been cleared with Human Resources before permitting the employee to return to work. If there are any restrictions or accommodations, the supervisor must work with Human Resources and the faculty or staff member in accordance with medical documentation provided by the treating physician.</p>
University Compliance and Risk Services	<p>University Compliance and Risk Services will coordinate with Human Resources on the return for absences for Occupational Injury or Disease. Environmental Health and Safety will provide assistance to the employee and supervisor if an ergonomic consultation is needed upon return.</p>

Principles

Fit for Duty

An employee must only come to work if fit for duty and, then, must perform the essential functions of the job in a safe, secure, productive, and effective manner during the entire time working. Employees are responsible for notifying Human Resources when they are not fit for duty in accordance with law and the University's Health Leave, FMLA, ADA, and Workers' Compensation policies.

The University retains the right to send an employee home or deny them access to Campus if they are not fit for duty or otherwise may pose a risk to the campus community in the sole discretion of Baylor, for example, displaying symptoms of a communicable disease. Supervisors should work Human Resources when appropriate to not violate the ADA.

When an employee is planning to return to work from an absence related to a serious health condition, injury, or illness, the employee is responsible for managing their health in a manner that allows them to safely perform the essential functions of their job.

When an employee is planning to return to work after encountering an Occupational Injury or Disease, they will comply with the University's Workers Compensation Policy. See that policy for additional details.

Modified Duty

When possible, modified or light duty can be made available to a returning employee to minimize or eliminate time lost from work. Modified or light duty may not run concurrently with FMLA and is temporary in nature. The University cannot guarantee a modified assignment and is under no obligation to offer, create, or encumber any specific position for purposes of offering placement to such a position. All modified work assignments will be made in accordance with information provided by the employee's treating health care provider. Employees are responsible for notifying Human Resources when restrictions have changed.

Modified Duty procedures for those with an Occupational Injury or Disease will be in accordance with the University's Workers Compensation Policy and the requirements for a Bona Fide Offer of Employment.

Once the employee has been cleared for full duty, regardless of the circumstances, the employee will be reassigned to their regular assigned duties and the Bona Fide Offer of Employment is automatically revoked and the employee is returned to regular duty.

Procedures

Approval of Return to Work; With or Without Accommodations

1. For those with an Occupational Injury or Disease, this process may be modified to comply with the University's Workers Compensation Policy. See that policy for additional details and process.
2. For those with medical leave that does not trigger FMLA protections, the supervisor will permit return unless there appears to be a fitness for duty concern. If there are questions as to the employee's fitness for duty, the supervisor will immediately contact Human Resources.
3. For those with medical leave that may trigger FMLA protections, the supervisor will notify Human Resources, who will then inform the employee of the return to work process and provide them with a copy of the Return to Work/Fitness for Duty Policy and [Fitness for Duty Certification form](#). When the employee is approved for FMLA, the employee will be informed of the requirement to complete the [Fitness for Duty Certification](#) through the FMLA designation notice.
 - a. The employee will have their treating health care provider complete the [Fitness for Duty Certification form](#) and return it to Human Resources within at least two business days prior to their anticipated return to work date.
 - b. Human Resources will review the [Fitness for Duty Certification](#), advise the department if there are any restrictions, and engage with the employee to establish modifications, if appropriate. If the restrictions indicate ADA accommodations may be appropriate, Human Resources will engage in the interactive ADA process with the employee and supervisor.
4. If modified duty is requested and approved, Human Resources will partner with the department to develop a written Bona Fide Offer of Employment to provide to the employee. Offers for those with an Occupational Injury or Disease must be coordinated with Office of Compliance and Risk Management. A written Bona Fide Offer of Employment must include the following information:
 - a. The position offered
 - b. The hours of duty
 - c. The wages
 - d. Job description, including duty hours, and maximum physical requirements of the position
 - e. The address, location, and approximate distance in miles from the employee's residence
 - f. The beginning and ending date of the position

5. If an employee has not provided sufficient documentation, Human Resources may request additional certification paperwork. In certain circumstances, Human Resources may request the employee receive an examination from a health care provider of Baylor's choosing. Before asking the employee to submit to a second health care provider evaluation, Human Resources will consider asking the employee's health care provider for additional information if the provider is qualified. If Baylor requests a second health care provider evaluation, Baylor will be responsible for the cost of the second evaluation. If the employee declines to accept the second medical review, Fitness for Duty and Light Duty options may be terminated at the discretion of Human Resources in consultation with the Department to which the employee is assigned.
6. If there are any changes to the original restrictions recommended by the health care provider, it is the employee's responsibility to provide Human Resources with a new [Fitness for Duty Certification](#) to reengage in the interactive process.
7. Human Resources will file and retain all documentation separately from the employee's personnel file.
8. Failure by the employee to meet the certification requirements may result in denial of the employee's return.