

PART I
D.C. PERSONNEL REGULATIONS
CHAPTER 20B
HEALTH

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D.C. PERSONNEL REGULATIONS**2049 PRE-EMPLOYMENT AND OTHER PHYSICAL EXAMINATIONS AND GENERAL MEDICAL QUALIFICATIONS REQUIREMENTS**

- 2049.1 The provisions of this section establish the requirements for pre-employment and other physical examinations, including fitness-for-duty examinations; general medical qualifications requirements; and preventive health programs pursuant to section 2007 (2) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (CMPA), effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-620.07 (2)) (2006 Repl.), with adherence to the provisions of the Americans with Disabilities Act of 1990, approved July 26, 1990 (P.L. 101-336; 42 U.S.C. § 12101 *et seq.*), as amended; other federal or District laws or regulations; and equal employment opportunity considerations.
- 2049.2 Each individual selected for appointment shall be physically and mentally capable of safe and satisfactory performance of the essential functions of the position for which he or she was selected.
- 2049.3 Medical determinations shall be made by physicians or practitioners, and determinations regarding job requirements and performance shall be made by supervisors and managers.
- 2049.4 To the extent inconsistent with any applicable law or regulation, the provisions of this section shall not apply to:
- (a) Police officers in the Metropolitan Police Department;
 - (b) Firefighters in the Fire and Emergency Medical Services Department; and
 - (c) Employees on the public sector workers' compensation system pursuant to §§ 2301 through 2347 of the CMPA (D.C. Official Code § 1-623.01 *et seq.* (2011 Supp.)).
- 2049.5 Personnel authorities may establish physical and mental qualifications requirements that are necessary to perform a specific job or classes of jobs, such as certain jobs in transportation, public works, or security jobs. Any physical and mental qualification requirements established by the personnel authority pursuant to this subsection shall:
- (a) Be related to the duties and responsibilities of the specific job or classes of jobs, and consistent with business necessity.
 - (b) Be designed to ensure consideration of individuals having the minimum physical ability necessary to perform the duties of the job efficiently without posing a significant risk of substantial harm to his or her health or safety, or that of others.
 - (c) List disqualifying medical conditions only in cases in which job duties require

- (d) special physical capabilities to safely and satisfactorily perform the duties assigned to the job.
- (e) Be waived by the personnel authority when a determination is made that the appointee or employee is a “qualified individual with a disability,” as that term is defined in Section 2099 of this chapter.

2049.6 The personnel authority may require an individual who has applied for or occupies a position with established physical or mental standards or requirements for selection or retention, or established occupational or environmental standards that require medical review, to report for a medical examination or evaluation as follows:

- (a) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition);
- (b) On a regularly recurring, periodic basis; or
- (c) Whenever there is a direct question about an employee’s continued capacity to meet the established physical or mental standards or requirements of the position, or conditions of employment.

2049.7 As appropriate in the case of positions with physical or mental qualification requirements pursuant to Subsection 2049.5 of this section, a personnel authority may either deny an applicant examination, deny an eligible appointment, or instruct or allow the employing agency to remove an appointee, by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed.

2049.8 In addition to a medical examination required pursuant to Subsection 2049.5 of this section, an employing agency may require a medical examination because of an employee’s conduct or performance on the job. Such an examination shall be ordered only upon approval by the personnel authority of a written request from the agency.

2049.9 The personnel authority or employing agency may offer a medical examination when an employee has made a request for medical reasons for a change in duty status, assignments, or working conditions, or any other benefit or special treatment (including reemployment on the basis of full or partial recovery from a medical condition), and the employing agency, after it has received and reviewed the employee’s medical documentation, determines that it cannot grant, support, or act further on the request without verification of the clinical findings and current clinical status.

2049.10 If an employee wishes his or her employing agency to consider any medical condition that may contribute to his or her unacceptable performance on the job, he or she shall furnish medical documentation, as that term is defined in Section 2099 of this chapter, of the condition. After the employing agency’s review of the medical documentation supplied by the employee, the employing agency may, at its discretion, require a medical examination in accordance with this section.

- 2049.11 The medical examination process shall consist of the following:
- (a) When a personnel authority or agency orders or offers a medical examination under this section, it shall inform the applicant or employee in writing of its reasons for ordering or offering the examination, and the consequences for failure to adhere to the request.
 - (b) The personnel authority or agency shall designate the examining physician, but shall offer an employee or former employee an opportunity to submit medical documentation from his or her personal physician or practitioner which the agency shall review and consider, or to propose a physician or practitioner of his or her choice.
 - (c) The personnel authority or agency shall provide the examining physician or practitioner with a copy of any approved medical evaluation protocol, any applicable medical qualifications and requirements for the position, or a detailed description of the duties of the position, including physical demands and environmental factors.
 - (d) The personnel authority or agency may order a psychiatric examination (including a psychological assessment) only when the result of a current general medical examination authorized by the agency or personnel authority under this section indicates no physical explanation for behavior or actions which may affect the safe and efficient performance of the individual or others.
 - (e) All medical specialty examinations ordered or offered under this section shall be conducted by a medical specialist.
 - (f) The employee shall pay for any medical examination conducted by a physician or practitioner he or she selected, regardless of whether the medical qualifications examination is ordered or offered by the agency or scheduled on the employee's own initiative.
 - (g) An agency may authorize, under conditions prescribed by the agency, an agency-required pre-employment medical qualifications examination of an applicant to be conducted by a physician or practitioner designated by the applicant, in which case the applicant shall pay for the examination.
 - (h) Each agency shall receive and maintain all medical documentation and records of examinations obtained under this section in accordance with the provisions of chapter 31 of these regulations.
 - (i) The report of an examination conducted under this section shall be made available to the applicant or employee under the provisions of chapter 31 of these regulations.

- 2049.12 If, based on the review of the medical documentation, in consultation with a physician or practitioner, the employing agency or personnel authority determines that an employee is temporarily disabled from performing his or her duties, the personnel authority may authorize one (1) or more of the following actions, as appropriate:
- (a) Detail;
 - (b) Make existing facilities used by the employee readily accessible to and useable by a qualified individual with a disability;
 - (c) Temporarily reassign to vacant position;
 - (d) Change tour of duty; or
 - (e) Any other feasible assistance in returning the employee to full performance capacity.
- 2049.13 If, based on the review of the medical documentation, in consultation with a physician or practitioner, the employing agency or personnel authority determines that the disability is permanent, the personnel authority shall do the following:
- (a) Determine whether reasonable accommodation can be made that would enable the employee to perform the essential functions of the position;
 - (b) In the event of a negative determination under Subsection 2049.13 (a) of this section, determine if there is another position available for which the employee qualifies and in which he or she can perform satisfactorily and safely, with or without reasonable accommodation;
 - (c) In the event of a negative determination under Subsection 2049.13 (b) of this section, explore with the employee, or his or her representative, the eligibility requirements and the advisability of filing for disability retirement or social security disability, as appropriate; or
 - (d) In the event that the individual does not qualify for or does not apply for disability retirement or social security disability, or, if his or her application has been disapproved, the personnel authority may initiate action to terminate the employee.
- 2049.14 If, based on the review of the medical documentation, the personnel authority determines that the employee is fit, and the employee continues to be deficient in either conduct or performance, the personnel authority may take administrative action against the employee. Any action taken against a Career Service employee covered under Chapter 16 of these regulations shall be taken under the provisions therein.
- 2049.15 This section shall not apply to any situation where an employee, due to a problem or condition that adversely affects his or her overall work performance, and with his or her

supervisor's approval, is engaged in a voluntary program of medical assistance through a personal physician or practitioner, the Employee Assistance Program under Section 2050 of this chapter, or any other recognized and qualified party. In these situations, a medical examination may be offered at the employee's request, and shall be ordered only if the employee continues to perform unsatisfactorily, or poses a significant risk of substantial harm to his or her health or safety, or that of others.

2050 EMPLOYEE ASSISTANCE PROGRAM

- 2050.1 In accordance with section 2007 (3) of the CMPA (D.C. Official Code § 1-620.07 (3)) (2006 Repl.), it shall be the policy of the District government to provide an Employee Assistance Program (EAP) designed to address personal problems that employees may encounter which may adversely affect their overall work performance or conduct on the job.
- 2050.2 The Director of the Department of Human Resources (Director of the DCHR) shall administer an EAP pursuant to Mayor's Order 91-62, dated May 1, 1991.
- 2050.3 The provisions of a collective bargaining agreement shall take precedence over the provisions of this section, to the extent that there is a difference or conflict.
- 2050.4 The EAP shall provide counseling and related services to employees who are experiencing problems, including, but not limited to, the following problems or issues which may adversely affect work performance or conduct on the job:
- (a) Family and marital problems;
 - (b) Financial difficulties;
 - (c) Emotional or mental illness; and
 - (d) Substance abuse problems.
- 2050.5 Records and information on referral to, or participation in, the EAP, shall be maintained in confidence as provided in Chapter 31 of these regulations and any other applicable federal and District of Columbia laws and regulations.
- 2050.6 An employee who is experiencing problems that adversely affect his or her work performance or conduct on the job shall be encouraged to voluntarily seek assistance to resolve the problems.
- 2050.7 Managers and supervisors should, in appropriate cases, consider referring to the EAP employees who are experiencing problems which adversely affect their overall work performance or conduct on the job before taking administrative action against employees.
- 2050.8 Participation in the EAP shall not preclude the taking of a disciplinary action under

Chapter 16 of these regulations, if applicable, or any other appropriate administrative action, in situations where such action is deemed appropriate. The EAP shall not be used in lieu of disciplinary actions, or any other appropriate administrative action.

- 2050.9 Any employee (excluding temporary employees) shall be eligible to receive services through the EAP.
- 2050.10 The EAP shall consist of assessment, counseling, and referral services.
- 2050.11 Involvement in the EAP shall be on the basis of self-referral or agency referral.
- 2050.12 Up to two (2) hours of administrative leave may be granted to an employee to attend his or her initial EAP appointment.
- 2050.13 The services of the EAP shall be provided through contracted health care service provider(s).
- 2050.14 The cost of the initial assessment, counseling, and referral session with the EAP contractor shall be paid in full by the District government, to the extent that the session is not covered by the employee's health insurance carrier.
- 2050.15 Unless a separate program is established pursuant to the provisions of Subsection 2050.19 of this section, participation in the EAP rather than another employee assistance program in the District government by agencies under the personnel authority of the Mayor shall be mandatory.
- 2050.16 The Director of the DCHR shall establish the rates for participation in the EAP.
- 2050.17 The Director of the DCHR may enter into a written agreement with other personnel authorities to provide EAP services.
- 2050.18 Each subordinate agency and independent personnel authority that participates in the EAP administered by the DCHR shall designate an EAP coordinator.
- 2050.19 The Director of the DCHR may authorize the establishment of other employee assistance programs in the District government, and each such program shall be consistent with the provisions of this section.

2051 WELLNESS PROGRAM

- 2051.1 In accordance with Subsection 2007 (4) of the CMPA (D.C. Official Code § 1-620.07 (4)) (2006 Repl.), a District government wellness program has been established to improve and promote health and fitness of District government employees.

2099 DEFINITIONS

- 2099.1 For the purposes of this chapter, the following terms shall have the meaning ascribed:

Essential functions of the position – the fundamental job duties of the position that an employee or applicant holds or desires. A job function may be considered essential for any of several reasons, including but not limited to the following: the function may be essential because the reason the position exists is to perform that function; because of the limited number of employees available among whom the performance of that job function can be distributed; and/or the function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

Evidence of whether a particular function is essential includes, but is not limited to the following: the supervisor's judgment as to which functions are essential; written job descriptions prepared before advertising or interviewing applicants for the job; the amount of time spent on the job performing the function; the consequences of not requiring the incumbent to perform the function; the work experience of past incumbents in the job; and/or the current work experience of incumbents in similar job.

Medical condition – A health impairment which results from injury, illness or disease, including psychiatric disease.

Medical documentation or documentation of a medical condition – a statement from a licensed physician or other appropriate practitioner which provides one (1) or more of the following kinds of information:

- (a) The history of the specific medical condition(s), including references to findings from previous examinations, treatment, and responses to treatment;
- (b) Clinical findings from the most recent medical evaluation, including any of the following that have been obtained:
 - (1) Findings of physical examination;
 - (2) Results of laboratory tests including drug and alcohol screening, X-rays, echocardiograms, and other special evaluations or diagnostic procedures; and
 - (3) In the case of psychiatric disease evaluation of psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;
- (c) Assessment of the current clinical status and plans for future treatment;
- (d) Diagnosis;
- (e) An estimate of the expected date of full or partial recovery;
- (f) An explanation of the impact of the medical condition on the individual's capacity to carry out his or her assigned duties;

- (g) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well stabilized;
- (h) Narrative explanation of the medical basis for any conclusion that duty restrictions or accommodations are or are not warranted and, if they are, an explanation of their therapeutic or risk-avoiding value; or
- (i) Narrative explanation of the medical basis for any conclusion that indicates the likelihood that the individual is, or is not, expected to suffer injury or harm with or without accommodation, by carrying out the tasks or duties of a position for which he or she is assigned or qualified.

Medical specialist – a physician who is board-certified in a medical specialty.

Physician – A licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this chapter.

Practitioner – A person providing health services who is not a medical doctor, but who is certified by a national organization and licensed by the District of Columbia or any State to provide the service in question.

Qualified individual with a disability – an individual with a disability who satisfies the requisite skill, experience, education and other job related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Reasonable accommodation – modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities. Reasonable accommodation may include but is not limited to: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. All of the above is contingent upon the needs of the agency. A "covered entity" is an employer, employment agency, labor organization, or joint labor management committee.

Review of medical documentation – assessment of medical documentation by, or in coordination with, a physician to ensure that the following criteria are met:

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- (a) The diagnosis or clinical impression is justified in accordance with established diagnostic criteria; and
 - (b) The conclusions and recommendations are consistent with generally accepted medical principles and practice.

D.C. Register Updates for Chapter 20B of the D.C. Personnel Regulations,
Health

The following *D.C. Register* citation(s) identify when a given section(s) of Chapter 20, Health, of Subtitle B of Title 6 of the District of Columbia Municipal Regulations, was amended. Following the publication in the *D.C. Register* of subsequent final rulemaking notices, this Addendum will be updated accordingly.

For the convenience of DPM subscribers, the Addendum identifies amendments on a section-by-section basis; identifies the page(s) in an E-DPM Transmittal impacted by the amendment(s); and provides brief comments on the amendment(s) accomplished.

<i>D.C. Register</i> Date	Section(s)	Change(s) Reflected on Page(s)	Comments
40 DCR 7649 (11/5/1993)	2050	Enter chapter Transmittal No. 38	The rules added a new section 2050 to the chapter, Employee Assistance Program.
51 DCR 10422 (11/12/04)	2049 through 2050, and 2099	Enter chapter Transmittal No. 122	The rules added a new section 2049 to the chapter, Pre-Employment and Other Physical Examinations and General Medical Qualifications Requirements; updated the provisions in section 2050 of the chapter, Employee Assistance Program; and added a definitions section to the chapter.
60 DCR 015260 (11/1/13)	2049, 2050, 2051, and 2099	Entire chapter Transmittal No. 213	The rules added a new section 2051 to the chapter, Wellness Program; amended subsection 2049.12; amended subsection 2049.13(c) to delete the phrase “ <i>and apply or assist in applying therefore</i> ”; and updated the definition section to the chapter.