

# Reasonable Medical Examination Policy

## 1. Purpose

### Policy

RedR has a duty of care (that is, a moral or legal obligation to ensure the safety and wellbeing of others) when it comes to staff safety, health and wellbeing, including both physical and mental health.

In circumstances where RedR has concerns about an employee's ability to perform the inherent requirements of their role, RedR may request an employee to complete a medical examination that is lawful and reasonable. In this context, examination may include psychosocial examination.

Also see *RedR's Drug and Alcohol policy*.

### Legal Framework

Employers have a common law duty to take reasonable care to protect their employees from foreseeable injury arising from their employment. Therefore, employers have an obligation to ensure that employees are medically fit to perform the inherent requirements of their job.

Employers are also required under occupational health and safety law to provide and maintain a working environment that is safe and without risks to health. This includes ensuring that employees are medically fit to perform their duties.

Finally, it is a well-established employment law principle that employees must follow the lawful and reasonable instructions of their employers.

### Principles

- An employer has a common law right to give a **lawful and reasonable** direction to an employee. This includes the right to direct an employee to attend a medical assessment:
  - it is reasonable for the employer to make such a request
  - and there is a genuine indication of a need for it.
- RedR will take reasonable steps before sending employees for medical exams, and ensure that any medical concerns are relevant to **the capacity to perform job roles and inherent requirements of the role**.
- RedR recognises this is a sensitive issue. RedR will carefully consider and manage each employee in the context of the individual's personal circumstances.
- Disciplinary action, including termination of employment, for failing to comply with a direction to attend a medical assessment will only be enforceable if the direction is found to be **lawful and reasonable in the circumstances**.

### Procedure:

1. **Before requesting a medical examination, consider the following:**

- Was there a genuine indication of the need for the examination, such as prolonged absences from work, or absences without explanation, or evidence of an illness, which related to the capacity to perform the inherent requirements of the job?
- Had the employee provided adequate medical information which addresses issues of fitness to perform duties?
- Was the industry or workplace particularly dangerous or risky?
- whether the employee has had prolonged and/or unexplained absences from work
- whether there are unexplained inconsistencies in the employee's medical certifications or absences
- Were there legitimate concerns that the employee's illness would impact on others in the workplace?

**2. Have an open and genuine discussion with the employee**

- Employee is advised of the details of the conduct which led to the concerns that he/she was not fit for duty?
- Determine agreed steps, it may not lead to medical examination in the first instance.

**3. Formal request to the employee to be reasonable and clearly state the following:**

- The medical assessment truly aimed at determining, independently, whether the employee was fit for work.
- The grounds on which the employer believes it is entitled to direct the employee to attend a medical examination
- The nature of the proposed medical examination and the questions that will be asked of the medical examiner relating to the inherent requirement of the job
- RedR will assign the medical provider. Alternative medical provider can be agreed by both parties.

**4. Assessing Fit for Duty**

- There is no 'one size fits all' approach to managing ill and injured employees. Principles of risk management and workplace accommodations will apply in light of the individual circumstances.

**Other Relevant Policies**

- RedR Staff Terms and Conditions
- RedR Open Disclosure Policy
- RedR Drug and Alcohol Policy
- Grievance Policy and Procedures
- RedR OHS Policies and Procedures

**5. Document control**

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