

AN ORDINANCE AUTHORIZING THE ADOPTION OF AN EMPLOYEE FITNESS FOR DUTY POLICY AND THE ADDITION OF THE POLICY AS DEFINED TO THE VILLAGE EMPLOYEE HANDBOOK

WHEREAS, Brewster Village Council desires to adopt an Employee Fitness for Duty Policy and to modify the Village Employee Handbook to include an Employee Fitness for Duty Policy.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF BREWSTER, THAT:

SECTION 1: The Village shall adopt an Employee Fitness for Duty Policy as defined below and shall add Section 7.15 - Employee Fitness for Duty Policy to the Village Employee Handbook as follows:

7.15 FITNESS FOR DUTY

A. Order for Fitness for Duty Examination

The Village may order an employee to submit to a physical, medical, and/or psychological fitness for duty examination(s) when there is an objective and reasonable basis for believing that the employee is physically, medically, or mentally incapable of performing his or her essential duties.

Objective and reasonable basis is defined as one that is not merely speculative but is derived from direct observation or other reliable evidence. **An order that an employee submit to a physical, medical, and/or psychological fitness for duty examination(s) is not discipline in nature.** An order that an employee submit to a physical, medical, and/or psychological fitness for duty examination(s) shall not be used as a substitute or in place of discipline. In addition, a fitness for duty examination shall not be ordered for capricious, arbitrary or discriminatory reasons.

B. Conduct of Fitness for Duty Examination

An initial fitness for duty examination(s) will be conducted by a physician or psychologist of the Village's choice, with no loss in pay or benefits or cost to the employee.

Prior to any examination, the Village shall supply the examining practitioner(s) with:

1. facts relating to the perceived disabling illness, injury or condition; and
2. the physical and mental requirements of the employee's position; and
3. job position description and specifications for the employee's position;

Copies of any documents and/or materials provided to the practitioner(s) by the Village will be provided simultaneously to the employee subject to testing.

C. Standards for Physicians and/or Psychologists (Health Care Professional)

Any physician utilized, either by the Village or the employee, must be a licensed doctor of medicine or osteopathy who has completed residency training in an accredited medical training program and/or is American Boards of Medical Specialties (ABMS) or American Osteopathic Association (AOA) board certified or international equivalent.

Any psychologist utilized, either by the Village or the employee, must be a licensed psychologist with education, training, and experience in the forensic and/or diagnostic evaluation of mental and emotional disorders.

D. Providing of Copies of Fitness for Duty Examination Results

Following the examination, the physician or psychologist shall provide the Village and the employee a written report detailing the physician's or psychologist's assessment of the employee's ability to perform his or her duties with or without reasonable accommodation. The employee is entitled to copies of all examination results and documentation associated with the examination subject to Ohio Revised Code Section 1347.08 and/or any other applicable law.

E. Cost of Fitness for Duty Examinations

The Village shall pay the costs of the examinations. However, an employee will be responsible for the costs associated with an unexcused failure to appear at a scheduled examination.

F. Refusal to Submit to a Fitness for Duty Examination Insubordination

An employee's refusal to submit to an examination, the unexcused failure to appear for an examination, or the refusal to release the results of the examination amounts to insubordination, punishable by the imposition of discipline up to and including removal.

G. Administrative Leave with Pay Pending Results of Fitness for Duty Examination

The Village reserves the right to place an employee on paid leave pending the final results of the fitness for duty examination prior to the examination results. Said paid leave is not discipline.

H. Employee's Fitness for Duty Examination

Employees shall have the right to submit to a fitness for duty examination by a physician or psychologist of the employee's choice at any time. Fees and expenses of an employee's physician and/or psychologist shall be borne by the employee.

I. Employee Notice Requirement if Undergoing Their Own Fitness for Duty Examination

If the employee chooses to exercise their right to submit to a fitness for duty examination by a physician and/or psychologist of the employee's choice, any determination on the employee's fitness for duty shall be held in abeyance until the Village's physician and/or psychologist has reviewed the findings of the employee's physician and/or psychologist, provided:

- The employee provides the Village with notice of their intention to do so within ten (10) calendar days of receiving the fitness for duty report by the Village's physician and/or psychologist, and
- The Village's physician and/or psychologist are provided, in a timely manner, with the report(s) of the employee's physician's and/or psychologist's fitness for duty exam and documentation that was created and/or reviewed in generating the report(s).

J. Reasonable Accommodation if an Employee Is Found Not Fit For Duty

If an employee is deemed physically, medically, or mentally incapable of performing his or her essential duties, the Village will make reasonable efforts to accommodate the employee in continuing their employment with the Village of Brewster. "Reasonable accommodations" are 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 an employee to perform the essential functions of that position. "Reasonable accommodations" shall be defined consistent with the Americans with Disability Act ("ADA").

K. Ability to Apply for Vacant Positions

If an employee is deemed physically, medically, or mentally incapable of performing his or her essential duties with or without reasonable accommodation, and if there are vacant positions within the Village for which the employee qualifies, the employee may apply for the vacant position.

L. Review of Fitness for Duty Examinations

When fitness for duty examinations (medical evaluations) are conducted by a physician or medical provider other than the Village physician and/or psychologist, the evaluation shall be reviewed and approved by Village physician and/or psychologist.

In the case of examinations undertaken to determine fitness for duty for purposes of return to work, the employee's return to work is subject to the approval of the Village physician and/or psychologist.

SECTION 2: The above policy replaces any previous version of this policy and supersedes any current policy which may be in conflict with this policy.

SECTION 3: This ordinance shall be in full force and effect at the earliest date provided by law.

Mayor Michael E. Schwab

ATTEST:

Village Clerk Treasurer K. Kris King

CERTIFICATE

I, K. Kris King, hereby certify that the above is a true copy of an ordinance passed at a regular meeting of the Brewster Village Council held on March 6, 2017

Clerk K. Kris King

I, K. Kris King, Clerk of the Council of the Village of Brewster, State of Ohio, do hereby certify that there is no newspaper printed in said municipality and that publication of the foregoing ordinance was duly made by posting true copies thereof at five of the most public places in said corporation as determined by Council as follows: Office of Brewster Utilities, Belloni's IGA, Brewster Federal Credit Union, Post Office and Brewster Laundromat.

Clerk K. Kris King

Brewster Ohio