



# Functional Fitness Evaluation™

**It is our position that an employer who chooses to test for the purpose of reducing risks in a safety sensitive environment, and has done so in good faith to satisfy the questions below, are on the right track to compliance. The goal is to remove the risk; not terminate the employee. We have designed our medical investigations to be limited to satisfying medical clearance in a safety sensitive environment no more, no less.**

## FUNCTIONAL FITNESS EVALUATION (FFE™)

CannAmm's position on the legal requirement of workplace testing in Canada is to establish a bona fide occupational requirement to justify the need for testing<sup>1</sup>. This requirement applies to all types of investigation including, but not limited to, physical demands fitness, medical fitness, drug and alcohol testing.

Based on Supreme Court decisions of the Meiorin<sup>3</sup> & Grismer<sup>4</sup> case, the following questions are asked when an employer is accused of discriminatory standards, policies or practices<sup>1</sup>:

1. Is there a standard, policy or practice that discriminates based on a prohibited ground?
2. Did the employer adopt the standard, policy or practice for a purpose rationally connected to the performance of the job?
3. Did the employer adopt the particular standard, policy or practice in an honest and good faith belief that it was necessary in order to fulfill that legitimate work-related purpose?
4. Is the standard, policy or practice reasonably necessary in order to fulfill that legitimate work-related purpose, so to demonstrate that it is impossible to accommodate the worker without undue hardship to the employer?

An employer who chooses to test for the purpose of mitigating risks in a safety sensitive environment with a good faith effort to satisfy the questions above, is on the right track to compliance. The employer must also be capable of answering a number of additional questions relating first to the policy/standard, second to the rational connection to the performance of the job, third to the honest and good faith belief that it was necessary to accomplish the purpose, and finally to the ability to demonstrate the reasonableness of the standard.

These questions regarding the fourth point are<sup>1</sup>:

- Have alternative standards been considered?
- If so, why weren't the alternatives implemented and why was this particular standard chosen instead of others?
- Is the standard the least discriminatory means of accomplishing the purpose?
- Is it necessary that all employees meet a single standard, or could varying standards be adopted?
- How was the standard designed to minimize the burden on those required to comply?
- What efforts were made to accommodate negatively affected individuals?
- Was the assistance of others sought in finding possible accommodations?
- Would the employer face undue hardship if it adopted alternative standards or provided individual accommodation?

We provide all of our services with these standards in mind. Our drug and alcohol testing is offered as a tool within a comprehensive Fit for Duty Program that covers all of the above and has accommodation built into the policy, training and practice. The goal is to remove the risk; not terminate the employee. We have designed our medical investigations to be limited to satisfying medical clearance in a safety sensitive environment no more, no less.

We recommend that any physical demands testing performed be thoroughly designed based on a job demands analysis also known as a physical demands analysis of the position to comply with the above. The greatest risk an employer faces today is choosing Physical Demands Testing solution that is not rationally connected to the job according to the established requirements set at the Supreme Court of Canada or by denying employment based on the results without demonstrating a reasonable attempt to accommodate.

Drugs and/or alcohol positive results as well as critical medical limitations are established as having a rational connection to safety in a safety sensitive role and well supported in the findings of related case law where it forms the premise of the arguments<sup>2,3,10,11</sup>, correlation studies<sup>7,8,9</sup>, Canadian Labour Code<sup>4</sup> and the criminal implications of failing to address a known hazard<sup>6</sup>. Physical Demands tests do not produce the same logical framework connecting testing outcomes to actionable workplace safety hazards, therefore employers require special attention to the purpose, quality, and decisions made based on Physical Demands tests. Standardized solutions should never be considered in Physical Demands offerings as this would supply the evidence that would support a prima facie case of a complainant.

## FUNCTIONAL FITNESS EVALUATION (FFE) COMPARISON

FFE DELIVERABLES	DESCRIPTION	CANNAMM
Completed by Qualified Clinicians	In order to make sure the result of an FFE is credible and reliable, it should be performed by a qualified professional. All FFEs completed with CannAmm are completed by professionals skilled in injury prevention and function testing: a kinesiologist, occupational therapist, or physiotherapist.	✓
Protocol Developed Based on Specific Physical Demands Analysis (PDA) Information	In order to ensure accuracy, the test should be based on a PDA. Taking an existing test and “best fitting” it to a PDA is backwards, and will undermine your program. All CannAmm FFEs are individually based on specific PDAs. This ensures the appropriate evaluation is selected - one that does not over or under-test the worker.	✓
Test Completed in Properly Equipped Facility	In order to provide an accurate result you need to have the right tools. A result is only accurate if the FFE is completed as intended. Each FFE performed by CannAmm is performed in an approved facility with the full complement of tools necessary to complete the test.	✓
One Stop Shop	CannAmm has the ability to perform multiple test types at single locations across Canada. As an example, an FFE can be combined with a drug and alcohol test in one convenient appointment.	✓
Clear and Actionable Resulting	The result of an FFE should be clear and actionable. CannAmm results are clear. The employee is deemed either fit or unfit to perform the duties.	✓
National Coverage	Not all employees are at the same place. CannAmm can perform FFEs all across Canada without jeopardizing the integrity of the test.	✓
Timely Reporting	Once the test is complete, results are necessary in order to proceed. CannAmm turns around results quickly; typically within 1-2 business days.	✓
Online Result Management	Managing the results of many tests for many employees can be time consuming. CannAmm’s industry leading Program Administrator Website delivers your results in an easy to use format to save you time.	✓

## REFERENCES

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