

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT

CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

SUBCHAPTER 21. EMPLOYEE ASSISTANCE PROGRAMS

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PART 1. GENERAL PROVISIONS

530:10-21-1. Purpose and scope [EFF. 7/1/01]

(a) The purpose of the EAP is to *provide assistance to state agencies in their management of employees whose personal problems may have a negative impact on job performance and to provide for assessment, referral, consultation, and problem resolution assistance to state employees and their family members seeking corrective help with medical or mental health problems, including alcohol or drug abuse and emotional, marital, familial, financial or other personal problems* [74:840-2.10(A)].

(b) *The Legislature and the judicial branch of state government may utilize the services of the State Employee Assistance Program at their discretion* [74:840-2.10(G)].

(c) *To ensure equitable treatment of employees, the rules in this Subchapter shall apply to all agency employee assistance programs in existence or which may be established in the future* [74:840-2.10(C)].

530:10-21-2. Definitions [EFF. 7/1/01]

In addition to terms defined in 530:10-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise:

"Care-giving resources" means qualified professionals in the public- and private-sectors which offer corrective help with medical, mental health, emotional marital, familial, financial, or other personal problems.

"EAP" means the State Employee Assistance Program within the Office of Personnel Management, and employee assistance programs established by individual state agencies.

"EAP professional" means an individual who provides assessment, referral, consultation, and problem resolution assistance through the EAP to employees and family members seeking corrective

help with medical or mental health problems, including alcohol or drug abuse and emotional, marital, familial, financial or other personal problems.

"EAP services" means assessment and referral assistance with medical and mental health problems, including alcohol or drug abuse and emotional, marital, familial, financial or other personal problems.

"EAP staff" means an individual who provides administrative support to an EAP professional.

"Employee" means any employee of the executive, legislative, and judicial branches of state government.

"Family members" means members of an employee's immediate family, including spouse, children, parents, grandparents, siblings, and others whose involvement is necessary to resolve the personal problem(s) adversely affecting the employee's job performance.

"Participant" means an employee or family member who is referred to or who consults with the EAP.

"Referral" means an Appointing Authority, supervisor, or other authorized personnel informing an employee of the services and policies of the EAP.

"Threat of violence" means a written, verbal, electronic, or behavioral message that, either explicitly or implicitly, communicates the intent to inflict, or cause to be inflicted, physical harm to persons or property.

"Violence" means physical harm or attempted physical harm to persons or property.

530:10-21-3. EAP policy

(a) The EAP is designed to:

- (1) Help employees overcome personal problems on a confidential, professional, and

humane basis, without jeopardizing the employee's job, and

(2) Secure for employees a continuum of services, from prevention to treatment to reintegration.

(b) Participation in the EAP is voluntary, except where participation is required by other state or federal law. There is no charge to employees or family members for EAP services.

530:10-21-4. [RESERVED]

530:10-21-5. EAP records [AMENDED EFF. 7/11/04]

(a) Records and information that relate to participation by an employee or family member in the EAP *shall be confidential* except as provided in Subsection (b) of this Section. *[N]either the records nor the testimony of an Employee Assistance Program professional shall be subject to subpoena unless a participant poses a threat to deliberately harm the participant or others.* [74:840-2.10(D)]

(b) EAP staff and EAP professionals may have access to EAP records within their agency as necessary to perform the duties and responsibilities of their job. EAP staff and EAP professionals may disclose confidential information relating to a participant under the following circumstances:

- (1) The participant consents in writing to the release of information;
- (2) The participant's employing agency requests verification of an employee's appointment with an EAP professional for the purpose of granting authorized absence according to 530:10-21-7. The disclosure shall be limited to the date and time of the employee's appointment with the EAP professional;
- (3) The EAP professional determines that the participant poses a threat to deliberately harm the participant or others [74:840-2.10(D)];
- (4) There is *reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon the child by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual abuse, or neglect* [21:846(A)];
- (5) There is *reason to believe that an elderly person or incapacitated adult is suffering from abuse, neglect, or financial exploitation* [43A:10-104(A)];
- (6) A court of competent jurisdiction orders the inspection, release, or disclosure of confidential information.

(c) Records and information relating to participation by an employee in the EAP *shall be maintained separate and apart from regular personnel records*

and shall not become part of the employee's personnel file [74:840-2.10(D)].

(d) Participants in the EAP shall have a right of access to their own EAP records [74:840-2.10(D)].

(e) The provisions of this Section shall remain effective regardless of whether the participant has ceased participation in the EAP or has terminated employment with the state.

530:10-21-6. [RESERVED]

530:10-21-7. EAP-related absences from work

(a) An Appointing Authority may establish a policy permitting employees to consult with an EAP professional without loss of pay or accumulated leave. Except as otherwise provided by law and the Merit Rules, the Appointing Authority must apply the policy uniformly to all employees. At the request of the employee's agency, EAP staff shall verify to the employing agency the date and time of an employee's appointment with an EAP professional in connection with this policy.

(b) An employee may request sick or annual leave to consult with an EAP professional.

530:10-21-8. [RESERVED]

530:10-21-9. Employee participation in the EAP

(a) An employee may be referred to the EAP by his or her supervisor, Appointing Authority, or other authorized personnel, or may contact the EAP without a referral.

(b) No employee shall prevent another employee from contacting the EAP.

(c) Appointing Authorities shall inform all employees of services provided by the EAP and shall distribute EAP-related materials to employees at the request of the EAP. Appointing Authorities may refer any employee to the EAP whose personal problems are having a negative impact on job performance, including employees who test positive for drug or alcohol use and employees who commit acts or threats of violence in the workplace.

(d) An employee shall not be disciplined or otherwise prejudiced in his or her employment by participating in or requesting assessment and referral assistance from the EAP in resolving personal problems. However, nothing in this Subchapter *shall be construed to conflict with an appointing authority's responsibility and authority to maintain discipline or to take disciplinary measures against employees for misconduct or unacceptable performance. Further, participation or non-participation in any state employee assistance program shall not excuse an employee from discipline or otherwise affect the terms and*

conditions of such employee's employment status or opportunities for advancement with the state [74:840-2.10(E)].

(e) Participation in the EAP shall be on a voluntary basis [74:840-2.10(A)], except where participation is required by other state or federal law.