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MEMORANDUM 033-16HR

TO: Agency Administrators

FROM: Carolyn Horwich, Esq., Director of Human Resources

THROUGH: Rip Colvin, Executive Director

SUBJECT: Employee Assistance Program -- Guidelines

DATE: September 15, 2016

The Department of Management Services has issued Guidelines providing agency heads and managers with information on how best to utilize the Employee Assistance Program, which is now operated by e4health.

The Guidelines are attached. Please distribute to all managers.

Thank you.



DIVISION OF HUMAN RESOURCE MANAGEMENT POLICY GUIDELINE

STATE PERSONNEL SYSTEM

SUBJECT:

Employee Assistance Program – General Policies

POLICY GUIDELINE: HRM #2016-007

EFFECTIVE DATE: September 12, 2016

SUPERSEDES: Policy Clarification 2011-#004 (effective July 6, 2011; revised November 8, 2012)

STATUTES/RULES/REGULATIONS/LAWS:

Section 110.1091, Florida Statutes (F.S.), Employee Assistance Programs; Public Records Exemption;

Section 112.0455, F.S., Drug-Free Workplace Act; and

Section 440.102, F.S., Drug-Free Workplace Program Requirements

FORMS: N/A

ADDITIONAL REFERENCE MATERIALS: N/A

SCOPE AND PURPOSE OR ISSUE:

All State Personnel System (SPS) agencies and employees receive Employee Assistance Program (EAP) services under the same vendor contract. As such, access to EAP benefits should be uniform and equitable. In addition, when a supervisor or manager refers an employee to the EAP, any necessary participation during work hours should be administered consistently and pursuant to applicable laws. Therefore, this policy guideline articulates general SPS policies concerning EAP and provides specific guidance to supervisors and managers on attendance issues.

Note: The State of Florida's authorized EAP service provider is [E4 Health](#). Employees and supervisors may access the EAP program information via the Internet at www.sofeap.com or via a 24-hour toll-free telephone number at 1-844-208-7067. For assistance with EAP referrals, supervisors may telephone 1-877-267-1585.

POLICY OR PROCEDURE:

Agencies should proactively promote the EAP to ensure employees are aware of this valuable resource and are familiar with the wide range of issues that EAP can help them address.

Pursuant to section 110.1091(2), F.S., a state employee's personal identifying information contained in records held by an employing state agency relating to an employee's participation in an employee assistance program is confidential and exempt from the provisions of section [119.07](#)(1) and Article I, Section 24(a), Florida Constitution. Additionally, pursuant to the federal Health Insurance Portability and Accountability Act (HIPAA), all information concerning an employee's use of the EAP (including any documentation that an employee was referred to EAP),

shall be treated in a confidential manner by the EAP provider and, to the extent they have any involvement, the agency. This policy applies regardless of whether contact was initiated solely by the employee or with the agency's assistance.

Under the state's current EAP contract, up to six free counseling sessions per person, per issue, per year are available and may be in person or, when clinically appropriate and agreeable to the employee, by telephone. EAP is not intended to address long term treatment needs. Therefore, it is possible that employees who are deemed to need long-term counseling will be referred by EAP to the most appropriate level of care outside the EAP. Since each of the State's employee group health insurance companies may have differences in coverage for outpatient or inpatient services, such referrals will take into consideration the employee's present group insurance plan and ability to pay.

Generally, an employee has the right to refuse a referral to EAP and may discontinue participation at any time. However, regardless of how the employee chooses to address the performance or behavioral issues at hand, it is critical for the supervisor to point out to the employee that, if the performance expectation and/or corrective behavior is not achieved within the timeframe prescribed by the agency, the agency will take normal disciplinary measures or other appropriate action.

Below is a summary of the four ways that employees may access EAP and the applicable attendance and leave policy:

Employee-Initiated

Employees are always welcome to self-refer to the EAP for themselves or anyone living in their household. They may do so confidentially, without the employer's knowledge. However, when it is not feasible to schedule any required telephone consultation sessions or office visits after work hours, employees should follow their respective agency's normal procedures for requesting time off and using the appropriate type of accrued leave or authorized leave without pay.

Supervisor-Initiated

For specific guidance on supervisory referrals, refer to the [E4 Health](http://www.sofeap.com) website at www.sofeap.com and click on the "Toolkit" tab. Below is a summary of the leave available in conjunction with supervisory referrals:

1. Informal Supervisory Referrals – If the supervisor has recommended EAP as a resource, but it is not feasible to schedule any required telephone consultation sessions or office visits after work hours, employees should request the time off following their respective agency's normal procedures for requesting time off and use the appropriate type of accrued leave or authorized leave without pay.
2. Supervisory (Formal) Referrals – If the supervisor is using EAP as adjunct support to help the employee address the problem at the root of the performance decline or substandard conduct, the employee will be granted work time to attend an initial assessment/consultation session. For all subsequent visits or telephone sessions the employee shall be granted use of accrued leave or authorized leave without pay, if participation conflicts with the employee's work schedule or shift.
3. Mandatory Referrals – If the supervisor, in consultation with the HR and General Counsel's office, has determined that a mandatory referral is appropriate (based on

agency policy and applicable state or federal laws where automatic referral to EAP is part of a formal protocol and refusal to participate can lead to dismissal), the initial assessment/consultation session through the EAP shall be considered work time. For any subsequent EAP outpatient or telephone session that cannot be accommodated after work hours and for any needed in-patient treatment, the employee shall be granted use of accrued leave or authorized leave without pay, if participation conflicts with the employee's work schedule or shift.

Note: In cases where it does not negatively impact operations, supervisors may also allow the employee to convert to a flexible schedule that accommodates EAP participation with minimal loss of work time.

BACKGROUND

The employee assistance program (EAP) for state employees has been provided in law since 1990. A critical function of the EAP is to provide consultations and/or treatment referrals for employees in an effort to minimize the impact of behavioral disorders, medical disorders, substance abuse problems or other personal difficulties on the workplace. Additionally, the EAP supports the rehabilitation of employees for whom formal referral to a treatment program for substance abuse issues is a legal requirement of their mandatory testing or special-risk positions.

The aforementioned services remain a critical part of EAP, but the EAPs of today also help employees tap into a wide array of resources designed to support a healthy balance between work and personal life. Common to all services is the goal of ensuring workplace productivity and safety. For these reasons, the State Personnel System recognizes the value of EAP as a management tool and the need to promote its use and exercise flexibility for its use as may be appropriate (i.e. approving time off or the use of a flexible work schedule, when feasible).

Currently, the State of Florida's authorized EAP service provider is *E4 Health*. Services offered include, but are not limited to, employee counseling, critical incident stress management, fitness for duty evaluations, and work-life services. Employees and supervisors may access program information via the Internet (www.sofeap.com) or use the 24-hour toll-free telephone line (1-844-208-7067) to request consultation services. For assistance with EAP referrals, supervisors may telephone 1-877-267-1585.

APPLICABLE STATUTORY AND RULE CITATIONS:

Section 110.1091, F.S., Employee assistance programs; public records exemption.--

(1) An employing state agency may provide a counseling, therapeutic, or other professional treatment program to assist any state employee who has a behavioral disorder, medical disorder, or substance abuse problem or who has an emotional difficulty that affects the employee's job performance. Each employing state agency may designate community diagnostic and referral resources as necessary to implement the provisions of this subsection.

(2) A state employee's personal identifying information contained in records held by an employing state agency relating to an employee's participation in an employee assistance program is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Article I of the State Constitution.

Section 112.0455, F.S., Drug-Free Workplace Act.--

(8)(m) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test.

(n) Upon successful completion of an employee assistance program or an alcohol and drug rehabilitation program, the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation.

(o) An employer may not discharge, discipline, or discriminate against an employee, or refuse to hire a job applicant, on the basis of any prior medical history revealed to the employer pursuant to this section.

(s) An employer may not discharge, discipline, or discriminate against an employee solely upon voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered an alcohol and drug rehabilitation program. However, special risk employees may be subject to discharge or disciplinary action when the presence of illicit drugs, pursuant to s. [893.13](#), is confirmed.

(u) If an employee is unable to participate in outpatient rehabilitation, the employee may be placed on leave status while participating in an employee assistance program or an alcohol and drug rehabilitation program. If placed on leave-without-pay status, the employee shall be permitted to use any accumulated leave credits prior to being placed on leave without pay. Upon successful completion of an employee assistance program or an alcohol and drug rehabilitation program, the employee shall be reinstated to the same or equivalent position that was held prior to such rehabilitation.

Section 440.102, F.S., Drug-free workplace program requirements.--

(11) PUBLIC EMPLOYEES IN MANDATORY-TESTING OR SPECIAL-RISK POSITIONS.—

(a) If an employee who is employed by a public employer in a mandatory-testing position enters an employee assistance program or drug rehabilitation program, the employer must assign the employee to a position other than a mandatory-testing position or, if such position is not available, place the employee on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

(b) An employee who is employed by a public employer in a special-risk position may be discharged or disciplined by a public employer for the first positive confirmed test result if the drug confirmed is an illicit drug under s. [893.03](#). A special-risk employee who is participating in an employee assistance program or drug rehabilitation program may not be allowed to continue to work in any special-risk or mandatory-testing position of the public employer, but may be assigned to a position other than a mandatory-testing position or placed on leave while the employee is participating in the program. However, the employee shall be permitted to use any accumulated annual leave credits before leave may be ordered without pay.

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