



# RULES OF THE STATE PERSONNEL BOARD

## 478-1-30 Employee Assistance Program

State agencies may use an Employee Assistance Program (EAP) to assist their staff with addressing concerns that can negatively affect the workplace. An EAP can be used as both a management tool and employee benefit to build and maintain a quality workforce. Participation in an EAP neither protects an employee from warranted disciplinary action, nor jeopardizes an employee's job or career advancement.

### **(1) Definition:**

For the purposes of this Rule, "Employee Assistance Program" or "EAP" is a confidential service established to assist state employees in coping with and overcoming problems that may affect work behavior and/or performance. EAP confidentiality standards ensure no one except the EAP and the person seeking assistance from the EAP knows about the issue unless it meets one of the criteria that requires disclosure. The EAP reports aggregate utilization to state employers, but not the identity of participants, unless an exception requiring disclosure applies. (See Sections (5) and (6)(d) of this Rule.)

### **(2) Agency Participation and Compliance:**

- (a) Each agency chooses whether or not to use an EAP. Agencies who choose to use an EAP have the discretion to participate in a program offered by the Commissioner or may contract separately for EAP services.
- (b) Each agency using an EAP may develop internal program policies and/or procedures, provided they are consistent with this Rule.

### **(3) Funding:**

EAP services are funded from the individual agency's existing budget.

### **(4) Confidentiality:**

- (a) EAP participation is confidential with limited exceptions as provided in Sections (5) and (6)(d) of this Rule.
- (b) Because certain EAP participation may involve information protected by law from public disclosure, agencies offering an EAP must take active steps to ensure that all EAP records in their possession remain confidential. Such actions may include:
  1. Maintaining any records referencing employee participation in the EAP separate from the official personnel file in a secure location with controlled access; and

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2. Limiting access to such information only to those with a “need to know.”

## **(5) Exception to Confidentiality:**

EAP records (maintained by either the EAP or the employer) disclosing an employee's identity and, as applicable, particular information about the EAP participation, are released only when:

- (a) The employee provides written consent;
- (b) Disclosure is required by law, such as in the case of child abuse, elder abuse, or abuse to a disabled individual;
- (c) In response to a court order;
- (d) The EAP provider believes disclosure is necessary to lessen a serious or imminent threat of physical harm to a person or the public; or
- (e) As the Commissioner's designee, an Appointing Authority is satisfied that disclosure of EAP records maintained by the agency is needed to assist law enforcement or medical personnel responding to a life-threatening or medical emergency.

## **(6) Employee Participation:**

- (a) EAP participation is typically voluntary, but may be mandatory in accordance with agency policy.
- (b) At any time, an employee may voluntarily seek assistance from an EAP.
- (c) Management may offer a non-mandatory referral when it recognizes that the EAP may benefit an employee with unsatisfactory performance or other work-related problems, or when an employee discloses a personal issue that may be negatively affecting work. In these circumstances, the employee's EAP participation is voluntary, and the employee may accept or decline participation without penalty. Such management referral is not intended as a disciplinary measure, nor does it replace the agency's policies and procedures for dealing with work deficiencies.
- (d) The Appointing Authority, or designee, may require EAP participation in accordance with agency policy. Mandatory referrals must be job-related and consistent with business necessity.

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## **(7) Leave and Work Time:**

- (a) EAP participation is typically not considered work time. The Appointing Authority may, however, have a policy that authorizes work time for certain EAP participation. Agencies that engage in mandatory referrals must grant work time for EAP participation when required by the Fair Labor Standards Act.
- (b) When an employee must use leave for EAP activities, management should make a reasonable effort to approve the requested time off. If the requested leave qualifies for Family and Medical Leave, the agency is responsible for making such designation. See State Personnel Board Rule 478-1-.23 (Family and Medical Leave).

## **(8) Data Reporting:**

- (a) Agencies must ensure that EAP vendors provide aggregate utilization reports as part of the contractual agreements. Such reports do not identify individual EAP participants.
- (b) Agencies are to provide their aggregate EAP data, including aggregate data on mandatory referrals, to the Department of Administrative Services, as directed by the Commissioner.

### **Authority:**

O.C.G.A. Secs. 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board), O.C.G.A. Secs. 45-20-70 and 45-20-71 (defining, authorizing, and establishing confidentiality for statewide Employee Assistance Program).

### Other State Law References:

O.C.G.A. § 19-7-5 (reporting of child abuse), § 30-5-4 (reporting of disabled or elder abuse, neglect, or exploitation), § 50-18-72 (records not subject to mandatory public disclosure).

### Federal Law References:

Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 (restricts the disclosure of alcohol and drug abuse patient records).

Health Insurance Portability and Accountability Act Privacy Rule, 45 C.F.R. Part 160 and Part 164.