

# Employee Assistance Program Policy

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## § 1. Policy

It is the policy of North Carolina State government that all agencies shall provide a comprehensive Employee Assistance Program (EAP) for eligible employees. The EAP Program is a confidential counseling and resource program that serves as a benefit to employees, their dependent family members, and supervisors/managers.

The Office of State Human Resources administers the EAP Program for state agencies by contracting with an EAP vendor that offers self-referrals, supervisory referrals, management directed referrals, and fitness for duty evaluations, as well as other program services such as critical incident response, workplace training events, and work-life resources.

The University of North Carolina also administers EAP Programs for the UNC System, and EAP contracts for UNC constituent institutions may further stipulate procedures specific to an institution for the types of referrals defined below.

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### § 2. Purpose

The purpose of the EAP is to combine sound management principles with supportive intervention techniques to provide resource information and treatment opportunities for employees needing assistance. Problems addressed by the EAP include but are not limited to: emotional, family, work, marital, alcohol, drug, financial, legal and other personal issues. The program seeks to maintain and restore individual health and well-being, improve productivity and retain valued employees.

For specific information on the university EAP

<https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/>

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### § 3. Coverage

Agency - The EAP shall be made available to all full-time employees. Dependent family members also are eligible to use the services of the EAP.

At the discretion of the agency and with agreement from the EAP vendor, part-time, temporary and other categories of employees may be included.

For specific information on the university EAP

<https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/>

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### § 4. Program Access

Agency - The EAP is available 24 hours a day, seven days a week, 365 days a year to assist employees and management through the NC EAP dedicated, toll-free phone number. Daytime and evening appointments are available for EAP services.

For specific information on the university

<https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/>

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### § 5. Program Options

Agency - The program provides a maximum of three (3) separate counseling sessions, per identified issue per year, to each eligible employee and to each dependent family member.

For specific information on the university EAP

<https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/>

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### § 6. Leave Time

An employee will not be charged leave for participating in mandatory (Management Directed Referral or Fitness for Duty Evaluation) EAP services. For self-referrals, supervisory referrals, or continuing treatment or rehabilitation with a professional provider beyond the contract provisions, vacation leave, sick leave, or leave without pay may be used.

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### § 7. Program Cost

Agency - Agencies are responsible for the cost of contracting for EAP services. There is no cost to the employee for the services provided directly by the EAP. The employee is responsible for the costs associated with any subsequent recommended treatment beyond three sessions.

If all three sessions are not utilized because the employee requires a referral for more specialized or longer-term treatment, the cost is the responsibility of the employee.

The requesting agency is responsible for all costs associated with a fitness for duty evaluation. The employee is responsible for the costs associated with any subsequent recommended treatment.

For specific information on the university EAP

<https://myapps.northcarolina.edu/hr/benefits-leave/work-life-programs/eap/>

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### § 8. Confidentiality

The agency may disclose information to the EAP regarding a situation concerning an employee while receiving a consultation or in making a referral. The EAP may only disclose client information to the employer with the written consent of the employee. The written consent shall outline specific information that will be disclosed to the employee's agency.

Federal and state law, along with professional ethics, requires that the EAP exercise the highest standards of client confidentiality.

Notwithstanding professional standards of confidentiality, federal and state laws require the disclosure of information in certain circumstances. These circumstances include the following situations:

- Threat of harm to self or others,

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- Knowledge of abuse or neglect of a child, elderly or disabled person,
- Upon court order, or
- Medical necessity.

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### § 9. Types of Referrals

There are four types of EAP referrals:

- Self-Referral
- Supervisory Referral
- Management Directed Referral
- Fitness for Duty Evaluation

|                                     | Participation | Leave Options                       | Type of Issue Addressed   |
|-------------------------------------|---------------|-------------------------------------|---|
| <b>Self-Referral</b>                | Voluntary     | Personal (vacation, sick or LWOP)   | Personal or work concerns.  |
| <b>Supervisory Referral</b>         | Voluntary     | Personal (vacation, sick or LWOP)   | Personal or work concerns.  |
| <b>Management Directed Referral</b> | Mandatory     | Investigatory Leave with Pay (ILWP) | Concerns require prompt and immediate attention to avoid disruption of the workplace. |
| <b>Fitness for Duty Evaluation</b>  | Mandatory     | Investigatory Leave with Pay (ILWP) | Concerns pose an immediate threat to self or others.                                  |

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### § 10. Self-Referral

A self-referral is a voluntary contact initiated by the employee to obtain confidential assistance for a personal or medical problem. The employee may contact the EAP directly and select a face-to-face or a telephonic assessment. The contact is strictly confidential between the employee and the EAP. The EAP does not notify the agency of an employee's self-referral.

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Management should encourage the use of the EAP, especially if they have knowledge that an employee is experiencing personal, work, or family problems.

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### § 11. Supervisory Referral

A supervisory referral is designed to provide a management tool for addressing unsatisfactory job performance or unacceptable personal conduct. Supervisors should encourage the use of EAP as a means for an employee to receive assistance for concerns that may be negatively impacting job performance or personal conduct.

This referral is provided as an option to the employee. Should the employee decline the initial offer of EAP services, the offer can be repeated any time the supervisor feels the employee may have become more receptive.

If the employee accepts the offer of EAP services, the Human Resources Office, in collaboration with the employee's supervisor, may contact the EAP in advance of the appointment to provide background information about the employee and details of the job performance or personal conduct that is of concern. If treatment is recommended, the EAP will refer the employee to a treatment provider and monitor the employee's compliance with treatment recommendations and will maintain ongoing communication with the agency until closure.

Unlike self-referrals, which are strictly confidential between the employee and the EAP, with a supervisory referral, limited information can be released by the EAP to the agency Human Resources Office with the written consent of the employee. This information is limited to:

- Whether the employee kept the initial EAP appointment,
- Whether the employee agreed to follow recommendations,
- Whether the employee is continuing to comply with recommendations, and
- When there is closure of services

Disciplinary action may be taken for any ongoing or subsequent job performance or personal conduct, regardless of the employee's active involvement in the EAP.

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### § 12. Management Directed Referral

A management directed referral is a mandatory EAP option that may be used to address employee behavior (including performance or conduct) that requires prompt or

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immediate attention and which may warrant disciplinary action. The purpose of the referral is to protect the workplace from disruption and to develop a plan of action to resolve the situation caused by the employee's conduct. As an example, this referral may be used when an employee has demonstrated:

- Erratic or unusual behavior that is disruptive to the workplace or may present a potential health/safety danger to self or others, or to state property,
- Impairment on the job, or
- Positive alcohol or drug test

When considering a management directed referral, management must first consult with the agency Human Resource Office which will work in conjunction with legal counsel.

When making a management directed referral, management must explain to the employee the process that is being considered in a manner that helps the employee understand expectations for the employee and what disciplinary action will likely occur. Specifically, management must communicate in writing the following information to the employee:

- Specific reason(s) for the management-directed referral.
- Management's expectations for compliance in resolving the concern(s).
- The conditions of the referral, which include:
  - Comply with the directive to undergo a management-directed referral,
  - Comply with and completion of any subsequent treatment recommendations, and
  - Make required corrections in job performance or personal conduct.
- Possible consequences for the employee's failure to accept all the conditions of the referral or to make and sustain required correction in job performance or personal conduct.

Refusal by the employee to participate in the EAP may be just cause for disciplinary action. Disciplinary action may also be based on the job performance or personal conduct issue that prompted the referral.

The agency may issue a lesser form of disciplinary action if the employee complies with the management directed referral and completes the recommended treatment. If later the employee fails to comply, the agency may issue an appropriate level of disciplinary action.

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The Human Resources Office must contact the EAP in advance of the appointment to provide background information about the employee and details of the job performance or personal conduct that prompted the referral. If treatment is indicated, the EAP will refer the employee to a treatment provider and monitor the employee's compliance with treatment recommendations and will maintain ongoing communication with the agency until closure.

The EAP will release limited information from the management directed referral to the agency with the written consent of the employee. The information is limited to:

- Whether the employee kept the initial EAP appointment,
- Whether the employee agreed to follow recommendations,
- Whether the employee is continuing to comply with recommendations, and
- When there is closure of services.

If, at any time, the employee refuses to sign the necessary consent for release of information or later revokes the consent for release of information, or does not comply with treatment recommendations, the agency may rely solely on the disciplinary process to address the job performance or personal conduct issue that originally prompted the referral.

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### § 13. Fitness for Duty Evaluation

A fitness for duty evaluation is a mandatory EAP option that may be used when an employee's behavior creates a reasonable belief that an employee poses an immediate hazard or risk to self or others, or to state property. It also may be used when there is a reasonable belief that an employee is not fit to perform the essential job functions due to a psychological or psychiatric condition. This may include suicidal ideation without an underlying conduct or performance issue.

When considering a fitness for duty evaluation, management must first consult with the agency Human Resource Office which will work in conjunction with legal counsel.

When making a fitness for duty evaluation referral, management must explain to the employee the process that is being considered in a manner that helps the employee understand what is expected and what disciplinary action likely will occur. Specifically, management must communicate in writing the following information to the employee:

- Specific reason(s) for the fitness for duty evaluation,
- Management's expectations for compliance in resolving the concern(s),
- The conditions of the referral, which include:

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- Comply with the directive to undergo a fitness for duty evaluation,
- Comply with and completion of any subsequent treatment recommendations or any other conditions of the evaluation, and
- Make required corrections in job performance or personal conduct, and
- Possible consequences for the employee's failure to accept all the conditions of the referral or to make and sustain required correction in job performance or personal conduct.

An employee's refusal to participate in the EAP may be just cause for disciplinary action. Disciplinary action may also be based on the job performance or personal conduct issue that prompted the referral.

The agency may issue a lesser form of disciplinary action if the employee complies with the fitness for duty evaluation and completes the recommended treatment. If later the employee fails to comply, the agency may issue an appropriate level of disciplinary action.

The agency Human Resources Office will provide the following information to the EAP in advance of the referral:

- Precipitating event(s)
- Documented performance, conduct, and/or behavioral concerns
- Pending and/or active disciplinary action
- Employee's job description or essential job functions

The EAP will facilitate the referral to a qualified resource to conduct the fitness for duty evaluation. Unlike the supervisory referral or the management directed referral, the agency Human Resources Office will receive an evaluative summary from the evaluating resource regarding the employee's fitness for duty. The evaluative summary will recommend at a minimum one of the following courses of action as defined in the fitness-for-duty program for the agency:

- Fit to return to duty without specific recommendations. The evaluator has determined that the employee does not pose a hazard or risk to self or others, or to state property and is fit for duty.
- Fit to return to duty with specific recommendations. The evaluator has determined that the employee does not pose a hazard or risk to self or others, or to state property and is fit for duty. However, the evaluative findings recommend that the employee should undergo treatment as a condition of continued employment.

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- Not fit to return to duty until specific recommendations have been met. The evaluator has determined that the employee may pose a hazard or risk to self or others, or to state property and is not fit-for-duty. Management in consultation with the agency Human Resources Office shall consider the recommendations in the evaluative summary. If return to work is contemplated, the state shall set the terms and conditions that must be met before the employee shall be allowed to return to work.

If treatment has been recommended following the fitness for duty evaluation, the EAP will provide the following services:

- Refer the employee to a treatment provider,
- Monitor the employee's compliance with treatment recommendations, and
- Maintain ongoing communication with the agency until closure of services.

If, at any time, the employee refuses to sign the necessary consent for release of information or later revokes the consent for release of information, or does not comply with treatment recommendations, the agency may rely solely on the disciplinary process to resolve the job performance or personal conduct, or behavioral issue that originally prompted the referral.

The agency is responsible for the cost of the fitness for duty evaluation, as defined in the EAP program. The employee is responsible for the cost associated with any subsequent recommended treatment. The agency is considered the client; therefore, the evaluative summary will be provided directly to the Human Resources Office.

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### § 14. Investigatory Leave with Pay

Investigatory leave with pay shall be used initially when management determines that the employee should not remain in or temporarily return to the workplace.

Management's decision must consider the best interests of the agency and the employee in deciding to use the investigatory leave with pay provision. Investigatory leave with pay may be used for an EAP referral in the following situations:

- Avoid disruption of the workplace and protect the safety of persons or property,
- Investigate allegations of performance or conduct deficiencies that may constitute just cause for disciplinary action,
- Provide time to schedule and conduct a pre-disciplinary conference,
- Facilitate management directed or a fitness for duty evaluation.

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### § 15. Investigatory Leave with Pay for Management-Directed Referrals

Investigatory leave with pay shall end when EAP notifies the agency that recommendations for treatment have been made following the assessment of the employee, or the results of an alcohol or drug test have been received and the agency makes a decision regarding the employee's status. If the employee is not able to return to work or if the employee requires leave time for recommended treatment, the agency shall advise the employee of leave options. Those options may include sick leave, or if eligible, family and medical leave or short-term disability.

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### § 16. Investigatory Leave with Pay for Fitness for Duty Evaluations

Investigatory leave with pay shall end when the agency receives the evaluative summary of the fitness for duty evaluation and is able to make a decision regarding the employee's status. If the employee is not able to return to the workplace based on the results and recommendations of the evaluative summary or if the employee requires leave time for recommended treatment, the agency shall advise the employee of leave options. Those options may include sick leave, or if eligible, family and medical leave or short-term disability.

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## § 17. Responsibilities

### § 17.1. Employee Responsibilities

Employees are always responsible for performing assigned job duties satisfactorily, conducting themselves appropriately in the workplace, and availing themselves of resources designed to facilitate the resolution of workplace concerns.

### § 17.2. Management Responsibilities

Management is responsible for managing employee performance, setting performance expectations, addressing performance and conduct deficiencies and for using the fitness for duty evaluation or disciplinary process when appropriate. Management, in consultation with agency human resources, shall utilize the services of EAP for consultation, and refer employees for EAP services in a fair and consistent manner.

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### § 17.3. Agency Responsibilities

All state agencies shall participate in the State's contract to provide EAP services to agencies. The University of North Carolina will administer the EAP Programs for the UNC System. As part of the development and support of EAP within the organization, each agency shall provide ongoing information to employees, supervisors and managers on the use of EAP services in compliance with this policy. Each agency shall designate an EAP Coordinator who has primary responsibility for the administration and communication of EAP services.

### § 17.4. Office of State Human Resources Responsibilities

The Office of State Human Resources is responsible for securing, maintaining and administering an EAP contract to provide employee and management services to state agencies (excluding the UNC system). OSHR will assist in resolving any issue between a state agency and the EAP vendor.

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### § 18. Sources of Authority

This policy is issued under any and all of the following sources of law:

- [N.C.G.S. § 126-4\(10\)](#); [N.C.G.S. § 143-581](#)

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### § 19. History of This Policy

| Date             | Version   |
|------------------|---|
| June 1, 1992     | <ul style="list-style-type: none"><li>• First version.</li></ul>  |
| January 1, 2003  | <ul style="list-style-type: none"><li>• Revised to reflect program changes in the EAP and changed the following policy provisions:<ul style="list-style-type: none"><li>• (1) Eliminates self-referral</li><li>• (2) Allows for only management referrals</li><li>• (3) Adds Fitness for Duty/Risk Evaluation referral process</li><li>• (Exception Case No. 02-08)</li></ul></li></ul> |
| February 1, 2006 | <ul style="list-style-type: none"><li>• Policy removed since the program has been contracted to a third party.</li></ul>  |

## Employee Assistance Program Policy

August 13, 2018

- This is a new policy that details the components of the EAP process intended to provide greater clarity on the referral options available to employees and management.