

Frequently Asked Questions

Regarding EAP Mandatory Referrals

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For your convenience, the sister-documents to this FAQ - the EAP [Supervisor Manual](#) and the [Online Supervisor Training](#) - are available online in the Supervisor Tools section of the EAP web site at www.FirstChoiceEap.com.

1. Is the mandatory EAP referral program only for drug and alcohol problems?

No. While the majority of referrals to the mandatory referral program are as a result of an employee's violation of the Company's drug-free workplace policy, the mandatory EAP referral program can be used for workplace performance and behavioral concerns. These are situations where the employee has continued to violate company rules despite coaching and progressive discipline. For example, you may have an employee who has continued to be late for work and despite your coaching and use of progressive discipline, the employee continues to be late. In this situation, the Company can make a mandatory referral to the EAP, as a "last chance condition of employment."

Often the EAP can discover that something in the employee's personal life may be contributing to their lateness ... maybe a drug or alcohol problem, domestic violence or some other condition. In these instances the EAP will work with the employee to resolve the issue that is contributing to their work-related problem.

2. The mandatory EAP referral seems like a drastic step to take and may not be received very well by my employee. It seems like we are making them get counseling. Can the Company do this?

Yes. While this may seem drastic, the mandatory EAP referral is often the last step the Company can take to help the employee retain their job. The purpose of this program is to help the employee become successful at work. Since the employee is likely to face termination if the performance/behavior doesn't change, the Company is going the extra mile by offering the employee the resources to become successful.

The EAP is in the unique position of being able to ask the employee difficult and personal questions that the Company can and should not ask. The EAP may determine that ongoing counseling or education can help the employee make healthy and necessary changes. Only information related to the employee's compliance or non-compliance with the program is shared with the Company.

3. We have an employee who tested positive on a random drug test. The employee will be suspended and required to follow through with the EAP mandatory referral program (Last Chance Agreement). When can he be expected to return to work?

The EAP will facilitate an assessment for the client. If there is a treatment recommendation the EAP will require the client to begin the treatment program and provide a negative drug/alcohol test before being considered eligible for returned to work (always at the employer's discretion). This timeframe for a return to work can vary from person to person (based on the recommended level of treatment and providing a negative drug/alcohol test) and the supervisor or Company can always consult with the EAP case manager in that regard.

4. Our drug-free workplace policy indicates that we can test an employee for drugs and alcohol if a concern arises as a result of "reasonable suspicion" which has been observed by at least 2 managers or supervisors. Could you give us examples commonly observed elements of "reasonable suspicion"?

At the end of this Q&A section, we have enclosed a page that lists commonly observed factors under a "reasonable suspicion" policy. We also suggest that you review your drug-free workplace policy for descriptions and protocols related to "reasonable suspicion."

5. The EAP has completed a mandatory referral evaluation for an employee who tested positive for THC. The EAP recommended that the client participate in a treatment program. It is our understanding that this is taking place. The client has been on suspension but now that treatment is underway we'd like to return the employee to work. The EAP has indicated that the employee has not yet provided a clean drug/alcohol test and has not cleared the employee to return to work. We need this person back on the job. Can we bring the employee back even though there has not yet been a negative drug test?

The EAP understands the Company's production concerns. For liability reasons the EAP will not clear the employee back into the workplace until they have provided the Company with a clean return to work alcohol/drug test. If an employee is returned to work prior to producing a clean drug test, the Company assumes all liability associated with such a decision. Returning an employee to work knowing that a prohibited substance continues to be in the employee's blood stream is in itself a violation of the Company's drug-free workplace policy. This would also place the company "at risk" for liability should the client be involved in a work-related accident. Such a decision could also create precedent about how other employees would expect to be managed in similar situations.

6. One of our employees with a CDL tested positive on a random Department of Transportation (DOT) drug test. What are our next steps?

The Company Designated Employee Representative (DER) who was notified of the positive drug test result should contact the EAP to initiate a mandatory referral. DOT regulations require that the employee be removed from safety sensitive duties and undergo an evaluation by a Substance Abuse Professional (SAP). Once the employee contacts the EAP, we will connect the employee to the Substance Abuse Professional. It is the responsibility of the SAP to conduct the evaluation, make a recommendation as to whether treatment is necessary and to determine when the employee can again be returned to safety sensitive duties. The EAP will monitor the employee's compliance with any treatment once the SAP has returned them to their safety sensitive duties.

The cost of this SAP evaluation is not covered by the EAP. In most cases the Company will charge the employee for the cost of this evaluation, currently \$650.

7. We referred one of our employees to the EAP as a result of a positive drug test. The employee told us it was a one-time mistake and they don't have a problem. The employee seemed very cooperative and was willing to go through the mandatory referral process. The EAP assessed the employee and recommended that the employee enter a treatment program. Our employee is now extremely unhappy, feels it was an unfair evaluation and doesn't want to follow through with treatment. He is a good employee and we don't want to lose him.

When an employee is referred, the EAP mandatory referral case manager does an initial telephonic assessment of the employee. The EAP then refers the employee to a provider who specializes in drug and alcohol assessment and diagnosis. The EAP carefully reviews all treatment recommendations and thoroughly discusses the recommendation with the provider before a treatment recommendation is made. The EAP ensures that any mandatory referral treatment recommendation is clinically appropriate to the identified concern and that the client is given every opportunity to be successful in addressing their problem.

It's common for an employee to initially be very cooperative with the referral process, only to become resistant upon learning that treatment is necessary and appropriate. This is part of the "denial process" often associated with substance abuse and dependence. Remember that the employee was referred to the EAP for violating the Company's drug-free work place policy (putting the employer at risk for liability). When an employee becomes resistant to treatment, it is appropriate to redirect the employee to the EAP for follow-up discussion.

If an employee is unwilling to follow through with the treatment recommendations, they will be designated as "out of compliance" with the terms of their mandatory referral. It is in the Company's best interest to implement the consequences described in the "Last Chance Agreement." This can be a difficult thing to do, especially if the employee is productive at work. However, allowing the employee avoid the recommended treatment sends the message that the employee's violation of the drug-free workplace policy is

acceptable and can set a precedent for future referrals. Such a decision reinforces the employee's denial and puts the Company at risk for liability.

8. We have an employee who disclosed they have a drug problem and would like to get help. How can we get this person help and can we make a mandatory EAP referral?

Many drug-free workplace policies allow the Company to make a mandatory referral to the EAP if an employee discloses a drug or alcohol problem. A mandatory referral can give the Company information about whether or not the employee is getting help and whether they are following through with a recommended program of care. If your Company's drug-free workplace program doesn't specifically allow you to make a mandatory referral, you may want to discuss this with your HR designee or your Company's legal advisor. Even if it is decided that a mandatory referral cannot be made, we suggest that you advise the employee to contact the EAP for help and resources.

9. We have an employee we hear is having personal problems at home. We believe his marriage is in trouble and one of his children was recently arrested. Even though he continues to do a good job at work, we believe he would benefit from counseling. Can we make a mandatory referral for him?

Unless the employee is exhibiting problems in their workplace performance, attendance or productivity, a mandatory referral is not appropriate. Instead, we recommend that the supervisor informally remind the employee of the resources available through the EAP and give them the EAP contact information. The EAP is also available to the supervisor to discuss the situation and consult about how to approach the employee and to review available EAP resources. We encourage organizations to contact the EAP any time to discuss questions or concerns about resources and responding to employee needs.

10. I am the HR representative for the Company and I've just become aware of an employee who has missed a lot of work, has had unexcused absences and a history of poor performance. At this stage his supervisor has not documented any of these concerns nor has the employee been talked to about these issues. Can I make a mandatory EAP referral to get these problems turned around?

If the employee is at a point where they are going to be terminated unless these behaviors change, then a mandatory referral would be appropriate as a part of the employee's "last chance agreement." If the Company's policy requires that these behaviors be documented and a course of progressive discipline is required before the "last chance agreement" then a mandatory referral would not be appropriate. Should the employee's attendance and performance problems continue despite supervisor coaching and progressive discipline, the mandatory referral would be a future option as part of the Company's "last chance" attempt to help the employee succeed.

11. We referred an employee to the EAP mandatory referral program as a result of ongoing absences. The employee was evaluated by the EAP and is currently seeing a counselor to deal with this problem. We are concerned that the employee continues to miss work. What is our next step?

When an employee is referred to the EAP as a mandatory referral, it is understood that the employee's problematic performance or behavior needs to change, regardless of the outcome of counseling assessment through the EAP. Progressive discipline up to and including termination of employment is generally the next step made by the employer when an employee's performance or behavior has not changed.

12. We have an employee who recently blew up in the workplace and threatened to "really mess someone up." We don't think he is serious, but we want to make sure that he will not harm anyone. He is currently suspended. How should we proceed with this employee and can we do a mandatory EAP referral?

If the Company is looking for assurance that an employee is not a risk to harm self or others and is safe to have in the workplace, the EAP recommends that a "fitness for duty evaluation" be conducted. This is not the same as a mandatory referral. A fitness for duty evaluation is a specialized, forensic evaluation of the employee's condition and falls outside of the scope of EAP services. The fitness for duty evaluation is appropriate for protecting the Company from liability whenever safety is a question or concern.

While this type of evaluation is beyond the expertise and scope of EAP services, the EAP can provide the Company with contact information for organizations that specialize in these types of evaluation. The cost of this evaluation is the responsibility of the Company.

The fitness for duty evaluation results in a determination of the appropriateness and safety of having the employee in the workplace and the timeline and conditions for the employee's return to work. If the evaluation clears the employee to return to work but requires the employee to receive some type of ongoing counseling, education or treatment, the Company can then make a mandatory refer to the EAP to monitor the employee's compliance with their recommended treatment plan.

13. We recently referred one of our employees to the EAP mandatory referral program due to job performance and attendance issues. Can you let us know why her work problems have been occurring?

In order to protect the employee's privacy, the EAP will only disclose whether or not the employee is in compliance with the recommended treatment plan and the mandatory referral. No other information will be released. Should the employee continue to have problems at work, the EAP should be notified and will consult with the employee's treatment provider. It is also appropriate for the Company to implement consequences and/or progressive discipline for recurring problem behaviors and performance.

14. We have an employee who has missed a lot of work recently. The employee has medical excuses for the missed work but has obvious problems doing the work even when on the job. The employee is forgetful, at times seems to “be out of it,” work quality is poor and there continues to be hours of missed work due to medical appointments. This needs to change. Can we make a mandatory EAP referral for this person?

It appears that these concerns may have a medical basis since the employee continues to provide medical documentation for absences. If so, this may be a question of whether or not the employee is medically able to be at work. Rather than making a mandatory referral, this may require a “fitness for duty” evaluation which is beyond the scope and expertise of the EAP. The Company should get permission to speak with the employee’s doctor to explain what the employee’s job duties are and how the employee is performing at work. It will be the physician’s responsibility to determine whether or not the employee is medically able to be at work based on his or her job description and work responsibilities.

15. One of our employees was referred to the EAP for anger problems at work. He completed the EAP mandatory program about a month ago after having several weeks of counseling. The employee recently had another anger outburst at work. He is an excellent employee most of the time, but keeps getting angry, throws things and sometimes swears at his co-workers and supervisor. Can we make another mandatory EAP referral for him?

It is generally understood that when an employee is referred to the EAP for a mandatory referral, that the behaviors of concern must change or the Company will implement any consequences or progressive discipline. This continues to be true even when the behavior occurs after the mandatory referral case is closed. The EAP recommends a “no tolerance” position be taken by the Company regarding reoccurring inappropriate behavior or work performance problems. In this case, it would be more appropriate to deliver the consequences outlined by the Company in the employee’s mandatory referral or “last chance agreement” rather than making another referral to the EAP.

Reasonable Suspicion

Commonly Observed Factors

Behaviors	Speech
Observed drug/alcohol use	Slurred
Possession of suspicious or unknown substances	Exaggerated enunciation
Possession of "drug paraphernalia"	Incoherent
Lack of coordination or difficulty balancing	Loud or boisterous
Wide mood or energy swings	Rapid or excessive
Abnormal or erratic behaviors	Swearing or verbally abusive
Hostile or belligerent	Inappropriate responses
More nervous than normal	
Inability to concentrate	
Excessive yawning	
Difficulty breathing or swallowing	
Insomnia	
Paranoia or hallucinations	

Odors on Breath/Clothes/Body	Job or Workplace Performance
Smell of alcohol	Declining performance or productivity
Smell of marijuana	Absences or poor performance after paydays
Offensive body odors/poor hygiene	Excessive absences (especially Mondays or Fridays)
Excessive use of breath mints/gum	Unexplained or undocumented absences
Excessive use of cologne or mouthwash	Prolonged lunch hours or breaks
	Change in performance after lunch or other breaks
	Excessive tardiness
	Resistance to authority or direction
	Lack of memory or concentration
	Carelessness or safety violations
	On the job accidents
	Disappearance from the worksite during the workday
	Complaints from co-workers
	High rate of colds, flu, headaches, stomach problems
	Frequent or intense arguments

Appearance

Constricted or large pupils

Bloodshot or watery eyes

Unfocused or blank stare

Wearing sunglasses at inappropriate times

Frequent runny, bloody or irritated nose

clothing or grooming

Excessive sweating

Cold clammy sweats

Pale or flushed complexion

Needle marks on arms

Complaints from co-workers