

THE FRONTLINE SUPERVISOR

Helping you manage your most valuable resource: Employees

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The following are answers to common questions supervisors have related to their employees and making EAP referrals. As always, if you have specific questions about referring an employee or managing a workgroup issue, feel free to make a confidential call to EAP for a management consultation at 608-775-4780 or 800-327-9991.

Q. My employee was disciplined for exaggerating his workers' compensation claim. Should we also make a supervisor referral to EAP?

A. Exaggerating a claim after a legitimate work-related injury is the most common type of workers' comp fraud—far more common than filing totally fabricated claims, according to Midwestern Insurance Alliance. Although your employee has been confronted, he may have a personal problem that contributed to his filing an exaggerated claim. For example, that personal problem might be a substance abuse issue. Between 38 and 50 percent of all workers' compensation claims involve workplace drug or alcohol abuse, according to the U.S. Department of Labor. Also, drug-abusing employees are five times more likely to file a compensation claim, according to the National Institute on Drug Abuse. An EAP referral may help identify an addiction problem, thereby reducing the risk of a future accident. It may also reduce the likelihood of an illegitimate claim, saving the organization from significant financial loss.

Q. My employee wanted to see my documentation on her performance. This is good, and I agree she should see it. However, she also wanted every personal note I've made to myself about her performance. When I refused, she got upset and angry. Was I right to withhold it?

A. If you were keeping personal notes with the expectation that they would not be shared, then your right to privacy is well-established. You might rely upon them later to jog your memory and construct documentation, but they have no role in official documentation. Your private notes are similar to a diary or a journal of intimate or personal experiences. It might be appropriate to share such notes if there was an overriding concern more important than your privacy, but this does not appear to be the case. Avoiding a power struggle over the notes can be accomplished by telling your employee that the documentation you must share represents the entirety of your concerns about her performance. You are not obligated to disclose the existence of private notes that would have no official purpose.

Q. When an employee tests positive for alcohol or drug use on the job, how is a referral to EAP "voluntary" if the alternative is termination for violating the policy? Aren't we forcing the employee to go?

A. A referral to EAP in lieu of disciplinary action for violating the company drug-free workplace policy is an accommodation for an employee who may have an addictive disease, although few employees see it this way initially. The hope is that the employee will accept help, enter recovery, remain abstinent and stay employed. At first glance, this process may appear coercive and forced, but it is still voluntary. This is because failure to go to EAP triggers disciplinary action based upon violating the policy, not failure to accept help. Although the referral may meet requirements under the law, as in the case of the U.S. Department of Transportation regulations pertaining to drug testing, it is still based upon the possible existence of addictive illness. It is less likely that a person will initially view an EAP referral as an accommodation if that person does not believe alcoholism or drug addictions are truly healthcare problems.

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