

## EMPLOYEE ASSISTANCE PROGRAM

**SECTION 1. Definition:** The Agency agrees to make available an Employee Assistance Program (EAP) to all employees at no cost. EAP services provided by the Agency will include: Professional Counseling, Management Coaching and Consultation, Critical Incident Services, Legal and Financial Services, and support of a Drug-Free Workplace. Applicable regulations including Executive Order 12564, DoDI 1010.04, and DoDI 1010.09 will govern Employee participation in the EAP and the consideration given to employees who allege that their actions were brought about by illness or substance abuse.

A. Supervisors should offer the availability of the EAP to employees who are experiencing situations that have adversely affected an employee's performance and conduct; however, supervisors will not attempt to diagnose employee problems; e.g., alcohol or drug abuse, depression, etc.

B. The Agency will publicize EAP on the front page of the intranet semi-annually during January and June. The information will include, at a minimum, the telephone number, location, and hours of operation of the EAP.

**SECTION 2. Drug and Alcohol:** The Agency and the Union jointly recognize that alcohol and drug abuse are health problems and employees having these conditions will receive the same consideration as for other health problems. Employees are encouraged to seek assistance from EAP or any similar program if they think that substance abuse is impacting their job performance and/or their personnel life (see Section 6, Safe Harbor).

### SECTION 3. Other Issues:

A. *Personal:* The parties recognize the need to assist employees whose job performance is adversely affected by medical, behavioral and emotional problems other than by reasons of alcohol and/or drug abuse. The Union supports the Agency's EAP as a means for identifying and providing information, education, and other assistance or referral services for these employees' problems.

B. *Workplace:* The Parties will encourage employees to seek employee assistance and recognize that, the EAP can be important in preventing and intervening in workplace violence incidents; delivering critical incident stress debriefings; and providing assistance to management and employees during Agency restructuring or other major organizational transitions or developments.

Agreed: Agency   
Date 7 Oct 14

Union PPW

**C. Security Clearance:** Going to EAP in and of itself will not affect an Employee's security clearance. EAP is a confidential service and does not report to security. If an employee is referred for substance abuse treatment and/or mental health counseling, they may be required to self-report. However, the fact that the employee sought help through EAP is usually considered favorably. It is noted that in terms of required disclosure, the SF-86 form exempts an employee from having to report any counseling related to "strictly marital, family, grief not related to violence by the employee; or strictly related to adjustments from service in a military combat environment."



**SECTION 4. Voluntary Participation and Employee Responsibility:** Although the existence and functions of the EAP will be publicized to employees, no employee will be required to participate or be penalized for declining referral to the program. Employees are highly recommended to attend EAP orientation. Employees are free to notify the Union of their participation in EAP.

Prior to leaving the work place to meet with an EAP counselor, the employee must inform his or her supervisor and make appropriate arrangements for the absence, but is not required to state the basis of the appointment. Employees who do not want their supervisors to know of their attendance must make arrangements for EAP appointments outside of duty hours or request leave in accordance with Annual Leave and Sick Leave Articles, of this Agreement for appointments during duty hours.

**SECTION 5. Access to EAP Services:** The Agency may grant periods of excused absence to an employee for participation in the EAP for problem identification and referral to an outside resource and for general employee orientation or education activities, provided that the employee informs the supervisor of the appointment. Employees shall be allowed up to one (1) hour (or more as necessitated by travel time) of excused absence for each counseling session during the assessment and referral phase of rehabilitation, as defined by the EAP Counselor.

Absences during duty hours for rehabilitation or treatment must be charged to the appropriate leave category in accordance with law and this contract. Employees who are referred to community services for treatment will request leave in accordance with the Leave Articles of this CBA.

**SECTION 6. Confidentiality of the Program:** Except as defined below, the Parties recognize that all confidential information and records concerning an employee's counseling and treatment through EAP will be maintained in accordance with the Privacy Act of 1974 (5 USC 552a), Health Information Portability and Accountability Act, and other applicable laws. Any information obtained from EAP with the employee's authorization may not serve as the basis for disciplinary or adverse actions unless required to enforce the law or terms of last chance agreements.

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Date 7-04-17  
2 of 4





A. Without an employee's specific written consent, the Agency may not obtain information about the basis of the employee's involvement with EAP. The EAP staff will provide the employee with a written notice concerning the confidential nature of EAP records along with the conditions where information discussed in counseling may be disclosed and inform the employee that there are three (3) types of disclosure:

1. Disclosure **with consent**. The employee's written consent is obtained before any information is released, except where disclosure without the consent of the client is allowed;
2. Disclosure **without consent**. This disclosure is only permissible in a few instances, such as the following:
  - a. to medical personnel in a medical emergency;
  - b. in response to an order of a court of competent jurisdiction;
  - c. to comply with Title 42 CFR, Chapter 1, subchapter A, part 2 that an EAP is required by law to report incidents of suspected child abuse and neglect (in some States, elder and spouse abuse) to the appropriate State and local authorities; or
  - d. EAP may make a disclosure to appropriate individuals, such as law enforcement authorities and persons being threatened; if the employee has committed, or threatens to commit, a crime that would physically harm someone. This can be done only if the disclosure does not identify the employee as an alcohol or drug abuser.
3. **Secondary Disclosure**. Any information disclosed with the employee's consent must be accompanied by a statement that prohibits further disclosure unless the consent expressly permits further disclosures.

B. Safe Harbor will be provided to employees who voluntarily admit to illegal drug use, obtain counseling or rehabilitation under the Civilian Employee Assistance Program, and thereafter refrain from using illegal drugs.

1. Upon such voluntary disclosure, a Safe Harbor determination shall be made which protects the employee from discipline or further adverse actions from the voluntary disclosure.
2. Safe Harbor shall not be available to an employee after notification of a random drug test request or drug usage being identified through other means, such as reasonable suspicion drug testing directed by a supervisor, or upper level management.

Agreed: Agency  Union   
Date 7/24/14  
3 of 4

3. Pursuant to NCR-MD DTM 13-002, Safe Harbor, the EAP Counselor will follow up with individuals during the rehabilitation period to track their progress and encourage successful completion of the program. The Counselor will provide follow-up via telephone with the employee while he/she is undergoing rehabilitation. The Counselor will also have the employee sign a Release of Information (ROI) allowing the Counselor to communicate with the employee's rehabilitation treatment providers to verify employees attendance and participation with treatment, obtain details of the employees treatment and aftercare plan to help coordinate the employee's return to work process post treatment. Once the employee has successfully completed treatment and is cleared to return to work, the Counselor will schedule an in-person follow up meeting with the employee to further assist and support the employee in the return to work process.


**SECTION 7. Discipline:** The first time an employee receives a proposed disciplinary or adverse action for illegal drug use (e.g., failing a drug test), the employee may notify the Deciding Official that she/he has a substance abuse problem and/or is seeking the services of EAP;

A. In response to the proposed discipline, the employee may request that the Deciding Official place the proposed action in abeyance for a period of not more than one (1) year while the employee undergoes treatment under terms and conditions agreed to by the employee. The Deciding Official may confer with the Proposing Official and the EAP Counselor. If the Deciding Official determines to decide to hold the proposed action in abeyance, the employee must provide supporting documentation of active enrollment in a rehab program for the term of the abeyance period, per Section 6(A)(1) of this Article. This provision only applies in the first instance of substance abuse and does not apply if severe, egregious or criminal misconduct is involved.

B. Although the Deciding Official may consider the request for abeyance, nothing in this agreement shall be interpreted as requiring the Deciding Official to grant this request or to justify his/her failure to grant the request.

C. If a decision is made by the Agency to hold an action in abeyance in accordance with Section A above, and there are no further instances of related performance or conduct problems at the end of the specified period, the Agency will rescind and close the pending the action.

D. Should the employee violate any terms of the agreed upon conditions or is involved in additional misconduct during the abeyance period, the proposed action will continued to be processed in accordance with the procedures outlined in 5 CFR 752 and Article 45, Disciplinary and Adverse Actions, of this Agreement.

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Date 7 Oct 14

4 of 4

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