

**CHAPTER 16**

**EMPLOYEE**

**ASSISTANCE**

**PROGRAM**

NOTE: This chapter should be read in conjunction with local activity instructions and with any negotiated agreements between your activity and an exclusively recognized labor organization. Contract language will generally take precedence over conflicting provisions in this manual. Areas of uncertainty should be discussed with the Human Resources Office.

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## SUBSTANCE ABUSE

### 1. PURPOSE

- Provide guidelines for assistance to employees who are involved in substance abuse.
- Provide guidelines for supervisors in proper methods of dealing with employees who have a substance abuse problem.

### 2. EMPLOYEE ASSISTANCE PROGRAM (EAP)

Misconduct or poor performance may be caused by some form of substance abuse or other personal problems. Referral to the EAP and successful rehabilitation may resolve employee problems and preclude the need for disciplinary action. The EAP is discussed in the following section.

### 3. EMPLOYEE DISCIPLINE

#### a. Analysis of Employee Infraction

“Potential for the employee’s rehabilitation” is one of the Douglas Factors used to analyze an employee infraction (See Chapter 17 Employee Corrective, Disciplinary and Adverse Action and associated Appendix 17A Douglas Factors and Appendix 17B Guide for Determining Recommended Remedies for Scheduled Offenses). If there is any relationship to what the employee did and their claim of substance abuse, it must be **documented** as part of the analysis.

#### b. Supervisor Guidelines for Cases of Suspected Substance Abuse

It is important that supervisors follow established procedures when dealing with suspected substance abuse. A supervisor guide for this is provided in Appendix 16A. It is especially important that the supervisor **properly documents** everything. Too much is better than too little.

#### c. Recommended Remedies for Substance Abuse

A range of remedies is recommended for substance abuse. The remedy depends on many factors including whether or not it is a first offense and how it affects the employee’s duties. This is discussed in Chapter 17 Employee Corrective, Disciplinary and Adverse action and associated Appendix 17C Schedule of Offenses and Recommended Remedies.

### 4. CLAIMS OF SUBSTANCE ABUSE

- a. Contact your HR advisor immediately for advice on how such situations should be handled.



- b. In order to be entitled to consideration for reasonable accommodation, it is not enough for the employee to claim that drugs or alcohol were in some way connected with their conduct.

- c. The employee must establish/prove both of the following:

- The abuse of the substance was the **direct** cause of the misconduct.
- The employee suffers from a dependency to that substance.

## EMPLOYEE ASSISTANCE PROGRAM

### 1. PURPOSE

- a. The Navy's Employee Assistance Program (EAP) was established to provide confidential assistance to civilian employees who have personal problems (such as substance abuse, emotional problems, marital problems, financial problems, etc.), that may have an adverse effect on job performance.
- b. The Employee Assistance Program (EAP) services are contracted out by some activities. The Human Resources Office administers the EAP for those activities without a contracted source. This office is also the coordinator for contracted EAP services.

### 2. POLICY

It is DON policy to recognize alcoholism and drug abuse as treatable health problems, that alcoholism and drug abuse are illnesses likely to impair job performance, that an affected employee having these illnesses will receive the same consideration and offer of assistance that is extended to employees having any other illnesses or health problems, and that employees who may have an alcohol, drug abuse, or any other personal problem are encouraged to voluntarily seek confidential counseling.

### 3. DEFINITIONS

#### **ALCOHOLISM**

It is a primary, chronic disease with genetic, psychosocial, and environmental factors that influence its development and manifestations. The disease is often progressive and fatal. It is characterized by impaired control over drinking, preoccupation with the drug alcohol, use of alcohol despite adverse consequences, and distortions in thinking, most notably denial. Each of these symptoms may be continuous or periodic.

#### **DRUG ABUSE**

Use of a drug in a manner or to a degree, which interferes with the individual's health, interpersonal relations, social behavior, economic functioning, or job performance.

#### **EAP COUNSELOR**

An individual, trained in mental health counseling, designated to conduct the initial interview with an employee, explain the provisions of the Civilian EAP, determine the nature of the personal problem, and refer the employee to a source of assistance located within the community.

#### **REHABILITATION**

It is a process often necessary for successful recovery from alcoholism, drug addiction or other dependencies. Rehabilitation occurs following treatment and normally does not require medical supervision. Ordinarily, rehabilitation involves individual or group counseling or participation in self-help organizations such as Alcoholics Anonymous or Overeaters Anonymous.

#### **TREATMENT**

The initial step in the process of recovery from alcoholism, drug abuse or other dependencies. Treatment is conducted under medical supervision and serves to alleviate the physical and psychological effects of substance abuse including withdrawal symptoms and medical conditions resulting from substance abuse. Treatment is a prelude to, and should not be confused with, rehabilitation.

## 4. SUPERVISORY RESPONSIBILITIES



- Do **not** attempt to diagnose an employee's problem(s), but be alert to indications of such problems, e.g., changes in behavior and/or performance.
- Document instances of conduct/performance problems and counsel employees about such issues. Make and document EAP referral (appointment). The earlier this is done, the greater the chances of effecting change.
- If the employee does not show improvement, **contact HRO** to discuss the appropriate action. One such action is to confront the employee with the performance/conduct deficiencies, and to offer a firm choice between cooperating in EAP counseling or receiving appropriate administrative correction. If the situation warrants, the corrective action may be initiated concurrently with the EAP referral.
- If the employee declines to cooperate in the counseling or undertakes a course of treatment/assistance but fails to correct the performance or conduct problems within a reasonable time, proceed with corrective action or further corrective actions, as appropriate. Assisting an employee in denying or covering up a problem is generally most harmful in the long run (to both the employee and the supervisor). Appendix 16A provides guidelines for dealing with employees suspected of being intoxicated on the job.



## 5. EMPLOYEE RESPONSIBILITIES



- Correct unacceptable performance/conduct with or without assistance through the EAP.
- Be aware of the provisions and procedures of the EAP.
- Cooperate with supervisors and EAP counselors in matters relating to EAP.

## 6. CONFIDENTIALITY

- a. The content of the EAP counseling interviews shall be kept confidential. Federal regulations prohibit EAP from acknowledging whether or not an employee has been seen except to verify the employee has/has not kept a specific appointment (during working hours), made by management.
- b. With the exceptions provided by state and/or federal regulations, no information about the counselee or the counseling interview may be given to any person unless the counselee has given written permission to do so.
- c. The employee's OPF will not contain any documentation relating to participation in the EAP as a counselee.

## 7. EXPENSE OF REHABILITATION

The employee is responsible for the cost of any treatment or rehabilitation, which results from referral under the EAP.

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### 8. ILLEGAL DRUG USE SAFE HARBOR

- a. To complement the Navy's efforts to eliminate the adverse effects of illegal drug use in the workplace, a voluntary referral procedure called "safe harbor" is established to encourage illegal drug users to seek counseling and rehabilitation without risk of disciplinary action.
- b. Any employee who voluntarily identifies oneself as a user of illegal drugs will be provided safe harbor and be exempt from disciplinary action (with the exception noted below) for the admitted acts of illegal drug use, including possession incident to such use, provided the employee fulfills their responsibilities.

- c. Employee Responsibilities

- Voluntarily make such disclosure to a superior official prior to being identified through other means.
- Obtain counseling and rehabilitation through the EAP.
- Agree to be tested by the activity during counseling and rehabilitation and during the post-treatment and evaluation phases.
- Consent, in writing, to release of all records related to counseling and rehabilitation related to the illegal substance abuse, including urinalysis test results, to appropriate management and EAP officials.
- Thereafter refrain from using illegal drugs.



- d. Safe Harbor Exceptions

- 1) Safe harbor does **not** imply an employee will retain a security clearance. Employment may be terminated when an employee loses necessary access (security clearance) to secure areas or sensitive information because of drug abuse.
- 2) An employee who admits to drug use after being identified that they are scheduled for a test, or just after a sample is collected, or who is found to use drugs on the basis of other appropriate evidence (e.g., direct observation or evidence obtained from an arrest or criminal conviction) is not eligible for safe harbor.
- 3) An employee who meets the safe harbor conditions will be advised that they will not be subject to discipline for the admitted acts of illegal use of drugs, including possession incident to such personal use. However, if the employee occupies a Testing Designate Position (TDP) subject to random testing, they must immediately be removed from that position. In addition, if the employee holds a current security clearance, the provisions of reference (e) apply. Agency officials are not relieved of their obligation to take appropriate action to protect national security information when they are made aware of information that reflects unfavorably on an individual's reliability or trustworthiness. Thus, an employee's admission of drug use under the safe harbor provision may be used by activity security personnel for access and clearance determinations. A notice to this effect is to be given to all new CNO employees.
- 4) Generally, supervisors are required to notify security of known/admitted drug use.
- 5) Federal Regulations prohibit EAP from reporting/providing such notification.

## APPENDIX 16A SUPERVISOR'S GUIDE FOR CASES OF SUSPECTED SUBSTANCE ABUSE ON THE JOB

### 1. MEDICAL DETERMINATION

- a. The supervisor may **request** authorization for a drug test for an employee if there is reasonable suspicion that the employee is using illegal drugs. Procedures for requesting this test are specified in activity Drug-Free Workplace Program instruction.
- b. The supervisor may **request, but not require**, an employee suspected of alcohol intoxication to submit to a breath test.
- c. The supervisor may **not require** an employee to undergo a blood, urine, or breath test for the purpose of determining if the employee is under the influence of drugs or alcohol other than as stated above. However, a field sobriety test may be ordered, but a physician or other trained person must administer the test.

### 2. SUPERVISORY DETERMINATION

- a. Frequently, the supervisor is the first to recognize symptoms of alcohol or other drug intoxication. A supervisor's careful observations are often the strongest evidence in a subsequent disciplinary action case.
- b. Ready and obvious means of supervisory detection
  - Odor of intoxicants on an employee's breath.
  - Red or bleary eyes or unusually dilated or restricted pupils.
  - Unsteady walk or drowsiness/nodding.
  - Slurred speech.
  - Unusual giddiness or loud talking.
- c. **NOTE:** Unless trained to do so, **DO NOT** evaluate the person as being intoxicated; simply report what is seen, smelled, heard, or otherwise observed, and that you have reasons to believe the person may be under the influence of a drug (only qualified personnel may make a diagnosis of intoxication).

### 3. SUPERVISORY STEPS TO FOLLOW AFTER SUPERVISORY DETERMINATION

In those situations where a supervisor finds an employee drinking intoxicants or taking drugs while on duty and/or appears to be under the influence of them, or is behaving in such a manner as to suggest employee is not "ready, willing, and able to work", the supervisor should do the following:

- a. Summon a Witness, if possible
  - 1) Another supervisor or responsible employee to witness the affected employee's behavior, physical appearance and responses to the supervisor's questions and/or instructions.

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- 2) If the employee is a member of a bargaining unit, consider summoning the shop steward or other union official to witness the employee's behavior.
- b. In the presence of a witness, confiscate any intoxicating beverage or drugs in the employee's possession and give the employee a receipt describing the contents, if known, and quantity. If, after receiving a direct order, the employee is reluctant to surrender the evidence, request assistance from security police.
- c. If incapacitated for duty, but not in need of medical attention, the employee should be sent home. The employee shall be driven to the place of residence or released to the custody of next of kin, relative or friend, if possible. Should an intoxicated employee's conduct be such as to constitute a hazard to self or others, the security police, if available, should be requested to escort the employee off the station and to deliver to the custody of the appropriate authorities.
- d. Require the employee to report to the medical officer for non-invasive evaluation of the employee's sobriety. If a medical authority is unable to conclude that an employee is impaired, exercise judgment in deciding whether to return the employee to work, offer leave, or assign duties not hazardous to the employee, co-workers, or property. Again, be certain that the employee is capable of operating a motor vehicle safely (**NOT** intoxicated) before allowing the employee to drive away.
- e. If reasonably certain that the employee is under the influence of illegal drugs, contact the Drug Program Coordinator for advice and assistance in requesting a drug-screening test under the reasonable suspicion provision of the activity Drug-Free Workplace Program instructions.
- f. Advise the HRO of what has taken place. The HRO Advisor will guide the supervisor as to the steps needed.
- g. Document and discuss the incident with the employee immediately upon the employee's return to duty to get the employee's explanation. Advise the employee of the possible outcome, including disciplinary action, and direct the employee to meet with the EAP Coordinator, as needed. Do not refer employees to the EAP if they are intoxicated or otherwise unable to participate in a meaningful discussion and make logical decisions.