

EMPLOYEE ASSISTANCE REPORT

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supporting EAP professionals

EAP Involvement in Fitness for Duty Evaluations

By David C. Fisher

Psychologists and psychiatrists often perform Fitness for Duty Evaluations (FFDEs), since they help employers make managerial decisions based on an employee's current psychological condition. When might an FFDE be necessary? What are some of the measures that EAPs and employers should consider when one is needed? This article will examine EAP involvement in FFDEs.

Background

FFDEs are not treatment services since the evaluating doctor does not establish the typical doctor/patient relationship with the employee. Instead, the evaluating doctor is independent, hired to objectively assess the employee without establishing a potentially complicated treatment relationship.

Furthermore, because they constitute medical/legal, or "forensic" evaluations, FFDEs are typically outside the scope of EAP services contracted to employers. Instead, employers usually pay for FFDEs out-of-pocket because it is illegal to bill them to employee health insurance plans.

Typically, a neutral third party, the FFDE facilitator, schedules and coordinates FFDEs. This indepen-

"...risks are often the greatest at the point in the process when the EAP or employer selects the doctor."

dent organization selects doctors, performs quality assurance services, and takes measures to reduce the legal risks to employers and EAPs.

FFDE Scenarios

There are many scenarios in which an employer might request a FFDE. They commonly include instances when employees threaten co-workers. Employers are often unsure if these threats are idle, or if they represent significant danger. This is why FFDEs include Violence Risk Assessments.

In other cases, employees in safety-sensitive positions have made potentially dangerous errors due to mental illness. Some employers note other declines in job performance, personality changes, or excessive absences. And finally, through FFDEs, many employers seek information about reasonable accommodations.

Employers and EAPs often unknowingly expose themselves to legal and other risks associated

with poor quality psychological and psychiatric FFDEs. Lawsuits aren't the only risks. Poorly conducted evaluations may also result in physical danger and financial consequences. These risks are often the greatest at the point in the process when the EAP or employer selects the doctor. If the doctor makes errors, the exam causes harm, or the doctor acts in bad faith, both the employer and the EAP can be vul-

continued on Page 2

FEATURED INSIDE

- ▶ Implementing Emotional Intelligence in the Workplace: Part I
- ▶ New DOT Drug Test Rules in Place
- ▶ Remote Work on the Rise
- ▶ How to Manage Employees Who are Family Caregivers
- ▶ Resources
- ▶ Background Checks Increasing in Importance
- ▶ Use Blogs to Stay Current
- ▶ Growing Number of CEOs are being Fired

INSERTS

- ▶ *Brown Bagger*: Navigating the Paper Maze: Shedding Light on ADA, FMLA, and HIPPA
- ▶ Payroll Stuffers
- ▶ LifestyleTIPS®

nerable to lawsuits, especially when they selected the doctor to perform the evaluation.

Common sources of risk include:

➤ **No objective psychological testing** — Courts have increasingly recognized the importance of objective psychological testing. Particularly in federal courts, decisions are preferentially made based on scientific facts, rather than mere opinions. By giving tests as part of a comprehensive assessment, doctors can use objective data related to matters such as truthfulness, the likelihood of violent behavior, and the degree of psychological distress.

➤ **No collateral interviews** — In most cases, the doctor should contact people who are familiar with the employee being evaluated. These individuals usually include workplace supervisors, co-workers, spouses, and any other doctors involved in treatment of the employee. It is common for a doctor who is unfamiliar with forensic assessments to neglect to pursue critical information that can only be obtained through collateral interviews.

Not only do these interviews enable forensically skilled doctors to develop a solid opinion, but they also demonstrate a good faith effort to acquire all information relevant to an employee.

➤ **Missing or improper consent and release forms** — Employees have to sign numerous forms when they report to doctor's offices. Doctors should use employee consent and release forms specially designed for Fitness for Duty and risk assessments. Doctors who do *not* routinely perform forensic assessments typically do not have forms designed for FFDEs.

These forms not only cover

release of information issues, but they also address the nature of the relationship established between the doctor and the employee, potential uses of the information, and the potential consequences of completing or refusing to complete the evaluation.

➤ **No standardized assessment protocol** — Most psychologists and psychiatrists do not routinely use a formalized protocol in their FFDEs. Without such a formal assessment plan, the evaluation can be inadequate, increasing the potential risk to EAPs and employers. Following an assessment protocol offers persuasive evidence that evaluations are performed according to national best-practice standards.

In addition, when doctors use assessment protocols, employers benefit because evaluations are handled *consistently* — regardless of the doctor selected, or where the employee lives and works. This measure has obvious implications for employees who claim they were treated differently than other employees who are also undergoing assessment.

➤ **Unnecessary personal information included in reports** — Most treatment-oriented doctors include confidential health-care information in their reports. This is ethical in treatment situations, but it is usually risky in forensic assessments delivered to employers. To avoid compromising the employee, most information pertaining to diagnosis, prescription medications, treatment, lifestyle, and family information should be deleted from reports.

This is a crucial point because employees can allege that an employer took action based not on their behavior, but because of a prejudice against people with similar medical problems or personal

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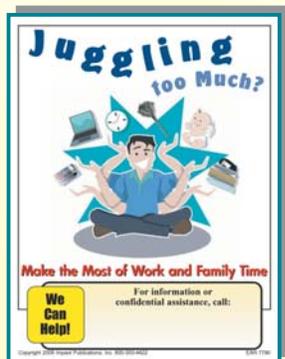
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characteristics. Furthermore, some courts have held that including such information is unnecessarily intrusive, and a violation of an employee's right to privacy.

➤ **Failure to take cultural factors into consideration** — The United States is an increasingly diverse culture in which it's no longer a good idea to rely on procedures valid with native-born Caucasians. Current professional

continued on Page 3

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Editor's Notebook

This month's cover story is an excellent example of how, while we do our best to fol-

low up on readers' suggestions for articles they wish to see in this newsletter, getting the topic into print can, unfortunately, take time.

We're not trying to make excuses — rather, the point is that just because it's been awhile since a suggested article was first brought to our attention, doesn't mean we've forgotten about it!

In any case, we appreciate your patience for a story on Fitness for Duty Evaluations, and hope you find the recommendations by David Fisher, a noted authority on this subject, helpful. Your comments and suggestions on his

story — or any article in *EAR* for that matter — are always welcome.

Speaking of feedback, we need you to complete and return the recent reader surveys, which we emailed this year instead of the usual snail mailing. *Let us know how we're doing!*

But please do so as soon as possible, as we have to start compiling the 2009 editorial calendar in the very near future. Your input helps us plan the best possible employee assistance resources for you. Until next month. ■

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FFDE

continued from Page 2

standards require that doctors adhere to specialized assessment practices when evaluating employees from different racial and ethnic groups. This may require familiarity with the employee's culture and the use of professional translation services.

In addition, to the greatest degree possible, interpretations of psychological tests should be based on normative data collected from correct normative groups. Neglecting these procedures can be a violation of an employee's duty of good faith and fair dealing, which may carry potential civil consequences for employers and EAPs.

➤ **Improperly vetted doctors** — Doctors' credentials should be verified before completing evaluations. Information substantiated might include licensure status, malpractice, and any disciplinary history as well as previous lawsuits.

EAPs and employers are often not able to include this important process when coordinating quick-response risk assessments.

Summary

In conclusion, there are many steps that EAPs and employers can take to protect all parties when they need an FFDE. The first step is to avoid the liability associated with arranging the evaluation. It is the FFDE facilitator's responsibility to try to ensure that a skilled expert performs a thorough assessment according to forensic standards. These include:

- ✓ Formalizing protocols to ensure the quality of the assessment by outlining a broad range of questions to be addressed in the interview;
- ✓ Defining the psychological testing to be administered;
- ✓ Encouraging doctors to perform collateral interviews;

- ✓ Considering claimant cultural and language issues; and
- ✓ Identifying the information to be *excluded* from the evaluation report.

Carefully written consent and release forms not only address release of information issues, but also the nature of the evaluation, potential uses of the information collected, and possible consequences to the employee.

Moreover, selecting well-credentialed forensic experts further serves to ensure quality.

Collectively, these measures increase the value of FFDEs while lessening risks for all parties involved. ■

David Fisher, Ph.D., L.P., ABPP, has served as president of PsyBar, LLC since 1995. Dr. Fisher oversees psychological and psychiatric FFDEs. He also publishes, lectures, and consults nationwide on psychiatric and psychological assessments. For more information, visit www.psybar.com.

Implementing Emotional Intelligence in the Workplace: Part I

By Dr. Jarik Conrad

In business, employees are promoted for a variety of reasons — maybe they exceeded sales quotas, perhaps their technical skills are off the charts, or maybe they deserve to be rewarded for their loyalty and years of hard work.

But how often are an individual's "people skills" considered? The truth is, people are rarely promoted for their ability to work with people — and this creates a problem. While they may have a positive impact on the bottom line, their inability to communicate effectively with others will create a domino effect, negatively impacting all areas of the organization.

Employers that do not deal with this issue right away may lose several star employees — or customers could decide to do business elsewhere. Disputes could even result in costly litigation.

"...people are rarely promoted for their ability to work with people..."

Whatever the details, the point is this: Too often this type of behavior comes down to an ultimatum ... the troubled employee must shape up, or be terminated. It does not have to be this way! There *are* tactics to that will help prevent these problems in the first place.

What is 'EI'?

Emotional intelligence, or EI, is the ability to recognize and manage one's emotions, while simultaneously recognizing and responding to the emotions of others. This concept took the business world by storm in the 1990s after Daniel Goleman's book on the subject

EI has been criticized because some people bought into the "either/or" trap of EI vs. IQ — in

other words, which one was the key to success? Too many people have discussed these matters as though they are mutually exclusive.

This isn't the case! The recipe for success includes significant amounts of both. In fact, EI enables people to take better advantage of their IQ. Imagine an individual with high levels of both — intelligent, optimistic, flexible, respectful, and caring. Who wouldn't want to work for or live with a person like that?

One of the greatest aspects of EI is that it can be learned. Employees who want to improve their EI skills can do so, and management can help.

NEXT MONTH: Ways to improve emotional intelligence in your organization. ■

Jarik Conrad is president of Conrad Consulting Group, and author of "The Fragile Mind," which explores emotional intelligence, race relations, and urban violence. For more information, visit www.conradconsultinggroup.com.

New DOT Drug Test Rules in Place

The U.S. Department of Transportation (DOT) recently issued rules improving protections against cheating on drug tests. The effective date of 49 CFR 40.67(b) is Nov. 1, 2008.

However, EAPA's DOT-required supervisory and employee trainings, offered in partnership with FedReady, a leading provider of training programs designed to

decrease the use of alcohol and illegal drugs at work, already reflect these changes.

The changes are focused on trying to prevent workers who use drugs from cheating on drug tests. With the proliferation of products designed and sold to help defeat drug tests, and the ease of subverting the integrity of the drug-testing process, the DOT took the position that it is no longer "practicable" to

operate a drug-testing program without adding countermeasures to well-publicized cheating techniques and devices.

The main countermeasures are as follows:

✓ Specimen validity testing (SVT) is now mandatory. The purpose of SVT is to determine

continued on Page 5

whether certain foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

✓ Instructional changes to collectors, laboratories, medical review officers, and employers regarding adulterated, diluted, and invalid urine specimen results.

✓ Expanding the criteria for what is considered a refusal to submit to drug testing.

✓ Requiring that all return to duty and follow-up drug tests are directly observed (the effective date of this requirement was changed from Aug. 25, 2008 to Nov. 1, 2008).

Summary

It is recommended that employee assistance professionals, and others who provide substance abuse services to organizations, take courses that address DOT drug and alcohol requirements for

employees and supervisors covered by the Federal Aviation Administration (FAA) and Federal Motor Carrier Safety Administration (FMCSA).

For a list of these courses, visit www.eapassn.org/public/pages/index.cfm?pageid=883 or contact Jan Price at (770) 270-5174. ■

Sources: Norm Bailis, a FedReady expert; and the Employee Assistance Professionals Association (EAPA). Reprinted with permission from EAPA, www.eapassn.org.

Workplace Survey

Remote Work on the Rise

Technology and increasing gas prices are making working from home, or at locations closer to home, more attractive options than ever.

It's not surprising then, that a growing number of workers are dialing, rather than driving, into work, according to a recent survey. More than two-thirds (69%) of executives polled said it is common for their employees to work off-site. Moreover, 82% of managers said they expect the number of employees who work remotely to increase in the next five years.

However, Dave Willmer, executive director of OfficeTeam, which conducted the study, cautioned that telecommuting (also known as telework) does not work for everyone and for every position.

OfficeTeam suggests that employees considering working off-site ask themselves the following questions before making the request to management:

➤ **Does my company have a remote work policy?** Review your employee manual or contact your human resources department to find out. If no policy exists, research how other companies

have established successful remote work arrangements for their staff.

➤ **What's in it for them?** Managers will respond more favorably to your request if they know the arrangement will benefit the company and not just you personally. For instance, will the arrangement save the company money or increase productivity?

➤ **Have I thought through the details?** Your supervisor will want to know key information, like why you are a good telework candidate, any technological tools and upgrades you will need, and what security measures you have in place at home to protect company information.

➤ **How self-motivated am I?** If you are easily distracted or lack self-discipline, working off-site could be very challenging.

➤ **How will I stay in touch?** How do you intend to interact with colleagues to ensure that projects stay on track? Also, offer to provide regular status updates so your manager is aware of your progress on work assignments.

➤ **How will I stay visible?** To avoid being overlooked for plum projects or promotions, maintain

plenty of face time with your managers and colleagues. Schedule important meetings for your on-site work days.

➤ **How can I show the arrangement will work?** Ask your supervisor if you can try telecommuting on a trial period, working remotely one or two days a week. Propose several meetings with your boss throughout the test period so you can both evaluate how the arrangement is working. ■

Source: OfficeTeam (www.officeteam.com). Editor's note: In addition to telecommuting, technology is also impacting how, and where business meetings are held. Watch for an article in the December. EAR.

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How to Manage Employees Who are Family Caregivers

With a growing number of Americans providing care for a loved one at home, businesses need to address this growing trend in a way that's fair for employees and employers alike.

More than 50 million Americans are "family caregivers" — the primary caregiver for a sick, disabled, or elderly family member. Since nearly half of all family caregivers also hold full-time jobs, employers need to be aware of the stress and emotional aspects that come with a caregiving situation.

Fortunately, there *are* ways to create a work environment that enables the employee to be productive despite caregiving responsibilities. These suggestions will help:

1. Get to Know Your Staff

As an employer or manager, it's helpful to be aware of employees' individual situations and how they may affect job performance. Spend time with them in an informal setting, such as a break room over coffee, a quarterly "lunch out," or simply chatting during a slow time.

The more you know about your employees, the better you'll be at managing them through any challenge — just be cautious to not overstep boundaries. Check with a human resources professional before discussing delicate issues with staff.

2. Examine Your Work Hours

Most businesses have core hours of operation during which staff attendance is mandatory. Identify those core hours. Chances are they add up to only 20 to 30 hours of an employee's weekly schedule. Make the remaining work week flexible for the entire staff, not just caregivers.

The key is creativity. For example, allow an employee to come in two hours later than usual, but stay two hours later at night. The goal is not reducing someone's hours — it is being flexible in employees' work and non-work needs. In return, you'll relieve stress, boost morale, and increase productivity.

3. Make Information Available

Many companies offer benefits for employees who care for a fam-



ily member. These benefits may include employee assistance programs, personal leaves of absence, and the *Family Medical Leave Act (FMLA)*.

However, don't assume employees are aware of these benefits! Post pamphlets of local service providers of elder care and respite care in break rooms, as well as information on the company's various assistance programs.

A Win-Win Scenario

With today's weakening economy and shrinking talent pool, employee retention is important. Educating employees about available resources, and being flexible about work schedules will translate into a win-win proposition that benefits everyone. ■

Source: American Red Cross. The organization's "Family Caregiving" reference guide and DVD is available at (800) 667-2968 or visit www.redcrossstore.org.

Resources

📖 *Creativity Revealed, Discovering the Source of Inspiration*, by Scott Jeffrey, \$24.95, Creative Crayon Publishers, www.scottjeffrey.com. The author describes how to think more creatively, find better solutions, and rise above the problems that seem insurmountable.

📖 *Hooked: New Science on How Casual Sex is Affecting Our Children*, by Joe McIlhane, Jr., and Freda McKissic Bush, \$17.99, Northfield Publishing, www.hookedthebook.com. More than just a stern warning about the risks of unprotected sex and unhealthy sexual behavior, *Hooked* is a journey of discovery into the human brain about when we are most vulnerable.

📖 *Unstrange Minds: Unmapping the World of Autism*, by Roy Richard Grinker, \$26.95, Basic Books, www.basicbooks.com. Is there, as many people believe, an autism epidemic? Judging from the increasing number of books about autism, one might think so. However, according to the author, the answer is more complex. ■

Background Checks Increasing in Importance

Companies are increasingly watching their bottom lines. One of the easiest but often times overlooked tactics in keeping the financial side of the house in order is by watching HR and ensuring that they are doing due diligence with employee background checks.

Conducting employee background checks are essential. CheckPoint HR, a leading administrative service organization, recently released its list of the top reasons why companies in all industries and of all sizes need to make background checks a standard practice in their hiring process.

1. Applicant Verification Increases Quality of Hire

Many applicants are not completely truthful on job applications and résumés. Common fallacies include fabricating skills and educational experience, excluding negative information, or fudging dates.

Taking the extra step of running a complete employee background check provides an opportunity to validate the accuracy of the information provided by the candidate

that could otherwise not be evaluated in an interview.

2. Avoid Workplace Theft and Violence

According to a 2006 report by the Bureau of Labor Statistics (BLS), almost half of employers with over 1,000 employees reported an incident of workplace violence in the previous year. A background check can reveal an employee's criminal history that may have been excluded on a résumé, helping companies avoid dreadful legal issues and monetary losses in the future.

3. Don't Go to Court

Organizations are held legally responsible for negligent hiring. Unfortunately, it's become fairly common for companies to find themselves facing legal issues. Consequently, it's important for firms to conduct thorough background screenings to reduce legal risks.

4. Reduce Turnover and Discipline Issues

Relying solely on a résumé and an interview can lead to the hiring of a substandard or high-risk candidate. Taking the extra steps to

ensure the most capable candidates are selected will lower turnover rates and decrease discipline issues

Also, diving deeper into a candidate's employment history can help companies avoid hiring employees with an unstable work history.

5. Create a More Productive Office

Running a background check reflects corporate responsibility and discourages dishonest behavior among applicants. Background checks also show current employees and clients that you are willing to take the steps to ensure you will hire the best employees. A competent employee pool creates a stable and successful work environment.

6. Not Just for New Hires or Pre-Employment

Organizations can implement policies that support ongoing evaluations for existing employees based on tenure, promotions, security, etc. in order to reduce risk. Employee acknowledgement and consent should always be required. ■

Sources: CheckPoint HR, www.checkpointhr.com; www.SpringboardPR.com.

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Use Blogs to Stay Current

By Marina London

Blogs can provide a quick snapshot of important issues, research, and best practices in both mental health and employee assistance. The following is EAPA's annotated list of EA relevant blogs you might want to check out:

🔗 **Employee Assistance Programs Blog** — This blog covers a multiplicity of EA-related topics, from increasing the use of EAPs, to dealing with human resource challenges, and much more. <http://eaptools.blogspot.com>

🔗 **HR Web Cafe** — A workplace weblog about employment issues, people matters, and work trends. www.hrwebcafe.com

🔗 **Markham's Behavioral Health** — An interesting and varied weblog by David G. Markham, C.S.W. <http://behavioralhealth.typepad.com>

🔗 **Pulse** — A weblog created by the Centre for Community Change International to gather noteworthy Internet resources for mental health providers, family members of individuals with mental illness, etc. <http://radio.weblogs.com/0108660>

🔗 **Connecticut Employment Law Blog** — Noteworthy developments in the labor and employment law field. Just about every post is of direct relevance to EA professionals in every state. www.ctemploymentlawblog.com/tags/employee-assistance-programs

🔗 **iWebU** — This informative blog promises to teach even the most technophobic EA professional how to harness the power of the web to boost professional exposure and earning potential. <http://iwebu.blogspot.com>

🔗 **Dr. Grohol's Blog of Psychology** — Possibly the longest-running psychology blog on the Net. Dr. Grohol is a pioneer in online mental health issues, and his blog is insightful and witty. <http://psychcentral.com/blog>

🔗 **Psychscape** — Random thoughts, ideas, and comments about issues related to psychiatry, mental health, and neuroscience. <http://radio.weblogs.com/0117471>

🔗 **Dr. Deborah Serani — Psychological Perspectives** — A blog by a psychologist about psychology and mental health issues. <http://drdeborahserani.blogspot.com>

🔗 **brainworld** — An interesting weblog on “Brain Sciences, Society, Arts and Culture.” <http://brainworld.blogspot.com> ■

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Workplace Survey

Growing Number of CEOs are being Fired

An increasing number of CEOs are leaving their positions prematurely, according to a study by Yan Zhang at Rice University. Of the 204 company leaders Zhang studied, 55, or 27% left their job within three years.

Zhang's study, “Information Asymmetry and the Dismissal of Newly Appointed CEOs: An Empirical Investigation,” found that the dismissals are often due to a board of directors that knows too little about the candidates' competencies. As a result, the board makes a faulty hire and then dismisses the CEO. Unbalanced information can negatively impact

the selection of a new CEO in a number of ways:

➤ Was the new CEO an internal or external candidate?

The origin of the new CEO is important because a board is less likely to be familiar with outside candidates and more likely to make a poor hiring decision in outside successions.

➤ Was the departure voluntary, or a dismissal?

The conditions of the preceding CEO's departure play a tremendous role in the success of the next chief executive. Because many companies institute mandatory retire-

ment ages, planned succession can help ease a seamless transition, as a company can groom an heir apparent before the CEO departs.

Moreover, if the company doesn't have a good pipeline of talent, the board can search in advance – making it more likely that a comprehensive internal *and* external search will turn up higher-quality candidates.

However, if the preceding CEO was dismissed, then inadequate preparation increases the likelihood that the board will make a poor hiring decision.

To read the complete study, visit www.rice.edu/nationalmedia/multimedia/2008-06-03-ceo. ■