

Benefits Insights

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Post-coronavirus Return-to-Work Plans and EAPs

The coronavirus (COVID-19) pandemic has changed employees' daily lives and routines, and even as businesses reopen, many employees are feeling the effects of the pandemic. As businesses reopen, employers must consider how the COVID-19 pandemic has affected employees, which in turn will affect their post-coronavirus return to work.

As employees return to work, many are experiencing financial hardship, balancing new caregiving responsibilities, managing concerns over their physical well-being, and maintaining their mental well-being and health. During these uncertain times, employees are understandably experiencing significant stress, which can lead to lower productivity and morale, and increase their risk for health conditions, absenteeism and higher health care costs.

To help employees navigate these times and ease their return to work, employers should consider offering or revamping an existing employee assistance program (EAP) to address post-coronavirus return-to-work concerns. EAPs can help employees tend to their personal needs, leaving you with healthier, happier and more productive employees.

What Is an EAP?

An EAP is an employer-sponsored program that offers services or referrals to help employees deal with personal problems. In this case, an EAP should be focused on addressing employees' concerns surrounding the pandemic, including, but not limited to, financial resources, mental health issues, alcohol or substance abuse, stress management, and child care or eldercare.

Why Offer an EAP?

When employees are distracted by stressful personal or life situations, they are unfocused at work and tend to be absent

more often. Their health may suffer as a result, leading to higher medical costs. Obviously, these circumstances are undesirable for an employer, but it is costly to recruit and train a replacement for the struggling employee, especially if that individual was formerly, and has the potential to once again be, a valuable asset to the company.

A better solution for many employers is to offer their employees assistance in handling their personal issues in order to improve their situations and regain their former productivity levels and value to the company. EAPs can provide that assistance. Once an EAP is implemented, it can help the employer attract and retain employees, lower health care and disability claims costs, increase productivity and morale, and lower absenteeism.

Designing an EAP

Employers should focus their post-coronavirus return-to-work EAPs on providing employees with the support they need to navigate these times. Employees will be going through vastly different experiences, so EAPs should be designed to address a wide variety of feelings and concerns, and also be flexible enough to be accessible to all employees. For example, some employees may be primarily focused on receiving financial resources or counsel while others may be concerned with receiving assistance with caregiving responsibilities. The most effective EAPs during these times will cover a wide variety of issues and be widely accessible in a myriad of formats.

Additionally, EAPs should be designed to help assist HR and managers with providing any necessary reasonable



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accommodations under the Americans with Disabilities Act, or leave under the Family and Medical Leave Act or the Families First Coronavirus Response Act.

While every organization's EAP will vary in design and structure, each EAP should include the following elements:

- **Counseling**—An effective EAP will offer counseling sessions with trained professionals to help employees address various issues. Given the times, an EAP should offer counseling sessions in a variety of formats, including text, phone, web and in-person (when appropriate and safe to do so). Counseling may be particularly effective to help employees cope with financial and mental health struggles.
- **Education**—Employees are more likely to use an EAP if they know it exists and what it entails. To increase engagement and utilization, employers should promote the EAP and provide detailed information about each offering under the EAP to educate employees on its existence.
- **Practicality**—It's one thing to design an EAP that could be helpful, but it's another to ensure that it will be useful and applicable to employees' post-pandemic daily lives. To find out what employees really need help with, consider conducting an anonymous survey to crowdsource what elements should be covered in an EAP.
- **Resources**—Employees may not want to reach out to counselors for help right off the bat. Consider offering educational resources from which employees can learn. Sometimes, employees may self-educate and realize they'd benefit from seeking additional help through an EAP.

Additionally, an EAP should include a policy statement, which communicates to employees the services offered, how to obtain those services, an assurance that the program won't jeopardize their jobs or reputations, a promise of confidentiality and any exceptions to the confidentiality agreement.

Cost Vs. Return on Investment (ROI)

The cost of an EAP can vary depending on which services are offered, whether it is administered in-house or outsourced,

and the number of counselors employed. Also included in the cost is the time employees spend away from work while receiving EAP services. Start-up costs for an EAP program can be high because many employees might be referred for counseling or treatment all at once; however, the ROI can be well worth the initial costs.

ERISA and COBRA Considerations

If an EAP is considered a welfare benefit plan, it must comply with ERISA's reporting and disclosure requirements. The key distinction, typically, is whether the EAP offers direct counseling or simply referrals. Because employee welfare plans are defined as providing medical benefits or benefits in the event of sickness, an EAP that provides counseling would generally fit that description and would be subject to ERISA standards (there is some uncertainty about these distinctions, however).

Similarly, the COBRA implications are a bit unclear regarding EAPs. Generally, if an EAP is a welfare benefit plan and provides medical care, it is subject to COBRA. Medical care can include the diagnosis, cure, mitigation, treatment or prevention of disease; EAPs that offer those services in some form (even through counseling) are likely considered health care plans subject to COBRA. COBRA regulations do not address EAPs that offer both medical and nonmedical benefits. It would seem, though, that an employer is at least obligated to offer eligible beneficiaries the option to elect to continue the portion of their EAP that provides medical benefits.

Legal Considerations and Confidentiality

Offering an EAP could expose an employer to certain legal liability situations due to actions taken by EAP counselors or outside vendors. Employers should ensure that their liability insurance covers all aspects of the EAP program.

In addition, confidentiality is essential for an EAP. Employees need to be certain that participating will not damage their career or reputation. EAP records and counseling sessions should be strictly confidential, including the fact that the employee contacted the EAP in the first place. Employers are entitled to employee surveys evaluating the EAP or statistical information as a whole, but employee names should not be revealed. If the release of information or records is necessary or advantageous in a certain situation, the employee must

sign a written consent form. Exceptions include situations where disclosure is legally required, such as cases involving child abuse, or homicidal or suicidal intentions.

More Information

Offering an EAP is just one way employers can help employees adjust to their new normal of post-pandemic life. In addition to providing support for employees, employers can implement workplace policies and procedures designed to make the post-coronavirus return to work as seamless as possible. For additional resources, contact Wallace Welch & Willingham.