

BLOG

Tackling Employee Addiction from Performance to Policy

By National Employee Benefits Practice

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With the pandemic significantly impacting employee benefits in fundamental ways, the growing need for increased behavioral health services is vital ([Risk Strategies 2022 Outlook](#), Employee Benefits Practice). In fact, according to [Mental Health America](#), nearly 50 million Americans are experiencing a mental health illness ranging from mild to serious including substance use, illicit drug use, and alcohol use disorders. They also reveal the prevalence of adults in each state with substance use disorder ranges from 5.98% (Florida) to 12.30% (District of Columbia)¹. As the trends in behavioral health have increased, so has the rise in questions we've seen on how to address employees with addiction issues.



There's a lot to consider before confronting an employee. Keep in mind, if this issue isn't handled carefully, you could expose your organization to unintentional discrimination claims, [Americans with Disabilities Act](#) (ADA) violations, and other liability issues. It's important to lay a solid foundation now to support your organization when this situation arises, and at some point, it will. Get the easy things right like creating a policy for your employee handbook. If you have already established one, it is critical to review and update the policy annually and ensure your workplace culture and behavior mirrors the policy outlined. For example, let's say an employee is terminated due to substance abuse interfering with their performance, but an outdated policy in your employee handbook indicated they needed a referral to your Employee Assistance Program (EAP) before termination would occur. Your employee handbook just became potential evidence to use against your organization for wrongful termination.

As you review your policy to ensure it is updated, make certain it is flexible around handling drug and alcohol related issues and reviewed against [Equal Employment Opportunity Commission](#) (EEOC) guidelines. You'll also need to be sure your policy clearly addresses continuation of medical and other benefits if the employee should enter rehab for addiction. Consider adding detailed information such as how long the employee can stay on leave before COBRA is triggered.

Be aware that addiction issues are often covered under the ADA. As you proceed, be very mindful of handling this as a reasonable accommodation just as you would with any other medical condition. If you need to confront an employee about a potential addiction issue, be diligent in keeping your questions open-ended rather than accusatory. Ask observational behavior or performance-based questions. While

many employees are willing to disclose problems when confronted, keep in mind socio-economic and safety factors can come into play and violate what the ADA recommends, or in some instances, requires.

Before approaching anyone with addiction concerns, be sure they are managed or coached in a positive way to address those performance or behavior issues. If you must dig deeper around addiction, be aware of other protected issues that may come up, such as a diagnosed medical condition requiring the employee to be placed into a protected ADA category. Training your management team on how and when to properly approach these concerns is vital.

Lastly, when faced with employee addiction issues, focus on the business that needs to be run while considering your culture, compliance requirements, and the law. Take the time to review your drug and alcohol policies, behavioral health benefits, and absence management programs now. These steps contribute to setting your organization up for success when the time comes that addiction needs to be addressed in your workplace.

From human resources consulting to employee benefits compliance expertise, Risk Strategies is here to help you and your organization. [Contact us today.](#)

1. "Adult Data 2022 | Mental Health America." *Mental Health America*, 1 Mar. 2022, <https://mhanational.org/issues/2022/mental-health-america-adult-data#two>

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