

ADVISORY 273

Note: This material is written by NMSBA for informational purposes only, and not as legal advice. You may wish to consult with your attorney for further explanation and advice as to the content of this advisory.

EMPLOYEE ASSISTANCE

~~When, in the opinion of the immediate supervisor and/or the Superintendent, the employee's physical or emotional condition warrants, the District may require a complete examination, at District expense, by a licensed physician selected by the District.~~ When the District has a reasonable belief, based on objective evidence, that an employee may be unable to perform essential job functions or may pose a direct threat to the health or safety of the employee or others, the District may require the employee to undergo a medical examination, at District expense, by a licensed health care provider qualified to evaluate the condition at issue. Any such examination shall be job-related and consistent with business necessity and appropriately tailored to assess the employee's fitness for duty, including, where relevant, mental or behavioral health and any risk of harm to the employee or others. All medical information obtained pursuant to this policy shall be maintained as confidential, kept in files separate from personnel records, and disclosed only as permitted by law, and shall be used solely to evaluate the employee's ability to perform essential job functions and/or to assess workplace safety.

The Superintendent shall have procedures for complying with the requirements of the Occupational Safety and Health Administration (OSHA), including an exposure-control plan, methods of compliance, work-practice controls, postexposure evaluation and follow-up, and administering vaccines to employees exposed to Hepatitis B virus.

All employees who as a result of their employment have had significant exposure to bloodborne pathogens (Hepatitis B/Human Immunodeficiency Virus) are required to report the details of the exposure in writing to the District and are required to follow postexposure evaluation and follow-up activities in accordance with New Mexico and federal laws. An employee who chooses not to complete these reporting requirements will be at risk of losing any claim to rights.

Employee Assistance Program

Employees may be referred to an Employee Assistance Program when the employee's job performance or attendance is unsatisfactory, and the employee is unable or unwilling to correct the situation, regardless of paid leave time available to the employee. The employee has the responsibility to perform job duties and to have regular dependable attendance. Employees who have drug or alcohol abuse problems are encouraged to voluntarily seek assistance.

The Employee Assistance Program will consist of referrals to Board approved community or other area counseling and rehabilitation programs through the personnel office.

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Failure to exhibit continuous and ongoing improvement of the unsatisfactory work performance after assistance has been offered and/or accepted will result in termination or non-renewal of the employee, according to prescribed School District policy, administrative regulations, local, state and federal laws.

Any employee who voluntarily seeks support and assistance from the District for a drug or alcohol problem before it becomes an employment issue will be granted unpaid leave, sick leave, or a combination of both to secure treatment/counseling for their problem.

The District employer reserves the right to request a second medical opinion, if the employer questions the employee returning to work in a timely manner.

Adopted: date of manual adoption

LEGAL REF.:

29 U.S.C. 653

42 U.S.C. § 12112(d)

29 C.F.R. § 1630.14

CROSS REF.:

EBBB - Accident Reports

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