

Mandatory EAP referral is legal

Q. In a previous issue of HR Specialist, you said that employers can't force employees to visit a psychologist. Our Internet policy says that if we find employees accessing pornographic Web sites, they'll receive a three-day suspension without pay and a mandatory referral to an EAP counselor. Can we require this? —A.C., Maryland

A. The issue raised by your company's policy is somewhat different than the issue of "required medical treatment" in the psychologist-visit answer. In your case, the EAP referral associated with the disciplinary action is simply a recognition that the employee's behavior had a negative impact on his or her ability to do the job.

Your policy allows EAP personnel to provide input within the context of that working relationship. In that case, your EAP referral is neither "diagnosis" nor "treatment" and, therefore, falls outside the prohibitions regarding the ADA.