

## CHAPTER 69

**AN ACT** concerning employee assistance programs for certain public employees and supplementing P.L.1941, c.100 (C.34:13A-1 et seq.).

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.34:13A-40 Definitions relative to employee assistance programs for certain public employees.

1. For the purposes of this act:

"Civil union" means a civil union as defined in section 2 of P.L.2006, c.103 (C.37:1-29).

"Employee assistance program" means a program in which a public employer provides or contracts with a service provider to provide assistance to the employer's employees and their dependents to resolve problems which may affect employee work performance, irrespective of whether the problems originate on the job, including, but not limited to, marital and family problems, emotional problems, substance abuse, compulsive gambling, financial problems, and medical problems.

"Dependent" means an employee's spouse, civil union partner, or domestic partner, an unmarried child of the employee who is less than 31 years of age and lives with the employee in a regular parent-child relationship, or an unmarried child of the employee who is not less than 31 years of age and is not capable of self support. "Child of the employee" includes any child, stepchild, legally adopted child, or foster child of the employee, or of a domestic partner or civil union partner of the employee, who is reported for coverage and dependent upon the employee for support and maintenance.

"Domestic partner" means a domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3).

"Employee" means an employee of a public employer.

"Public employer" means the State of New Jersey, or the counties and municipalities thereof, or any other political subdivision of the State, or a school district, or any special district, or any authority, including a bi-state authority, or any commission, or board, or any branch or agency of the public service.

C.34:13A-41 Employee assistance programs; licensure, establishment.

2. Employee assistance programs may provide advice, counseling, treatment, referral and other assistance, except that nothing in this act shall be construed to authorize a person to provide any service in connection with an employee assistance program without holding the license required by law to provide the service. An employee assistance program may be established through a negotiated agreement between the majority representative of the employees in an appropriate bargaining unit and a public employer, or established by a public employer through the adoption of a policy which conforms to the requirements of this act.

C.34:13A-42 Prohibited actions by public employer.

3. No public employer shall take any action against an employee of the employer, including termination, because the employee or a dependent of the employee has obtained counseling, referrals or other services from an employee assistance program or has obtained treatment or other services from any program to which the employee assistance program refers the employee or dependent, unless the employee was referred by the employer to the employee assistance program due to issues related to job performance and fails to make a good faith effort to comply with the recommendations made by the employee assistance

program. The provisions of this section shall not be construed as preventing the public employer from taking any action which the employer is otherwise authorized to take for workplace misconduct of the employee or poor work performance, even if the misconduct or poor performance is related to a problem for which the employee is obtaining services provided by an employee assistance program or other program to which the employee assistance program refers the employee.

C.34:13A-43 Confidentiality; waivers.

4. a. Except as provided in subsection b. of this section, each request by an employee or dependent for assistance from, referral to, participation in, or referral by, an employee assistance program shall be confidential, and no public employer, service provider or other person shall divulge to any person that an employee or dependent has requested assistance from, been referred to, or participated in, an employee assistance program or any treatment program to which the employee assistance program refers the employee or dependent. The requirement of confidentiality shall apply to all information related to an employee assistance program, including but not limited to any statements, materials, documents, evaluations, impressions, conclusions, findings, or acts taken in the course of, or in connection with, the program. If, however, a public employer documents to the employee assistance program that the employee has accepted a referral by a public employer for assistance during normal working hours with sick leave or other paid leave, the public employer shall be entitled to know whether the employee has kept his appointment and the amount of time of the appointment.

b. The requirements for confidentiality provided for in subsection a. of this section may be waived only if:

(1) the employee or dependent to whom the information applies has requested and authorized a waiver; the waiver is in writing and specifies the information to be released and the persons to whom the information may be provided; and the information released is the information authorized for release by the employee or dependent and is released only to the persons designated by the employee or dependent, provided that a public employer may not require an employee to authorize a waiver pursuant to this subsection or take any action against an employee for not authorizing the waiver;

(2) the employee assistance program advisor reasonably believes that the employee is at substantial risk of imminent death or serious bodily injury to self or others; or

(3) the advisor is reporting suspected child abuse or neglect.

c. The provisions of this act shall not be construed to affect other evidentiary privileges and recognized exceptions.

5. This act shall take effect immediately.

Approved May 9, 2011.