

AMERICA'S OPIOID CRISIS: WHAT YOU NEED TO KNOW

NEARLY EVERY ISSUE OF SOCIAL CHANGE HAS eventually found its way into the workplace. Work is where, for example, Americans continue to wrestle with issues of discrimination and harassment, with a wide range of personal privacy issues, and with many of the most sensitive aspects of their health care (and how it is paid for). That premise continues to persist, as employers across the country struggle with the work-related aspects of the opioid crisis.

Opioids are medicines designed to relieve pain. They are also highly addictive, often induce a sense of euphoria and can trigger dangerous physical and behavioral changes. According to research by the American Psychiatric Association, nearly a third of Americans say they know someone who is or has been addicted to opioids or prescription painkillers. The costs of opioid addiction are similarly staggering. The National Institutes of Health estimates that opioid addictions cost the United States over \$500 billion a year.

In addition to causing widespread misery in society as a whole, opioids are producing specific challenges in the workplace. As just one example, the U.S. Bureau of Labor Statistics reports a 25 percent increase from 2012 to 2017 in the number of workers fatally overdosing on the job. So as the opioid crisis continues, what should employers and their counsel be doing to prepare for and respond to this problem?

SCREENING FOR OPIOIDS

It is not difficult to include opioids in a workplace drug testing program, whether pre-employment or otherwise. What can be difficult, however, is determining whether a positive result on that test indicates that the worker or applicant is using an illicit drug or is simply taking an opioid medication as prescribed by a doctor. In order to avoid discriminating against disabled individuals taking prescribed opioids, employers should give those who test positive an opportunity to produce a prescription. Protections under the Americans with Disabilities Act for those who test positive can apply

to a broad range of scenarios, particularly for individuals in treatment for addiction.

Under the ADA, however, the current use of illegal drugs is not a disability, regardless of its health effects. Consequently, an employer is not required to accommodate illegal drug use by allowing workers to use such drugs or be under the influence of them at work. However, individuals who have successfully completed a supervised drug rehabilitation program (or are currently in one) and are no longer using such drugs are legally protected.

SUPERVISOR TRAINING: MORE IMPORTANT THAN EVER

Opioids can cause dramatic, negative changes in behavior, including violence. They can also trigger medical crises, such as overdoses. To prepare, employers should train their managers and supervisors regarding the warning signs of worker addiction and create systems for reporting any such concerns to human resources or safety personnel.

LEAVES OF ABSENCE FOR TREATMENT—FOR WORKERS AND THEIR FAMILIES

Workers who qualify for the protections of the Family and Medical Leave Act (FMLA) are entitled to up to three months of job-protected leave for certain types of drug treatment. And just as qualified workers may take job-protected leave for their own treatment, so they may also take leave to care for immediate family members being treated for a “serious health condition,” such as opioid addiction.

While both the federal government and many state governments and employer groups are working in various ways to reverse the tide of opioid addiction, there is no end in sight to the problem. Consequently, these issues and many others will continue to be important ones for employers and their counsel to proactively plan for.

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