

Opioids in the Workplace

Labor & Employment Law Update

on November 3, 2017

One of the first questions I ask when providing drug and alcohol training to managers, supervisors and employees is “What is the most commonly used illegal drug?” Typically, the response that I get will be alcohol (albeit not illegal) or marijuana. What most do not realize until the training is that prescription drugs, in particular opioids, are the most commonly abused illegal drug. Prescription opioids include hydrocodone, oxycodone, morphine, codeine and fentanyl, while illegal opioids include heroin.

Opioid use in the United States has started to take on a whole new form and is now commonly referred to as the opioid epidemic. Illinois has not escaped the opioid epidemic; in 2016 there were 2,278 drug overdose deaths of which over 80% (1,826) were opioid related. The number of opioid related deaths in 2016 was an increase of over 30% of the opioid related deaths in 2015 and an increase of over 70% of the number of opioid related deaths in 2013.

In looking at these numbers, it is important to understand that these are only the deaths – not the actual number of individuals using or abusing opioids. In a recent study by the National Safety Counsel, over one in three Illinois residents (35%) reported being impacted by opioid/heroin use by knowing someone (self, family/friend, co-worker/co-workers’ family, or neighbor/neighbor’s family) that started using opioids/heroin, became addicted to opioid/heroin, survived an opioid/heroin overdose or had died from an opioid/heroin overdose. Indeed, one issue with the opioid epidemic is that the gateway to opioid use does not always come from illegal activities, but can start out with a legitimate legal prescription. When there is a valid use for a prescription drug, an individual can feel like they are not doing anything wrong and their use can quickly turn into a slippery slope of addiction, activities that negatively impacts their work performance and potentially illegal activities. As a result of this, the opioid epidemic does not discriminate and can be found across all demographics, industries and positions.

One of the concerns with opioids for employers is that it is more difficult to tell if someone is under the influence or using opioids or heroin than other more traditional drugs. For instance, opioids and heroin do not come with symptoms or indicators that are easy to perceive like with alcohol – a smell, shaking hands and movements, and behavior changes; or with marijuana – a smell, red eyes, delayed reaction time, anxiety, and lack of coordination. With opioids, it is often difficult for employers to make the connection between an employee appearing groggy, sleepy or forgetful in the workplace to being linked to drug use. Indeed, what employers will typically see, if anything at all, is a gradual decline in an

employee's attendance and performance, until the employee loses their job or stops coming to work altogether.

The traditional tool of employers to identify and prevent drug and alcohol use within the workplace is drug testing. Pre-hire drug testing can be effective in preventing illegal opioid users from joining the workforce. However, drug testing is not always effective where the opioid user has a legal prescription or where the individual is not yet an opioid user. Reasonable suspicion drug testing can also be effective, but first requires reasonable suspicion of opioid use which can be difficult to identify.

So what does this leave? First and foremost, employers should re-evaluate their drug policies and testing procedures and understand the potential legal implications. For example, drug testing can be modified to test for legal prescription medications, but in order to avoid a violation of the ADA the applicant or employee must be able to provide an explanation for the positive drug test, such as a prescribed medication. Additionally, employers must realize that even if the employee is using prescription medication, there may be an underlying medical condition that they need to be aware of to avoid any kind of disability discrimination claim.

Next, employers should consider questioning its health care benefit carrier and workers' compensation carrier on what actions they are taking to address the opioid epidemic and collaborating with them on any specialized programs or options for addressing. This can include learning about whether the carrier has programs for the conservative use and risk of prescription opioids, an opioid management program and/or a prescription benefit management program, which can help in preventing prescription medication abuse and identify the abuse of prescription medications. In doing so, employers should also consider investing in an employee assistance program (EAP), which can help employees avoid or address addiction.

Another investment that can pay dividends is management and employee education. Better training and education for not only management, but also employees regarding the impacts of opioids, how to identify opioid use and how to address opioid abuse. Management training can help make management more aware of how to identify potential issues before they occur and get employees help before it escalates to more serious problems. This includes not only taking into consideration the symptoms of opioid and other drug use, but also recognizing changes in how employees are acting, their performance, their attendance, any recent injuries they have had and any other issues that could indicate drug abuse. Employee training can help employees understand the danger of opioids, how the use of legal use of prescription opioids can lead to addiction, and what steps can be taken to seek assistance. Of course, any training should be tailored to include information regarding the Company's policies, drug testing, benefit programs and reassurances regarding the Company's commitment to providing confidential and accessible help and

treatment.

Finally, one thing to remember is that despite the high numbers of deaths in 2016 in Illinois, Illinois is still behind many states in its exposure to the opioid epidemic. Indeed, in some places manufacturing employers have found using pre-hiring drug testing was not effective. The reason for this is it significantly increased the number of applicants they have had to go through in order to hire for a position or was making it near impossible to fill their staffing needs due to applicants not returning after learning there was drug testing or applicants consistently failing the drug test.

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