Client Alert: Combating Opioid Abuse in the Workplace – A Proactive Approach For Employers

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The opioid crisis in America remains at epidemic proportions. A study from Boston Medical Center published last week estimates that 275,000 Massachusetts residents, or 4.6% percent of all adults and children older than age 11, suffered from opioid use disorder in 2015. Employers are increasingly feeling the effects of this phenomenon. Studies have found that approximately 60% of adults with substance dependence are employed full-time.

Opioid abuse is both a health and safety issue in your workplace. Substance abuse by employees has been found to result in higher health care expenses for employers, higher rates of absenteeism, reductions in job productivity and performance, increased worker's compensation and disability claims, and increased safety risks on the job site. Taking the proactive steps outlined below can help to reduce employee substance abuse and create a safe and healthy environment in which both employees and business thrive.

THE OPIOID CRISIS HITS THE WORKFORCE

Researchers have identified a disturbing recent trend in the national labor force: Despite positive reports of low unemployment rates, a growing number of Americans are simply no longer in the workforce, and opioid use is playing a significant role. In 2016, Princeton economist Alan Krueger published a disturbing finding that nearly half of men ages 24 to 54 who are not in the labor force take pain medication on a daily basis. Krueger concluded that the increase in opioid prescriptions from 1999 to 2015 could account for about 20% of the decline in men's labor force participation during that period, and as much as 25% of the decline for women.

As the labor market tightens and job applications decrease, employers in desperate need of workers may be willing to forego employee drug testing or to look past drug-related records simply to get employees in the door. With existing employees, employers may not want to – or may not know how to – address opioid abuse occurring in their workplace. Such failure to act may end up costing employers dearly in the long run in the form of decreased productivity, increased health costs, and significant safety risks.

In addition, injuries on the job can often be the precipitating event that leads to abuse of prescription opioids. The construction and manufacturing industries, as well as others that call for physical labor, are particularly susceptible to opioid addiction in their workforces. Indeed, a recent report from the Massachusetts Department of Public Health indicates that construction and extraction workers in Massachusetts are six times more likely to suffer from an opioid-related overdose death than workers in all other occupations. Physical labor can be hard on the body, and opioids are routinely prescribed to treat pain from the injuries and conditions that can develop. In 2015, 20% of spending from construction-related worker's compensation insurance claims was for opioid prescriptions – double the percentage in

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other industries.

STEPS EMPLOYERS SHOULD TAKE NOW

The key to addressing opioid abuse in the workplace is to take action to head off problems before they begin, and to have a plan in place to address issues that come to your attention. We recommend that employers take the following steps:

Develop A Detailed Workplace Drug Policy

Policies should go further than simply announce the boilerplate "we are a drug-free workplace." A comprehensive and easy to understand substance abuse policy should provide a specific prohibition on the illegal or unauthorized use of prescription drugs, indicate under what circumstances drug testing will be conducted, and outline the procedures for employees and supervisors who have "reasonable suspicion" of an employee's impairment or drug abuse. Workplace policies should encourage employees to seek treatment as soon as possible, and state clearly that appropriate disciplinary action will be taken if job performance is affected or safety risks are perceived.

Offer Insurance Coverage and Employee Assistance Programs

Employers should consider offering health benefits that provide comprehensive coverage for substance use disorders, including aftercare and counseling. In addition, Employee Assistance Programs (EAPs) are recommended to provide employees with confidential access to screening and treatment resources for substance abuse and other issues faced by employees. Research shows that workers in recovery have lower turnover rates, are less likely to miss work days, are less likely to be hospitalized, and have fewer doctors' visits. Ensure that employees are aware of the resources available to them; it may be helpful to post information about EAPs or other substance abuse treatment options in employee common areas.

Ensure That Narcan Is Accessible to Employees In the Event of an Emergency

According to a poll recently released by Blue Cross Blue Shield of Massachusetts, 70% of Massachusetts residents believe that the opioid-reversal drug naloxone—commonly known as Narcan—should be kept onsite at workplaces in a manner similar to automatic external defibrillators (AEDs). Employers should consider keeping a Narcan "kit" in an area accessible to employees in the event of an overdose emergency.

Invest in Employee Training

Consider mandatory training for employees about substance abuse and the dangers of opioid dependence. These programs should encourage employees to seek help for dependency and addiction, and should promote the use of non-stigmatizing language relating to substance abuse. Employees and supervisors should also be trained in identifying impaired behavior and understanding the warning signs of opioid abuse, and what to do if they have concerns. While supervisors should not attempt to diagnose a medical condition, they, in concert with Human Resources, should be prepared to act on their concerns by referring an employee to an EAP, drug testing, or removing an employee who poses a safety risk. Additionally, employers who choose to keep Narcan on their premises should ensure that any employees who would administer the drug are properly trained. Employers should consider making employees aware of free Narcan training sessions offered in some locations by community organizations or municipal agencies.

Implement Drug Testing

Drug testing can be a valuable tool in preventing drug-related incidents and reducing risk. Employers should ensure that drug tests include screening for opiates and related compounds. Employees should be notified of the drug testing policy and the specific circumstances when testing will be used. Note that under a 2016 OSHA rule and new guidance released earlier this month interpreting that rule, drug testing for the purpose of evaluating the

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root cause of a workplace incident that harmed or could have harmed employees is generally permissible so long as the employer tests *all* employees whose conduct could have contributed to the incident, not just employees who reported injuries.

Finally, keep in mind that an employee's prescription drug use or substance abuse treatment may implicate employment laws. Lawful use of prescription medications to treat a disability will be protected by the ADA, and employers may have a duty to reasonably accommodate such use, including modifying job responsibilities. The Family and Medical Leave Act (FMLA) provides employees up to 12 weeks of leave per year to receive treatment for a serious health condition, which may include substance abuse. The leave must be for treatment itself – absence because of the employee's use of the substance will not qualify for FMLA leave.

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