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

BY TIMOTHY P. VAN DYCK • OCTOBER 12, 2017

Imagine your employee "Bob" has recently missed a lot work for unexplained reasons. Bob's coworkers notice that he sometimes "nods off" while working, and his supervisor just reported to you that Bob became enraged while speaking with a client. Upon hearing about these serious performance issues, you diligently conduct an investigation and prepare to take disciplinary action, or even consider termination. But during this process, you learn that Bob has been struggling with a dependency on prescription painkillers he had been taking for an injury he sustained on the job several months ago. Are you prepared to handle this situation? What are your obligations to Bob? What can you do for your employees generally to reduce the incidence of opioid abuse in your workplace?

The opioid crisis in America has hit epidemic proportions. Sales of prescription painkillers have more than quadrupled since 1999, and drug treatment admissions for prescription opioids have increased seven-fold since 1998. Drug overdoses, predominately from opioids, now exceed car crashes as the leading cause of unintentional death in the U.S. 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 in this article 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. The labor force participation rate has continued to decline since the early 2000s, reaching a nearly 40-

©2025 Bowditch & Dewey LLP. All Rights Reserved.

year low of 62.4% in September 2015. 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. This work 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 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.

• **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. 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.

• **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

©2025 Bowditch & Dewey LLP. All Rights Reserved.

OSHA rule, employers may not automatically require drug tests after a workplace injury, but may only do so where there is a “reasonable possibility” that employee drug use may have been a contributing factor in the incident.

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.

©2025 Bowditch & Dewey LLP. All Rights Reserved.