The Opioid Crisis Meets The COVID-19 Pandemic: Employers Beware and Be Prepared

Insights
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During the COVID-19 pandemic, employers have had to manage an ever-increasing variety of stressful employee related issues. However, as the crisis surges forward, with multiple states facing increased rates of infection as businesses reopen, there is a new issue that employers should be wary of: increased employee substance misuse and substance use disorders.

According to the National Safety Council (NSC), opioid fatalities are spiking across the country. In fact, as of June 2020, at least 30 states have reported a rise in opioid overdose fatalities in correlation with the COVID-19 pandemic. Given these trends, the NSC had advised that employers should prepare for an increase in employee substance misuse.

Factors Linked To Increase Substance Misuse
The NSC advises that mental health issues and substance misuse will impact employees during COVID-19's peak and well after the initial crisis has passed. There are several factors associated with increased substance misuse or risk for relapse/overdose, which include:

- financial stress;
- unemployment;
- grief, anxiety, and trauma;
- disaster and potential disaster trauma; and
- social isolation.

Critically, these factors have been increasingly present during the pandemic. Employees have been forced to quarantine, comply with evolving state lockdown orders, and phased re-openings. Dealing with these issues is challenging enough. However, in addition to these challenges, many employees are working remotely full-time and navigating increased responsibilities as their homes have become offices, schools, daycares, summer camps, and playgrounds at the same time.

Steps Employers Can Take To Help
While there is no clarity about when things will return to "normal," there are steps you can take to help manage potential substance misuse issues with your workforce.

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Supervisor Training And Involvement

A key component of managing potential employee substance misuse issues will be supervisor training. As a result of the pandemic, many supervisors and team managers have teams that are completely different than before the pandemic. Many workforces are now fully remote, downsized, have increased responsibilities, and/or new team members due to personnel shifts. As a result, recognizing signs of physical impairment may be significantly more difficult.

The NSC advises that employers should consider training their supervisors on various issues including:

- understanding substance use disorders and their relationship to worker health and impairment;
- understanding fatigue and its relationship to worker health and impairment;
- the company's drug-free workplace policies;
- resources available to employees dealing with stress and problematic substance use; and
- how to identify job performance changes, such as frequently calling in sick, extended breaks, errors in judgment, and/or deteriorations in work performance.

In addition, supervisors will often be the first line of communication for employees having trouble coping with their current circumstances. As a result, supervisors should have a basic understanding of the steps being taken by the company and Human Resources to provide support to employees. The NSC also recommends that supervisors should increase check-ins with employees, and have authority to permit employees to take mental health breaks and engage in other acts of self-care.

Communicate, Communicate, Communicate

During these challenging times, you should also increase communications with your workforce. Employee knowledge of employer support is critical to their mental and physical health during these stressful times. Actions you should consider include:

- sharing information about available Employee Assistance Programs and health insurance plans;
- communicating information about available healthcare benefits, including coverage for COVID-19 testing/treatment and coverage for seeking routine care;
- adjusting and communicating appropriate HR policies and resources;
- providing a confidential help line or email address where employees can anonymously raise concerns and ask for help;
- developing flexible return-to-work policies and effectively communicating these policies to your employees;
- sharing all resources provided by your benefits providers and community programs;
- communicating available leave of absence policies; and

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- informing your workers about all safety efforts you are taking to manage the risk of potential COVID-19 infection at the workplace.

Set Performance Expectations

Developing a plan to manage substance misuse by employees does not mean that company rules no longer apply. Impairment in the workplace is a serious safety concern, especially in industries where employees are medical professionals, are employees responsible for the care of the elderly/children/sick, come into contact with large groups of the public, or are operating heavy machinery. You should set expectations around performance, even when employees are remotely working, and strongly enforce rules meant to protect employees, customers, and third parties.

In addition, while you do not need to automatically terminate employees for initial violations of substance abuse policies, you can enforce mandatory assessments and requirements for help before employees can return to work. Critically, if a supervisor or manager notices warning signs of significant and obvious substance misuse (i.e., strong smell of alcohol, incoherence, inability to maintain balance, frequent unscheduled absences), your managers should be ready to take immediate action, including reporting the issue to Human Resources and precluding the employee from continuing work in situations that could result in harm to themselves or others.

Conclusion

As the COVID-19 pandemic continues, employee substance misuse is an issue that cannot be ignored by employers. Many employees are fatigued, stressed, and dealing with extraordinary levels of pressure both at work and at home. Supporting the mental health and well-being of your workforce can have a substantial impact not only on the morale and health of your employees, but on your businesses' ability to effectively navigate the pandemic.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you subscribe to Fisher Phillips' Alert System to get the most up-to-date information. For further information, contact the author, your Fisher Phillips attorney, any attorney in our Workplace Safety and Catastrophe Management Practice Group, or any member of our Post-Pandemic Strategy Group Roster. You can also review our FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers and our FP Resource Center For Employers.

This Legal Alert provides an overview of a specific development. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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