



# America's Opioid Epidemic and the Workplace: Should Employers Change Their Approach to Drug Testing?

Insights

7.31.17

As many as 50,000 Americans may have died in 2016 as the result of an opioid-related overdose. This number continues to increase with no end in sight, as the use of prescription opioids to relieve pain has reached staggering levels. In 2012, more than 259 million prescriptions were written for opioids, with the current number undoubtedly being much higher. Drug overdose is now the leading cause of death for Americans under 50.

## Prescription Drug Use Often Leads to Heroin Addiction

Opioids may be found in any medicine cabinet. This group of drugs includes the regularly prescribed painkillers oxycodone, hydrocodone, morphine, and fentanyl. These drugs interact with opioid receptors on nerve centers in the brain to create a pleasurable experience and relieve pain. Due to the relief they experience, consumers of these drugs often become dependent upon them. Once addicted, individuals may turn to heroin, which, although illegal, is often a cheaper and more accessible opioid. In fact, approximately four in five heroin addicts developed their addiction after taking prescription painkillers.

As described in *Dreamland*, Sam Quinones' chilling documentary on America's opioid epidemic, prescription painkiller use has skyrocketed in Appalachia, especially in Ohio, Maryland, North Carolina, West Virginia, and my home state of Tennessee. Studies show that in 2015, 2 million Americans had a substance use disorder involving prescription pain relievers, and 591,000 had an addiction to heroin. Nearly 23% of opioid users will eventually become addicted to heroin.

## Effects on the Workplace

Employees may be prescribed opioids to relieve pain following a workplace injury, which could begin a path to dependency. But whether the origin of opioid use stems from a workplace injury or not, use of these drugs could have a dramatic impact on an employee's performance. Opioid dependency often leads to drowsiness, shifting moods, anxiety, and depression. An employee with an opioid addiction may struggle to maintain regular attendance, achieve quality goals, or pose a safety hazard to him or herself and coworkers. Moreover, addiction to these drugs usually also causes financial issues because the addict is in constant search for a fix. This could lead to cases of workplace theft or embezzlement.

## Lessons for Employers

The growing opioid epidemic and its impact on employee behavior and health creates unique challenges for employers. Although no perfect response is available, now is the time for employers to rethink their drug testing and counseling programs in order to keep their employees and workplace safe. A focus on education, prevention, and counseling may help minimize the impact of opioid use on the workplace.

When formulating their plan to address opioid use, employers should consider the following:

1. **Create an Environment Where Employees are More Likely to Disclose Opioid-Related Issues**

Given the recent rise of opioid use, employers should consider encouraging employees to tell you when they have a problem or suspect that another employee may have an issue with prescription painkillers. This starts by creating a workplace environment conducive to the free exchange of information. This is an evolving area of human resources and business management; you must balance the concern of being viewed as an employer who attempts to invade employees' private home life versus later dealing with an employee who quits, overdoses, or creates a safety concern due to an addiction you may have ignored.

The key to preventing opioid addiction is educating employees on the potential harmful impacts of abusing painkillers. If you become aware of an employee's potential abuse of opioids, attempt to approach the employee in a cordial, non-confrontational manner to offer assistance with this condition. Pay special attention to employees returning to work after an injury. Consult your counsel on navigating any potential ADA or HIPAA issues. Addressing these issues early may help prevent a larger issue later.

2. **Reconsider Zero Tolerance Drug Testing Failure Policies**

An employee who loses his or her job because they fail a drug test may fall further into the depression often caused by opioid use. Unemployment may lead to more drastic outcomes for the employee, including intentional or accidental overdose. In order to avoid such a tragedy, employers should revisit their zero tolerance drug testing policy.

Many employers are modifying their drug testing policy due to OSHA's recent new rule on this topic. Effective December 1, 2016, OSHA's new rule requires employers to drug test after a workplace accident only when you have a reasonable basis to believe that the incident or injury was likely to have been caused by the employee's impairment, and that the drug test will determine whether the employee was impaired at the time of the incident or injury (versus a test that shows mere historical drug use).

When modifying their drug testing policy, and in light of the opioid epidemic, employers should think seriously about removing any provision requiring the automatic termination of the employee after the first positive drug test. Instead, employers can amend the policy to include required counseling for employees who fail drug tests. This not only gives the employee a second chance to become "clean" and attempt to end their dependency, it also provides the employee

chance to become clean and attempt to end their dependency, it also provides the employee with an opportunity to obtain much needed education and counseling on their condition. The permitted use of prescription drug use while working at the worksite must also be clearly explained in the policy.

### 3. **Consider Enhanced Monitoring of Workers' Compensation Claims**

Many workers' compensation carriers (and even employers) often seek to minimize the potential impact of workers' compensation claims by finding the most inexpensive treatment option possible. Indeed, under the guise of "conservative" treatment, insurance carriers may be more inclined to pay for opioid prescriptions to "treat" an on-the-job injury versus considering more aggressive treatment options (i.e., steroid injections, surgical intervention, etc.) in the first instance (even when medical providers recommend more aggressive treatment). As such, there can be a higher incident of dependency – and increased tolerance levels in the event of a future surgery – simply in the name of reducing the financial impact of a workers' compensation claim. Employers should monitor these trends, and even their medical providers, and evaluate the care provided to injured workers.

### 4. **Revisit and Enhance Drug Counseling Programs**

Now is the time for employers to evaluate and enhance their drug counselling programs. Does your insurance provider offer drug counseling to employees? Is there an extra cost for this service? Are employees aware of this amenity? Providing employees robust counseling on opioid use and addiction may prevent further use from occurring.

Opioid use continues to increase at an alarming rate and yet many employers have not addressed this concern in their policies and programs. No perfect plan is currently available, but you should begin working with counsel to take proactive steps to avoid risks to employees.

*The original version of this Article appeared in The Business Journals on Thursday, July 26, 2017: <https://www.bizjournals.com/bizjournals/how-to/growth-strategies/2017/07/america-s-opioid-epidemic-and-the-workplace-3.html>*

### **Related People**





**Edwin G. Foulke, Jr.**

Partner

404.240.4273

Email



**Travis W. Vance**

Regional Managing Partner

704.778.4164

Email