DEALING WITH DRUGS, ALCOHOL AND PSYCHOLOGICAL ISSUES IN THE WORKPLACE

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THE PROBLEM

WORKPLACE

ADDICTIONS
- Drugs
- Alcohol

MENTAL HEALTH ISSUES
- Depression
- PTSD
- Bipolar
- Obsessive/compulsive
- Schizophrenia
- Suicidal
Workplace Protections Growing for Cannabis Consumers

By Lisa Nagle-Piazza, JJ, SHRM-SCP
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Although employers are moving to embrace cannabis in the workplace, several states allow medical, but illegal, use of recreational marijuana.

Recently, some of those states have been providing greater workplace protections. For instance, Nevada has passed a law that makes it illegal for an employer to discriminate against an employee who uses medical marijuana. It has also clarified that an employer cannot discipline an employee for being under the influence of marijuana, as long as the employee is not impaired on the job.

Here are some recent developments on the topic:

California Lawmakers Pass Bill to Protect Medical Marijuana

California Assemblyman Rob Bonta, D-Alameda, recently introduced legislation (AB 2255) that would ensure employees are not denied or punished for using medical marijuana. The bill would also prevent employers from requiring workers to undergo pre-employment drug testing or drug testing during employment if they use medical marijuana.

Colorado Legislators Endorse Bill with Speed Protections

Colorado Rep. Jovan Melon D-Aurora, recently introduced HB19-1069, which would prohibit employers from requiring a job applicant or employee to undergo a drug test for the use of medical marijuana. The bill also prohibits employers from imposing disciplinary actions against an employee or applicant for the use of medical marijuana.

Residents of Washington D.C. also voted to decriminalize the possession and use of small amounts of marijuana, which will go into effect in 2020.

It is clear that more states are moving in the direction of legalizing marijuana for medical use, and more employers are embracing the use of marijuana in the workplace. As a result, it is important for employers to understand the legal landscape and how it may impact their workplace policies.
Can Using CBD Oil Result in a Failed Drug Test? The Answer May Surprise You…

If you thought you had a handle on marijuana issues in the workplace, get ready for a curveball. Employers in Ohio have been grappling with marijuana-related issues for the past couple of years. Despite the time that has elapsed since medicinal marijuana was legalized in Ohio and nearby states, many questions remain unanswered and new issues have emerged. One such issue relates to the use of seemingly innocuous line of ‘CBD’ products, such as oils, topical lotions, bath bombs, vape pens, and even chewable gummies. These sorts of CBD products have been all the rage, with many companies selling CBD products, such as pills and oils, and marketing them with claimed medicinal properties. This hype can be described as nothing less than a national phenomenon, with CBD making headlines across national news (or commentary) outlets over the past several months:

- “Sunsoil USDA Certified Organic CBD” – Daily Beast
- “Sunesel Organic CBD Oil for Anxiety, Depression and Stress” – Observer
- “Best CBD Oil Companies of 2020” – Austin Chronicle
• One in four adults experiences mental health disorders
• Mental health is the number one cause of disability in the U.S. utilizing 40% of sick leave
• One in every 13 adults abuse alcohol – costing $33-68 billion per year in absences, lost productivity, and injuries
• Suicide rates rose 33% to 14 per 100,000 people
• Anxiety disorders affect 30% of adults
• Depression affects one in 15 adults annually
• 11% of U.S. population diagnosed with PTSD
THE IMPACT

- Decreased productivity/increased costs
- Workplace violence
- Poor attendance
- Inadequate performance
- Conflicts between workers
- Increased injuries
- Increased medical claims
  - Mental health expenses have escalated 10% annually over five years – medical costs escalated 5% annually
  - Employers spent $2.6 billion on opioid addiction – eightfold increase over prior year
  - Treating depression costs $110 billion annually
THE CAUSE

- New generation of employees
  - Generation Z depression symptoms increased 39%
  - Millennials 24%
- Enhanced diagnosis
- Workplace stressors
- Legalization of marijuana
  - 70% of U.S. workers live in states permitting use

- Societal stressors
- Over prescribing of drugs
  - Approximately 70% use at least one prescription/50% use two – 1:3 uses prescription opioid
- Inadequate employer response
  - Although 50% of employees (60% millennials) reported mental health lapse – only 1/3 reached out to employers
THE EMPLOYERS’ OPTIONS

ACTIVE
- Awareness
- Accommodation
- Assistance
- Access
- Acceptance

PASSIVE
- Ad Hoc treatment of immediate issue
  - Discipline
  - Leave of absence

DO NOTHING?
THE LAW

• **ADA**
  – Reasonable accommodation for “qualified” individual with “disability” but **not** if “safety threat” or “undue hardship”
  – Current users excepted
  – Perceived disabilities actionable

• **FMLA**
  – Leave for serious health condition

• **Privacy Laws**
  – Confidentiality of protected health information

• **OSHA**
  – § 5(a)(1) – workplace free of hazards
POSSIBLE ACCOMMODATIONS

- Paid leave or additional unpaid leave for treatment and/or recovery
- Modified work schedule/assist with managing or negotiating workload
- Access to a “quiet room”
- Reduce exposure to stressors - supervisory
- Relocate to a quieter workspace or permit headphones
- Temporarily modify duties – customer facing work vs desk work
- Change shifts
- Reassign to more suitable equivalent position
- Pair with a trusted co-worker, coach or mentor to advocate and help
• **EEOC v. The Health Care Center at West Meade Place**, USDC Nashville – 10/22/19

• **Valdivia v. Twp. High School District**, 7th Circuit U.S. Court of Appeals – 11/12/19
“PLAYING THE DISABILITY CARD”

- Post incident disability feigned
  - Employee “defense” to legitimate employer action
- Case studies
WORKPLACE FACTORS IMPACTING MENTAL HEALTH

- Long work hours
- Inflexible work schedules
- Lack of workplace friends/positive relations
- Insufficient support from manager
- Lack of clarity about work tasks/organizational objectives
- Poor communications
- Unsafe work environment
- After hours emails/texts
- Work team esprit de corps
- Insufficient control over one’s job
- Unqualified management
SIGNS OF MENTAL HEALTH CONCERNS

- Confrontation with team members
- Workload complaints
- “Lack of support” complaints
- Indecisiveness
- Loss of confidence
- Disorientation
- Increased irritability
- Increased emotionality
  - Easier to cry/emotional outbursts
- Sadness
- Difficulty concentrating
WHAT EMPLOYEES WANT

- Mental health training
- Clearer information about available resources
- A more open culture about mental health at work
  - 62% of millennials say they’re comfortable discussing mental health issues – twice as many as baby boomers
- Employer understanding
- Uniform application of policies on drugs/alcohol, etc.
- Prompt/appropriate employer actions
**HINTS FOR EMPLOYERS**

- Screen applicants more carefully
- **Monitor** workplace for signs of issues
- **Educate** and train management
- Have comprehensive EAP program
- Inform employees

- Retain a company mental health provider
- Follow the law
- Quickly/decisively address workplace incidents
- Create/maintain positive work environment
- Avoid perceiving a disability
- Document performance shortcomings not alleged mental conditions
LEGALLY SPEAKING
by Bob Dunleavy
Taft Law

WORKPLACE MENTAL HEALTH ISSUES ABOUND!

It seems as though employers are being overwhelmed by their employees' mental health issues these days – something that cannot be ignored any longer, but something that is both delicate and difficult to deal with. Employers need to take the time to understand these issues and address them effectively and strategically so as to avoid claims of disability discrimination and incidents of workplace misconduct.

The new generation which seems to have over diagnosed, over medicated, and over counseled them as children and young adults – many have been made dependent and ill-adjusted environment which children and young adults – many have been made dependent and ill-adjusted.

Many lack interpersonal skills. The list of conditions go on forever – anxiety, depression, PTSD, bipolar disorder, schizophrenia, and attention deficit disorder is that an unacceptable number of workers claim their productivity has been diminished by just a few. Compounding the problem is that an unacceptable number of workers claim their productivity has been diminished by just a few.

Approximately one in five claims some form of opioid or alcohol addiction issues. That list of controlled substances is growing. Workers are sniffing meth, heroin, cocaine, pot, and fentanyl. The drug addiction problem is growing.
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