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## Drug & Alcohol Testing

### **Practitioner Insights: Prescription Opioids in Workplaces and on Job Sites**



BY REBECCA J. BERNHARD AND JACK SULLIVAN

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**T**he headlines seem inescapable.

According to the Centers for Disease Control and Prevention, physicians write more than quarter of a billion prescriptions per year for the powerful painkillers known as opioids. The availability of the drugs is fueling what CDC researchers call an epidemic of abuse and addiction—a fact that is no surprise to many, as a recent Harvard School of Public Health report shows that more than two in five Americans say they personally know someone who has abused prescription painkillers in the past five years.

*Rebecca J. Bernhardt is a partner in Dorsey & Whitney's Labor & Employment Group with her practice focusing on traditional labor, business immigration, federal contract compliance and audits, and mergers and acquisitions support. Jack Sullivan is a senior associate in Dorsey & Whitney's Labor & Employment Group, with his practice focusing on disability issues, litigation, and traditional labor.*

The dangers of prescription opioid use—and abuse—carry into workplaces and onto job sites. Given the prevalence of opioids and the risks they pose in industrial workplaces and construction job sites, in particular, safety managers may wonder how they should approach or deal with their use.

**What Are Opioids?** Opioids are a class of drugs that interact with nerve cells in the body and brain. Prescription opioids include oxycodone, known by its brand name OxyContin; hydrocodone, sold as Vicodin; codeine, morphine and fentanyl, among others. This class also includes the illegal drug heroin.

In general, opioids alter or inhibit the transmission of pain signals, resulting in decreased sensations of pain. Opioids also affect the emotion-regulating limbic system to create feelings of relaxation and contentment, which can lead to misuse and abuse. Short-term opioid use can alter judgment, cause drowsiness and nausea, while long-term use can alter nerve function in the brain, so much so that a user may suffer withdrawal symptoms if he or she stops taking the drugs suddenly. Long-term use also leads to increased tolerance to the drugs, meaning that a user needs to take more of the drug to achieve the same effects.

**Deepening Problem in Society—and the Workplace** According to statistics gathered by the National Institute on Drug Abuse and the CDC, the negative consequences of opioids have risen as their use has in-

creased. Emergency room visits involving non-medical use of opioids doubled between 2004 and 2008; the percentage of treatment admissions due to opioid abuse between 1997 and 2007 increased by a factor of five; and deaths from drug overdoses nearly tripled from 1999 to 2014. Indeed, in 2014, more than six in 10 overdose deaths were caused by opioids.

Given the physical effects of the drugs, a recent report of the National Safety Council warns that opioids may cause impairment and “increase the risk of workplace incidents, errors and injury even when taken as prescribed.” The NSC also notes that opioids can increase workers’ compensation costs, lengthen recovery time after injuries and thereby increase the amount of lost work time. The total cost to employers of opioid abuse is staggering: A 2011 Pain Medicine study determined that prescription opioid abuse caused more than \$25 billion in lost workplace productivity in the U.S. in 2007.

Given the trends, it is likely only a matter of time before any individual safety manager must decide how to deal with prescription opioid use on a job site. One employee may disclose that he or she has been prescribed an opioid; another may appear to be impaired while at work.

**Enforce the Drug-Free Workplace Policy** Drug-free workplace policies likely include provisions that allow disciplinary action to be taken if an employee is impaired, regardless of whether it is alcohol, illicit drugs, or prescription drugs that are causing the impairment. Depending on the circumstances—such as whether personnel or property are placed at risk—safety managers should be ready to document the observations that demonstrate that a person is likely impaired and to recommend action to decision makers if warranted.

Documentation should avoid conclusions and instead focus purely on observations. This will allow a skeptical third party who reads the documentation later to determine whether the person described is impaired. For example, the statement, “He appeared under the influence” is not legally useful, whereas observations such as “his voice was slow and slurred” or “her eyes were glassy” are, as they are both factual and dispassionate.

**Decide Whether to Request Drug Test** For some employers and on some job sites, a drug-testing procedure may be a mandatory step when impairment is suspected. On other job sites, it may be a discretionary step that may or may not be implemented, depending on the circumstances.

Employers and safety managers faced with implementing a discretionary drug testing procedure should

evaluate if the employee’s behavior is enough—on its own, notwithstanding whether the employee is impaired—to take action. For example, a person who reports to work halfway through her shift has violated an attendance policy; it may not be necessary to determine that she did so because of drug use when the tardiness itself may warrant disciplinary action, regardless of the reason.

Employers should also review the Occupational Safety and Health Administration’s recent guidance regarding the implementation of anti-retaliation programs to avoid the risk that their drug testing practices may run afoul of agency’s anti-retaliation rules. Guidance can be found on their website.

**Mind the ADA** The Americans with Disabilities Act, as amended, bars employers from making medical inquiries of employees, unless the questioning “is shown to be job-related and consistent with business necessity.” The U.S. Equal Employment Opportunity Commission’s Enforcement Guidance includes questions about prescription drugs and medications as examples of medical inquiries. To be “job-related and consistent with business necessity,” a question must come when an employer “has a reasonable belief, based on objective evidence, that: (1) an employee’s ability to perform essential job functions will be impaired by a medical condition; or (2) an employee will pose a direct threat due to a medical condition.”

In regard to opioids, or any prescription drugs, an employer should not inquire if an employee has been prescribed or is taking a certain medication unless the employer has objective evidence that makes it reasonable to believe that the employee cannot perform his or her essential job functions or that he or she will pose a direct threat to others. The EEOC’s frequently-asked-questions provide that in certain limited circumstances, employers may be able to require employees in positions affecting public safety to report when they are taking medication that may affect their ability to perform essential functions.

Finally, employers should keep in mind that the ADA requires employers to keep any medical information as a confidential medical record, not to be disclosed except in limited circumstances to those with a legitimate business reason for needing to know. Voluntarily-disclosed opioid prescription use would be considered medical information to be kept confidential under the ADA.

To contact the editor responsible for this story: Larry Pearl at [lpearl@bna.com](mailto:lpearl@bna.com)