

# KEEPING OPIOIDS OUT OF YOUR WORKPLACE

Gun violence is pervasive in parts of Milwaukee. It is on the news nearly every night and last year the death toll reached 118. While this is clearly troubling, it pales in comparison to another grim statistic: deaths from opioids. The death toll from opioid overdoses was nearly seven times that of gun violence: 833 people in Milwaukee lost their lives to opioids in 2017.

Unlike gun violence, deaths from opioids are often not dramatic. Individual cases rarely make it to the evening news and it may even be underreported. In addition to accidental deaths, individuals

suffering from Opioid Use Disorder (OUD) are 13 times more likely to commit suicide than the general population. Compounding the problem is the gun violence inherent to trafficking and distributing the drugs.

This is a crisis. In fact, in 2015 and 2016, the life expectancy rate in Wisconsin fell for the first time since the 1960s – a decline that can be directly linked to the use and distribution of opioids. Wisconsin's problem appears to be increasing faster than any other state in the



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nation. Last year, emergency room visits due to opioid overdose increased 109%, well above the national average of 30%.

Beyond the death toll, there are the tens of thousands of people in Wisconsin living with OUD. Many Waukesha County officials

agree that combating the opioid epidemic is the biggest challenge facing the community in decades and is placing undue burden on taxpayers.

For example, incidences of armed robberies tripled from 2016 to 2017, and nearly all involved people addicted to opioids. In 2015, Waukesha had 243 ambulance runs involving the administration of

naloxone, a drug that reverses the effects of an overdose. Many of these cases led to drug treatment, often paid for by the county. It is estimated that a death due to opioid abuse costs nearly \$30,000 – much of it incurred by taxpayers. Last month the county joined a lawsuit against drug manufacturers in an effort to offset the increasing costs of the epidemic on taxpayers.

Like the community at large, the opioid epidemic can have a devastating impact on the workplace; as an employment attorney I have seen this first hand. For example, a Waukesha-based manufacturer

hired me to investigate a problem employee, who was also pursuing a workers' compensation claim. He was often away from his workstation and only came to work intermittently.

The result of the investigation: the employee was dealing prescription opioid drugs in (and probably outside of) the workplace. Even more troubling, the employee's supply of drugs was prescribed by the doctor who was treating his (alleged) workplace injury and was paid for by our client's workers' compensation insurance. Needless to say, the client was devastated.

The client's son, who was also employed by the manufacturer, was suffering from opioid addiction, and until the results of our investigation, the client did not know the source of the drugs. Turns out, it came from the



place his son should have been safest – work.

Most employers understand that they are not immune from the crisis. In fact, four out of five employers polled report that they have dealt with an opioid-addicted employee.

Due to the prescription nature of opioids, employers are often paying for both the drugs and the consequences of their abuse. Accident Fund Holdings, a Michigan and Wisconsin workers' compensation insurer, has studied the problem and found that workers' compensation claims involving an opioid prescription are nine times more expensive than the average claim.

Complicating matters is the common belief that the Americans with Disabilities Act prohibits employers from asking their employees about medical or disability issues. While the law does limit medical inquiries, if an employer has objective evidence that an employee is having difficulty doing his/her job, the employer has the right to inquire about whether the person has a physical or medical concern that is leading to diminished performance.

Employers also have a right to require their employees to submit to medical evaluations in order to evaluate performance ability and any necessary accommodation.

Drug-addicted employees may not immediately present themselves as problematic. They may be smart, easy to get along with and driven, but also struggling with addiction. They may take a combination of drugs to help them function in the workplace. Recent statistics show that 70% of opioid addicts are employed. However, maintaining a job and an addiction is rarely viable in the long-term and absenteeism and performance issues are likely to arise.

Look for early warning signs in employees such as mood swings, changes in energy level, tardiness, missed days, napping at workstations or in cars and signs of withdrawal. All suspicious activities should be documented.

While employers do not need to directly address suspicions of drug use, they can and should voice concern and require employees to visit a doctor. Ensure these employees sign a notice that the evaluating doctor is not providing medical care, and is only evaluating in order to advise the employer regarding fitness for duty. The medical professional will be responsible for inquiring about drug use.

If drug-use is confirmed an employer can require, as part of an accommodation in bringing the employee back to work, commitment to a treatment plan with the ultimate goal of recovery. I will caution that because this is a sensitive area, employers should consult an employment law attorney and only

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work with doctors experienced in occupational medicine.

If problematic behavior is on-going and employers have reasonable suspicion of opioid drug abuse (such as use without a prescription, use in excess of a prescription, prohibited use while engaging in safety sensitive functions or use of illegal narcotics) they also have a right to require drug testing. It is best to do this under a written drug testing policy, following procedures that have been announced to employees before testing and that include the consequences of a violation.

Even without a policy, employers are not prohibited from requiring a test. The resulting actions for refusal to test, or in response to a positive test, will depend upon the pre-existing policy.

Many companies implemented their drug testing programs before the opioid crisis. Unless the procedure was recently changed,

these programs probably do not test for opioids. While heroin use may be detected in the majority of testing, prescription opioids such as Vicodin, OxyContin and Oxycodone and synthetic versions of heroin do not show up in the standard testing

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approved by the US Department of Transportation in the 1990s. Employers need to explicitly ask their drug testing clinics/labs to test for opioids or they will not be included.

Beyond drug testing, there are many other steps employers can take to combat the crisis. Workplace education, particularly for working parents, can be especially effective.

An employee who has a child addicted to drugs will be distracted and will not perform well. Education can assist employees in navigating the crisis inside and outside of work.

Education can be presented as a benefit to the employees, their families and the employer. Create a message that opioids can be dangerous and addictive and should be avoided unless absolutely necessary. Stress that opioids should not be viewed as a convenient, quick way to reduce moderate or minor pain, and employees should question any doctor that prescribes them.

Other techniques include providing employees stickers to place on a medical/prescription insurance card that instructs the pharmacist to inform your employee if a drug contains opioids, and then educating the employee regarding non-narcotic alternatives. The National Safety Council provides numerous other suggestions and resources to be

## SAMPLE DRUG TESTING POLICY

The resulting actions for refusal to test, or in response to a positive test, will depend upon the pre-existing policy. The policy should state your position on prescription opioids, for example:

"Our company is concerned about the opioid crisis and will take every step possible to protect our company, our employees, and their families from the devastating effects of addiction to these drugs. We expect our employees to avoid use of opioids wherever possible. Generally, use of opioids at any time is prohibited. In the limited situation where an employee is suffering from extreme pain and a doctor has prescribed these drugs, so long as the employee is using such drugs in accordance with a doctor's prescription issued to that employee, and the use is for the specific condition and time frame prescribed by the doctor, this shall not constitute a violation of our drug policy. However, employees may not drive onto our premises, operate equipment or perform any safety sensitive functions while using or under the influence of opioids, unless a doctor and the prescription instructions recommend that they may do so. Employees are required to consult with their prescribing physician and the pharmacist, and to advise the company of any restrictions arising from the use of opioids. A violation of this policy may result in discipline up to and including termination."

found at: [www.nsc.org/home-safety/safety-topics/opioids](http://www.nsc.org/home-safety/safety-topics/opioids)

Opioids can serve a purpose. For severe pain or terminal illness they can make the best out of a bad situation. Unfortunately, their distribution is out of control, and addiction is widespread. As the supply of prescription drugs is being tightened, addicts are turning to heroin, fentanyl and other illegally trafficked substitutes, with deadly impact.

Opioid abuse is considered a disease, and like other diseases it is contagious and can infect your workplace. Implement a policy, educate your employees, take efforts to reduce the prescribed use of opioids by your employees, look for warning signs, respond when you have suspicion of use, require medical evaluation and/or drug testing and/or rehabilitation when appropriate, discipline and/or terminate for violations of your drug policy, study your health insurance prescription utilization to understand use of these drugs by your employee population and do whatever it takes to keep this crisis from contaminating your workplace. •

## DID YOU KNOW?

\$26 billion per year is the amount employers lose from consequences of prescription pain medication abuse, including absenteeism, diminished productivity, and lost earnings from premature death.<sup>1</sup>

\$1.4 billion per year is what workplace insurers (i.e., Worker's Compensation program underwriters) spend on narcotic and opioid painkillers.<sup>2</sup>

The overall cost is 9x higher to treat a workplace injury when a narcotic painkiller is prescribed.<sup>3</sup>

4 out of 5 employers have had to deal with opioid prescription addiction and abuse in their workplace.<sup>4</sup>

<sup>1</sup> source: National Business Group on Health's Employers Guide to Workplace Substance Abuse 2009

<sup>2</sup> source: The New York Times June 2012

<sup>3</sup> source: Accident Fund Holdings

<sup>4</sup> source: National Safety Council study of Indiana employers December 2015



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Susan Gartell of Milwaukee Ballet Photo by Rachel Malehorn and Timothy O'Donnell; Milwaukee Youth Symphony Orchestra Photo by Ron Oshima; Christina Hall (Mrs. Lovett) and Andrew Varela (Sweeney Todd) in Skylight Music Theatre's *Sweeney Todd*

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