

Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

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WHAT EMPLOYERS CAN DO TO ADDRESS OPIOID ADDICTION IN THE WORKPLACE

Opioids represent the deadliest drug crisis in American history, having claimed nearly 218,000 lives from overdoses in the United States between 1999 and 2017. Opioid overdose deaths have quadrupled since 1999, according to the Centers for Disease Control and Prevention. Those statistics don't begin to cover the countless individuals living with the consequences of a family member's addiction or opioid-related death.

The workplace has not escaped the epidemic's impact. The likelihood that some employee, at some time, will face an opioid addiction has raised significant questions for employers.

As businesses of all sizes have discovered, the opioid crisis is having a significant impact on the workforce, especially because opioids are commonly prescribed to treat work-related injuries or conditions protected under the Americans with Disabilities Act. Employers are left grappling with issues of lost productivity, higher absenteeism,

greater risk of workplace injuries, an increase in positive drug tests, workplace theft and higher healthcare costs. Many businesses are even experiencing labor shortages due to difficulty hiring and retaining enough workers who can successfully pass a drug test.

In response, employers are being encouraged to become an integral part of a massive effort to help educate, support and rehabilitate opioid-dependent workers. But how?

One solution is to develop a five-pronged policy that promotes a drug-free workplace and provides support for those who become addicted. This program would include:

- 1) A comprehensive, written drug-free workplace policy.
- 2) Detailed, comprehensive supervisor training.
- 3) An employee education and awareness program.



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4) A comprehensive employee assistance program (EAP).

5) A drug-testing policy.

As a part of this approach, many employers are shifting away from zero-tolerance drug policies and instead turning to more proactive measures that include:

- Reviving "last-chance agreements" that offer drug-dependent employees a second chance to get clean rather than immediate termination. The agreement, instated after the first positive drug test, requires the worker to admit addiction and successfully complete a treatment program to remain employed.
- Expanding supervisor training to include proper methods for detecting drug use, how to conduct fitness-for-duty evaluations, when and how to do reasonable suspicious drug testing and procedures for assisting employees when reaching out to EAPs or other treatment programs.

"Consult a Columbus Bar attorney to put together policies that increase your employees' awareness and promote a drug-free workplace."

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• Offering employee education and an Employee Assistant Program to provide information on the harmful effects of opioid abuse, recognizing signs of drug abuse, proper handling and storage of medicine at home and how to access treatment for a worker or loved one.

By proactively adopting these steps, employers will increase morale and help reduce the harmful impact of addiction. Of course, these steps should not substitute for appropriate disciplinary actions and/or termination for drug-related workplace misconduct when appropriate.

The opioid crisis is now a part of the landscape and will continue to affect the workforce. Given its human and financial impact on companies, employers must stay on top of the crisis by developing a comprehensive response that includes a review of hiring practices, workforce education, supervisor training, discipline and discharge, consideration of an employee assistance program and last-chance agreements and updating drug-testing procedures and policies. ■

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RIDESHARING: INSURANCE COVERAGES AND POTENTIAL LIABILITY

Rideshare companies have made it clear that they view drivers as independent contractors and not employees. While this issue continues to be litigated in various jurisdictions, current rideshare driving agreements typically require rideshare drivers to carry personal insurance coverage. Whether the rideshare company's own insurance policy (or policies) provides coverage for an accident in which a driver is involved is usually determined by the rideshare company's own policies and agreements



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with its drivers, the language of the rideshare company's insuring agreement(s) and the stage of the "trip" during which the accident occurs. The coverages which have been determined to be applicable to the loss are typically third-party liability coverages, and rideshare drivers are generally not covered under these policies for their own injuries or damage to their

vehicles.

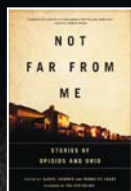
Typically, rideshare drivers log-in to the rideshare company's app, making themselves available for ride requests.

Once a driver accepts a request, the driver will pick up the requestor and take them to their chosen location. Uber® and Lyft® both indicate their insurance acts as primary coverage if the rideshare driver is involved in a "covered" accident while en route to pick-up a rider, or while driving a rider. This coverage ends once the rider is dropped-off at their location and the trip is marked as completed.

When the driver's app is turned off, the driver's personal coverage applies. If an accident occurs while the driver is using the app and is available to receive ride requests, but has not yet accepted a request, both Uber® and Lyft® provide

contingent third-party liability coverage in the event the driver's personal insurance does not respond. The rideshare company's insurance policy will then likely respond, if the driver's policy does not.

Most personal automobile policies exclude coverage for accidents which occur while the insured is working as a rideshare driver, as this is considered a commercial activity. Insurance companies have begun to offer rideshare endorsements for personal automobile policies as the practice of ridesharing has become more common, which may be a worthwhile expense to rideshare drivers.



July 29, 2019 • 7-8pm @ Gramercy Books Bexley

NOT FAR FROM ME: Stories of Opioids and Ohio

More and more Americans find themselves touched by the opioid epidemic. *Not Far From Me* is the first book on this public health emergency composed entirely of first-person accounts. Join us for a discussion with the book's editors. 1.0 CLE hour (Prof. Conduct). Co-sponsored by Gramercy Books.



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