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## INSIGHT: A Whole Employer Approach to the Opioid Epidemic



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Addressing the opioid epidemic challenges employers due to the many overlapping laws and its many varied facets. One survey reported that 70% of employers have felt some impact from drug abuse, such as absenteeism, use of prescription pain relievers at work, positive drug tests, impaired or decreased work performance, an employee's family member affected, and in other ways.

Every 16 minutes there is a death from an opioid overdose, according to the Center for Disease Control ("CDC"). It has been reported that 4.5 million Americans are estimated to have a substance abuse disorder involving opioid prescription painkillers, costing an estimated \$504 billion per year. Surveys widely vary regarding whether the abuse is more prominent in employees or their dependents. Regardless of who has the substance abuse issue, opioid abuse in the family will likely impact the employee's performance at work.

**Substance Abuse in the Workplace** There are a variety of employment, privacy, safety and state laws an employer must consider when dealing with an employee with a substance-abuse problem. Employers have long dealt with employees suffering addiction; the opioid epidemic magnifies these issues due to the widespread nature of the problem and because it can involve misuse of prescription drugs.

The opioid epidemic is challenging because many employers do not test for the synthetic opioids that are commonly being abused. Nor is the testing designed to address the misuse of prescribed medications (e.g., 1 pill per 8 hours prescribed, but 3 pills taken). Unless testing is done immediately after opioid ingestion, it may not catch all abuse due to the rapid metabolism of opioids. Some employers have considered eliminating random drug testing, but such a choice will only expose the employer to additional risk of civil liability, poten-

tial injuries on duty, and related Worker's Compensation claims.

**Substance Abuse is an Ongoing Condition and Potential Relapse Must Be Considered** An employer facing any addiction issue must be prepared to deal with rehabilitation and the very real possibility that the employee will suffer a relapse. Disability plans, employment policies and collective bargaining agreements may not adequately address this concern or related issues in the workplace. To address the opioid addiction issue effectively, an employer must consider not only the initial discovery of the issue, but also relapse and recurrent rehabilitation treatments, absences and returns to work, as well as the potential ramifications of such occurrences in its policies, agreements and plans.

**Traditional Random Drug Testing by Employers Has a Limited Impact on Detecting Opioid Abuse** Traditional random drug testing is not designed to capture any of the synthetic substances currently being used, such as Oxycodone, Hydrocodone, Dilaudid, Fentanyl and others. The traditional five panel drug test looks for marijuana or THC, cocaine, opiates such as codeine, morphine and heroin, amphetamines and Phencyclidine, but does not test for the synthetic opioids.

Even testing specifically designed to identify synthetic opioids may fail to identify cases of abuse where the individual has a prescription, but may not be using the drug in accordance with their prescription. Testing is further challenged because the human body metabolizes the synthetic opioids rapidly and testing may not occur quickly enough following an incident triggering the requested test.

**Identification of the Substance Abuse Problem is Only the First Step for an Employer** Employers may learn about an employee's substance abuse issues in a variety of ways and how the employer learns of the is-

sue will determine the legal restrictions that apply to such information. The employer must consider those restrictions when developing a strategy to deal with any substance abuse issue. When confronting evidence of potential opioid abuse, an employer must first ascertain how it first learned about the employee's substance abuse problem. An employer learns medical information about employees from a variety of potential sources, however, the source of the information and particular facts involved will determine what legal restrictions apply to the use of the information by the employer.

**Employment Related Laws, OSHA and Workers Compensation Laws** An employer dealing with an employee's substance abuse issue will need to consider a number of potentially applicable laws that are not mutually exclusive. For example, employers must consider the safety of all their workers and the employer's obligation to report safety issues, such as under OSHA. Employers must also consider their obligations under Worker's Compensation requirements and applicable workplace safety laws. In addition, substance abuse poses obvious risks to co-workers and/or the public, and potential civil liability for employers (e.g., an employee operating a company vehicle on the roads while impaired).

Employers must consider their obligations under federal and state employment laws including the Americans with Disabilities Act (the "ADA"), the Family and Medical Leave Act ("FMLA") and various medical record privacy laws. If the employer raises concerns regarding the employee's behavior (e.g., excessive absenteeism to attend to a child's addiction issue), there are a variety of laws that may provide protection, including the ADA due to association with a disabled family member and FMLA for leave for a serious medical condition of a family member.

For example an employer may have reason to suspect substance abuse where an employee has an unusual proclivity for injuries on duty. However, if the employer takes note of the injuries as a result of their inclusion in the reportable event logs for OSHA, the source of the employer's knowledge could trigger retaliation concerns and other federal and state law protections.

Finally, with the rapidly changing legal landscape related to medical and recreational marijuana laws, employers need to carefully consider their workplace policies and testing procedures.

**Employees Subject to Licensure or Certification Requirements** Some employers employ individuals who are required to maintain licensure or certification from a governmental entity in order to perform their job for the employer. For example, hospitals employ doctors and nurses who are subject to state licensure and may be subject to U.S. Drug Enforcement Administration requirements to be authorized to prescribe controlled substances; companies in the transportation industry may have groups of employees required to be licensed by the U.S. Department of Transportation or the Federal Aviation Administration and each of these have licensure and/or certification requirements. With the licensure or certification requirements on the employees, the employer operating with such employees may also have notification or reporting requirements that must be considered when dealing with opioid abuse or other substance abuse issues with such an employee.

**Analyzing How the Information Came to the Employer is the Starting Point to Understand the Legal Obligations Tied to the Information** The employer may learn of the information in a manner that implicates privacy protections under the Health Insurance Portability and Accountability Act, as amended ("HIPAA"). For example, if the employer learns of the issue from its group health plan, then privacy protections under federal and state law will likely be implicated. HIPAA Privacy protections may be triggered include: If the employee assistance plan hears from the employee or a family member that the employee has a substance abuse issue; if the employer's group health plan claims adjudicator notes the number of prescriptions issued to particular employee and raises questions regarding the overuse of opioids and the number of prescription refill requests; if the case manager notes an individual in rehabilitation or substance-abuse treatment has discharged himself against medical advice (AMA), or, if the health plan's case manager notes the high frequency of visits an employee is having with pain management specialists without an appropriate related medical diagnosis. Each of the above would indicate the medical information came from the group health plan and trigger the HIPAA Privacy restrictions and possibly state medical privacy laws.

The employer may also learn the information from the employer's on-site clinic or on-site emergency medical technicians, and depending on how those are structured, HIPAA privacy and/or state medical privacy laws may protect such information and restrict the employer's use of the information.

**Develop a Strategic Approach or Framework** One of the first things an employer must do is develop a strategy for analyzing each situation and identifying how it gained knowledge of a potential substance abuse issue. From that analysis the employer next determines which laws may apply to the particular situation and which laws govern what the employer may do in terms of using the information to address the addiction or abuse problem. Employers may want to consider developing checklists to use when gathering the relevant information to start analyzing, why the information was provided to the employer; how the information was obtained; from where the information was obtained; whom the information is about; and, where they are located in order to determine what laws and restrictions may apply and what obligations may flow from the employer's receipt of such information.

An employer may also want to develop flow charts to assist its human resources function analyze which set of laws apply to a particular fact situation giving rise to the concern that there may be a substance abuse problem with a particular employee. Information obtained from direct observation of the employee's behavior may be treated in a different manner and necessitate different actions as compared to information an employer receives in the form of medical information supporting a request for leave as opposed to information the employer learns from reviewing injury on duty or Worker's Compensation records.

If instead the employer learns about a potential substance-abuse issue directly from the employee when he or she requests a leave of absence to address the issue, the employee may be seeking not only a protected FMLA leave, but also may be seeking reasonable ac-

commodations under the ADA (e.g. the employee requests time off at intervals to take a child to rehab), which have their own confidentiality requirements and attendant FMLA and ADA protections.

Similarly, if the employee is involved in an injury on duty which is an OSHA reportable event, the health information received by the employer is required to be maintained confidentially in the employee's medical records file.

Frequently, employers request drug testing following accidents or other incidents on the worksite. The employer should obtain consent to perform drug testing in compliance with the employer's drug-free workplace policy. Failure to obtain the employee's consent to the test may result in the employer being subject to civil claims for assault and battery or invasion of privacy. When an employee signs a consent for the test, the employer should verify that this form also authorizes the party performing the drug testing to provide the results to the employer. Furthermore the employer should maintain a copy of the consents and authorizations to disclose.

If an employer notes that a particular employee has a high incidence of worksite injuries, the employer may be using information it received through its worker's compensation carrier. If so, the employer must be careful to appear as though it is taking retaliatory actions based upon the information obtained from the worker's compensation function. While such information is generally not protected under HIPAA, it may be subject to state medical privacy laws in addition to worker's compensation retaliation protections.

If the employee requests a leave to address a child's substance abuse problem, the employee is requesting an FMLA leave and is putting the employer on notice that its child has a serious health condition. Employers need to be careful with the information they receive from an employee related to substance abuse problems of family members as those may constitute serious health conditions triggering protections under FMLA and/or the ADA. It is important to remember that an employee who has a substance-abuse problem and who is currently abusing is not protected by the ADA. However, if the employee is in rehabilitation, or has completed rehabilitation, or is perceived erroneously and/or regarded as currently using or abusing drugs, he or she may still be protected by the ADA. Once there is a concern that there may be an issue under the ADA, the employer needs to be sure that human resources engages in the interactive process with the employee to explore whether any reasonable accommodations may be required.

Employers must be mindful of their obligation not to discriminate against the disabled or those perceived to be disabled or associated with the disabled when developing policies and procedures to address substance abuse problems. An employee who has a child suffering from an opioid addiction might be perceived to be disabled or to be associated with a disabled person triggering claims for protections under the ADA. An employee who has an opioid addiction and is currently abusing opioids is generally not protected by the ADA because they are currently using. However an employee who has recovered from addiction and is not currently using would be protected by the ADA.

Employers may need to periodically educate their supervisors regarding the company's obligations under

the ADA with respect to employees returning from rehabilitation. However this does not mean the employer is required to alter working conditions or work rules for such individuals outside of the employer's obligation to not discriminate under the ADA and to permit FMLA leave for a serious health condition when the employee properly requests and documents the need for the leave such as an intermittent leave for attending ongoing therapy.

**Suspicious Utilization in the Medical Plan** When the information is first created or received by the group health plan (e.g., the pharmacy benefit manager or a case manager for the health plan notes issues), the issue is likely identified through Personal Health Information (PHI) and that brings HIPAA Privacy and Security requirements, and possibly state medical records privacy laws, into play. HIPAA Privacy regulations require a separation between the group health plan and the employer sponsoring the group health plan and this means the PHI held by the group health plan cannot be transferred to the employer, and the employer cannot use any PHI it receives from the group health plan to make employment decisions. If the information identifying a substance abuse problem first comes through the employer's group health benefit plan or one of the vendors providing services to the group health benefit plan, that information may constitute PHI, but that does not mean the group health plan cannot engage in normal case management and review of services for medical necessity or to avoid fraud or abuse as part of the group health plan's health care operations.

An employer should review its contracts with the persons managing claims and providing services to the group health plan to determine what case management services might be available as part of the claim management and health care management processes. Information obtained by the group health plan is the group health plan's PHI which it must keep private and secure, unless the disclosure or use is permitted under HIPAA, such as a disclosure for treatment, payment or health care operations. Employers who set up case management or care limitations in their group health plans must be careful not to impose non-quantitative treatment limitations on mental health care that are more stringent than those imposed on medical surgical care raising issues about whether they are in compliance with the Mental Health Parity and Addiction Equity Act ("MHJPAEA").

If an employee visits an on-site clinic at the employer, the analysis is more complex. On site clinics can be set up in a variety of ways - they can be set up as a facility that the employer contracts with a vendor to staff and manage; they can be set up as part of the group health plan or part of the employer's occupational health department; they can also be merely a physical location on the employer's premises which is operated and managed by a healthcare provider contracted by the employer to operate the clinic; they can be on the employer's premises staffed by the employer's employed health care provider; or, it can be an area in which health care providers may schedule times to provide services to employees with each provider responsible for billing the services and managing its own appointments.

An on-site clinic must be carefully reviewed to determine how it is set up and whether it is acting on behalf

of the employer's group health plan; whether it is acting on behalf of the employer in treating just occupational health issues; or, if it is a medical facility operated by the employer or a healthcare provider. How an on-site clinic is set up and operated determines who is responsible for protection of health information gathered at such a location and how it might be used. Employers with on-site clinic, or on-site health care, providers need to carefully analyze their particular situations to determine which medical privacy rules apply and to whom such rules apply, which will determine the ways information might be used.

Employers using information that may have been part of the group health plan must be careful not to use the information in a way that violates applicable privacy laws. Employers must also be mindful not to take actions that might cause a plan participant to claim that the employer violated section 510 of the Employee Retirement Income Security Act of 1974 ("ERISA") by retaliating against them for filing a claim for benefits under the group health plan.

**Employer Facilitation of an Employee Returning from Rehab** An employer also must consider how it will handle employees who return from substance abuse treatment and how it will handle such knowledge when an employee requests reasonable accommodation when returning to work following substance abuse treatment. An employee who is not currently abusing may be protected from employment discrimination by the ADA and may also be entitled to reasonable accommodations. For example, a hospital employs a nurse who returns from substance abuse treatment to a patient care position requiring the provision of prescription drugs to patients. The nurse seeks an accommodation that he or she not have access to pharmaceutical products in the course of their work. Employers will need to follow the interactive process in each case considering the job description for the position and determine whether the requested accommodation is reasonable.

It is important that employers consider how they will provide a supportive work environment, such as by establishing policies that facilitate re-entry by employees returning from treatment. The employer should consider whether it should allow intermittent FMLA leave to attend group therapy sessions. Reasonable accommodations do not require an employer to create a new position nor do they require an employer to remove another employee from their position. Employers must also be mindful that they are not perceived as discriminating against a returning employee in retaliation for the medical claims they filed for their rehab treatment setting up a potential ERISA 510 claim.

**Remember the Collective Bargaining Agreement's Terms and Working Conditions** Before an employer establishes rules regarding how it will handle substance abuse in the workplace, it should first consult the collective bargaining agreement requirements to ensure that any new policies will not trigger issues under the collective bargaining agreement. For example, does the collective bargaining agreement mandate leave time or other benefits that must be provided? Policies, agreements and plans should also be reviewed to determine how they deal with an employee relapsing into substance abuse.

Employers need to review the applicable collective bargaining agreements to ascertain how the agreement

is implicated by an employer's request for a drug test; referral to an employee assistance program; or referral to address the perceived substance abuse issue. Violations of collective bargaining agreements may result in litigation, and can raise employee relations issues within the employee bargaining unit. Expanding the scope of the random drug testing or testing initiated as part of the drug free workplace policy should be done after consulting with the collective bargaining agreement and labor counsel to determine if such a change is covered by the management reservation of rights or if it will need to be negotiated prior to implementation.

Employer referrals to an Employee Assistance Plan or an on-site clinic need to be done in compliance with the applicable collective bargaining agreement, applicable work rules, and, if applicable, with the employer's policies and employee handbook.

**Mental Health Parity and Addiction Equity Act and Medical Plan Design Changes** Group health plans subject to the Mental Health Parity and Addiction Equity Act ("MHPAEA") must provide care for substance abuse disorders, like opioid addiction, in a manner that meets the MHPAEA parity requirements. However, MHPAEA compliance is only one piece of the puzzle an employer might use to fight the opioid addiction. MHPAEA requires annual review of claims and plan design to verify that the predominant restrictions are still satisfying the parity requirement. Employers may want to consider whether their plans cover the various treatments for opioid abuse in a manner that provides access to the treatment modalities in a manner that is on parity with medical coverage, such as in-patient, residential treatment, outpatient and medically assisted therapies ("MAT"). As new treatments are developed, group medical plans will need to ensure the non-quantitative treatment limitations on such new therapies are not imposed in a manner that is more stringent than how they are applied to new treatment modalities on the medical surgical side.

**Reintegration into the Workplace** At least one state has taken steps to encourage employers to welcome opioid addicted individuals back from opioid addiction treatment into the workforce. New Hampshire recently established an initiative for a recovery friendly workplace which is a voluntary program for participating employers to support returning employees to avoid recidivism so that the employee can maintain their recovery. Surveys have indicated many employers have concerns causing them to be reluctant to allow individuals treated for substance abuse issues to return to work. Perceptions related to an employee whose dependent has substance abuse issues, and may require additional support or leave, may also raise issues as employees with such dependents may require more time off to assist their dependent in their treatment and recovery. Employers must be cognizant of their workplace safety policies as well as the reporting obligations under OSHA and similar state and local laws relating to workplace safety, medical record privacy and other state law privacy requirements, disability discrimination and leave requests, and worker's compensation retaliation. Management may need to be reminded of the employer's obligations under the ADA and ERISA section 510 so that an individual reintegrating into the workplace following rehab returns successfully and the employer's

risks related to claims of discrimination or retaliation are minimized, to the extent possible.

Steps an employer should consider to prepare to address opioid addiction in its workforce:

1. Assess the employer's work rules and policies and the employee handbook, and to collective bargaining agreement(s), if applicable, with respect to how those rules and policies are implicated when an employee shows signs of substance abuse in the workplace.

- Do they address use of drugs without a prescription, use in excess of the prescribed amount, or illicit drugs?

- Do they address return to work policies for employees undergoing substance abuse rehabilitation treatments?

- Do they address relapses?

- Do they address employee use of prescription drugs at work?

- Do they address return to work policies for employees taking impairing medications, such as the synthetic opioids?

- Are supervisors trained to identify potential substance abuse issues and to contact the human resources department for guidance on handling the situation?

- Is there a job description for each position?

- Is there an interactive process to identify reasonable accommodations for employee impairment due to prescription medications?

- Is there a performance improvement plan for employees who fail drug tests?

- Is there a policy regarding employee notification of supervisors regarding prescription drug usage and are managers trained to keep such information confidential?

- Is there a policy to address employee use of medical marijuana?

- Are supervisors trained regarding return to work of employees who have family members with substance abuse and support available to the employee or family members under the group health plan, employee assistance plan or other resources to support the recovery and rehabilitation?

2. Review the Agreement with the vendor retained to perform the drug testing on employees and the forms used for such testing to verify that the vendor is obtaining the appropriate consents and authorizations prior to administering the test and to verify the scope of the test with whom the results may be shared and whether they also test for synthetic opioid use and use of opioids or synthetic opioid's in a manner that exceeds their prescribed use.

3. Review any collective bargaining agreements for relevant terms and conditions of employment and restrictions related to on site evidence of substance abuse, handling of workplace injuries or performance issues that may indicate an employee substance abuse issue and relapse or recurrence issues.

4. Verify that employment policies and/or collective bargaining agreements permit the employer to conduct random drug testing and ensure that there is a program for such random drug testing in operation. Verify that the applicable testing processes require employee consent to perform the drug testing and employee authorization to allow the testing provider to disclose the information to the employer.

5. Identify all of the service providers to the employer's group health plan, e.g., EAP, claims adjudicator,

provider network, pharmacy benefit manager, on-site clinic provider.

6. Review the employer's contracts with its group health plan's claim administrator, managed care organization, pharmacy benefit manager and employee assistance plan and determine whether each provides:

- A description of what each vendor is doing to identify potential incidents of substance abuse such as noting too frequent prescriptions by an individual;

- Identify what each vendor has bound contracted parties to do to combat the opioid epidemic (e.g., has the managed care network required its contracted physicians to appropriately limit prescriptions, has the pharmacy benefit manager required pharmacies to not solicit refills of opioids with refill reminder calls). Will the pharmacy benefit manager provide prescribers of opioids with clear guidelines regarding opioid prescriptions or will the managed care organization require the physicians prescribing opioids with clear contractual requirements and limits? Are physicians encouraged or contractually required by the managed care network to prescribe the lowest dose possible when prescribing opioids?

- Identify whether the plan design and the vendor will limit the size of dosages given for opioid prescriptions to a reasonable number of units for the type of diagnosis involved - this may also involve a plan design change on copayments for opioids where a long-term need is medically required so that prescription size limits either do not apply for certain diagnoses or the copays are adjusted to not penalize those who need to be on opioids as long term pain treatment. (For example, are there limits on opioid prescriptions following a minor medical procedure, injury or illness to pills for three or seven days instead of 30 days, and requiring precertification for prescriptions or refills of longer duration? If an individual has a diagnosis involving chronic pain, do the plan's vendors have a system that would permit a longer duration prescription for a diagnosis that justifies either repeat refills of seven days with subsequent refills not subject to the co-pay until the 30 day supply is filled?) Plan design changes will need to be made after carefully investigating the various vendor system capabilities to handle new designs with new limitations.

- Identify how each of the parties is taking steps to identify and address opioid abuse and catch opioid abuse in the group health plan's case management and care coordination functions so that the group health plan can use the data for healthcare operations under and in compliance with HIPAA for the benefit of the participants. Identify what steps each vendor performs after it identifies a person with a potential opioid abuse issue. Case management and care coordination can intervene to help control healthcare costs and affect better care as part of the care coordination and case management functions which may be permitted under HIPAA as part of healthcare operations.

- Remind management of the employer's obligations not to take any retaliatory actions.

7. Verify that for purposes of HIPAA the group health plan is separated from the employer and the appropriate business associate agreements are in place with parties providing services to the group health plan, as well as the required plan amendments. Verify that the employer has procedures in place to remain separate from the group health plan and not to access the health plan information for employment purposes.

8. Verify that the employer's HR staff is able to determine when it receives medical information in its capacity as the employer and when it receives medical information its capacity as the group health plan and understands that there are different rules applicable based on how the information is received.

9. Verify that the employer keeps medical records it receives in its capacity as an employer separate from other files and protects them to comply with any applicable state laws and the ADA requirements. Verify that the employer has appropriate procedures in place to protect the privacy of medical information received in its capacity as the employer under either the ADA, FMLA, state Worker's Compensation laws, or in its capacity as the plan sponsor of the group health plan.

10. Establish procedures to regularly review workplace accident and injury reports to determine if there are any trends that need to be addressed.

11. In monitoring workplace accidents, injury reports, and Worker's Compensation claims, the employer HR staff needs to be aware of the applicable state laws protecting employees against retaliation for making Worker's Compensation claims and take steps to avoid creating the perception of that there is any retaliation for Worker's Compensation claim.

12. Consider developing a flow chart analysis to aid the human resources function to analyze how the information on medical conditions arrived in the HR department and what the nature of each piece of medical information's source means to the HR department in terms of which laws apply, what restrictions there are on what can be done with the information, how it can be used, and what storage requirements and protections apply to such information. This includes identifying potential state laws applicable due to the location of the employee or location of the incident giving rise to the information or the location in which it was transmitted to the employer from the employee.

13. Identify an individual was in the HR department or position that will be responsible for reviewing what information has been received what information may be needed and how the employer may obtain that information under the various legal restrictions - a health information privacy official.

14. Identify a set of forms for the employer to use to obtain additional medical information when necessary such as authorizations for the individual involved to sign, and if the legal department is involved, subpoena forms or other document requests, for use with disability plans.

15. Identify the short and long-term disability benefits offered by the employer and what exclusions may apply in such benefit plans. Identify the medical information the disability benefit plan administrator may need to determine whether an individual is disabled when suffering from an opioid addiction or substance abuse problem, and have authorization forms ready to facilitate obtaining such information from an individual seeking disability compensation while seeking rehabilitation treatment.

16. If the substance being abused is marijuana, THC or cannabis oil, the employer must carefully review the applicable state laws regarding protections for individuals who are being treated with medical marijuana to avoid potential state law retaliation claims.

17. Employers should annually review their group health plan's design and compliance with the MHPAEA considering its coverage of treatment for addiction and substance abuse, and considering the case laws interpreting what constitutes parity, such as the various methods for treating addictions, inpatient, out-patient, medicine assisted therapies and residential treatment centers.

18. Educate management on identification of potential substance abuse issues and how to address those in a manner that does not put the employer at risk considering all of the various laws that apply to an employer in the context of dealing with substance abuse in the workforce.

19. Identify any requirements to report substance abuse by employees who are subject to licensure or certification requirements to perform their positions. Such identification should include: who is required to report; when is the report required; to whom must the report be made; what is required to be reported; and the consequences of failure to report.

The above list provides a general summary of some of the considerations an employer may want to consider as they seek to address problems of opioid abuse in their workforce. This is not an exhaustive list, nor is it a list that will apply and address all issues for any particular employer. The facts of each situation need to be considered, including how various benefits are provided, how the information is received, the plans involved, and what working conditions, terms and policies exist that may be implicated by taking actions without first considering whether they are permissible under the current terms and conditions of employment. Employers should carefully consider consulting with a legal team that brings the various disciplines to the table to address the issues involved. This is intended as a high level summary only. Each situation must be carefully evaluated when an employer is developing a game plan to address an employee with a substance abuse issue, like an opioid addiction.

**CAVEAT:** This does not constitute legal advice and cannot be relied upon as such. No one should rely on the contents of this article, but should consult one's own attorney with respect to your particular facts, the applicable laws and other considerations.

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