

LEGAL ISSUES SURROUNDING OPIOIDS IN THE WORKPLACE

Presented By:

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I. APPLICABLE STATE LAW/CODE OF MARYLAND REGULATIONS

- Ann. Code of M.d., State Gov't Article, § 20-606(a)(1)(i) an employer may not fail, refuse to hire, discharge or discriminate against any individual because of a disability.....
- § 20-606(a)(2) an employer may not limit, segregate, or classify its employees/applicants.... because of a disability;
- § 20-606(a)(4).... fail/refuse to make a reasonable accommodation for the known disability of a qualified employee;
- Code of Maryland Regulations ("COMAR") 14.03.02.04(B)(3) a covered entity may not fail to make an individualized assessment.....
- Americans with Disabilities Act ("ADA") (i) individual with a disability includes an employee who has completed a supervised drug rehab program and is no longer engaging in the illegal use of drugs.



RECENT CASE LAW INVOLVING OPIOIDS/MEDICATIONS IN THE WORKPLACE

- ▶ Stewart v. Snohomish County, 262 F. Supp. 3d 1089(W.D. Wash. 2017). Cp. suffered from severe & chronic migraines. After her OTC meds failed, she had to take the opioid Dilaudid. She rec'd satisfactory performance evaluations from the employer for the previous 20 years.
- ▶ Cp's physician certified that she needed to have Dilaudid injections in his office to treat the pain from migraines. Cp. had intermittent absences from work for the treatment. Cp's physician still noted that following an injection, if allowed by the employer, the Cp. just needed a brief rest period, but then she could work without restrictions and perform essential functions.
- ▶ Manager suspected Cp. was impaired at work. Employer had a "fitness for duty" policy. She was tested for drugs. The exam was positive for Dilaudid.



RECENT CASE CON'T

- ▶ Cp. was fired as a result of positive test. Policy made no exception for employees taking prescription meds, or for an employee who needed a reasonable accommodation. Employer refused to depart from its blanket drug policy.
- ▶ Case argued in part under state law (WLAD), Title 20 in Maryland. Court found that employer refused and/or failed to accommodate the Cp. Awarded the Cp. \$1.8 million in compensatory, and \$10,000 in emotional damages.
- ▶ Court stated that employer failed to acknowledge Cp.'s disability, chose to address the Cp.'s condition through a disciplinary/adverse instead of interactive process, treated Cp. as a drug abuser, rather than Cp. needing assistance to address the pain associated with her medical condition of migraines.



TAKEAWAYS

- ▶ Employees have a legal right to use legally prescribed drugs unless such medication presents a safety issue (depending on job)/hinders ability to perform essential functions. It's reviewed by the MCCR on a case by case basis. (Fact specific).
- ▶ Employees should consult with their physician about prescription medication and whether it might interfere with their ability to safely perform his/her duties.
- ▶ Employees should be informed about the employer's policy surrounding impairment of job performance due to prescription medication.
- ▶ Employers have a duty to perform an individualized assessment/interactive process when addressing disability, (whether, and if so, how) the meds impact performance. The answer "NO" is not an interactive process, delay is denial.
- ▶ Employers should guard against implementing blanket drug-testing policies without flexibility, as an accommodation as may be needed. (Rest, no cost).



TAKEAWAYS

CON'T

- ▶ The focus for employers should be centered on the employee's qualifications and job performance, not singling out, stigmatizing, or ostracizing an employee who might be taking opioids. The employer should not make matters worse by taking an adverse action, but if possible find a way to assist.
- ▶ Employer in Maryland has a duty to provide a reasonable accommodation when a request is made regarding a disability. It can be challenged by demonstrating the reasonable accommodation is a financial & administrative hardship.
- ▶ Cp. doesn't have to say "I need a reasonable accommodation." There are no magic words required. A 3rd party can make the request on behalf of the Cp. The employer just needs to be placed on notice of the inquiry.