



## SESSION G

# Medicinal, Recreational Pot, & More: Should HR Intervene?

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# SUBSTANCE USE IN THE WORKPLACE

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## What is Substance Use Disorder?

A problematic pattern of alcohol or drug use leading to significant impairment or distress as evidenced by:

- The individual uses larger amounts or over a longer period than was intended;
- There is persistent desire to cut down or control use that are unsuccessful;
- Large amounts of time spent obtaining, using, or recovering from effects of substance;
- Craving or strong urges to use the substance;
- Recurrent use leading to failure to fulfill major role/life obligations;

## **Substance Use Disorder (cont'd)**

- Continued use despite experiencing negative consequences of use;
- Social, occupational, recreational activities given up because of use;
- Recurrent use in physically hazardous situations;
- Continued use despite severe physical/psychological problems caused or exacerbated by use;
- Tolerance;
- Withdrawal

## **Why?**

- Hide from personal problems
- Compensate for (perceived) inadequacies
- Alleviate fear
- Release inhibitions
- Reduce physical pain
- Reduce emotional pain
- Society says “Feel better fast”
- Society says you’re cool if you drink the right stuff



## Quiz: True or False?

- Heroin is the most widely abused drug in the workplace today.
- Marijuana can be detected by a drug test for up to a month or more.
- About a third of all heavy drinkers also use illegal drugs.
- Most alcoholics drink every day.
- Almost half of industrial injuries can be linked to alcohol use.
- Heroin withdrawal is more physically dangerous than alcohol withdrawal.
- People can test positive on a drug screen even if they weren't using but were just exposed to marijuana smoke at a party.
- Caffeine and a cold shower can help sober up a person who has been drinking.

## Substance Abuse in the Workplace

The results of some recent studies:

- Approximately 1 in 7 workers abuse alcohol/drugs
- Of all employed people:
  - 8.2% reported use of illicit drugs in last month (19% - 18-25 y/o)
  - 8.8% reported heavy alcohol use in last month (16.3 – 18-25 y/o)
  - 2.6% met criteria for illicit drug abuse or dependence in last year
  - 10.6% met criteria for alcohol use disorder in last year
- Nearly 70% of current users of illicit drugs are employed
- U.S. companies average 1 or more drug dealers for each 100 employees
- Alcohol problems cost employers \$27 billion a year in lost productivity

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## Treatment Options



- Inpatient hospitalization
- Partial hospitalization (daytime/evening)
- Outpatient counseling
- AA/NA meetings or other self-help groups

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## Role of Key Personnel

- Know the policy
- *Communicate the policy*
- Recognize signs and symptoms – Reasonable Suspicion
- Understand that you are not expected to:
  - *Diagnose substance abuse disorder;*
  - *Prescribe treatment;*
  - *Provide counseling services*

## Top 5 Reasons Supervisors Don't Act

- “I’m afraid I’ll be wrong, and the person will test negative.”
- “I don’t want to get sued.”
- “I’m not really sure what the procedure is.”
- “He (she) is a good worker most of the time.”
- “I don’t want any conflict with the union”

## ***Four Characteristics of Reasonable Suspicion***

At least one of these must be present:

- 1.** Appearance (unkempt appearance, dilated, red eyes, unsteady gait, drowsiness or sleeping on the job, etc.)
- 2.** Behavior (hyperactive, aggressive, etc.)
- 3.** Speech (slurred, incoherent)
- 4.** Body Odor (odor of alcohol or marijuana)

## ***Observations Must Be: (Checklist)***

- Specific
- Contemporaneous: the behavior, conduct, appearance, or body odor exists at the time the supervisor is making the observation
- Articulable: the observations can be documented; grounded in objective criteria

## *Observation and Documentation*

- Immediately document observations
- Corroborate observations by another trained supervisor, if possible
- Use objective terms; do not diagnose or label (i.e. avoid using terms like ‘drunk’ or ‘intoxicated’)
- *Adhere to company policies*

## *Reasonable Suspicion Drug Testing*

- Marijuana
- Cocaine
- Opiates – opium and codeine derivatives
- Amphetamines and methamphetamines
- Phencyclidine – PCP
- Alcohol – by breathalyzer

## **Reasonable Suspicion Drug Testing (cont'd)**

*(These are very general guidelines.)*

- Amphetamines                    1-2 days
- Cocaine                        2-3 days
- Marijuana                      7-30 days
- Opiates                        2 days
- PCP                            2 days
- Alcohol                        1 day
- Detox from Alcohol            1-5 days

## **Reasonable Suspicion Drug Testing (cont'd)**



General job performance problems, such as errors, absenteeism, and tardiness, are not grounds to conduct a reasonable suspicion test.

## **Why Should I Help My Employee? The Business Case for Offering Help**

- What happens when you terminate an employee?
  - *How much does it cost to recruit a new employee?*
  - *How much does it cost to train a new employee?*
  - *How can you be sure the new employee will be a good choice?*
- What happens when you offer help?
  - *Sometimes the employee's substance abuse behavior has been enabled by well-meaning others (family, friends).*
  - *Usually by the time it shows up in the workplace it is also a problem in other areas of the employee's life.*
  - *Often a positive, compassionate, no nonsense confrontation in the workplace is the catalyst that is needed for the employee to seek help.*
  - ***"We value you as an employee and we want to see this work for both of us."***

## **Why Should I Help My Employee? (Cont'd)**

- What happens when help an employee reach recovery?
  - *When employees get their life back you get a loyal, engaged and motivated employee - for life.*
  - *The rest of the workforce notices, and they may become loyal, engaged and motivated employees as well.*
- What happens to an employer who is known to care about its employees?
  - *How does that influence the employer's reputation in the community?*
  - *How does it influence recruiting?*

## **How Should an Employer Respond?**

- Federal Omnibus Transportation Employee Testing Act
- DOT Safety-Sensitive Transportation Employees (AKA - SAP Cases)
  - Employer's options are very limited – actions governed by federal requirements
  - Two hours of training required for all persons who supervise drivers
  - Mandatory testing
  - [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)
  - *(Be certain the SAP is a SAP)*

## **How Should an Employer Respond? (Non-SAP)**

- Have a policy
  - *Word the policy carefully*
  - *Communicate the policy*
  - *Consider reasonable suspicion testing*
- Train key personnel to recognize reasonable suspicion
- Explain that management is not expected to:
  - *Diagnose;*
  - *Prescribe treatment;*
  - *Provide counseling services*
- Who can help?
  - *Consider an EAP*
  - *Direct relationship and liaison with treatment providers*
  - *Peer support programs*
  - *Public safety chaplaincy*

## *Preparing for a Job Performance Discussion*

- Consult with HR if appropriate
- Have documentation ready, particularly if the employee needs to sign a corrective action form
- Consider and prepare for an employee's possible reactions



## *General Guidelines for Performance Discussions*

- Share concerns about job performance.
- Convey clear expectations, and the time frame for improvement – be specific, concrete.
- *If appropriate, recommend EAP (a formal supervisory referral).*
- *Contact the EAP and let them know that you are making a referral.*
- Discuss consequences (present and/or future).
- Set time for follow-up meetings.

## ***Positive Confrontations***

- Say something positive, affirming past work history, contributions, technical skills, etc.
- Present the performance problem(s). Have documentation ready to present as a visual illustration of the problem, if needed, to break through defensiveness, arguing.
- Clearly state your expectations for improvement, preferably in writing, including a timeframe.
- Set consequences, if any, resulting from the current situation, including future steps if the stated expectations are not met.
- Arrange for follow-up plans to monitor progress and/or continue with discipline process.

## ***When dealing with troubled employees, DO NOT ...***

- Diagnose the employee's problem.
- Pry into the employee's personal life, or give advice.
- Accept excuses, or ignore the problem.
- Wait until the employee's job is in jeopardy.
- Take responsibility for solving the employee's problem.
- Make decisions based on what you hear through the office grapevine.

## Possible Employee Responses



- Denial
- Defensiveness
- Hostility
- Fear
- Anger
- Distress
- Silence
- Projection

## The Sometimes Speech

*"Sometimes job problems such as these are the result of things going on outside the workplace. It may not be true in your case, and it's really none of my business. However, because it is true sometimes, the company does have an Employee Assistance Program. It's free and confidential, and it has helped a lot of individuals. We value you as an employee and we would not want to see these issues progress to a point where we may have to consider disciplinary action."*

## Resources

### SAMHSA

Substance Abuse and Mental Health Services Administration

<https://www.samhsa.gov/workplace/toolkit/plan-implement-program#assess>

- *Plan and Implement a Program*
  1. *Assess your workplace and its needs related to substance use.*
  2. *Identify available resources.*
  3. *Develop a written policy for your drug-free workplace.*
  4. *Determine whether to have an Employee Assistance Program (EAP).*
  5. *Determine whether to do drug testing.*
  6. *Plan to provide education and training for your employees and additional training for supervisors and other appropriate staff.*

## Resources

### Connecticut Clearinghouse

<https://www.ctclearinghouse.org/>

- *Connecticut Clearinghouse is a statewide library and resource center for information on substance use and mental health disorders, prevention and health promotion, treatment and recovery, wellness and other related topics. Materials from our specialized library and resource center are available to Connecticut families, teachers, students, professionals, communities and children.*

## Resources

### US Department of Transportation (DOT)

<https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/overview-drug-and-alcohol-rules-employers>

- *The DOT adopted regulations requiring commercial motor vehicle operators required to maintain a commercial driver's license (CDL) to be tested for alcohol and drugs. You cannot delegate your responsibility to comply with all applicable requirements and procedures. You are responsible for all actions of your employees, representatives, and agents in carrying out the requirements of the DOT regulations.*

## Why Should I Help My Employee? (Revisited)

People in recovery tend to become . . .

- *People who seek out opportunities to grow and improve.*
- *People who accept personal accountability.*
- *People who are more open to feedback and suggestions.*
- *A friend for life.*

*Questions?*

## CBIA Human Resources Conference

# Handling Substance Abuse in the Workplace

March 21, 2018

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## Troubling Statistics

- **21 million** Americans have substance use disorder
  - **75%** of those are employed
- **24%** of workers reported drinking at work in last year
- **10%** of workers reported working under influence of marijuana in last year
  - **50%** in states where marijuana is legal
- **11.4 million** Americans misused prescription opiates in 2017
  - Since 2005, **96%** increase in drug screens testing positive for oxycodone
- Quest Diagnostics: 2016 had highest rate of positive drug screens since 2005



## Impacts on the Workplace

- Accidents and injuries
- Tardiness and absences
- Poor decision making
- Increased health insurance and workers' compensation claims
- Loss of productivity
- Theft
- Illegal activities at work
- Higher turnover and related costs
- Disciplinary processing
- Reputational harm
- Decreased morale



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## Pre-Employment Drug Screening

- Urinalysis: Only test regulated by CT law
  - Inform applicant in writing of intent to conduct the test
  - Test must be conducted in accordance with Connecticut law
  - May not test applicant who employed by employer during last 12 months
  - Private cause of action to aggrieved employees and applicants



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## During Employment

- Random testing permitted only if:
  - Authorized under federal law (e.g., CDL drivers)
  - Position has been designated as safety sensitive by the Department of Labor
  - Testing is conducted pursuant to an EAP program in which employee voluntarily participates

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## During Employment

- May not require employee to submit to a urinalysis drug test without reasonable suspicion that the employee is under the influence of drugs or alcohol



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## **“Reasonable Suspicion” of Being Under Influence**

■ Based on Combination of Factors:

- Appearance
- Behavior
- Speech
- Smell

Examples:

- Unsteady gait
- Odor of alcohol on breath
- Thick or slurring speech
- Abusive behavior or language
- Disorientation

Other factors to consider include:

- Employee's time and attendance pattern
- On-the-job accidents
- Difficulty remembering instructions or conversations
- Poor relationships with co-workers, supervisors, and others

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## **May Discipline Employee If:**

■ Tests positive for illegal drugs or alcohol;

**OR**

Refuses to submit to lawful testing

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## Confronting an Employee

- Gather evidence
- Document
  - Performance issues and/or
  - Signs of impairment
- Schedule a meeting
  - Focus on facts
  - Don't make assumptions
  - Offer assistance and support
- Avoid enabling
- Follow policies (and law)

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## EEOC Guidance

- ADA may protect a “qualified” alcoholic who meets definition of “disability”
- ADA does not protect individual who currently engages in illegal use of drugs, but may protect a recovered drug addict
- Regardless of history, individuals may be held to same performance and conduct standards as other employees



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## Rights of Employees Using Medical Marijuana

Subject to limited exceptions, no employer may refuse to hire or employ a person **solely** on the basis of the person's status as a *qualifying patient or primary caregiver*.



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## Recent Interpretation of CT Law

Noffsinger v. SSC Niantic Operating Company LLC (U.S. D. Conn. 2017 and 2018) held:

- Implied private cause of action for discrimination under statute
- Statute protects **both** status as a qualifying patient **and** the actual use of medical marijuana
  - But, employers can still discipline employees who are under the influence at work
- Attorney's fees and punitive damages not available under statute

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## Medical Marijuana User...Now What?

- - A question of impairment
  - Positive or negative drug screen?
    - Be sure to specify the position applied for
    - “Negative with safety concern”
  - Employer could be subject to a discrimination claim if it refuses to hire on this basis alone
    - Are you better off not knowing?
  - Regardless, employee may not use or be under the influence at work

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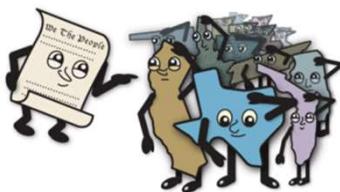
## Miscellaneous Points

- - If employee is taking medication under doctor's orders, employer may request note from doctor that the medication does not adversely affect ability to perform job safely
  - When alcohol is served at Company functions, employees are expected to drink responsibly and use proper judgment
  - Fitness for duty examinations

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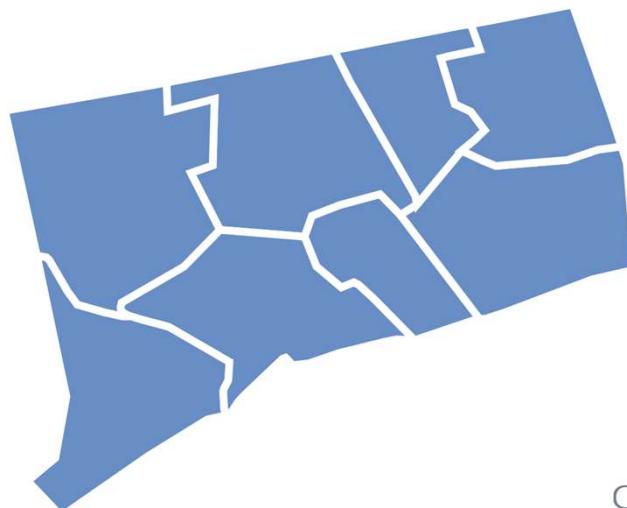
## Recreational Marijuana

- States that permit recreational marijuana:
  - Alaska
  - California
  - Colorado
  - Maine
  - Massachusetts
  - Michigan
  - Nevada
  - Oregon
  - Vermont
  - Washington
  - Washington, D.C.



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## Is Connecticut Next?



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## Proposed Connecticut Bills – Introduced 3/14/19

- Bills would:
  - Legalize and tax recreational marijuana
  - Permit possession of up to 1.5 ounces for adults 21 and older
  - Tightly regulate cultivation, manufacture and sale
  - Expunge criminal records for prior convictions of possession of 1.5 ounces of marijuana

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## Proposed Connecticut Bills – Introduced 3/14/19

- Bills would:
  - Set new penalties for driving under influence of marijuana (including passengers smoking inside vehicle)
  - Allow for training of police officers to detect impairment
  - Include efforts to ensure minority-owned business entry to the industry
  - Not require employers to accommodate impairment at work

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## Can Employers Prohibit Recreational Use Outside of Work?

- Under current Connecticut law, yes
- Under the proposed Connecticut bills, will depend on how bills develop
  - Note CT law prohibiting discrimination against use of tobacco
- Evaluate purpose behind such a policy
  - Consider discrimination, privacy, reputational issues

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## Practical Strategies

- Implement / review drug and alcohol policy
- Educate employees
  - Consider a wellness program
  - Consider EAP
- Review health insurance benefits
  - Consider coverage for substance abuse
- Focus on performance and behavior
- Look for signs of impairment
- Respect employees' privacy
- Treat employees with consistency and dignity



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