Employee Benefits Report

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Employee Benefit Planning

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How to Fight the Opioid Epidemic

Death from an accidental opioid overdose has become one of the top five causes of death in recent years.

The United States is experiencing an epidemic of opioid addiction. The National Safety Council released a report that says a person born in 2017 has a greater chance of dying from an accidental opioid overdose than from a car crash. Accidental opioid overdose is now one of the top five causes of death behind heart disease, cancer, respiratory disease and suicide.

The Centers for Disease Control and Prevention estimates that the total "economic burden" of prescription opioid misuse in this country is $78.5 billion a year, which includes the costs of health care, lost productivity, treatment, and use of the criminal justice system.

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New Association Health Plan Rules Deemed "Absurd"

A Washington, D.C. District Court judge's decision in State of New York, et. al. v. United States Department of Labor, et. al. is raising doubts about the future of association health plans (AHPS) for unrelated employer groups.

AHPs have been a way for similar business and employer trade associations to form associations in order to secure health care coverage that is less expensive than what they could purchase on their own. President Trump directed the federal government to expand access to AHPs and to disregard the re-

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The encouraging news is that employers can play an important role in mitigating this crisis by identifying early signs of drug abuse and educating employees about opioid alternatives and treatments.

How Opioids Became a Crisis

An opioid is a medication used to treat persistent or severe pain. People who take opioids often suffer from a variety of conditions including:

- Chronic headaches or backaches
- Severe pain after surgery or an injury
- Cancer

Opioids include oxycodone (OxyContin®), hydrocodone (Vicodin®), codeine and morphine. Heroin, while illegal, is classified as an opioid. Opioids block pain messages sent through the spinal cord to the brain. While opioids can be extremely effective in reducing pain, they also can be highly addictive.

The opioid epidemic began in the late 1990s after professional and consumer groups pushed for increased opioid use for pain management, and pharmaceutical companies assured physicians that prescription opioids were not addictive. At the same time, the makers of OxyContin (oxycodone) increased their marketing efforts and provided free samples at doctor's offices.

What Employers Can Do

An employee who abuses substances is a danger to themselves and to their families and communities. At work, substance abuse impacts workplace safety, health care costs, productivity, absenteeism and job performance.

As an employer, you can train managers to identify early signs and symptoms of substance use disorders and help employees get treatment. Drug-free workplace programs are cost-effective and can help employees avoid or manage a drug crisis. Effective programs consist of:

- Written policies
- Employee education
- Management training
- Employee assistance program
- Drug testing

Written Policy

A written policy tells your employees exactly what is expected at work and what options are available should they have a drug problem.

Work with your legal counsel and human resources department to ensure the policy follows federal and state guidelines.

A few topics your policy could cover:

- Prohibited behavior, including possessing or selling drugs or intoxicants
- Employee responsibilities
- Disciplinary actions
- Who to call for treatment

Employee Education

By promoting wellness policies and stressing the importance of self-care, you will support all your employees. Start with management teams; and share information with employees through workshops, flyers, emails, videos and social media. When hosting social events, require they be alcohol and drug-free.

Wellness talks can be an opportunity to discuss how easy it is to become addicted to opioids. Tell employees that substance use disorder is a preventable and treatable illness, and your workplace is recovery-friendly.

Review policies about substance abuse affecting hiring, discipline, retention and termination of employees. Encourage employees to use sick days not only when they are ill, but for medical, dental, mental and/or chemical health.

Inform employees that there are alternatives to opioids for pain management, and

quirement for businesses to be related. He also asked the DOL to reconsider its definition of "employer" under ERISA to allow smaller groups to participate.

On March 28, 2019, District of Columbia Judge John D. Bates ruled that major provisions of the DOL's final rule on AHPs were unlawful. He said that the rule's interpretation of "employer" to include working owners and groups without a true commonality of interest was unreasonable.

Judge Bates also called the changes "absurd" and said they were "clearly an end-run around the [Affordable Care Act]."

The DOL now has three options: rescind the rule; revise it so it falls in line with the judge's decision; or appeal the decision to the U.S. Court of Appeals.

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that opioids are not more effective for most pain. Dr. Don Teater, a medical advisor for the National Safety Council, said that for pain related to common workplace-related injuries, opioids are not any more effective than non-steroidal anti-inflammatory drugs (NSAIDS) alternatives such as Tylenol, Advil or generic ibuprofen. They also usually are more affordable and safer than opioids.

Management and supervisor training

Train supervisors to convey the company policy to enforce drug and prescription drug policies, and that there are programs available to help battle addiction. Supervisors also must know what to do if someone seeks assistance or they see signs that someone is under the influence.

The medication Naloxone temporarily blocks opioid effects during an overdose. Make sure you have Naloxone on hand and supervisors are trained to administer it if an employee overdoses.

Employee Assistance Program

Work with your health care coverage broker to find a plan supporting several pain management treatment options, including cultural practices, chiropractic, massage, acupuncture, physical therapy, exercise, mindfulness, cognitive behavioral therapy and occupational therapy.

Consider a plan with an Employee Assistance Program (EAP). An EAP assists employees in resolving personal problems, including alcohol or substance abuse; child or elder care issues; relationship challenges; financial or legal problems; wellness matters; and assistance in handling traumatic events. Vendors who are part of comprehensive health insurance plans can provide care over the phone, computer or in person at no cost to employees.

Drug testing

While drug testing can be intrusive, it also is a valuable tool to prevent drug-related incidents. Drug-testing programs often curb drug abuse because employees fear getting caught. Seek legal guidance before starting any drug testing program to ensure it complies with state law and federal guidelines. Also remember that testing done before an employee starts work will not detect drug use after they begin employment.

Typical drug tests detect opiates/heroin, cocaine, marijuana, PCP and amphetamines. Many commonly abused prescription drugs are not included in federally mandated tests or many other drug testing panels. As an employer, you often can choose to test for more drugs than regulations require. However, the Americans with Disabilities Act may protect an employee's use of over-the counter or prescription drugs to treat a disability.

Please contact us if you need assistance developing substance abuse guidelines for your firm.

To Pay or Not to Pay Parental Leave?

There are no laws mandating unpaid leave to care for employee's family members.

The Family Medical Leave Act allows employees of covered employers to take 12 weeks of unpaid leave in a 12-month period to care for a newborn or adopted child. An employee also can use the unpaid leave to take care of themselves or a family member who has a serious health condition.

Despite the protections FMLA provides, there's no U.S. statute mandating that leave time be paid to ALL employees and the financial toll that unpaid leave takes on families can be brutal. The United States Congress Joint Economic Committee reports

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that 25 percent of two-income families and 13 percent of single-parent families that file for bankruptcy do so after missing two or more weeks of work because they were sick or caring for an ill family member.

With that in mind, more and more companies now offer paid maternity, paternity or parental leave. Providing paid leave to take care of young or sick children ensures that employees will be able to return to their jobs.

According to the Society for Human Resource Management (SHRM), more than one in three U.S. employers offer paid maternity leave longer than the amount required by FMLA, up from one in six businesses earlier this decade. Still, as of 2017, only 15 percent of U.S. workers received paid family leave, according to the U.S. Bureau of Labor Statistics.

Also, employers who do offer parental leave don't always offer it to all their employees. World at Work, a global association for human resources management professionals and business leaders, surveyed 385 employers in 2017 and found that about 22 percent of companies offering paid leave only gave it to some workers. This is not unusual. Part-time workers typically are excluded, while middle- and upper-income workers are more likely to have access to paid leave.

Employer Benefits of Paid Leave

One reason employers offer paid leave is that it's an easy way to help retain employees without raising wages. Employees who feel appreciated are less likely to seek employment elsewhere. Plus, research shows that the cost of offering paid leave often is less expensive than paying recruiting and training costs for new employees. The Center for American Progress says that the typical median cost of turnover for most positions is 21 percent of an employee's annual salary.

Paid parental leave probably is most important to lower-wage workers — particularly those who are paid hourly — and who are less likely to be able to afford a day without pay. Working mothers, who usually are responsible for staying home with sick children and family members, benefit greatly from having paid sick leave. A 2010 Joint Economic Report (11th U.S. Congress) found that half of working mothers miss work if their child is sick compared to only 30 percent of working fathers.

Employee Benefits of Paid Leave

The biggest advantage of paid parental leave is financial security. The Federal Reserve's Survey of Consumer Finances showed that low income earners are least likely to have a savings account, and of those who make $25,000 annually, the average savings account is only $500. Employees who have to pay surprise medical bills and take unpaid time off obviously are those most susceptible to filing for bankruptcy.

In addition, employees who can afford to stay home when their child is first born help their children get a strong start in life. ■

Retirement Reform on Senate and House Agendas

Two similar bills in the U.S. Senate and House are designed to make it easier to save for retirement and both bills appear to have bipartisan support.

The Senate's Retirement Enhancement and Savings Act (RESA) of 2019 is an updated version of the 2018 RESA legislation, which did not pass. Many senators and observers believe that the 2019 bill is the most comprehensive retirement security measure proposed at the federal level since the Pension Protection Act of 2006. Bipartisan leadership of the Senate Finance Committee introduced the 2019 version earlier this spring.

The U.S. House Ways and Means Committee approved the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) this spring. The reform package can now be brought before the full House for a vote. It also was introduced by a bipartisan group of committee members.

Both pieces of legislation have similar provisions, and according to the Insured Retirement Institute, the two bills are "virtually identical". For instance, both bills would encourage employees to increase their retirement savings annually through automatic increases in contri-

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butions to their 401(k) plans. It also would require employers to provide estimates of how much an employee's account would provide during retirement if it were invested in an annuity.

One major difference between the two bills is the time when plan participants would be required to begin taking distributions from their retirement plans. The House bill increases the required minimum distribution age from 70½ to 72, while the Senate bill keeps the age the same at 70½ years.

Highlights of what each bill proposes:

RESA 2019

If passed and signed by the president, the 2019 Senate bill would make a number of changes and modifications to the existing retirement system by:

- Making it easier for small employers to take part in multiple employer defined contribution plans (MEPs). MEPs are retirement plans sponsored by a group of employers that are not related through common control or ownership. MEPs allow small companies to share and thereby reduce administrative costs, resulting in lower costs and increased investment returns for employees.
- Removing the age limitation on IRAs for contributions to the plan.
- Removing some restrictions on automatic enrollment in 401(k)s.
- Making it easier to use lifetime income options inside a qualified retirement plan.

SECURE Act

The House SECURE Act makes it easier for employers to offer annuities in 401(k) and 403(b) retirement plans and, as mentioned earlier, raises the age for taking required minimum distributions from 701/2 to 72 years old.

The legislation also includes:

- Updates to the effective dates.
- Modifications to the exception to the required minimum distribution rules.
- Provides for an acceleration of Pension Benefits Guaranty Corporation (PBGC) premiums. The federal government established the PBGC to guarantee basic benefits to participants who are covered by the PBGC in the event that their employer-sponsored defined benefit plans become insolvent.
- Increases the auto-enrollment safe harbor cap from 10 to 15 percent.
- Requires employers to allow long-term, part-time employees to participate in workplace 401(k) plans

Is Fitness Tracking for Better Health Worth the Risk of Losing Privacy?

Would you require or incentivize your employees to share data from their fitness trackers if it would significantly lower premiums and/or improve their health?

In exchange for discounts, many insurance companies now offer interactive policies requiring members to share health data captured through wearable devices, such as smartwatches,. Life insurance company John Hancock Financial announced last fall that it now only sells interactive policies.

A National Association of Insurance Commissioners representative explained that insurance companies use data from devices such as Fitbit to adjust premiums or give discounts. If insurers find that employees' risk profile is lower because of healthy fitness habits, future premiums may be lowered.

Wearable fitness technology can track an individual's heart rate, sleep patterns and steps taken — although many insurance companies only track steps taken.

Of course, insurance companies benefit from insuring healthier members and believe that members will be more active if they know they are monitored. Many people in these programs say they are more active when they know their progress is being monitored.

Another benefit to companies is that once members get used to using their smart devices, they tend to use other online services as well, including telemedicine for virtual doctor's appointments instead of going to a clinic for minor issues.

But the question for companies is whether it's worth it for employees to share this additional information, even if it does encourage them to be more fit, if they feel it gives away too much of their privacy.

Data privacy is also a concern for companies. While insurance companies maintain they follow strict privacy guidelines to keep data safe, breaches are more frequent. The theft of medical data from 78 million Anthem insurance company customers in 2015 shows how valuable medical data is to thieves. Experts worry that when more insurers collect fitness tracker data, cyber attackers will target these companies.

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