

New Study Suggests Drug Use in Our Workforce is on the RiseHow Can Employers Protect Themselves and Their Employees?

Working Together

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By Megan Youngling Carannante

A recent study released by Quest Diagnostics reveals that drug use in the country's workforce is on the rise. According to Quest's analysis of more than ten million tests conducted in 2016, drug use among the combined US. workforce has increased to 4.2 percent, which is a five percent relative increase over 2015's rate and an all-time high since 2012.

Drug use by workers poses significant health and safety concerns for their fellow-employees and exposes employers to liability. It also leads to loss of employee productivity, high turnover and creates a myriad of other issues.

What accounts for the increase in drug use among our employees? To begin with, as one might expect, more employees today are testing positive for marijuana. In oral fluid testing, for example, which detects recent drug use, marijuana positivity increased nearly 75 percent, from 5.1 percent in 2013 to 8.9 percent in 2016, in the general U.S. workforce. In Colorado and Washington, the first states in which recreational marijuana use was legalized, the overall urine positivity rate for marijuana outpaced the national average in 2016 for the first time since the statutes took effect.

Interestingly enough, while the current national dialogue continues to focus on the opiate crisis, the Quest study suggests that prescription opiate use, including use of hydrocodone, hydromorphone and oxycodone, is actually beginning to decline in the general U.S. workforce. The decline is likely the result of state and federal authorities' efforts in recent years to place tighter controls on opiate prescribing practices. Non-prescription opiate use also appears to be on the decline. After four straight years of increases, heroin use remains steady among the general workforce.

While opiate use is down, cocaine use was unfortunately more prevalent in 2016 than it was in 2015. Cocaine positivity increased 12 percent in 2016, reaching a seven-year high of 0.28 percent in the general U.S. workforce. Likewise, amphetamine (which includes amphetamine and methamphetamine drugs) positivity continued its year-over-year upward trend. Between 2012 and 2016, methamphetamine use climbed 64 percent in the general U.S. workforce.

pullcom.com  @pullmancomley

BRIDGEPORT
203.330.2000

HARTFORD
860.424.4300

SPRINGFIELD
413.314.6160

WAKEFIELD
401-360-1533

WATERBURY
203.573.9700

WESTPORT
203.254.5000

WHITE PLAINS
914.705.5355

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What should employers in Connecticut do to address the increasing presence of drugs in the workplace, and protect themselves and their employees?

(1) Understand Applicable Laws

First and foremost, an employer must ensure it understands the various legal requirements it must comply with when dealing with drug use and abuse by employees (this includes both legal and illegal drugs). An employee using medical marijuana during non-work time may, for example, be entitled to certain legal protections under Connecticut's medical marijuana statute. While an employee is not permitted to report to work under the influence of marijuana even if that marijuana is medically indicated, an employer may not discipline, terminate or discriminate against an employee solely because he/she is a qualified medical marijuana patient or because he/she (if he/she is such a patient) fails a drug test.

(2) Draft and Disseminate a Comprehensive Policy

We also recommend that employers draft and disseminate a clear and comprehensive drug-free workplace policy. The policy should address the proper and prohibited uses of prescription drugs and illegal drugs and the employer's drug testing procedures. The best way to inform employees of an employer's expectations is to articulate them and have employees acknowledge them in writing. Having a strongly worded policy also provides a first line of defense in the event of litigation.

(3) Ensure That Drug Testing Complies with Applicable Law

If an employer is drug testing prospective or current employees, it must confirm it is drug testing properly and as permitted by law. Private employers, for example, must comply with Connecticut's drug testing statute, Connecticut General Statutes §31-51t *et seq.*, when conducting urinalysis drug testing. That statute requires employers conducting pre-employment and post-employment testing to follow certain rules and provides a right of action to an employee if those rules are not followed.

(4) Train HR Professionals, Managers and Supervisors, and Document Everything

The employer should also train its supervisors and managers regarding the requirements of its policy and how to recognize when their employees are under the influence of drugs at work. To the extent a supervisor or manager suspects drug use or abuse, they should document everything they observe.

(5) Be Supportive and Consistent and Act In a Measured Way When Enforcing the Policy

Finally, employers should be sensitive to the difficulties employees face when abusing substances and encourage them to seek help. Employers should also engage in an interactive process with the employee and his/her health care professionals when appropriate. Employers may also find it beneficial to offer an

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Employee Assistance Program. While an employer may or may not wish to discipline or terminate an employee it discovers is using drugs, the situation may be complicated by a variety of human, economic and legal factors. How the situation is handled may have long-lasting effects for both the employer and employee, and handling it properly will benefit the business and reduce the risk of litigation and other costly outcomes which may be avoided with a bit of forethought.

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