



Update No. 87

Summer 2018

**Workplace Drug Use Surges to a 10-Year High,
as Employers Focus on Working with Individuals Suffering from Addiction**

By Nancy N. Delogu, Esq.

Daily news reports detail the tragic effects of illegal drug use and addiction on individuals, families and communities. Typically, our workplaces serve as a microcosm of the larger society. Quest Diagnostics' most recent Drug Testing Index, covering 2017 and published in June 2018, reveals that the number of positive workplace drug tests has increased year-over-year to levels last seen more than a decade ago. If you assume that the increases reflect changing attitudes to marijuana use, as that drug now enters mainstream use in many communities, you are correct.

That is not the whole story, however. The number of positive tests for amphetamines (including methamphetamine) is up, as are the number of tests positive for cocaine. The U.S. Substance and Mental Health Services Administration's annual Survey on Drug Use and Health reported that in 2016, more than 28 million Americans admitted using illegal drugs in the previous month; during the same period, 16 million acknowledged "heavy" alcohol use.

It seems likely that the numbers will increase again in 2018, as many employers began testing for opioids this year. Quest's numbers report test results from 2017, before the U.S. Department of Transportation added four opioid classes to the DOT testing panel – hydrocodone, hydromorphone, oxycodone and oxymorphone – in order to deter and detect safety-sensitive workers misusing these drugs. Inasmuch as many employers who drug test "mirror" the DOT testing rules in their employer-mandated drug testing programs, we can expect to see more concrete evidence of America's opioid epidemic in the workplace in the test results for 2018.

The opioid epidemic in the United States has become so significant that a Federal Reserve report has labeled drug addiction as one of the key reasons the U.S. labor market has ceased to grow,

suggesting that severe opioid abuse has increased the number of American adults either unwilling or unable to work. This is particularly apparent to employers competing for workers in a low unemployment market. In April, U.S. Surgeon General Jerome Adams surprised employers by urging them to make the anti-overdose drug naloxone (trade name Narcan) available at work, stating “For a heart attack, we train employees how to do CPR until the paramedics arrive. Why is that not the case with naloxone and Narcan?”

Whether or not you choose to make naloxone available at your workplace, the upshot of these trends in substance abuse is that more and more employers find themselves employing workers who, if they are not currently using drugs, might be former drug users in recovery. New Hampshire and Rhode Island have gone so far as to launch a “recovery-friendly” workplace initiative designed to help workers who have used drugs return to productive employment. According to Shatterproof, a nonprofit group working to end the harm caused by addiction, a recovery-friendly workplace program includes: (1) a clear written policy on substance use; (2) employee education on addiction, to reduce the stigma associated with drug and alcohol dependence; (3) supervisor training; (4) employee support programs and access to evidence-based treatment; and (5) drug testing.

Many of the employers who participate in *Drugs Don’t Work in New Jersey’s* programs are more than halfway to creating such a workplace. The Americans with Disabilities Act and the New Jersey Law Against Discrimination protect workers in recovery from discrimination, but also permit employers to implement drug tests following a return to work from time away for treatment. Alcohol tests are also permitted for those in safety-sensitive roles or who are being provided a “second chance” after a policy violation involving alcohol. Assisting existing employees to get well and back to work is an investment employers might prefer to recruiting new talent.

September is National Recovery Month. When was the last time you updated your drug-free workplace policy or your employee outreach? Consider increasing your efforts to educate your workforce about the very real concerns drug use poses to them and to your workplace, and to ensure workers with substance use concerns are offered support in getting and staying well.

City of Freehold Must Pay for Employee’s Medical Marijuana

A state administrative law judge has found that the Freehold Township must reimburse one of its employees for the cost of his marijuana after he began using the drug to manage the pain of a workplace injury.

The township’s workers compensation carrier had objected to paying for the drug, which remains illegal to prescribe, use or possess as a matter of federal law, but which New Jersey makes available pursuant to the Compassionate Use of Medical Marijuana Act to anyone suffering from a range of medical issues, including, since earlier this year, migraines, anxiety and chronic pain conditions. Earlier this summer, the Maine Supreme Court rejected a similar claim brought by a resident of that state, citing the differences between federal and state law on marijuana and enumerating the penalties that insurance carriers and employers might incur for aiding and abetting a violation of federal law.

New Jersey Medical Marijuana Users Not Excused from Employer Drug Testing Compliance, According to Federal Court

New Jersey's U.S. District Court recently issued a ruling concluding that an employer did not violate the Compassionate Use of Medical Marijuana Act (CUMMA) or the New Jersey Law Against Discrimination (LAD) when it refused to permit a worker to continue working after he stated that he would test positive for medical marijuana.

The employee, Daniel Cotto, hit his head on the roof of a forklift while at work and was instructed to submit to a post-accident drug test. He refused, and stated that he would test positive because he was a medical marijuana user. Concluding that Cotto would not be permitted to work while he used marijuana, his employer placed him on an indefinite leave pending his ability to pass a drug test. Cotto sued, alleging that he was disabled within the meaning of the LAD, and entitled to a reasonable accommodation of his disability. Claiming that CUMMA had legalized marijuana in New Jersey, he argued that his employer had to waive its requirement that he pass a drug test as long as he was using marijuana in accordance with that law.

Reasoning that the LAD protects against discrimination on this basis of disability but not illegal conduct related to the disability, the court concluded that Cotto's employer took issue with the treatment for the disability, not the disability itself, which it was aware of and had accommodated in the past. Noting that no New Jersey court had yet to decide the issue, but that those courts have in the past found drug testing to be "unobjectionable in the context of private employment," the District Court judge concluded that the courts would not require an employer to abandon its drug testing policy absent specific direction from the legislature to do so. Employers will take note as the case is one of several brought in recent months by CUMMA participants against employers unwilling to employ marijuana users in safety-sensitive roles. The case is *Cotto v. Ardagh Glass Packing, Inc.*, No. 18-1037, and the decision is dated August 10, 2018.

For Treatment Information, call 1-844-Reach NJ or visit www.reachnj.gov.

About the Author: Nancy N. Delogu, Esq. has extensive experience in drug-free workplace law and state drug-testing. She is an attorney for Littler, www.littler.com, specializing in employment and labor law solutions.

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