

Legal Issues Related to Employment of Persons in SUD Recovery

Speakers

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Summary

- Employment is the key to helping the country beat the opioid addiction crisis.

Recovery-Ready Communities

- Biden Harris initiative nationally
- Some states working on it
- Chambers of Commerce nationally looking at continuing employment of persons with addiction who are receiving care

Legal Issues

- HR confidentiality
- FMLA issues
- Liability

Personnel Issues

- Concern that the person with addiction will be a bad example
- Risk to other employees
- Risk to customers/public

Provider Issues

- HIPAA
- Informed consent for release of info vs. impaired individual
- Liability
- Impact on patient goals

Case Study #1

- University has a beloved professor who is chair of her department and also teaches. She interacts with the University Board, staff under her supervision, and students as part of her regular job activities.
- Professor admits addiction to the University Personnel/HR Director
- What now?

University Response

- Are you getting treatment/how to get you treatment
- Will you need time off for care
- Have you done anything on the job while impaired that we need to address
- What do we tell employees/staff and students
- How do we keep this from being public

Professor Response

- How do I keep my job
- How do I get care
- What about my privacy and reputation

Provider Response

- What do I need in terms of forms and consents to release information
- Is the University a partner in Professor's treatment and care
- What additional liability might I have in this situation

Privacy and Confidentiality

- Scope of the law
- Informed consent
- Waiver forms

Modification of Job Duties/ HR Concerns

- Impact on Professor of modifying job
- How to outline scope of job modification
- How to reassure staff/students
- Fairness and pay

Communication Between the Care Partners/Employer

- Employer as part of the care team
- Limits on employer input/knowledge
- Written communication
- Goals and benchmarks

Case Study #2

- Local factory is in need of hourly employees to work loading and unloading trucks.
- Some heavy equipment and risk is involved in the job.
- Prospective Employee is receiving medical and counseling treatment for SUD and is in recovery.
- Prospective Employee lives in a halfway house and has been cleared for a job search.
- How can Factory hire Employee?

Factory Issues

- How to discuss addiction/recovery in interviews
- Applicable laws for protection of employees
- Safety of co-workers and customers
- Changing or modifying job requirements
- Communication with medical and clinical care team

Employee Issues

- Privacy concerns
- Job advancement and security concerns
- Time required by counseling and medical care
- Peers or customers knowing of illness

Provider Issues

- Medication, job duties and safety
- Communication with HR/Employer designate
- Aftercare and length of time required

Forms

- HIPAA/consent waiver
- BAA?
- Review of safety protocol/procedures
- Time off for treatment – In employee files
- Privacy/publicity protection documents
- Communications with insurers (workers compensation, health, liability)

HIPAA and consent forms

- Employee must consent to release of information. Be specific about what will be released and to whom
- Not all information should be released. Typically, attendance at treatment and negative drug test results
- Lab, counselor, and medical provider may all require separate releases

HIPAA and consent forms

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- HR, CEO, medical liaison. Release should identify that person. That person should be the custodian of information.
- Employee should know who receives the information and who they can talk to about the information.
- Forms should contain start/stop dates for information sharing
- Forms should have a cessation clause if the Employee switches jobs/is terminated

Business Associate Agreement

- - Check state law for required information sharing with Employee's Primary Care Provider
 - Providers may want Employer to execute a BAA as well
 - Each provider may want a BAA with the other, to ensure continuity of care and appropriate information sharing

Review Safety Policies and Protocols

- - Employer may have safety policies or protocols impacted by Employee's medication or treatment
 - Employer may have policies about medical absences
 - Employer may have sick leave policies
 - Review all and create amendments or exceptions to permit the care

Privacy vs. publicity

- - Safe space for care
 - Telehealth kiosk
 - Limit who knows when or why Employee is accessing care
 - Create a policy permitting the care

Communication with Payors/Insurers

- - If payment for care is being made by an insurer, counsel may need to communicate with the payor
 - The Employer liaison needs to know to forward communications from the payor to provider
 - Providers need to know how to get care information from the Employer/Employee
 - This may require a specific consent and delegation document signed by Employee
 - If the plan is through the Employer, or the Employer is paying for care, the Employer may need to be involved in ensuring that billing/payment is timely handled

Questions?