2018 IMA-NA INDUSTRIAL MINERALS TECHNICAL WORKSHOP

SUBSTANCE ABUSE AND ADDICTION IN THE WORKPLACE: LEGAL AND PRACTICAL ISSUES

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WHY TALK ABOUT THIS?

- What does this have to do with safety?
- What does this have to do with ME?
OVERDOSE DEATHS
(New York Times, January 2016)
OVERDOSE EPIDEMIC

- 2003: 9 overdose deaths per 100,000

- 2014: 15 overdose deaths per 100,000

- 67% increase
MORTALITY

- 35,000 car accident deaths
- 40,000 suicides
- 7,000 HIV
- 33,000 Firearms
- 16,000 homicides
- 30,000 alcohol-induced
- 47,000 drug overdoses
IN THE WORKPLACE

- 2016: 32% increase in workplace overdoses.

- 2012-2016: 25% increase each year in workplace fatalities.

- 17.5% of mine workers report alcohol addiction or abuse.

- 75% of all drug/alcohol abusers are in the workforce—13 to 15 million.
ADDICTION

- Disease Model
  - Chronic, relapsing brain disease
  - Compulsive drug seeking and use
  - Self-destructive behavior

- Characteristics
  - Chronic
  - Progressive
  - Fatal
WHAT ADDICTION IS NOT

- Bad Habits
- Bad Behavior
- Poor Character
- Weakness
Brain Changes

- Inability to abstain
- Impaired behavioral control
- Craving
- Lack of recognition of the problem
- Dysfunctional emotional response
Legal Drugs

- Alcohol
- Marijuana
- Prescription Drugs
Illegal Drugs

- Cocaine
- Methamphetamine
- Heroin
- Designer drugs
OPIOIDS

- Narcotic pain medication
- Heroin
- Affect the central nervous system
- Reduce pain signals and affect the brain’s emotional response.
COMMON OPIOIDS

- Hydrocodone (Vicodin)
- Oxycodone (OxyContin and Percocet)
- Codeine
- Morphine
OPIOIDS ABUSE

- 60% of all overdoses
- Most heroin users start with prescription opioids
- Fentanyl: 100 times as powerful as morphine.
- Carfentany: 100 times as powerful as fentanyl. ELEPHANT TRANQUILIZER.
THE LAW

- Americans with Disabilities Act ("ADA") applies to employers with more than 15 employees.

- State and local laws

- Different laws for government employers
Discrimination

- Race
- Age
- Gender
- Religion
- DISABILITY
DISCRIMINATION IS NOT

- Treating someone favorably because of conduct or job performance.
- Disciplining someone because of conduct or job performance.
- Simply being unfair
What is a Disability?

- Physical or mental impairment that substantially limits one or more major life activities.

- A history of such an impairment OR

- Being “regarded as” having an impairment.

- DETERMINED ON A CASE BY CASE BASIS
Is Addiction a Disability?

- Generally, “yes”

- Employee must prove that it limits him or her in a major life activity (walking, talking, working, bodily functions, etc.).

- Disability is broadly defined.
Can I Fire Someone for Being High at Work?

- **YES**

- Disability laws do not protect employees from their *conduct* which negatively impacts their job.
Can I Fire Someone for Being an Addict?

- Maybe.

- If the addict is in recovery, he or she is likely protected.

- Law does not protect anyone who currently uses illegal drugs.

- Case by case determination.
What is a Reasonable Accommodation?

- Changes in work setting, hours or workplace rules so that job duties can be performed.

- Cannot cause undue hardship to employer (significant cost or fundamental change in operations).

- Accommodation must be requested.
TREATMENT

- Family Medical Leave Act gives up to 12 weeks unpaid leave for serious health conditions.

- Can’t take action against the employee.

- CAN require “fitness for duty” evaluation and documentation from treatment provider.

- CONFIDENTIALITY
HIRING ISSUES

- Do NOT ask about disabilities.

- You CAN ask if they currently use alcohol or illegal drugs. **Use is not a disability.**

- Drug testing is okay.

- Medical exams are allowed only if job-related and “consistent with business necessity.”

*After the job offer is made*
What is an Employee Assistance Program?

An Employee Assistance Program (EAP) is a voluntary, work-based program that offers free and confidential assessments, short-term counseling, referrals, and follow-up services to employees who have personal and/or work-related problems.

Source: United States Office of Personnel Management
Establishing an EAP

- In-House
- Health Insurance Providers
- Third Party Assistance
EAP Benefits

- Employee Support
- Healthy Workplace
- Business Value
What Else Can I Do?

- Drug Testing
- Education
- Create a healthy culture
- Encourage wellness
SUMMARY

- Addiction is a health issue.
- It can be treated.
- It cannot be ignored.

TAKE ACTION