



# 2018 Drug Testing and Substance Abuse Management Master Class

Compliant and Effective Strategies for California Employers

Atlanta, GA | Thursday, November 1<sup>st</sup>, 2018  
Pasadena, CA | Thursday, November 8<sup>th</sup>, 2018

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Recent state regulatory developments regarding medical and recreational marijuana have created a complex web of compliance concerns for employers as they try to navigate drug testing policymaking and substance abuse management in the workplace. A sweeping opioid abuse epidemic further compounds these challenges, requiring that employers maintain a delicate balance between business objectives, employee rights, and ADA requirements.

It's in an employer's best interest to be proactive on this issue. According to the National Safety Council, the estimated yearly economic impact of substance use disorders exceeds \$442 billion. Workplaces assume a great deal of these costs in the form of absenteeism, increased healthcare expenses and lost productivity. On the other end, each employee who recovers from a substance abuse disorder saves a company more than \$3,200 a year.

This one-day comprehensive seminar will provide practical information on and strategies to address these sensitive and increasingly prevalent workplace issues.

You'll learn:

- Your legal rights and limitations regarding drug testing
- Post-accident drug testing best practices and strategies to comply with OSHA's 'Reasonable' Reporting and Anti-Retaliation Provisions
- How to address emerging compliance obligations regarding medical and recreational marijuana use
- Steps you can take to manage the effects of the opioid epidemic on your workforce and minimize your legal liabilities
- Ways that you can leverage employee assistance plans and other benefit programs to combat addiction and aid in timely recovery

## 2018 Master Class Agenda:

### Registration and Breakfast

7:00 a.m. – 8 a.m.

### How, When, and Why to Drug Test: Your Legal Rights and Limitations in Policy Development and Enforcement

8 a.m. – 9:15 a.m.

This solutions-focused workshop will kick off with a comprehensive overview of the current regulatory landscape concerning the legality of drug testing.

This session will examine:

- When an employer may conduct drug testing on prospective and current employees
- The types of drug and alcohol testing methods that are permitted under the law, which are most accurate, and what they are likely to reveal
- The ins and outs of developing a comprehensive drug-testing program designed to give you the information you need to make informed and legal hiring and other employment decisions
- Drug and alcohol testing policy essentials, and instances when enforcement of zero-tolerance policy language may spark legal issues
- How to train supervisors and managers on warning signs that someone might be under the influence
- The action plan for addressing a situation when you suspect an employee is drunk or high at work
- What to do if an applicant or a current employee demands to be retested because the test revealed a false positive result

### **New Guidance on Post-Accident Drug-Testing and Safety Incentive Programs: How to Comply with OSHA's 'Reasonable' Reporting and Anti-Retaliation Provisions**

9:25 a.m. – 10:40 a.m.

A 2016 OSHA final rule created requirements for electronically reporting data about work-related injuries and illnesses and codified a new antiretaliation provision with serious implications for employer drug-testing, incentive, and disciplinary programs. Under the new provision, certain types of post-incident drug testing could be considered illegal retaliation against employees who report injuries or safety concerns. Safety incentive programs that reward employees for the absence of injuries are another potential enforcement target. An OSHA memo offers key guidance for employers about how the agency will evaluate these programs—and when your policies could lead to costly citations. This session will cover your compliance obligations and best practices concerning post-incident drug and alcohol testing and incentive programs to help you assess your policies and ensure that you stay on the right side of the line, according to OSHA's rule and guidance.

You'll learn:

- The key parts OSHA's memorandum addresses concerning:
  - Incentive programs
  - Anti-retaliation
  - Post-incident drug and alcohol testing expectations relative to your injury and illness reporting process
- What recent OSHA violation activity relative to reporting and recording injuries and illnesses signals
- Tips for reviewing whether your reporting and recordkeeping program is compliant and up to-date—considering new developments concerning post-incident drug and alcohol testing and safety incentives
- How to assess your existing recordkeeping and reporting components to ensure that they are fully compliant with OSHA interpretations and directives

### **Networking & Refreshments Break**

10:40 a.m. – 11:10 a.m.

### **Medical and Recreational Marijuana at Work: Multi-State Updates for Emerging Compliance Obligations**

11:10 a.m. – 12:25 p.m.

According to a recent Gallup poll, more people are using marijuana these days. The survey reveals that 43 percent of adults nationwide have tried cannabis. Thirteen percent of respondents said they currently use it, and more than half of Americans favor the legalization of marijuana. Also, a recently released Quest Diagnostics Drug Testing Index™ reveals that drug use among American workers has reached the highest level in 12 years. The findings came from analyzing 10 million workers' employment-related drug tests.

Given the uptick, employers nationwide are left struggling to fully understand how recently passed state laws legalizing recreational marijuana possession and use and other state laws authorizing the use of medical marijuana impact what they can and can't do to monitor and restrict cannabis use or possession among their employees.

While marijuana is still illegal under federal law, 28 states have passed legislation giving medical marijuana usage the green light. Eight states and the District of Columbia have legalized recreational marijuana. And, several states have enacted laws making the possession of small amounts of the drug a civil, not criminal, offense. How does the evolving legal landscape concerning medical and recreational marijuana affect employment policies on drug testing and off-duty conduct?

During this session, you'll learn:

- The changing legal landscape—where and when medical marijuana and recreational marijuana are legal in states around the country and the District of Columbia
- Best practices for federal contractors to follow with respect to drug testing and usage to ensure they don't lose federal funding
- How state marijuana laws affect your federal compliance obligations under the DOT and other agencies
- Which state laws explicitly include employee non-discrimination protections and which likely don't
- \*How to address the off-duty use of marijuana
- How medical marijuana laws interact with unemployment and workers' compensation-related benefits
- Whether medical marijuana usage may qualify as a reasonable accommodation under the Americans with Disabilities Act (ADA)
- How to develop and manage drug-testing policies and practices in light of the current legal landscape
- How to decide if your organization should test for marijuana
- What to do if an employee tests positive for marijuana usage
- The role of fitness for duty evaluations, and best practices for workplace safety

### **Networking Lunch**

12:25 p.m. – 1:25 p.m.

### **The Opioid Epidemic: Steps You Can Take to Manage Effects, Combat Worker Addiction, and Limit Your Legal Liabilities**

1:25 p.m. – 2:40 p.m.

Opioids are a powerful class of drug and usage has proven to result in debilitating addictions. According to the Centers for Disease Control and Prevention (CDC), drug overdose-related deaths are up and six out of 10 of the fatalities involve an opioid. Since 1999, the amount of prescription opioids sold in the United States has quadrupled even though there has not been a change in the amount of pain being reported. The CDC has characterized the situation as an epidemic, and this crisis is particularly concerning for employers.

You have a duty to maintain a working environment that is “free from recognizable hazards ... causing or likely to cause death or serious harm to employee” under the Occupational Safety and Health Act's (OSH Act) general duty clause. Opioid use among your workers could have a serious impact on that environment.

Consider, too, that if an employee is injured on the job, he or she may be prescribed a powerful opioid to manage the pain. The longer the employee is on that medication, the greater the risk of addiction. What can your organization, your workers' compensation carrier, and your medical providers do to minimize the risk of addiction when employees are taking prescribed drugs to manage chronic or acute pain?

During this session, you'll learn:

- Practical—and legal—steps you must take to manage the impact of the opioid epidemic
- Recent research showing why opioid usage is a serious cause for concern for employers nationwide
- The practical impact opioid usage can have on worker productivity and safety, and when you have an obligation to take action under OSHA's general duty clause
- Strategies to reduce the risk of employees becoming addicted to powerful opioid painkillers when they're taking the drugs to cope with a workers' compensation injury
- Best practices for effective treatment and management of pain that minimizes the risk of opioid addiction

- Warning signs of a potential opioid addiction
- How HR, safety, medical professionals, and workers' compensation claims adjusters can take steps to help addicted workers manage their issues

### **Networking & Refreshments Break**

2:40 p.m. – 3:00 p.m.

### **How Employee Benefit Programs, Including Health Insurance and Employee Assistance Programs, Can Help Employees Recover From Addiction**

3:00 p.m. – 4:15 p.m.

Last year, the Department of Labor (DOL) stepped up enforcement of mental health parity requirements for group health plans. This represents a growing effort to ensure that group health plans are in compliance with the Mental Health Parity and Addiction Equity Act (MHPAEA). In fiscal year 2016, the DOL investigated 330 health-care plans and found dozens of violations—most related to how plans handle non-quantitative treatment limits (NQTLs).

If your organization's group health plan covers mental health and substance abuse disorders (MH/SUD), there are specific financial parity requirements the plans must meet concerning things like copays and deductibles. Also, parity is required concerning benefit limitations affecting the scope or duration of treatment. In total, there are six categories of benefits where parity between MH/SUD and medical/surgical coverage must be demonstrated. This session will examine final MHPAEA rule requirements and the most common compliance trouble spots to watch out for, as well as practical strategies for using employee assistance plans to help addicted workers start and stay on the road to recovery.

You'll learn:

- The most common ways MHPAEA violations occur with respect to NQTLs for substance abuse
- Key questions to ask, so you can evaluate whether your company is at high risk
- Potentially problematic healthcare plan treatment limits, including practices that deal with intensive outpatient programs for substance abuse treatment
- When your employee assistance plan (EAP) offerings are covered under the MHPAEA, and when they aren't
- Useful strategies for getting employees to take advantage of EAP offerings that can help them manage substance abuse-related issues
- How much substance abuse costs employers in terms of lost productivity time and absenteeism—and the business case for making substance abuse assistance offerings part of your benefits package
- Communication strategies for talking to employees you are concerned may need professional help due to addiction

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