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Federal

Creating a Safe and Healthful Workplace

The Occupational Safety and Health (OSH) Act of 1970 requires all employers to create a safe and healthful working environment. However, this should not be an employer's only motivator for taking steps to protect its employees. A safety- and health-conscious employer can benefit from more productive and less frequently absent employees, fewer workers' compensation claims and lower medical costs.

In order to create a culture of health and safety in the workplace that managers, supervisors and employees are likely to embrace, an employer must develop, teach and enforce health and safety rules and regulations.

One resource that an employer can turn to for help is the National Institute of Occupational Safety and Health (<http://www.cdc.gov/niosh/>) (NIOSH), which is part of the Centers for Disease Control and Prevention in the Department of Health and Human Services. NIOSH studies ways to improve the lives and health of all employees and issues recommendations an employer can use to develop employee programs and policies that can prevent work-related risks and chronic illnesses and injuries linked to employees' lifestyle choices.

NIOSH's program, Total Worker Health (<http://www.cdc.gov/niosh/TWH/>), seeks to improve overall employee health through better work-based programs, policies, practices and benefits. The program supports addressing worker health and well-being in a more comprehensive way by taking into account an employer's physical and organizational work environment and addressing employees' personal health-related decisions and behaviors.

Practical Example

Josie, an employee of Acme Co., would like to be healthier, but she does not believe that she has the time or the money to make better food choices or join a gym. She continues to make poor eating choices and does not exercise. At work, Josie is often sluggish and tired. She is frequently absent because she is sick.

Acme Co. has not tried to create a positive environment of safety and health in the office, although it does comply with all workplace safety and health regulations. If Acme had a program designed to teach employees about cost-efficient ways to promote better health, such as simply walking instead of paying to join a gym, its workers might live more healthful lifestyles. Acme would benefit because employees like Josie may gain more energy and experience fewer illnesses, resulting in greater productivity and fewer absences.

Wellness and Fitness Programs

To do its part in keeping employees safe and healthy, an employer can start by creating an effective employee wellness and fitness program. This type of program might include:

- Training employees in first aid, CPR and use of an on-site automated external defibrillator (AED);
- Providing a gym on-site or offering reduced-price gym memberships;
- Holding classes that provide information on healthful lifestyle choices;
- Having a subsidized cafeteria with lower-priced healthful choices;
- Offering free physicals and vaccines or issuing information on the importance of receiving them;
- Conducting nutrition awareness seminars and providing pamphlets so employees can take the information home; and
- Distributing information about common ailments (such as hypertension, diabetes, high cholesterol and obesity) and precautionary steps employees should take to prevent them.

However, if an employer chooses to implement one of the above measures, it should consider how it might affect its liability or budget. For example, an employer who offers an on-site exercise program should consider the following questions:

- Is the employer responsible if an employee gets hurt while participating in the program?
- Would employee injuries be covered under workers' compensation?
- Can HR require employees to sign waivers to avoid these issues?

On the other hand, if an employer wants to offer local gym memberships, it must consider a different set of issues:

- Are there any local gyms in the area and, if so, do they offer employer programs?
- Is the cost within the employer's budget?
- Should the employer offer reduced-price memberships or pay the full cost for eligible employees?

Whatever type of wellness or fitness program an employer decides to implement, HR must consider the following factors:

- Financial constraints;
- Intended goals for creating a program;
- Employees' needs and preferences;
- The extent to which upper management will be involved in creating and implementing the project (the more involved management is, the more in-depth and better-funded the program will be);
- How to make the program as attractive to employees as possible (if employees do not participate, the potential benefits of the program will not be realized); and
- Whether any laws or regulations affect program standards, such as the Americans with Disabilities Act (ADA), Health Insurance Portability and Accountability Act (HIPAA) and Genetic Information Nondiscrimination Act (GINA).

Employee Assistance Programs

An employee assistance program (EAP) is another option an employer can explore that can benefit employees and their families. An EAP provides confidential services to employees who are facing personal or work struggles. The services offered will vary from employer to employer.

EAPs typically provide counseling, referrals and/or educational materials on issues such as:

- Substance abuse;
- Stress/mental health;
- Finances;
- Marriage/relationships; and
- Eldercare.

EAPs may be run internally by the employer or contracted out to an external source dedicated to running such programs. Either way, an employee's participation in an EAP, and any information revealed while utilizing an EAP service, must be kept confidential.

Safety Education

An employer may be required to provide specific types of safety training depending on its industry, workplace and employees' job duties. Outside of such requirements, any employer can develop a safety-conscious workforce by:

- Having employees be involved in job safety analysis (JSA) and accident / near miss investigations;
- Recognizing unsafe behaviors (a good starting point is to look at what is causing the most injuries in the workplace);
- Determining why they are occurring;
- Creating solutions;
- Educating employees on why certain behaviors are dangerous or unhealthful and how to change them;
- Delegating "stop work" authority to employees; and
- Continuously monitoring progress and making adjustments as needed.

Practical Example

Acme Insurance recognizes that employees are sitting too closely to their computer screens. It decides to teach employees the proper sitting position when working on a computer. Acme frames the solution in the context of its desired result by telling employees that sitting at the correct distance from their computer screens could reduce eye strain and headaches. When a few employees complain about glare, Acme makes minor adjustments to their workstations.

An employer may also wish to encourage safety at home. While an injury that occurs off-work on an employee's personal time does not create employer liability or entitle an employee to file a workers' compensation claim, if it results in the employee having to take time off from work, not only is workplace productivity affected but the employer could incur a cost if the employee uses the employer's health insurance benefits. An employer can do something as simple as distributing brochures on ladder safety or proper lifting, offering defensive driving classes or providing guidance on home use of personal protective equipment (PPE) and tools.

Fetal Protection Programs

While an employer must be proactive in protecting its employees' health, it cannot go so far as to infringe on employees' rights. Employers have run into trouble trying to protect employees from hazardous chemicals or toxins in the workplace that could harm a fetus. Under a fetal protection program, an employer bars women from working with or around such substances because they are pregnant or may become pregnant. Although the employer may have the employees' best interests in mind, such a policy could amount to illegal sex discrimination, according to the Supreme Court. See [*United Autoworkers v. Johnson Controls*, 499 U.S. 187 \(1991\)](#).

To protect employees and avoid discrimination claims, an employer should fully inform employees of the risk of harm. Unless there is evidence that an employee's ability to perform the job is affected, the decision to work is the employee's, not the employer's.

An employer must make available to employees and ensure they are informed of the information in the [safety data sheets](#) for all chemical hazards in the workplace and provide the correct [personal protective equipment](#) for safely handling dangerous substances.

Under limited circumstances, an employer that has toxic substances in its workplace has the right to obtain employees' genetic information in order to monitor the biological effects of the substances. Such testing is allowed under GINA as long as:

- The employer provides written notice of the genetic monitoring to employees;
- The employee provides prior, knowing, voluntary and written authorization, or the genetic monitoring is required by federal or state law;
- The employee is informed of individual monitoring results;
- The monitoring complies with federal or state genetic monitoring regulations; and
- Monitoring results are released to the employer only in aggregate terms and do not identify specific employees.

[42 USCS § 2000ff-1\(b\)\(5\)](#).

Everyday Health Concerns

First Aid and Basic Medical Care

An employer needs to plan how it will manage everyday health concerns, including having a plan in place for administering first aid and basic medical care. What is considered a proper first aid program will depend upon the nature of the workplace. The program must be reviewed periodically to ensure that it continues to adequately address an employer's needs.

If the employer's facility is not in near proximity to a hospital, clinic or EMTs, the employer should task a specific individual or department with choosing and maintaining adequate first aid supplies that reflect the types of injuries that occur in the workplace. The supplies must be easily accessible during an emergency situation.

An employer should also provide first aid training (and retraining), as needed. Note: all employees providing first aid to fellow employees may likely be exposed to blood or other bloodborne pathogens. This is covered under OSHA's bloodborne pathogens standard requirements.

Hygiene Concerns

An employee's lack of proper hygiene can be more than just an annoyance; it can also endanger other employees. For example, employees who do not wash their hands after using the restroom or who do not cover their nose and mouth when sneezing or coughing can pass along the flu, the common cold or other infectious diseases. Good personal hygiene, particularly paying proper attention to minor cuts and scratches on the hands and forearms, helps keep worker health risks to a minimum.

It is important for HR to write a hygiene/grooming policy and distribute it to all employees. This policy should clearly explain employer expectations of employee hygiene and grooming. For example, it might include when employees must wash their hands, when they should wear gloves, when they should wear a hairnet, and what clothing is and is not acceptable to wear. These rules are especially important if employees work with food or with patients.

Even if the employer's business does not involve working with food or with patients, the employer still has the right to demand a certain level of hygiene and grooming from its

employees. An employer can expect employees to look presentable, be free from bodily odor and be clean. Employees who smell may not physically harm others, but they can make others uncomfortable and create an unpleasant working environment. However, it is important to handle hygiene/grooming policy violations in a way that will cause minimum embarrassment to the employee.

If an employee is not following the written hygiene/grooming policy, the employer should address the issue with the employee in private:

- Explain the situation in a way that does not embarrass or insult the employee;
- Ask if there are any reasons that the employee might not be following the policy (e.g., side effect of a medication, a disease such as severe halitosis or a financial crisis such as homelessness, which has left the employee without a place to take a shower);
- Involve the employee in determining a resolution. If the employee helps create the solution to the problem, it is more likely to be followed and less likely to cause discomfort;
- Present the employee with the company's hygiene/grooming policy, if necessary;
- Document the conversation and the solution and have the employee sign it; and
- Follow up to make sure the problem has been fixed or to come up with a new solution if the original solution is not working.

Allergies and Sensitivities

Allergies have a wide range of causes and effects. They may be seasonal, food-related or triggered by insect bites. Reactions may range from a mild sensitivity to severe illness or death. Therefore, an employer must be prepared to deal with a severe allergic reaction.

Mild sensitivities. Mild allergic reactions have little effect on the workplace. However, an employer may want to take steps that better ensure the comfort of all employees, such as:

- Allowing an employee to use an air purifier if it will not disturb other employees;
- Allowing an employee to take time off from work to receive allergy shots;
- Banning the use of air fresheners, perfumes and colognes or, more realistically, asking employees to apply fragrances with a light hand;
- Allowing an allergy sufferer to be separated from a fragrance-wearer; and
- Ensuring the workplace is regularly cleaned and checked for mold.

Allergic reactions. An employer is generally not responsible for employees' food allergies (unless it provides meals, in which case it should ask employees about their food allergies and take them into consideration or warn employees of any ingredients, such as peanuts, that cause common food allergies). Nonetheless, an employer should have a plan of action in place in the event an employee has an allergic reaction to something he or she ate.

The same can be said about other factors that can cause serious allergic reactions, such as bug bites or stings. An employer can have the workplace fumigated at regular intervals, but it is impossible to prevent employees from ever coming into contact with any insects. Thus, an employer should have a plan in place to deal with a potential medical emergency.

The plan should include the following:

- Training a few employees in first aid so they can administer medical care to an employee, which may include administering an epinephrine injection. Employees with a known allergy who carry an epinephrine pen with them should let others know where it is kept in case they cannot self-administer. Once again, under these situations, the

employee's assistance may be covered under OSHA's bloodborne pathogens standard;

- Checking an employee's medical file to find out any other allergies the employee may have (before issuing medication) and what emergency contact to call;
- Designating an individual to call 911, if necessary, and to call the employee's emergency contact, as well;
- Having someone available to drive an employee to the emergency room after treatment has been given, if necessary; and
- For every person with a designated job (such as calling 911), having a backup in case that person is unavailable or is the one having the allergic reaction.

Environmental Health Concerns

Employees may suffer health issues caused by the work environment or conditions to which they are exposed on a daily basis. Environmental health hazards come in many forms:

- Physical: hazards that may hurt an employee without touching the employee, such as vibration or noise;
- Chemical: synthetic substances that are harmful to employees, such as acid;
- Biological: naturally occurring substances that are harmful to employees, such as mold;
- Carcinogens: a cancer-causing substance, such as tobacco; and
- Bug infestations: an invasion of bugs, such as lice or bed bugs.

There are many methods for protecting employees' health, including:

- Having the building fumigated on a regular basis to rid it of bugs, and requiring workers to work from home (if their job allows it) or to take a sick day if they suffer an infestation, such as lice or bed bugs;
- Keeping the building free of contaminants, such as mold;
- Providing proper [personal protective equipment](#);
- Having, providing and correctly utilizing [safety data sheets](#);
- Educating employees on how to avoid environmental concerns;
- Effectively communicating to employees the risks of possible exposure to environmental hazards;
- Performing periodic [safety self-inspections and self-audits](#) to identify and either eliminate or correct environmental health hazards; and
- Following all applicable OSHA regulations.

Sick building syndrome (SBS) occurs when employees suffer from an illness that cannot be diagnosed and seems to be caused by the conditions in a building, but the specific cause cannot be identified. According to the Environmental Protection Agency (EPA) (<http://nepis.epa.gov/Exe/ZyNET.exe/000002JA.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A/zyfiles/Index%20Data/91thru94/Txt/00000009/000002JA.txt&User=ANONYMOUS&Password=anonymous&SortMethod=hj-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=plf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>), SBS can be triggered by:

- Inadequate ventilation;
- Air pollution caused by indoor or outdoor chemical contaminants emitted by such products as:
 - Adhesives;
 - Carpeting;
 - Manufactured wood products; and
 - Car exhaust; and
- Biological contaminants (such as mold).

The signs of SBS are:

- Acute symptoms including eye, nose or throat irritations; dry, itchy skin; dizziness and nausea; difficulty concentrating; and sensitivity to odors;
- Symptoms that cannot be diagnosed; and
- Symptoms that mostly go away shortly after leaving the building.

Building related illness (BRI) is similar to SBS, but involves diagnosable symptoms and an identifiable cause related to a particular building.

The signs of BRI include:

- Chest tightness, fever, a cough, chills and muscle aches;
- Symptoms that lead to a diagnosable disorder (e.g., asthma); and
- Symptoms that take a while to go away even after leaving the building.

BRI is not as common as SBS, but it is more serious. An employee who has BRI will need actual recovery time and may require medical treatment. The same harmful environmental hazards that cause SBS can lead to BRI.

Shift Work Disorder

Not all working conditions that can impact employee health are tangible, such as mold or bugs. Shift work disorder affects employees who work odd hours or whose shifts change frequently. When employees do not have a regular schedule, it is hard to develop a good sleeping pattern. Fatigue can affect concentration and increase worker errors and accidents, causing undue risk to both the worker and the community. Shift work disorder causes emotional and physical stress to take over the body and can cause health conditions, including heart disease and digestive disorders.

HR should be concerned about shift work disorder because employees suffering from this problem may:

- Make more errors;
- Cause more accidents;
- Be more irritable and prone to violence;
- Be more dissatisfied with their job; and
- Take more sick time.

When shift work cannot be avoided, an employer can help its shift workers by:

- Redesigning the work schedule to give employees more of a semblance of regularity;
- Redistributing the workload so that employees do not constantly work the night shift;

- Providing enough time off between shifts or shift schedule changes for the employees to get enough rest or to adjust to the new schedule; and
- Teaching employees healthier sleep strategies (e.g., remind them of the effect of caffeine and stimulants on sleeping habits) and relaxation techniques.

Infectious Diseases

Providing a safe workplace also includes protecting employees from infectious diseases, such as Hepatitis B, Hepatitis C, tuberculosis and influenza, as well as guarding employees against pandemics. An employer can achieve this by following OSHA's bloodborne pathogens guidelines, having a plan to prevent the occurrence of infectious diseases and to lower their impact if they do occur, and providing employees with proper training and appropriate personal protective equipment. An employer may want to consider creating a contagious disease policy and sending a letter to its employees on the importance of being vaccinated.

An employer must take precautionary measures appropriate for its workplace. A health care facility will obviously require more measures than a general office setting. However, since accidents can occur in any workplace, every employer should have precautions in place to protect first-aid administrators and other employees from coming into contact with blood while tending to a cut or other injury that results in blood loss or an open wound.

Good hygiene is often key to avoiding the spread of an illness. An employer should strongly encourage employees to use a tissue to cover their mouth/nose when sneezing or coughing and to wash their hands after blowing their nose. An employer may want to consider providing hand sanitizer in high-traffic areas or around items that are handled by numerous people (e.g., shared computers, lobby phones).

For mosquito-borne illnesses, such as the Zika virus or the West Nile virus, an employer should eliminate areas where water can pool on its grounds, including draining standing water from decorative bins, garbage cans, etc. It should also provide insect repellent and protective equipment (e.g., hats with mosquito netting) to its outdoor workers.

If vaccinations or flu shots are important, an employer should consider providing them on-site to make them as convenient and low-cost as possible. However, an employer must be careful about requiring employees to get them. On the one hand, an employer may be able to terminate an employee who refuses to get one under the principle of employment at-will. On the other hand, an employer may need to provide an accommodation if an employee refuses based on a sincerely held religious belief or because of a medical condition.

If few employees are getting vaccinated, the employer may want to educate employees on the importance of vaccines. This can be done through sending an email to all employees, hanging posters in high traffic areas or offering a class as part of a wellness program.

When an employee has an infectious disease, the employer must assess what dangers it can pose to the other employees. An employer can require an employee to stay home when ill or contagious with illnesses such as tuberculosis or the flu.

An employer should also assess its policies and practices related to taking time off from work. Even if it has a policy that provides for time off for illness, that is not enough. An employee may be reluctant to use this benefit if his or her manager makes it clear that it is frowned upon.

Pandemics

A pandemic occurs when a disease spreads through a large area or population. When a pandemic occurs, it has the potential to seriously hurt workforces. Thus, it is a concern for which an employer should prepare by having an emergency plan in place that addresses the following issues:

Which employees should come to the workplace? Preparations should be made so that as many employees as possible can work from home. This can be done through issuing computers or other equipment for employees to use at home, if possible. If it is not possible to allow all employees to work at home, the employer should determine which employees are absolutely necessary to run the business.

How will employees find out their status? Options to consider are providing a dedicated phone number or website that employees can use to find out whether the workplace is closed or whether they are expected to show up for work or to work from home.

What should be done for employees who are too sick to work? There should be a contingency plan in place for ensuring vital duties are handled if an employee is absent for a long period. As a goodwill gesture, an employer may also wish to send a get-well card or flowers.

How will the business run if a large portion of the workforce is affected? Every employer should have a business continuity plan in place, in case of a pandemic, natural disaster or other emergency.

International Travel

When health concerns regarding infectious diseases arise in foreign countries - such as the Zika or Ebola virus - an employer must understand its rights and responsibilities in relation to employees traveling to and from an affected country.

If an employee is scheduled to travel to a country for which the Centers for Disease Control has issued a travel advisory, it is best to postpone travel that is not absolutely necessary.

If there is no travel advisory and an employee refuses to travel, the employer has the right to require the employee to go. The employee generally will not be able to refuse to do his or her job under the federal Occupational Safety and Health Act, which requires a reasonable belief of imminent death or serious injury. However, the employer should be understanding of the employee's concerns. The employer can consider delaying travel or coming up with an alternative plan (e.g., conduct the business in a different location or remotely). At the very least, the employer can try to allay the employee's fears by explaining:

- Why the risk of infection is low;
- What protective measures the employee can take; and
- What measures the employer is taking to protect employees' health.

There may be times when an employee wants to travel, but the employer does not want him or her to go to specific areas. The employer may not dictate employees' travel plans when they are off-duty. The employer also may not impose travel restrictions on certain employees (e.g., women who are pregnant or may become pregnant) even if it has their best interests in mind. Employees must be allowed to make their own decisions regarding their health. At most, the employer may provide relevant information and warnings about any health risks. It may also have a policy allowing any employee (not just pregnant employees, for example) to opt out of a trip without risking an adverse employment action.

When an employee is already in a place where a public health issue arises, the employer should provide information on avoiding infection, recognizing signs of infection and getting treatment, if needed. The employer should also have a plan in place for the quickest and safest way to get the employee home.

The return of an employee from international travel could raise fears in their co-workers. An employer needs to ensure these fears do not turn into harassment, isolation or other mistreatment of the employee. The employer also needs to ensure that it does not make its own mistakes, such as:

- Refusing to allow the employee to return to the workplace, which could lead to medical privacy, disability discrimination, or race or national origin discrimination claims; or

- Requiring the employee to undergo a medical exam upon his or her return, which could violate the Americans with Disabilities Act if the exam is not justified by business necessity.

Additional information on the Zika and Ebola viruses can be heard in our podcasts: What the Zika Virus Means for Employers; What Ebola Means for Employers.

Mental Health Concerns

No workplace is immune to mental health issues. On a daily basis, one employee or another may be dealing with stress or a more serious psychological disorder or a personal tragedy.

Stress

One of the most prevalent problems employees face in the workplace is stress. HR should take an active role in minimizing employee stress because stressed workers are often careless, frequently absent and tend to burn out quickly. Reducing workplace stress improves productivity and increases job retention.

Symptoms may be physical, emotional, behavioral or mental, including:

- Worry;
- Anxiety;
- Negative thinking;
- Gastrological disorders;
- Behavioral problems;
- Irregular sleeping patterns; and
- Appetite changes.

HR should watch for and try to eliminate stress from the workplace because reducing stress may:

- Prevent violence in the workplace;
- Limit workers' compensation expenses;
- Create happier, more loyal employees; and
- Help prevent more destructive mental disorders from evolving in the employee.

An employer can help its employees reduce stress by:

- Establishing an employee assistance program that provides access to someone to whom employees can talk and vent about personal or work issues and that provides employees with stress-reduction techniques;
- Establishing an open-door policy that encourages employees to discuss work issues with management;
- Maintaining a positive workplace culture that includes showing employees they are valued and appreciated;
- Allowing stressed employees to take time off; and
- Checking that an employee's schedule or workload is realistic, and making adjustments if needed.

Workaholics

Workaholics are employees who do not know how to disconnect from work and who place work too high on their list of priorities. Workaholics work late every day, take work home with them and work even while on vacation. At first, a workaholic may seem like an ideal employee, but this behavior leads to stress and burnout, which may eventually render the employee unable to work.

An employer can avoid problems with workaholics by using techniques similar to those used for stressed employees. An employer might also want to take additional steps for managing workaholics, such as:

- Encouraging employees to take vacations and helping them disconnect by planning how their work will be handled while they are out;
- Adjusting policies and procedures so employees feel less of a need to work long hours and weekends to succeed;
- Encouraging work-life balance, which includes having employees see that upper management maintains such a balance; and
- Ensuring that managers' expectations are realistic and that they are not pressuring or encouraging their employees to be workaholics.

Depression

Employees suffering from depression are often absent, easily distracted, less productive and more accident-prone, among other work-related problems. Depression is considered one of the world's leading disabilities.

The signs of depression are many and varied, and even a seemingly happy employee can be depressed. Some common signs include:

- Loss of production;
- Lack of energy;
- Crying;
- Frequent complaints;
- Drug and alcohol use;
- Unsafe behavior (such as ignoring safety rules);
- Changes in weight;
- Insomnia;
- Digestive disorders; and
- Headaches and body aches.

What should an employer do if it believes an employee is depressed? First, it is important for an employer to understand the Americans with Disabilities Act (ADA) and any related state or local laws. The ADA limits an employer's ability to make disability-related inquiries. The employer should not ask the employee if he or she is depressed, even if its only intention is to help the employee. If an employee is having performance or behavioral issues, then the employer should focus on the specific work-related problem without trying to diagnose the reason behind it. The employer can and should follow standard procedures for dealing with a performance or behavioral issue.

However, if the employee volunteers that he or she suffers from depression, then the employer must consider whether a reasonable accommodation is needed. This calls for the employer and the employee to engage in a two-way conversation known as the interactive process under the ADA.

Practical Example

Tina observes that Mark's data entry error rate has risen in the past month. She meets with him to talk about the increase in errors and how he needs to get back down to an acceptable level. Mark reveals that he has not been sleeping well due to a new medication he is on for depression. He asks if he can change his work schedule and use some of his accrued time off until his doctor can make the necessary adjustments. Tina will need to consider whether Mark's request is reasonable.

An employer should never offer medical advice to an employee. It may instead provide information on an EAP. Offering the service is not enough, though. Many employees are unaware that such services exist. Those who do know are often afraid that they will be stigmatized if they use it, especially for a mental health issue. This may come from their peers, who might think less of them for needing help, or their boss, who might think that they are unable to do their job. To counteract this, HR should make sure that employees know that this service is available, is confidential and is not going to adversely affect their job.

Grief

When tragedy hits, such as the death of a loved one, an employee may take a long time to recover. Handling a grieving employee is a delicate issue.

Death of a loved one. When an employee mourns the death of a loved one, the employee may experience symptoms similar to depression. The following are some ways in which an employer can help in this situation:

- Acknowledge the employee's loss. For example, have an employer representative attend the funeral, allow co-workers time off to attend the funeral, send flowers and/or send a card signed by managers and co-workers;
- Give the employee time to mourn away from work. An employer may want to consider implementing a bereavement leave policy;
- Be understanding. Do not expect the employee to return to work the day after the funeral and be fine. Giving the employee time to grieve is extremely important;
- Offer assistance upon the employee's return to work. Remind the employee of any EAP services available; and
- Talk to the employee. Ask the employee how he or she wants to handle the situation. For instance, some might want to talk about what they are going through while others may not. Everyone is different, and each employee will handle grief in his or her own way.

Death of a co-worker. When an employee dies, there are many things HR can do to help employees deal with their grief:

- Set aside a place on-site or contract with a place off-site where employees can speak to a counselor about their grief;
- Let employees take time off when they learn of the death and then to attend the funeral;
- Set up a memorial for the deceased employee;
- Circulate a card for all employees to sign; and
- Send flowers or give a gift on behalf of the entire staff to the family of the deceased employee.

Also consider doing any of the following for the family of the deceased:

- Make sure that the employer is represented at the funeral (unless it was a company accident or violation that caused the death and has created hostility with the family);
- Make a donation to the employee's or family's charity of choice;

- Send a letter of condolence to the family;
- Offer to take up a collection to help with funeral expenses or to help meet the family's immediate needs;
- Encourage employees and the deceased's family members to communicate with each other if they wish to do so;
- Suggest that employees do something for the family, such as make a dinner or write a letter;
- Process final paychecks as required by the relevant state law; and
- Return the employee's personal belongings that were left in the workplace.

If an employee dies at the workplace, [*the situation should be managed somewhat differently.*](#)

Anger Management

It is important that an employer pay special attention to employees with anger management issues. Not only is angry behavior disruptive to the workplace, but it can also lead to workplace violence. The following are tips to help deal with an angry employee:

- Treat all employees fairly and respectfully. Employee anger often surfaces when an employee feels mistreated by the employer. This is especially true when an employee is in an unpleasant situation, such as being disciplined or being turned down for a promotion.
- Acknowledge the employee's feelings. This does not mean agreeing with those feelings or accepting an inappropriate expression of them. Sometimes an employee simply wants to be heard. However, if the employee does have a legitimate reason to be angry, the employer should consider how to help resolve the situation.
- Do not tiptoe around an employee who gets angry easily. A manager may prefer to avoid confronting an employee who may not respond well, but this simply rewards the employee's poor behavior.
- Ensure all employees understand the employer's expectations for appropriate workplace behavior and the potential consequences for behaving inappropriately. Therefore, it is important to periodically review with employees any applicable policies related to general conduct, bullying and workplace violence.
- Emphasize to supervisors the importance of enforcing such policies. Employees will have fair warning that their behavior is unacceptable, and the employer will have a paper trail to support a discipline or termination decision if such behavior continues or gets worse.
- Offer anger management counseling to employees, such as through an EAP.

Drugs, Alcohol and Smoking

Drugs and Alcohol

Most employers do not need to be convinced that maintaining a drug- and alcohol-free workplace is a good idea. Some employers are required to do so by the Drug-Free Workplace Act or industry regulations. To ensure a drug- and alcohol-free workplace, an employer should have and enforce a strong policy on substance use addressing the following:

- The purpose of the policy;
- Who the policy applies to;

- Prohibited behavior;
- The consequences of violating the policy;
- What assistance the employer offers to employees;
- Confidentiality provisions; and
- Any drug testing requirements, including:
 - Who will be tested (e.g., all employees, only employees in safety-sensitive positions);
 - When testing will be conducted (e.g., upon hire, randomly, after an accident); and
 - What the testing process entails (e.g., where it takes place, how to appeal a false positive result).

Legal considerations. There are some legal considerations to be aware of in regard to workplace drug and alcohol use.

The ADA treats drug and alcohol use differently. An employee who currently uses illegal drugs or illegally uses legal drugs (e.g., a family member's prescription drugs) is not covered. However, an employee who is a recovering drug addict or alcoholic or who currently uses alcohol is protected by the law under some circumstances. This generally means that a covered employee may not be discriminated against and may be entitled to reasonable accommodations; it does not mean that an employer must allow an employee to show up late because of a hangover or to work while under the influence. Note that an employer should also check applicable state or local disability discrimination laws.

Some states have legalized marijuana use for medical or recreational purposes, although this is still illegal under federal law. Therefore, an employer:

- Does not have to accommodate marijuana use, including ingestion, possession or intoxication, in the workplace; and
- May take adverse action, including discipline up to and including termination, against an employee who is under the influence of marijuana at work.
- An employer generally has the right to test employees for marijuana use, terminate them based on a positive test result and prohibit them from using marijuana or being impaired on the job. However, an employer must be careful where a state law includes workplace-specific antidiscrimination or accommodation provisions.

Note that some courts have held that the state laws legalizing medical marijuana and the ADA do not prohibit employers from disciplining or terminating an employee for medical marijuana use. See [*Casias v. Wal-Mart Stores Inc.*, 764 F. Supp. 2d 914 \(W.D. Mich. 2011\)](#). However, there is no consensus by the courts as to whether using medical marijuana is an illegal use of drugs that falls outside the protections of the ADA. Because the law is still developing in this area, an employer should be careful about making any employment decisions with regard to employees who use medical marijuana. See Employee Management > Disabilities (ADA).

Suspicion of drug or alcohol use. If HR suspects an employee is abusing drugs or alcohol, it should address the problem without being accusatory; not only may an employer's suspicion be wrong, but an employee under the influence may become violent if confronted.

HR should take the following steps:

- Move a clearly impaired employee to a location where he or she will not be a threat to others;
- Call the employee's emergency contact to come and pick up the employee; and

- Ask the employee in private for an explanation for the observed erratic behavior (it will be helpful to have documentation of the behavior). If the cause is something other than substance abuse, seek help for the problem. If the situation warrants, follow company policy on drug or alcohol testing.

If the cause of an employee's actions is definitively linked to substance abuse, determine whether company policy calls for termination. If the employer has a zero-tolerance policy that has been documented and consistently enforced or the employee's behavior was severe enough to warrant termination, consider waiting until the employee is sober before terminating, but do not allow the employee to continue working.

There are nondisciplinary measures an employer can institute instead of termination, such as referring the employee to an EAP or providing a leave of absence for treatment.

Smoking

Many states and municipalities regulate smoking, including vaping (use of e-cigarettes) in the workplace. In states where workplace smoking is allowed, an employer should seriously consider limiting employees to smoking outside or in a designated smoking area. Allowing workers to smoke in the building is more than just a nuisance to those who do not like it; it is also a significant source of organizational risk as smoking in the workplace may:

- Raise health care costs;
- Lead to fires in the building;
- Reduce productivity; and
- Lead to employer liability in secondhand smoke cases.

To rid the workplace of these risks, HR should implement and enforce a no-smoking policy, which should:

- Explain the purpose of the policy;
- Specify whether or where smoking is allowed outdoors;
- Explain how and by whom the policy will be enforced;
- Specify the consequences of violating the policy;
- Address whether employees may use any type of device designed to help smokers quit (e.g., vapor or e-cigarettes);
- Address frequency and length of smoke breaks; and
- Address situations in which an employee smells strongly of cigarettes to the discomfort of other employees.

In order to have an effective no-smoking policy, it is helpful to educate employees about:

- The health risks of smoking, which may encourage smokers to quit; and
- The reasons for the employer's policy, even if employees refuse to quit.

An effective smoke-free workplace program should also include information about, or help with, quitting smoking. Having fewer employees who smoke not only reduces the number of complaints about a no-smoking policy, but may also help reduce an employer's health care costs. Possible ways to help smokers quit include:

- Offering counseling and classes;

- Creating a smoker's hotline or supplying smokers with the number to an existing hotline; and
- Helping to pay for the costs of quitting devices (e.g., nicotine patches or vapor or e-cigarettes).

Emergency Medical Situations

An employer should be fully prepared to handle workplace emergency medical situations. While such preparation should not replace calling 911 or other professional medical help, it is important to know what to do while waiting for help to arrive.

Seizures

Seizures can be mild or life threatening. An employer can take certain steps to help an employee having a seizure, such as removing sharp objects from the vicinity and not holding down or restraining the employee. However, if an employee has a known condition, such as epilepsy, HR should offer to sit down with the employee, on a voluntary basis, to come up with an individual plan in the event of a seizure. The employer should ask the employee the following questions:

- How often do you have seizures?
- How severe are the seizures?
- Who should be called when a seizure occurs?
- Can your primary care physician suggest a plan of action?
- What should be done when a seizure occurs?

If an employee is seizure prone, it may be appropriate to have a neurologist assess the employee for safety and appropriateness of occupation (e.g., job duties include driving). However, before doing anything, HR should check to make sure that any actions taken comply with the ADA's provisions on medical exams and inquiries.

Heart Attacks

Heart attacks can occur so quickly that the worst may happen while waiting for a medical responder to arrive. The faster a heart attack victim can receive CPR or be treated with an automated external defibrillator (AED) the better the chances of survival. An employer should consider having an AED at the workplace and training individuals on its use as well as on CPR. Also, under OSHA's recordkeeping standard, all employers are required to notify OSHA within eight 8 hours of becoming aware of a work related heart attack.

The federal Cardiac Arrest Survival Act (CASA) encourages the placement of AEDs in federal buildings to decrease the number of deaths that could occur due to sudden cardiac arrest. [42 USCS § 238p](#). Since the passage of CASA, many states have adopted laws that regulate AEDs in the workplace and create requirements for employee training. Some of these laws only require certain workplaces to provide an AED onsite and train an employee on its use. Other laws do not require an onsite AED, but provide legal requirements for an employer that chooses to place an AED in its workplace. AED users are generally protected from liability by so-called Good Samaritan laws.

AEDs should be placed in:

- Highly populated areas;
- Confined spaces; and
- Places where employees exercise or participate in physical activity, whether as part of their jobs or in their free time.

OSHA recommends training some or all employees to:

- Recognize when another employee is having a heart attack and know how to notify emergency responders;
- Perform CPR;
- Correctly use an AED; and
- Care for victims while waiting for help.

Strokes

A stroke occurs when the blood supply to the brain is cut off or reduced. This causes the brain to lose oxygen. It is vitally important to recognize the onset of a stroke and immediately get help for the victim because brain cells begin to die within minutes of oxygen loss. Symptoms include numbness of the body, slurring of speech, difficulty understanding, dizziness and trouble walking.

The American Stroke Association (http://www.strokeassociation.org/STROKEORG/WarningSigns/Stroke-Warning-Signs-and-Symptoms_UCM_308528_SubHomePage.jsp) has an acronym - FAST - for recognizing a stroke:

- Face: Have the employee smile. Does one side droop?
- Arm: Have the employee lift his or her arms. Does he or she have trouble with one arm?
- Speech: Ask the employee to talk. Is his or her speech slurred or is the employee having difficulty speaking?
- Time: Note the time that the symptoms started in order to tell emergency personnel.

If an employee starts demonstrating symptoms of a stroke, get him or her to a hospital right away and follow the steps of the workplace emergency plan.

Managing an At-Work Fatality

If an employee dies at work it can be a scary and emotional time, especially if the death occurred due to an accident. Because of the soaring emotions triggered by such an event, an employer should have a plan in place so that fewer decisions have to be made at the time of the death. The plan should be clearly written and issued to all employees. It should include the names of predesignated employees who will act for the employer (as well as backup individuals) to immediately handle specific tasks in the event of an onsite employee death, such as:

- Moving employees to a safe place away from the scene;
- Calling 911 and the deceased's next of kin; and
- Investigating the incident and [reporting the death to OSHA within eight hours](#).

An employer should also consider providing grief counseling for employees, allowing them to go home after the tragedy and giving them time off from work to attend a memorial or funeral service for their deceased colleague.

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