Opioid Abuse in the Workplace: Not Just Another Day in Employer Paradise

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The City of Paradise Beach has a population of 200,000 residents, a highly-ranked public school system, and takes pride in its low crime rate. Paradise Beach is also known for its spacious and well-maintained parks, public swimming pools, municipal golf courses, and bike trails that cover approximately 25 square miles of lush green landscape. The City's Parks, Recreation, and Links department maintains these amenities with 19 employees, which include landscapers, tree trimmers, groundskeepers, regular maintenance staff, and two office assistants.

Sloan Waverly has been the Assistant Director of Parks, Recreation, and Links for12 years, and has always received above average to outstanding scores on her performance evaluations. Although she is generally in the office three days per week, Waverly's duties require that she drive in her City vehicle to ensure that her staff's work is being safely completed and that no dangerous conditions exist for the public. One year ago, while helping to trim a large elm tree, she fell and injured her back, sustaining a concussion. Since that time, Waverly has received prescriptions of the opioids Demerol, Vicodin, and Percodan for frequent headaches and constant back pain. She generally presents well when providing reports to management or to the Paradise Beach City Council. She has also received accolades from her workers and members of the community for her leadership and hard work.

Due to the effects of opioids, Waverly has on occasion fallen asleep in her office and has seemed lethargic in staff meetings. She has even been heard vomiting in the office restroom. It has become apparent to her supervisor, the Director of Parks, Recreation, and Links, Marty McGavin, that Waverly may be addicted to opioids. Because Ms. Waverly drives a City vehicle and helps the outdoor staff with numerous tasks involving gas-powered lawn mowers, battery-operated tools, and construction equipment, McGavin approaches the Paradise Beach City Attorney, Penny Schumacher, for advice and counsel.

Scope of the Opioid Epidemic:

As a recent report to the United States Senate concluded, the abuse of, and addiction to, opioids such as heroin, morphine, and prescription pain relievers is a serious problem affecting many aspects of American society.[1] Indeed, the U.S. Centers for Disease Control and Prevention (CDC) noted an alarming increase in opioid addictions, overdoses, and deaths for nearly all demographics of the U.S. population.[2] Close to two million Americans have abused or are dependent on prescription opioids, and from 1999 to 2015, more than 183,000 individuals have died from opioid-related overdoses.[3] Overdose rates are highest among individuals between 25 and 54 years old.[4] Although men are more likely to die from overdose, the mortality gap between males and females is closing.[5] One in four people receiving long-term prescription opioids for non-cancer pain struggles with addiction.[6] Over 1,000 people are treated in emergency rooms every day across the country for misusing prescription opioids, with the most commonly overdosed opioids being methadone, oxycodone (e.g. OxyContin), and Hydrocodone (e.g. Vicodin).[7] The reality is that many of these addictions do not start because of illegal drug use. Rather, the addiction starts in a doctor's office after a patient receives a legal and valid prescription designed to combat pain and suffering, and then descends into an illegal drug habit.

Of course, employers in both the public and private sectors are not immune from the consequences of this opioid epidemic. The National Safety Council (NSC), a non-profit organization chartered by Congress, recently conducted a survey finding that 70% of employers have felt the effect of an employee's prescription drug abuse, whether through absenteeism or missed work, decreased job performance, failed drug tests, or other indicia.[8] Although the NSC found that most employers suffered because of their employees' abuse of prescription drugs, relatively few employers had policies or procedures in place to deal with such issues.[9]

Employers who want to address an opioid problem with an employee not only face sensitive human resources and communication issues, but also a complex set of legal rules and regulations. Compliance obligations arise under the Americans with Disabilities Act, the Family and Medical Leave Act, and even federal and state Occupational Safety and Health Act laws. Accordingly, employers need to act carefully and thoughtfully

when dealing with an employee suffering from opioid abuse so as not to violate any laws offering protections to suffering or addicted employees.

ADA Legal Refresher:

Title I of the Americans with Disabilities Act (ADA or the Act)[10] applies to employers with 15 or more employees, and includes private employers, state and local governments, employment agencies, labor unions, and joint labor-management committees.[11] The ADA prohibits discrimination against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment. Congress enacted the ADA in 1990, and broadened its definition of "disability" in 2008 with the Americans with Disabilities Act Amendments Act.

The ADA prohibits employment discrimination against "qualified individuals with disabilities."[12] The Act specifically defines a person with a "disability" as an individual who has a physical or mental impairment that substantially limits one or more of his or her major life activities, has a record of such an impairment, or is regarded as having such an impairment.[13] Additionally, in order to be a qualified individual with a disability, the disabled individual must be one who also satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.[14]

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an undue hardship on the operation of the employer's business.[15] Reasonable accommodations are adjustments or modifications provided by an employer to enable people with disabilities to enjoy equal employment opportunities. Accommodations vary depending upon the needs of the individual applicant or employee, and may include: making existing facilities used by employees readily accessible to and usable by persons with disabilities; restructuring jobs; modifying work schedules; reassigning to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; and providing qualified readers or interpreters.[16]

However, an employer does not have to provide a reasonable accommodation if it imposes an undue hardship.[17] The ADA defines undue hardship as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.[18] Employers are not required to lower quality or production standards to make reasonable accommodations, nor are they obligated to provide personal-use items such as glasses or hearing aids.[19] Moreover, an employer generally does not have to provide a reasonable accommodation unless an individual with a disability asks for one.

An employer who believes that an employee's medical condition is causing a performance or conduct problem may ask the employee how to solve the problem and whether the employee needs a reasonable accommodation.[20] Once a reasonable accommodation is requested, the employer and the individual should discuss the individual's needs and identify the appropriate reasonable accommodation. Where more than one accommodation would work, the employer may choose the one that is less costly or that is easier to provide.

Once an employer becomes aware of an employee's disability and need for a reasonable accommodation, it is incumbent upon both the employer and the employee to engage in an "interactive process."[21] This is a necessary but informal process intended to clarify what the individual needs and what an appropriate reasonable accommodation may entail. An employer is permitted to ask the individual relevant questions that will enable it to make an informed decision about the request for accommodation, including asking what type of reasonable accommodation is needed.[22]

The exact nature of the interactive process will vary on a case-by-case basis. Often, both the disability and the type of accommodation required will be obvious, and there may be little or no need to engage in detailed discussions. Other times, however, the employer may need to ask questions concerning the nature of the disability and the individual's functional limitations in order to identify an effective accommodation. While the individual with a disability does not need to be able to specify the precise accommodation required, he or she does need to describe the problem being faced. Suggestions from the disabled individual may help the employer determine what type of accommodation to provide. Ultimately, however, the determination about what kind of reasonable accommodation to be provided is up to the employer. An employee may refuse to accept an offered accommodation, but just as an employer may be found to have not participated in the interactive process in good faith, so too can an employee who does not cooperate with his or her employer, or who refuses reasonable accommodations.

Legal Considerations for Workplace Drug Use

The ADA specifically states that persons who currently use drugs illegally are not protected by its provisions because such users are excluded from the definition of the term "qualified individual with a disability."[23] The ADA's regulations provide that "illegal use of drugs" refers both to the use of unlawful drugs, such as cocaine, and the unauthorized use of legal prescription drugs.[24]

With respect to current illegal drug use, the Equal Employment Opportunity Commission (EEOC) states that currently engaging in illegal drug use is not intended to be limited to the use of drugs on the day of, or within a matter of days or weeks before, the employment action in question. Rather, the provision is intended to apply to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct, or has an ongoing problem with drug abuse. When employees are currently using drug illegally, the ADA specifically states that an employer: 1) may prohibit the illegal use of drugs at the workplace by all employees; 2) may require that employees not engage in the illegal use of drugs at the workplace; 3) may require that all employees behave in conformance with requirements established under the Drug-Free Workplace Act of 1988; and 4) may hold an employee who engages in the illegal use of drugs to the same qualification standards for employment or job performance and behavior to which the organization holds its employees, even if any unsatisfactory performance or behavior is related to the employee's drug use.[25]

However, the illegal use of drugs does not include the use of a drug taken under

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the supervision of a licensed health care professional, or other uses permitted by federal law.[26] Accordingly, the EEOC provides that the following examples would not be considered illegal uses of drugs: experimental drugs for people with AIDS, epilepsy, or mental illness; morphine taken under the supervision of a licensed physician for the control of pain caused by cancer; and participation in a methadone maintenance treatment program.[27] The EEOC, however, is silent on the use of drugs, including opioids, to treat workplace injuries.[28] Importantly, the ADA's protections do apply to individuals who are former illegal drug users and who have been rehabilitated successfully or who are currently participating in a supervised rehabilitation program and no longer use drugs illegally.[29] Additionally, an employee will also be protected under the ADA if he or she is not illegally using drugs but is erroneously perceived or regarded as being a drug addict or as currently using drugs illegally.[30] The rationale behind this provision is that employers should not assume that, for example, a groggy employee with bloodshot eyes is abusing drugs. Instead, the employee's appearance may be the side effect of lawfully prescribed medication or other medical issues.

Drug Testing Provisions under the ADA

An employer may not require a job applicant to take a medical examination, to respond to medical inquiries, or to provide information about workers' compensation claims before the employer makes a job offer.[31] A job offer may be conditioned upon the satisfactory result of a post-offer medical examination or medical inquiry if this is required of all entering employees in the same job category.[32] A post-offer examination or inquiry does not have to be job-related and consistent with business necessity, and may ask questions about previous injuries.[33] After a person starts work, a medical examination or inquiry of an employee must be job related and necessary for the business.[34] Accordingly, employers may conduct employee medical examinations where there is evidence of a job performance or safety problem; the examination is required by other federal laws; the examination is to determine current fitness to perform a particular job; or the examination is a voluntary examination part of an employee health programs.[35]

Because the ADA does not protect individuals who currently use drugs illegally, the Act does not interfere with employers' programs to combat the illegal use of drugs in the workplace.[36] An employer may make certain pre-employment, pre-offer inquiries regarding the illegal use of drugs, and may ask whether an applicant is currently using drugs illegally.[37] However, an employer may neither ask whether an applicant is a drug addict, nor inquire whether he or she has ever been in a drug rehabilitation program, because individuals who were addicted to drugs--but are not currently using drugs illegally--are protected under the ADA.[38] After a conditional offer of employment, an employer may ask any questions concerning past or present drug or alcohol use.[39]

Since an employer may conduct tests to detect the illegal use of drugs, the ADA does not classify drug screenings as medical examinations, and an applicant can be required to take a drug test before a conditional offer of employment has been made.[40] Current employees also can be required to submit to drug tests, whether or not such tests are job-related and necessary for the business. Employers are free to refuse to hire an applicant or to discharge or discipline an employee based upon a test result that indicates the illegal use of drugs.[41] The employer may take these actions even if an applicant or employee claims that he or she recently stopped illegally using drugs.[42] If the result of a drug test indicates the presence of a lawfully prescribed drug or reveals information about a disability, such information must be kept confidential.[43] When tests for illegal drug use disclose the presence of lawfully used drugs, employers must be careful not to erroneously regard an individual as a drug addict or abuser. If they do, they would be violating the employee's rights under the ADA.

In addition to drug testing, the ADA does not prevent employers from obtaining certain information necessary to evaluate the ability of applicants and employees to perform essential job functions or to promote health and safety on the job.[44] However, once a person is hired and has started work, an employer generally can only ask medical questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition. Accordingly, any medical examination or inquiry required of an employee must be job-related and justified by business necessity.[45]

Federal Leave Law and Substance Abuse

The federal Family and Medical Leave Act (FMLA) provides protections for employees with "serious health conditions" and for their family caregivers.[46] The FMLA requires covered employers—which includes both public and private employers—to provide, as relevant here, up to 12 weeks of unpaid leave annually for an employee's illness.[47] Moreover, the FMLA requires reinstatement in the employee's position or an equivalent position upon return from leave. These protections include leave for substance abuse treatment.[48]

The term "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves in-patient care in a hospital, hospice, or residential medical care facility, or that requires continuing treatment by a health care provider.[49] The condition must involve such care as a period of incapacity or treatment in connection with or consequent to in-patient care; a period of incapacity requiring absence from work of more than three days and that involves continuing treatment by a health care provider; or continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or so serious that it would likely result in a period of incapacity of more than three days if left untreated.[50] "Continuing treatment by a health care provider" must involve: two or more treatments by a health care provider; two or more treatments by a provider of health care services under orders of or on referral by a health care provider; at least one treatment by a health care provider that results in a regimen (e.g., a course of medication or therapy) of continuing treatment; or being under the continuing supervision of a health care provider due to a serious long-term or chronic condition or disability which cannot be cured.[51]

According to the Department of Labor's regulations implementing the FMLA, treatments for substance abuse may qualify as serious health conditions under the appropriate circumstances.[52] That is, the treatment for substance abuse may qualify for FMLA leave if it is an impairment requiring inpatient care, or requires continuing medical treatment by a health care provider.[53] However, congruent with the ADA, FMLA requirements do not prevent an employer from drug testing employees for detection of illegal substances, nor do they excuse employees from prohibiting the illegal use of drugs.[54] For example, the regulations do not interfere with an employer's requirement that an individual taking certain drugs may not perform safety-sensitive functions. Just as an employee who tests positive for drugs does not necessarily have a "disability" for ADA purposes, such an employee does not necessarily have a "serious health condition" for purposes of the FMLA.[55]

Therefore, absence from work because of the employee's use of the substance, without treatment, does not qualify for FMLA leave. Additionally, an employee may not use FMLA leave to recover from the side effects of substance abuse (such as a hangover or drug-induced incapacity). FMLA leave may only be taken for substance abuse treatment or rehabilitation provided by a health care provider or by a provider of health care services on referral by a health care provider.[56] The employer may not take action against the employee because the employee has exercised his or her right to take FMLA leave for substance abuse treatment. However, if the employer has an established, well-communicated, and non-discriminatory policy which provides that under certain circumstances an employee may be terminated for substance abuse, then pursuant to that policy, the employee may be terminated regardless of whether he or she is presently taking FMLA leave. Thus, the inclusion of substance abuse as a serious health condition does not preclude an employer from taking action against an employee who is unable to perform the essential functions of the job, provided that the employer complies with the ADA and does not take action against the employee for exercising his or her right to take FMLA leave for treatment of that condition. Accordingly, an employer cannot fire an employee for taking FMLA leave alone, but may terminate an employee because of the employee's underlying illegal drug use that led to the taking of FMLA leave.[57]

> [A]n Employee will also be protected under the ADA if he or she is not illegally using drugs but is erroneously perceived or regarded as being a drug addict or as currently using drugs illegally. The rationale behind this provision is that employers should not assume that, for example, a groggy employee with bloodshot eyes is abusing drugs. Instead, the employee's appearance may be the side effect of lawfully prescribed medication or other medical issues.

Federal Occupational Safety and Health Act

Finally, it bears mentioning that both the federal and related state OSHA plans can be relevant when drug use or abuse is implicated. OSHA recognizes that impairment by drug use may constitute an otherwise avoidable workplace hazard and that drug-free workplace programs help improve employee safety and health.[58] Accordingly, OSHA strongly supports comprehensive drug-free workforce programs, especially within certain workplace environments, such as those involving safety-sensitive duties like operating machinery.[59] However, OSHA further recognizes that a reasonable procedure must be in place to balance the interests of workplace safety with those of employee privacy.[60] Therefore, OSHA maintains that drug testing policies should limit testing to situations in which employee drug use is likely to have contributed to workplace accident, and for which the drug test can accurately identify impairment caused by drug use.[61]

Importantly, the ADA does not override health and safety requirements established under federal workplace safety laws, even if a safety standard adversely affects the employment of an individual with a disability.[62] Therefore, if a certain drug testing or drug tolerance standard is required by OSHA (or a similar workplace safety law), an employer must comply with that federal law.[63] Nonetheless, the ADA still may remain applicable. If a workplace safety law allows for an employer to make a reasonable accommodation, and the accommodation will not conflict with workplace safety, then the employer must work with the employee and within the confines of the ADA to make the necessary accommodation.[64] In other words, if an employer can comply with both the ADA and OSHA, then the employer must do so.

Considerations for the Paradise Beach City Attorney

Because the ADA and the FMLA both apply to the City of Paradise Beach, the City Attorney must adhere to strict federal laws when determining how to handle Ms. Waverly's condition. Waverly's supervisor, Mr. McGavin, knows that she is likley addicted to opioid pain killers. What is unknown—and what will be critical in determining how the City deals with Waverly's addiction—is whether she has become addicted through the normal and legal use of the drugs as prescribed by her doctor, or whether her addition arises from her procuring the drugs illegally (such as by buying them off the street without a

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doctor's prescription) and her using them in violation of varying state drug laws and the federal Controlled Substances Act.

If Ms. Waverly illegally obtained, and is illegally using, opioid painkillers, then neither the ADA nor the FMLA will protect her. The ADA will not consider her to be a qualified individual with a disability. Although Waverly's physical condition (i.e., her lethargy and her stomach/intestinal problems) may substantially limit her ability to perform the major life activity of working, the law specifically carves out an exception to the protections normally afforded to disabled individuals. Simply put, the law does not protect individuals who use illegal drugs.

Accordingly, if the City determines that Waverly's opioid addiction stems from illegal use or activity, then it can insist that she abide by the City's normal policies and procedures governing workplace performance and drug policies. The City could: 1) hold Ms. Waverly accountable for using drugs in the workplace (assuming that she uses opioids while at work; 2) require that she not engage in the illegal use of opioid painkillers while at work; 3) require that she behave in conformance with all federal drug laws; 4) hold her to the same qualification standards for employment or job performance and behavior to which the City holds its other employees; and, 5) if it desires, terminate her employment without repercussion. If Ms. Waverly's actions are illegal, the City is not required to engage in the accommodation or interactive processes.

Similarly, the FMLA does not provide protection for Ms. Waverly if her use of opioids is illegal. Although she may receive FMLA leave for substance abuse treatment if the treatment involves inpatient care and is provided by a health care provider, she cannot request leave to deal with the day-to-day side effects of her illegal opioid use. Additionally, nothing in the FMLA prohibits the City from disciplining or terminating Waverly for her underlying illegal use of drugs, so long as the City does not terminate her simply for taking FMLA leave to seek appropriate medical attention.

On the other hand, if Ms. Waverly's lethargy and stomach illness is a side effect of her legal and proper use of doctor-prescribed opioids, then the City must be certain to comply with the ADA and FMLA. Under the ADA, her side effects must substantially limit her ability to perform her job duties in order for her to qualify as an individual with a disability (assuming that she otherwise would still be capable of performing them). If they do, the City would need to provide Waverly with a reasonable accommodation, so long as accommodating her condition was possible and did not impose an undue hardship. Human Resources and Ms. Waverly's manager, Mr. McGavin, would have to determine whether she is able to perform her assigned job duties. If the answer is yes, then the City should engage Waverly in the interactive process. It should:

1. Determine the duties that Ms. Waverly are required to actually perform and are fundamentally important to the City, versus the duties that are not essential and are marginal in importance;
2. Discuss with Waverly her ability to perform job-related functions and request that she contact her health care provider to provide any physical or cognitive limitations;
3. Discuss with Waverly the potential performance barriers due to her limitations; and
4. Determine possible options for an effective and a reasonable job accommodation that does not impose an undue hardship for the City as an employer, and then discuss those options, if any, with Ms. Waverly.

For example, if Waverly's lethargy is problematic, then the City could agree to provide extra rest breaks for her. If she needs to be within close proximity to a bathroom because of her upset stomach, then perhaps the City could temporarily relocate her desk to be nearer to those facilities. Similarly, if she is unable to assist other Parks and Recreation employees in manual labor, then the City could assign her only tasks involving a minimal amount of physical exertion. Lastly, if she is unable to travel to the City's different parks locations to oversee her employees, then perhaps the City could permit Waverly and her employees to communicate electronically such as via a cell phone or videoconference. Provided that these or similar accommodations would permit Ms. Waverly to meet her job duties and would not be unduly burdensome for the City to implement, then the City could propose these accommodations and fulfill its requirements under the ADA.

Under the FMLA, if Ms. Waverly's addiction to opioid painkillers resulted from legal use and required treatment by a health care professional, then she would be considered to be suffering from a serious health condition. Accordingly, if FMLA leave was available to Waverly, then the City would be required to permit her to utilize such leave to seek treatment for her opioid-induced medical complications.

How should legal counsel approach this issue? The City Attorney must first determine whether Waverly's opioid-induced side effects stem from the legal or illegal use of drugs. The City may request that she submit to a drug test with a third-party drug screener, and check to see whether the test reveals abnormally high concentrations of opioids. Additionally, the City may observe Waverly and her side effects, and draw conclusions about the likelihood of her illegal use of drugs based upon the observed severity or duration of the side effects. However, caution with either of these methods must be taken, because there is always the possibility of a falsely positive drug test or inaccurate observations. The ADA provides specific protections for individuals wrongly regarded as disabled. Accordingly, the City's best course of action may simply be to speak withWaverly. Information about legal or illegal use of opioids may come out during ADA-related conversations and the interactive process.

Once the City determines the extent of the drug use, it can take further steps. If the drug use is illegal, it may discipline or terminate Ms. Waverly. If the use is legal, the City will need to follow ADA and FMLA procedures to ensure that reasonable accommodations are offered, and opportunity for leave is available. Ms. Waverly would likely be considered disabled and afforded legal protections by the federal government.

Take-Aways for Employers

Given the scope of the opioid epidemic sweeping through America, employers, including state and local governments, need to be mindful of the legal and practical implications accompanying both the legal and illegal use

of opioid drugs. To better facilitate safe and efficient workplaces, employers should consider taking several steps.

First, employers should have a clear drug policy that includes provisions for the legal and illegal use of prescription drugs. Employers should also be certain that their drug tests include screening for the presence of opioids and prescription painkillers. Make clear that abusing prescribed drugs is a violation of the organization's drug policy. Establish specific and careful procedures for investigating employees who may be abusing drugs, and for taking corrective action once an employee has been determined to be in violation of a drug policy.

Second, consider educating employees about the dangers of prescription painkiller abuse. Employees should know about the high risk of addiction with opioid painkillers, and should be aware of the adverse side effects that often accompany even legal opioid use. Moreover, employees should be aware that opioid use may adversely impact their job performance, and may necessitate that they and their employer try to find ADA-compliant reasonable accommodations.

Third, employers should train supervisors to detect and respond to employees who may be suffering from illegal drug use, which would include coverage of opioid abuse. Training on detecting a disability, drug use and abuse, and how to handle such situations are paramount. All managers and supervisors should not only be fluent in the organization's drug policies and processes, but should know how to spot the symptoms of abuse. Additionally, all supervisors and managers should understand that while an individual may suffer from the side effects of opioid medication, the employee may not actually be using opioids illegally. When an employee's use is legal, supervisors need to know that they will have to accommodate the employee's disability. Supervisors should not be quick to make adverse employment decisions based off an erroneous perception of drug abuse.

Fourth, and finally, employers need to recognize that opioid abuse is a complex matter. Dealing with opioid abuse will necessarily involve many different individuals and departments. The employee, the employee's medical providers, the employee's supervisors, the human resources department, and the legal department may all need to take an active role to resolve potential workplace problems stemming from the use of opioid medications. By taking a compliant and well-informed approach, employers can better ensure that all interested parties are involved, and that there is consensus regarding the most appropriate course of action to keep the workplace safe and liability-free. Working closely and speaking openly and honestly will benefit all parties involved and can help combat the negative workplace effects of America's opioid epidemic.

Notes

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6. *Id.*
7. *Id.*
8. National Safety Council, How the Prescription Drug Crisis is Impacting American Employers, http://www.nsc.org/NewsDocuments/2017/Media-Briefing-National-Employer-Drug-Survey-Results.pdf.
9. *Id.*
10. *See* 42 U.S.C. § 12101 et seq.
11. *Id.* at § 12111.
12. *Id.*
13. *Id.* at § 12102.
14. *Id.*
15. 29 C.F.R. § 1630.2.
16. *Id.*
17. 42 U.S.C. § 12112.
18. 29 C.F.R. § 1630.2.
19. *Id.*
20. *See id.*
21. *Id.*
22. *Id.*
23. 42 U.S.C. § 12114.
24. 29 C.F.R. § 1630, Appx.
25. 42 U.S.C. § 12114.
26. 29 C.F.R. § 1630.3.
27. EEOC's Americans with Disabilities Act Title I Technical Assistance Manual.
28. *Id.*
29. 29 C.F.R. § 1630.3.
30. *Id.*
31. 29 C.F.R. § 1630.13; *see also* EEOC Enforcement Guidance: Disability-related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA), https://www.eeoc.gov/policy/docs/guidance-inquiries.html.
32. EEOC Enforcement Guidance: Disability-related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA).
33. *Id.*
34. *Id.*
35. *Id.*
36. 42 U.S.C. § 12114.
37. 29 C.F.R. § 1630.3.
38. *Id.*
39. EEOC Enforcement Guidance: Disability-related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA).
40. *Id.*
41. EEOC's Americans with Disabilities Act Title I Technical Assistance Manual.
42. *Id.*
43. *Id.*
44. EEOC Enforcement Guidance: Disability-related Inquiries and Medical Examinations of Employees under the Americans with Disabilities Act (ADA).
45. *Id.*
46. 29 U.S.C. § 2601 et seq.
47. *Id.* at § 2612.
48. 29 C.F.R. § 825.119.
49. 29 U.S.C. § 2611.
50. 29 C.F.R. § 825.115.
51. *Id.* at § 825.102.
52. *Id.* at § 825.119.
53. *Id.*
54. *See id.*
55. *Id.*
56. *Id.*
57. *Id.*
58. *See* https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22577.
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62. EEOC's Americans with Disabilities Act Questions and Answers, https://www.ada.gov/employmt.htm.
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64. *Id.*