

Manufacturers Must Consider Employee Use of Prescription Medications on an Individualized Basis

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Manufacturers that conduct workplace drug and alcohol testing must be careful when addressing drug test results and employee disclosures of prescription medication use, especially as drug use has surged across the country during the COVID-19 pandemic.

According to a Quest Diagnostics [study](#), the manufacturing industry's drug positivity rate has increased steadily each year from 2016 through 2020. Other studies, including a [report](#) by the American Medical Association, documented the increase in drug use and overdose deaths during the pandemic.

Employees in manufacturing often operate or control high-tech, safety sensitive equipment or work in potentially dangerous areas. Manufacturing employers correctly are concerned about ensuring safety in the workplace and preventing accidents.

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Testing and Prescription Medication

Drug tests conducted by manufacturers typically test for amphetamines, cocaine, marijuana, opioids, and phencyclidine, among others. While a few of these drugs are illegal, some of these categories may include legal prescription drug use. For example, a positive opioid drug test result could be caused by heroin use or by prescription opioid use.

To help them determine whether a positive test is due to legal or illegal drug use, employers routinely use medical review officers (physicians with expertise in analyzing drug test results who are contractors affiliated with drug testing laboratories). However, an applicant or employee often will volunteer that they use prescription medications, such as oxycodone, hydrocodone, or medical marijuana. Such disclosures are particularly concerning to manufacturing employers when the employee's job is operating machinery, power tools, or heavy equipment.

Manufacturers' Obligations

Manufacturers must not assume the use of certain medications always creates a safety risk; rather, employers must engage in the interactive process and direct threat analysis required under the Americans with Disabilities Act (ADA) and comparable state laws. That process requires an individualized assessment, on a case-by-case basis, of the employee's job duties, the way the medication affects the individual employee, and whether there are any accommodations that could mitigate the risks.

A court case in Ohio illustrates the risks in making assumptions about an applicant's use of prescription medications. In *Hartmann v. Graham Packaging, L.P.*, No. 1:19-cv-488 (S.D. Ohio Jan. 25, 2022), an applicant applied for a job as a forklift driver at a manufacturing company. He used prescription opioids for pain relief, along with four other medications, which he disclosed during his initial interview. The employer asked him to provide a

doctor's note that the use of his medications would not create a safety concern. The applicant's doctor provided such a note.

The applicant passed the pre-employment drug test, but the test result was marked "safety-sensitive." Subsequent disclosures showed that the applicant also used Adderall in addition to the five other medications previously disclosed (some of which typically are prescribed for depression, anxiety, and bipolar disorder). The applicant's doctor stated again that there was no safety concern. The employer ultimately did not hire the applicant because his medications were a "safety hazard."

The applicant asserted claims under the ADA and Ohio state law. The employer argued that the applicant's opioid regimen rendered him a risk to the "health and safety" of others. Rejecting that argument, the court stated it was not clear whether the employer conducted an "individualized inquiry" concerning the applicant's ability to perform the job duties safely, and therefore, the case would have to proceed to trial.

Manufacturers must ensure they are not making assumptions about the dangers of certain medications and must not maintain "blanket" rules prohibiting employees in safety-sensitive jobs from using certain "unsafe" medications. The Equal Employment Opportunity Commission frequently sues manufacturers for having such blanket rules about prescription medications or for making employment decisions based on assumptions that certain medications are unsafe.

Instead, manufacturers must engage in the interactive process with the applicant or employee. This process includes discussions with the applicant or employee (who must be able to perform all of their essential job functions) and obtaining information from the treating physician. For safety-sensitive jobs, the manufacturer also must conduct the "direct threat analysis," which is an assessment of whether the applicant or employee's use of the medication would create "a significant risk of substantial harm" to himself or others. These discussions and assessments can be difficult.

Manufacturers should ensure their human resources employees and other managers are trained to engage in these discussions and analyses appropriately. Jackson Lewis attorneys are available to assist manufacturers with these issues.

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