KAUFMAN DOLOWICH LLP

KD Alert: EEOC Guidance: Employee Opioi

During the 30th anniversary year of the American Employment Opportunity Commission (EEOC) has tac issuing guidance in the form of two technical a Information for Employees for Health Care Provide to provide clarity to the public regarding exist drugs in the workplace.

The EEOC defines the term opioid to include many common prescr hydrocodone (Vicodin®, Lortab®, Lorcet®), meperidine (Demerol®), be prescribed to treat opioid addiction in a Medication Assisted

Unlawful Use of Opioids and the Employer's Rights

The EEOC guidance states that employers are permitted to termina opioids in the workplace, regardless of whether the employee has work whether lawfully prescribed or not - the employer is not production or performance standards, eliminates essential functi use on the job.

The Interactive Process

If an employee's use of opioids is legal, (i.e. there is a valid MAT program), an employer must consider if there is a way for th action. This is when the interactive process is triggered. An are in a MAT program, unless the employee is unable to do the jo

Lawful Use and Reasonable Accommodations

While the guidance reinforces the notion that an employer does n certain *lawful* uses of opioids, thereby entitling employees to protection employees *currently using* opioids, *addicted* to opioids *illegally*, may be entitled to reasonable accommodations, provided r *recovering addicts* who are addicted to opioids but are not currently using provides the following examples of reasonable accommodations: ch temporary transfer to another position.

An employer may also have to provide a reasonable accommodation if:

- The employee takes prescription opioids to treat pain for a me disability under the ADA;

- The opioid medication the employee is taking interferes with t
- The employee has an opioid addiction (but not if the employee
- The employee had an opioid addiction in the past and is accommodation to help avoid r
- The employee has a medical condition that is related to opioid

The EEOC also describes the process for requesting a reasonable
they believe their rights have been violated. Moreover, the gui
ADA when a patient who uses opioids needs a reasonable accommoda
job safely. The health care provider s role includes but is not
approval) to support the request for an accommodation. The EEOC
if requested:

- The health care provider s qualifications and the nature and l
- The nature of the employee's medical condition;
- The employee s functional limitations in the absence of treatm
- An explanation on how the employee s medical condition makes c
- A suggested accommodation.

Employers may then use this information to evaluate whether to p
accommodation to offer.

Employers should review their policies and procedures regarding
positions are aware of their obligations under the ADA and relev
process or the cooperative dialogue). For more information abou
please Kceointtha oGtuEErnsitkeainRosbeynbeKlMuotsatein@kaufmaEnRdoosleonwbilcuhm.@ckoamufma,ndor lo
by phone at (516) 681-1100, or anyLambmbe& Emp Kaufman Dolowich & Vriach t &cé

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