CLIENT NEWS BRIEF

Opioid Testing Now Required for Employees in Safety-Sensitive Transportation Positions

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Effective January 1, 2018, the federal Department of Transportation (DOT) will require safety-sensitive transportation employees, such as county, city, and school district bus drivers, to be tested for prescription opioids in an effort to tackle opioid abuse. The DOT's final rule, which was published on November 13, 2017, amends the Code of Federal Regulations.

Under the new rule, the DOT will require safety-sensitive transportation employees to be tested for the following four "semi-synthetic opioids": hydrocodone, oxycodone, hydromorphone, and oxymorphone. These opioids are commonly known as OxyContin, Percodan, Percocet, Vicodin, Lortab, Norco, Dilaudid and Exalgo. The employees will continue to be tested for other drugs, including marijuana, cocaine, and methamphetamine.

Six federal agencies, including the Federal Motor Carrier Safety Administration (FMCSA) and Federal Transit Administration (FTA), define safety-sensitive positions. Under the FMSCA, safety-sensitive positions include operators of commercial motor vehicles. The FTA provides that employees in safety-sensitive positions include those who operate, control, and/or maintain a revenue service vehicle; operate a vehicle that requires a commercial driver's license; and those who carry a firearm for security purposes.

Under current law, an employee in a safety-sensitive position can only use prescription pain medications if a medical practitioner familiar with the employee's medical history and job duties has advised the employee that the medication will not "adversely affect" his or her ability to safely perform their job duties. However, not all employees ask their medical practitioners if their medications will impact their ability to work or ask their employers whether they can continue working while using these pain medications.

The DOT's new rule will increase the regulation of employees' use of prescription pain medications. If employees test positive for these medications, they will still have an opportunity to provide a "legitimate medical explanation" to medical review officers, the independent physicians responsible for receiving and reviewing results from a drug test. According to the DOT's new rule, a "legally valid prescription" can constitute a legitimate medical explanation, but a medical review officer is still required to interview the employee and review his or her medical records before deciding whether his or her result from a drug test is negative. Even if the result is ultimately negative, the medical review officer may have a responsibility to raise fitness-for-duty considerations with an employer.

The DOT's new rule provides employers another opportunity to inform employees in safety-sensitive positions about the effect prescription pain medications may have on their ability to safely perform their job duties. For more information about the DOT's new rule or drug and alcohol testing in general, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also visit our website, follow us on Facebook or Twitter or download our Client News Brief App.

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