



Dear Friends,

The Northampton Health Department and Hampshire HOPE's Workplace Toolkit is designed to help employees and employers address the problems caused by opioid and other drug use in workplace settings. It focuses on preparing for and responding to opioid and drug use by customers and/or staff. Hampshire HOPE is a community coalition whose mission is to help people and families struggling with Substance Use Disorders in Western Massachusetts. Safe and productive employment is essential to our mission of supporting recovery.

It is important to note that this Workplace Toolkit originated before the COVID-19 pandemic and is being disseminated about the same time that workplaces begin to return to a new normal. The new normal will require a different level of knowledge and understanding for leaders and managers within organizations of all types and sizes. Some of the practices implemented at worksites during the pandemic may transform the work environment for some in an ongoing way. Many staff will be returning with varying levels of post-traumatic stress disorder, increased mental health challenges including higher levels of anxiety and depression and increased use/misuse of substances and opioids.

The time is now to become an expert in the information contained within and to be part of the solution to support and help staff and the economy get back on our collective feet. The Biden-Harris administration has recently announced its seven priorities to address the opioid crisis. These include advancing recovery-ready workplaces and expanding the addiction workplaces. ([The Biden-Harris Statement of Drug Policy Priorities for Year One](#))

The Toolkit aims to promote Recovery Supportive Workplaces; cultures that actively support employees struggling with addiction and mental health issues and their families. We believe this makes businesses more successful and efficient for all in the long run. Increases in substance use on the part of customers, employees, and families of employees has led to multiple difficulties affecting all workplaces. See the Toolkit introduction for a full listing of the topics covered. Each topic in the introduction links to a section on that topic with more information including sample policies, communications, and links to helpful web-sites and videos.

Drug overdose deaths have steadily increased at alarming rates over the last 20 years affecting almost every workplace in some manner. This year during the COVID-19 pandemic, overdose rates have risen, with the CDC estimating 90,000 overdose deaths in 2021. The great majority

of these deaths are due to opioids. Opioid and other drug use has led to numerous difficulties in the work setting. These include increases in absenteeism, staff turnover, complicated questions about employee and employer rights and responsibilities. Others have struggled with customers who are using on-site and, in some cases, overdosing on site.

The goal of the Toolkit is to ensure successful workplaces where all can work to their capacity by promoting and supporting recovery and safety. Specific guidelines, resources and training materials and possible approaches are outlined and sample policies and approaches are included.

Note that we use the terms substance use, substance misuse and addiction to apply to all types of drug and alcohol use and misuse.

We look forward to your comments and feedback. The toolkit is a living document. It will be continually updated to be sure that it meets the needs of your workplaces over time.

Thank you

Hampshire HOPE

TOOLKIT INTRODUCTION

This Workplace Toolkit has information compiled from a variety of on-line, professional and local sources. It is meant to meet the needs of workplaces. Among the sources for this Toolkit is the excellent on-line [National Safety Council's "Opioids at Work Employer Toolkit."](#) This kit offers a wealth of downloadable posters and fact sheets that can be used in any large or small workplace.

The following topics will be addressed in the Workplace Toolkit. Each section has a brief introductory paragraph. Click on the link to go to more detailed information for this area.

[NOTE ABOUT THE IMPACT OF COVID 19](#) and how workplaces can handle the myriad of increased physical, mental health, substance use/misuse and addiction issues as well as stay compliant in providing a safe and welcoming workplace for all staff.

1. [General Information about substance use and opiate use.](#) Changing the conversation and our perceptions about drug use and misuse. It is a given that a number of your employees and customers are struggling with the effects of addiction and drug misuse. Whether staff are dealing with recovery themselves or with a family member who is actively using or in recovery your workplace is affected by addiction and the difficulties of recovery. Workplaces frequented by customers have the added difficulties of customers using on site, and the risks of overdosing. All of these difficulties can lead to serious life and death situations. Such traumatic incidents have an impact on all employees. The first step in promoting a Recovery Supportive Workplace is acknowledging that drug use, addiction and recovery can affect everyone at the worksite. That makes it important to ensure that all have access to information about substances, addiction and recovery. This section provides information about substance use, misuse, recovery and harm reduction that will help and guide all at the worksite.
2. [Resources and services that are available from Hampshire HOPE and in the](#) region of western Massachusetts (resource guide). This section is designed to familiarize members of the workplace with resources available to employers, staff, customers and families. Resources for information, treatment, recovery support and training are included.
3. [Narcan and overdose prevention.](#) Find information here on Narcan, including links to online training, apps, and resources for in person training. Protocols for maintaining and use of Narcan on site are included. Hampshire HOPE has developed NaloxBoxes which contain Narcan, materials for intervening in overdoses and instructions. NaloxBoxes are placed in public places accessible to people who may need them in emergencies. See

the [Hampshire HOPE](#) website for information about NaloxBoxes and information about their placement in our communities. Hampshire HOPE has also developed a helpful standard operating procedure pamphlet (SOP) if you are interested in adding a NaloxBox at your worksite.

4. [Overdose Prevention At Workplaces With Customers on Site](#). Includes information most helpful to businesses that serve the general public such as food service establishments. This section includes discussions of how to prepare staff for potential overdose emergencies, bathroom policies and procedures and helping employees to deal with the potentially traumatic experience of witnessing an overdose..
5. [Employee legal rights](#) and responsibilities [related to substance use and treatment](#). Employees have many rights and legal protections in the workplace. This section details the most important laws protecting employees as well as other resources that can help an employee who is dealing with a Substance Use Disorder.
6. [Employer legal responsibilities related to drug use, treatment and recovery](#). Employers are bound by several federal, state and local laws that guide and govern the employer's response to dealing with employees struggling with a Substance Use Disorder. [Here is a link to a chart summarizing all applicable state and federal laws relating to employer responsibilities](#).
7. [Employer ethical and humane obligations](#) to fulfill their part of the [Psychological Contract](#) between employee and employer. There are many ways employers can demonstrate their concern for their employees. Maintaining health and safety in the workplace is essential for supporting workers, customers and families.
8. [How to talk with employees about your concerns](#) about their possible substance use and the ways it may impact their performance at work. This section provides specific information about addressing concerns in a supportive but clear manner.
9. [Special Populations](#). This section addresses specific concerns and provides resources for a variety of special populations.
 - a. [People Returning to the Community From and Involved With the Criminal Justice System](#)
 - b. [Veterans Transitioning from Military to Civilian Life](#)
10. [Information on how to develop and maintain a Recovery Supportive Workplace](#). What is a Recovery Supportive Workplace? How can employers and senior managers set the tone for and develop workplaces supportive of people in recovery? What are some

examples of and sample policies for Recovery Supportive Workplaces? How can we increase buy-in from all employees?

11. [Terms and Definitions](#)
12. [Sample Policies and Procedures](#) This section provides sample customizable policies for your workplace.
13. [A List of Resources Used in this Toolkit](#)

NOTE ABOUT THE IMPACT OF COVID 19

Hampshire HOPE assessed the need for the Workplace Toolkit focused on Recovery Supportive Workplaces long before the Covid 19 pandemic took hold in the United States. The pandemic has further intensified the need for this Toolkit as statistics show that the markers of a safe and healthy community are pointing in the wrong direction.

According to recent reports by the [CDC on Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic](#), and [by the Kaiser Family Foundation on The Implications of COVID - 19 for Mental Health and Substance Use](#) the pandemic has been associated with mental health challenges related to the morbidity and mortality caused by the disease and to mitigation activities, including the impact of physical distancing, loneliness and stay-at-home orders.

The CDC studied a sample one week period in June of 2020 and reported that U.S. adults reported considerably elevated adverse mental health conditions associated with COVID-19. Younger adults, racial/ethnic minorities, essential workers, and unpaid adult caregivers reported having experienced disproportionately worse mental health outcomes, increased substance use, and elevated suicidal ideation.

- 1) Symptoms of anxiety disorder and depressive disorder increased considerably compared with the same period in 2019. The Kaiser Family Foundation reports that 41% of American adults reported symptoms of an anxiety disorder and/or depressive disorder in January 2021 as compared to 11% reporting similar symptoms in 2019.
- 2) Representative panel surveys were conducted among adults aged ≥18 years across the United States during the one week period, June 24–30, 2020.
 - a) Symptoms of a trauma- and stressor-related disorder (TSRD) related to the pandemic (26.3%),
 - b) Have started or increased substance use to cope with stress or emotions related to COVID-19 (13.3%).
 - c) The percentage of respondents who reported having seriously considered suicide in the 30 days before completing the survey (10.7%)
 - i) was significantly higher among respondents aged 18–24 years (25.5%),
 - ii) minority racial/ ethnic groups (Hispanic respondents [18.6%],
 - iii) non-Hispanic black [black] respondents [15.1%]),
 - iv) self-reported unpaid care- givers for adults (30.7%),
 - v) and essential workers (21.7%).

According to the American Medical Association, there has been a significant increase [in opioid related overdoses during Covid](#). As the COVID-19 global pandemic continues, so does the nation's opioid epidemic. It is estimated by the CDC that drug overdoses will increase to over 90,000 for the year ending December 2020. The great majority of these are opioid related. More than 40 states have reported increases in opioid-related mortality as well as ongoing concerns for those with a mental illness or Substance Use Disorder in counties and other areas within the state.

Employers have a huge opportunity to impact the health and well-being of all their employees. The impact can be extended to families as well who may participate in the employee's health and wellness benefits.

Sections 2 through 10 of this "Toolkit" discuss specific and detailed information regarding general information about opioids and drug use, the physiology of addiction, signs of substance use in the workplace, important human resource laws for employees to know to be able to advocate for themselves, must know federal, state and local laws that employers must comply with. We also lay out the foundation for becoming a Recovery Supportive Workplace that realizes that caring about employee's physical and mental health is good for business on many levels, from profit to people.

Employers should also be aware of the specific laws that have been put in place pertinent to the pandemic. Those laws are also available for employers to access at the [Department of Wage and Hour Division Pandemic Resources](#) and are briefly described below:

Workplace Safety

The Occupational Safety and Health Administration (OSHA) has resources to help employers and workers prepare for and respond to coronavirus in the workplace.

- [OSHA Guidance on Preparing Workplaces for COVID-19](#) – Developed in collaboration with the U.S. Department of Health and Human Services to help employers respond in the event of coronavirus in the workplace.
- [Temporary OSHA Guidance on Respiratory Protection Standard](#) – This guidance provides suggestions and options to help increase the availability of N95 filtering face piece respirators for healthcare providers.
- [COVID-19 Webpage](#) – Provides infection prevention information specifically for employers and workers.

Wages, Hours and Leave

The Wage and Hour Division is providing [information on common issues employers and workers face when responding to COVID-19](#), including the effects on wages and hours worked under the Fair Labor Standards Act and job-protected leave under the Family and Medical Leave Act.

Unemployment Insurance Flexibilities - The CARES ACT has expanded unemployment benefits during the pandemic. “Gig workers” and who are not usually covered are eligible to receive benefits and benefits have been extended. See information about current benefits [here](#).

Hampshire HOPE has partnered with Dr. Sarah Goff and Kelsey Clary at the University of Massachusetts, Amherst to understand the experiences and needs of coalition members (behavioral health workers, health care workers, law enforcement professionals etc) during the COVID-19 pandemic. Interviews were conducted to assess the added burden on providers and workplaces and the mental health and personal impact on individuals. Here is a [link to the very helpful Tip Sheet for managers and supervisors compiled as part of their research](#).

1) GENERAL INFORMATION ABOUT OPIATE AND DRUG USE

a. Facts and Information

The opioid epidemic continues to affect all of us in the Commonwealth of Massachusetts. Unfortunately, most employees and customers know someone or know the family of someone who has struggled with opioid use. In the U.S.A. today a person is more likely to die from an opioid overdose than from a car crash. Overdose deaths are one of the leading causes of death for those under age 50. The Massachusetts Health Policy Forum Issue Brief, 2019 [Addressing the Opioid Crisis in Small and Rural Communities in Western Massachusetts](#) provides a full and thorough overview of the crisis in our area over the last few years. For the most recent data on the opioid epidemic in Massachusetts visit [Massachusetts Department of Public Health Data Set](#) or for more local data see the data section of the Hampshire HOPE website.

While the opioid epidemic has had a deep impact on our workplaces, so have the harmful effects of alcohol and other drugs. In addition to overdose and deaths, drug use has a huge effect on employee absenteeism, turnover and myriad other problems in the workplace. In addition, employees may require accommodations due to their treatment needs related to drug and alcohol addiction.

When we talk about opioids, we mean “street” drugs such as heroin or fentanyl, and prescription painkillers like OxyContin, Percocet, or Vicodin. Prescription opioids are widely used to reduce pain. They are also very addictive and many who struggle with addiction started their use when prescribed opioids for acute or chronic pain. The distinction between “street” drugs and “prescribed” drugs is not so clear as many prescription opioids are readily available for sale on the street as well. The National Safety Council [FAQ and Stats](#) is a clear description that can be distributed to employees and others.

b. Substance Use Disorder defined

Using a medication or street drug for a non-prescribed purpose or in a non-prescribed way; using another person’s prescription or using medication without a prescription; using illicit substances. According to ASAM (The Addiction Society of American Medicine), **Addiction** is defined as a treatable, chronic medical disease involving complex interactions among brain circuits, genetics, the environment, and an individual’s life experiences. People with addiction use substances or engage in behaviors that become compulsive and often continue despite harmful consequences. Prevention efforts and treatment approaches for addiction are generally as successful as those for other chronic diseases. In this toolkit we focus on addiction to drugs and

alcohol and specifically opioids. A **Substance Use Disorder** is defined as a diagnosis meeting criteria for illicit drug or alcohol misuse as defined in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-V).

For this toolkit we generally use the term **Substance Use Disorder** to describe the problem as related to workplaces. Substance misuse is treatable and preventable.

c. The physiology of addiction

Opioid painkillers are used to treat various types of pain. Opioids attach to pain receptors in the brain, spinal cord and other organs. This allows opioids to block pain messages from other parts of the body. Opioids can be short acting, extended release (short-acting formulations that are absorbed slowly and to be taken at longer intervals) or long acting. Opioid tolerance develops quickly. Tolerance is a natural biological process that occurs when opioids or other drugs are used long term. The body builds a tolerance to the effects, meaning more of the drug is needed to achieve the same effect. Tolerance may not be the same for different opioids. Changing from one opioid to another can be dangerous, so one type of opioid should not be substituted for another.

All medication changes should be approved by a doctor. Stopping opioid use is different than stopping other drug use. The withdrawal symptoms that accompany cessation of opioid use include extreme anxiety, restlessness, insomnia, diarrhea, vomiting, and bone and muscle pain. Though the most intense of these symptoms abate after 24–72 hours, some symptoms, such as anxiety and insomnia, can linger for months. Opioid tolerance drops quickly after use has been discontinued. Restarting, a re-occurrence (or what is commonly referred to as a “relapse”) after a period of non- use of opioids presents a dangerous risk of overdose, because a dose that was previously taken without issue could be fatal (from the National Safety Council) For a full explanation of the physiology of addiction see the video [Addiction is a Brain Disease by Dr. Ruth Potee](#) Dr. Potee is based in Western Mass. and lectures and trains widely on addiction and the opioid crisis.

There are many risk factors for substance misuse. These include biological factors such as genetic predisposition, family history, other medical conditions; psychological conditions such as exposure to trauma, mental health problems; and social conditions such as unstable employment, families and housing.

d. Trauma and Substance Use Disorders

Although there are many risk factors for Substance Use Disorders, the link between early trauma and substance misuse is clear. The [famous ACE study conducted by the CDC and Kaiser Permanente in 1995-1997](#) established a clear link between adverse

childhood experiences (ACEs) and later substance misuse in addition to a variety of other social and medical disorders. The study correlated 10 areas of childhood trauma including witnessing domestic violence, substance abuse and mental illness in the home, abuse, neglect, divorce and more. The larger the number of ACEs children were exposed to the greater the risk of substance misuse. People who reported four or more ACEs had a 700% increase in alcohol abuse as adults. According to Dr. Gabor Mate in his book [In the Realm of Hungry Ghosts](#), addiction is a direct response to the toxic stress caused by traumatic experiences. He defines addiction as a deeply ingrained response to stress, an attempt to cope with stress through self-soothing; highly effective in the short term, but maladaptive, destructive and deadly in the long run.

People who use drugs are further exposed to a variety of traumatic experiences as a result of their use. These include a variety of serious physical illnesses such as high rates of AIDS, Hepatitis, and other communicable diseases; homelessness and it's related life difficulties, poor nutrition and health care and their conditions; and the long term medical effects of prolonged use. Also, exposure to crime, victimization, abuse are heightened. And, of course, the dangers of overdose and accidental death are ever present.

e. Language, Stigma and Discrimination

People with mental illnesses and who use and misuse drugs are often characterized as “bad,” “acting out,” and of poor character when, in fact, they are struggling with an extraordinarily difficult episodic illness. They are stigmatized and face discrimination in workplaces and in society at large. We tend to use language that describes people by their illness, rather than as people who have experienced many things in life, including addiction. For this reason we discourage terms such as “addict” and instead use the term “person with an addiction” or “person who misuses drugs or alcohol.” Use language that is scientifically accurate and “people first” such as “person with a substance use disorder” will indicate that disorders are chronic but treatable illnesses.

Here is a link to [Mike's Story](#) a short 1 minute video about stigma produced by the Bureau of Substance Addiction Services of Massachusetts. You will see other short stories on the right side of the screen.

Here is a link to a printable poster, [Language Matters](#) produced by the Addiction Policy Institute. This chart suggests language that does not stigmatize.

Here is a link to a 7 minute video [What is Stigma?](#) presented by the Addiction Policy forum. This video provides a full and extensive definition.

f. Who in the workplace might be using or misusing opioids and other drugs?

In short, anyone; employees, employers, and customers could be at risk. We all know people who have used and misused alcohol and drugs and managed to maintain good work records. It becomes a problem when one's use affects the workplace. For customers this might mean creating a disturbance or acting in a manner that causes concern for safety or overdose. For employees, misuse might lead to increased absenteeism, mistakes on the job, misunderstandings, unusual behaviors and even illegal activity such as stealing cash to support a growing habit.

g. Signs of Substance Misuse to look for in the Workplace

As noted above there are numerous signs that an employee or customer may be struggling with misuse of drugs and alcohol. These include:

- Changes in behavior
- Frequent lateness
- Missing shifts
- Frequent mistakes
- Appearing to be unsteady
- Increase in accidents
- Irritability and mood swings
- Emotional outbursts
- Increase in workers compensation claims
- Changes in appearance (eg, declining self-care)
- Lengthy use of the bathroom
- Slurring words, falling asleep at a workplace

These changes could be the result of other factors, so an employer should not automatically assume substance misuse is the cause. But concern could prompt a caring conversation with an employee.

h. Is Recovery Possible?

Up to 90% of people with Substance Use Disorders go on to live productive lives in long term recovery. **Recovery** might be defined as gaining control of one's use and improving one's health and wellness. Recovery is an individual personal journey that may include maintaining stable employment, living situation, purpose, improved overall health and wellness and relationships. Being employed offers the opportunity to regain financial stability, restore self-confidence, contribute to society and have a useful social role. **Numerous studies show that employment is seen as a "protective factor" in recovery;** an important element in gaining and maintaining recovery. Obtaining and continuing employment are directly connected to financial stability, housing stability, food security, and keeping families together. Employment is also a key ingredient in self-respect, a sense of self-worth and connection to our communities.

The course of recovery differs from person to person, and for some, includes relapse, which means recovery may take an episodic course and is not a one size fits all pathway like many chronic medical and health conditions.

i. Treatment for Substance Use Disorders

There are many approaches to treatment and recovery for people struggling with substance misuse. Different people may respond to varying approaches.

- **Medication-Assisted Therapy (MAT)** is the accepted “best practice treatment” for people struggling with opioid use. MAT includes the use of medications, in some combination with counseling and behavioral therapies and recovery supports, to provide a “whole-patient” approach to the treatment of Substance Use Disorders. Research shows that a combination of medication and other supports can successfully treat these disorders, and for some people struggling with addiction, MAT can help sustain recovery. A common misconception associated with MAT is that it substitutes one drug for another. Instead, these medications relieve the withdrawal symptoms and psychological cravings that cause chemical imbalances in the body. MAT programs provide a safe and controlled level of medication to overcome the use of an abused opioid. And research has shown that when provided at the proper dose, medications used in MAT have no adverse effects on a person’s intelligence, mental capability, physical functioning, or employability. Methadone, buprenorphine, and naltrexone are used to treat opioid dependence and addiction to short-acting opioids such as heroin, morphine, and codeine, as well as semi-synthetic opioids like oxycodone and hydrocodone. People may safely take medications used in MAT for months, years, several years, or even a lifetime.
- Acute treatment and Rehab are residential programs which may be appropriate on a short-term basis for people struggling to get their use under control, to learn skills to stop or reduce their use and, for some, to start MAT in a safe environment
- IOP (Intensive Outpatient Therapy) and Outpatient Therapy are key levels of care to gain and maintain recovery. IOP is generally a 3-5 day per week treatment program with duration of a few weeks to 3 months. Outpatient Group and/or Individual Therapy is typically a once per week intervention. Sober Housing is a longer-term residential housing program where people can gain the support they may need to maintain their recovery
- Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) are non-professional mutual aid fellowships to support members from using.

j. Treatment, Mass Incarceration, and the US Drug War

Over the past 20 years, the USA has moved in the direction of seeing substance misuse through the lens of a “disease model” that will benefit from treatment. Authorities have started to recognize that we cannot incarcerate our way out of a drug epidemic. Starting in the 1970’s the Drug War led to mass incarceration of Americans and today, the USA continues to have by far the highest rate of incarceration. Although we have seen a leveling off of the numbers of people incarcerated and much talk about decarceration, the USA still houses over 2 million people in jails and prisons.

Massachusetts, the state with the lowest incarceration rate in the USA would rank 9th in the world if it were a country, compared to other countries. ([States of Incarceration: The Global Context: A Report of the Prison Policy Initiative; The Prison Policy Initiative](#)) Prisons and jails today are the largest providers of treatment for Substance Use Disorders. One in five are imprisoned on a drug related charge and well over 50% have a documented Substance Use Disorder.

Our move towards mass incarceration starting with the Drug Wars in the 1970’s has been targeted primarily at Black people as well as Native Americans. It is well known that much of the public fear leading to the Drug War had to do with images of Black people out of control on drugs due to the “crack epidemic”. Crack was seen as a violence causing drug use by Black people while powder cocaine use was seen as a recreational drug used by wealthier White people. Sentences for crack use were up to 18 times higher than for cocaine, when cocaine use was prosecuted. Black people were overwhelmingly more likely to be incarcerated even though White people were just as likely to be using crack cocaine. Today, Black youth continue to be prosecuted for marijuana use as well as other drugs in some states while marijuana or cannabis becomes a big business in states that have legalized recreational use. As of 2015, Black Americans were incarcerated at more than 3 times the rate of White Americans. [Overdose Deaths and Jail Incarceration; The Vera Institute.](#)

Prior to 2000, heroin use was seen as primarily an inner city drug used by Black people. As overdose deaths and use skyrocketed in suburban and rural areas amongst White people at the beginning of the millennium due to a confluence of multiple reasons, the “opioid epidemic” started to be seen as a public health problem. Here is a short video by Jay-Z and Molly Crabapple illustrating [The History of the War on Drugs; The Drug Policy Alliance.](#)

People returning to the community are at high risk for overdose and face numerous challenges. See the section below for a discussion of the workplace and individuals involved with the criminal justice system. [People Returning From Incarceration and Involved With the Criminal Justice System](#)

k. What is Harm Reduction?

Harm reduction promotes public health by ensuring that people who use drugs are educated and equipped with tools to reduce the spread of disease such as HIV and Hepatitis C and to eliminate the proliferation of both fatal and non-fatal overdose. This pragmatic care model meets people where they're at rather than making judgments about where they should be in terms of their health behavior choices. A harm reduction approach can be used with people who, for many reasons, may be unable to stop using drugs or don't want to or are not ready to change their substance using behavior and those who are currently (or strive to be) abstinent from all drugs, including alcohol. It acknowledges that some ways of using drugs are safer or less risky than others. The goals of harm reduction are to educate people to make choices that reduce the negative consequences of their drug use, to prevent the spread of diseases associated with use, like HIV and HepC, and to keep people alive by decreasing the chance of an overdose. Harm reduction interventions are heavily researched and backed with decades of evidence of their effectiveness.

Here are some of the tenets of harm reduction:

- Legal and illegal drug use is part of our world. Harm reduction chooses to work to reduce the harmful effects of drugs rather than simply ignoring or condemning them.
- Harm reduction is centered around the individual, non-judgmental, non-coercive.
- While the focus is meeting people where they're at, harm reduction doesn't ignore the risk associated with drug use. Instead, harm reduction strives to create and maintain kind, compassionate relationships with people and help break isolation often associated with drug use. These relationships help people talk about their drug use openly to encourage less risky behavior.
- Harm reduction uses the "stages of change" model to understand a person's use. If someone is not ready for change then harm reduction interventions address higher risk behavior (using sterile syringes, sterile water, not sharing needles or other drug supplies, etc.). If someone is ready to change, then they are supported for this choice. For example, if someone is not ready to stop using, the focus is on keeping them as safe as possible and not on encouraging acute treatment unless it is asked for. Harm reduction may include helping people who use drugs to use safer, manage their use, or discontinue use.

Some examples of harm reduction include:

- Using new, sterile syringes, not sharing works, and using fentanyl test strips.
- Knowing your tolerance and using lower amounts to reduce overdose risk, particularly if someone has not used for even just a couple days.
- Swallowing, snorting, or smoking a drug rather than injecting.

- Not using alone or if that is not possible letting someone know through text or phone call you are going to use so they can check in on you.
- Taking turns using when in a group so someone can respond if a person overdoses.
- Not mixing drugs like benzos, alcohol, and opioids like heroin.
- Having Narcan on hand and communicating to friends and family about how to use it, where it's found, and what to do if you overdose.
- Using a tester shot to gauge potency, especially if it is a new batch.
- Accessing a [Syringe Access Program](#).
- Help, referrals and connections to care are made.

Supporting harm reduction and recovery efforts in the workplace: Employers can play a major role in supporting recovery and embracing people who have struggled with substance use and misuse. A Recovery Supportive Workplace can enable people to maintain employment, decrease turnover and avoid the other workplace problems associated with substance misuse, such as increased absenteeism, turnover and health care costs. By supporting harm reduction and recovery, workplaces are making an investment in their employees. And that investment can be returned by having loyal, long term excellent employees who are committed to a workplace that hired and supported them in their time of need. Employers can make a huge difference in the lives of people in recovery. Some examples of ways to support harm reduction in the workplace are:

- Flexibility in scheduling. People in MAT may need to receive their treatment at a specific time.
- Accommodations to enable employees to follow through on treatment.
- Providing the support needed by any employee who may be struggling with an illness.
- Intentionally hiring and working with people who are in recovery who will respond to the investment of the employer.
- Education of other employees about substance use and recovery
- Be ready to be open to hiring people with positive CORI checks and criminal backgrounds.

People in recovery may have had difficult pasts. But none of us want to be defined by our worst days.

Trauma Informed Care and a harm reduction approach go hand in hand. Trauma informed care is an approach to treatment and care that:

- Recognizes the widespread impact of trauma
- Assesses for and recognizes the signs of symptoms of trauma in people served
- Uses knowledge and understanding of trauma to create policies and practices
- Seeks to actively avoid re- traumatizing people served

Here is a [link to a full explanation of trauma informed care at the website of the Trauma Informed Care Implementation Center website](#)

Some tips for talking to people about their use: It isn't easy to talk to someone about drug use. In some cases it may be an employee, customer, friend or relative you may know for a long time and don't want to offend. At other times, we are cautious about invading people's privacy and, perhaps, violating rules or laws that protect an individual from discrimination. But when a person's use is affecting their behavior or a customer or employee is causing the workplace to be affected it is important to address the issue. **This section is meant to be a general discussion about how to approach people when you are concerned about their use.** For a discussion of how, specifically, to approach employees about their use, follow this link to the discussion on [How to Talk With Employees About Your Concerns.](#):

First, any conversation has to start with concerns about the observable behavior of the person. It is important to not jump to conclusions about what is causing that behavior. For instance, an employer might believe that an employee is consistently late due to their use but the focus needs to start on the concerns about lateness. Concerns about substance use may arise from the conversation, from other employee concerns or from careful probing. Once the topic has been opened, the following tips can be helpful.

Start off by talking about how you feel.

- "I care about you."
- "I feel like you've been acting differently lately at work than you usually do. Are you okay?"
- "I am concerned about (name the observed behaviors that have you concerned)"
- Be specific about how this has impacted others.
- "I'm worried about your health. Are you okay? ."

Ask if it's okay to talk about their drug use. But in a work situation, only ask if they have disclosed to you first about their drug use.

- "I know this can be a hard thing to face. Are you open to talking about it more so that I might be able to help and support you?"

- “We could talk about some ways to support you to get help. Would you be into that?”

Offer support.

- “How can I support you?”
- “I know this is hard and not simple , but I’m here for you and we want you to be able to continue our relationship.”
- “Do you want to talk about what to do next?”
- “What are ways we can support you to get the help you need to continue to work here successfully?”

Talk about next steps.

- “You seem to have some good ideas for how to get help. What can I do to make this process easier?”
- “It seems like you’re interested in seeking help for your substance use . Here are ways we can support you. Let us know if there are other ways we can support you.”

2) RESOURCES AND SERVICES THAT ARE AVAILABLE FROM HAMPSHIRE HOPE, IN WESTERN MASSACHUSETTS AND STATEWIDE

Here is a list of treatment, recovery and support services. Links to more thorough lists of helpful services are provided below.

[Hampshire HOPE](#) is a broad, inclusive coalition of people from all walks of life in Hampshire County, located in the heart of the Pioneer Valley: public health professionals, schools, medical and behavioral health providers, police officers, prosecutors, people in recovery, people who use drugs, harm reduction specialists, advocates, allies and family members, elected officials, corrections workers, and municipal leaders.

We take a big tent approach to the life-threatening Substance Use Disorder epidemic in our country, inviting a diversity of perspectives in order to change underlying conditions that led to an overdose death crisis in our region. These key tenets guide our work: dismantle stigma, prevent overdose, promote harm reduction, humanize people who use drugs or are addicted, support recovery, reduce addiction. We believe each of these goals work together on our overarching mission of saving lives.

We engage our community in a variety of approaches informed by needs and guided by data, including:

- wide distribution of naloxone and training on how to use it;
- advocating for medication assisted treatment for opioid use disorders within correctional facilities and beyond;
- responding to overdoses by specially trained teams of recovery coaches, harm reduction specialists and community police officers;
- educating the community about the neurobiology of addiction and evidence-based treatments;
- promoting safer drug storage, removal and disposal;
- intensive training of people whose work brings them in contact with people who use drugs or struggle with addiction;
- approaching people who use drugs with respect, dignity and compassion;
- support of families and allies of people who use drugs or are in recovery;
- promotion of peer-based recovery support and recovery-friendly communities;
- advocating for policy changes, such as safer prescribing regulations and the Good Samaritan Law, that improve conditions for people dealing with Substance Use Disorders.
- working with employers and employees to create Recovery Supportive Workplaces.

Funded by a variety of state and federal grants and housed in the city of Northampton's Health Department, HOPE coalition staff and partners collaborate to bring public health approaches to the epidemic of overdose deaths across the western Massachusetts.

Developing and supporting Drug Addiction and Recovery Teams (DART) has been a major project of Hampshire HOPE and its partners. See the description of these valuable teams on the Hampshire HOPE website.

Resources for help in Hampshire County

[Tapestry](#) provides a variety of harm reduction services in Hampshire, Hampden and Franklin and Berkshire Counties. These include onsite and mobile syringe access and disposal, Narcan training and access, overdose prevention and education and HIV, STI and Hepatitis C testing, health and prevention. In addition, Tapestry provides comprehensive community based healthcare including reproductive and sexual health services. Here is a [link](#) to a list of the harm reduction services provided and the locations and phone numbers for each of Tapestry's offices.

[Northampton Recovery Center](#) (413-834-4127) is a peer-driven community that provides a positive and welcoming environment for people on all pathways and in all stages of recovery from addiction, as well as for their families and allies. Recovery coaching and a variety of activities and services are provided to support recovery.

[Clinical And Support Options](#) (413-582-0471) is a provider of behavioral health treatment (including counseling and MAT), case management and recovery support services in a variety of locations in Hampshire and Franklin Counties.

[ServiceNet](#) (413-585-1300) is a provider of behavioral health services and housing services serving Hampshire, Franklin and Hampden Counties.

[Center for Human Development](#) (Easthampton Office 413-529-1764) is a large social service provider with housing, shelter and behavioral health services provided at locations across Western Massachusetts.

[Behavioral Health Network](#) is a large provider of behavioral health treatment, and recovery support services with locations across Western Massachusetts. BHN provides a full range of behavioral health services in Eastern Hampshire County.

[On Call Healthy Living Program](#) (413-584-7425) provides Medication Assisted Treatment (MAT) services in Northampton. On Call promotes same day access to begin MAT for individuals who seek treatment.

[Health Care Resource Centers](#) (413-584-2404) provides Medication Assisted Treatment (MAT) services, including Methadone treatment, in Northampton, Greenfield, Westfield and Chicopee.

[Learn to Cope](#) is a statewide non-profit support network that offers education, resources, peer support and hope for parents and family members coping with a loved one addicted to opiates or other drugs.

[Narcotics Anonymous](#) (866-NA-HELP) is a fellowship of people for whom drugs has become a major problem who meet regularly to help each other stay abstinent from drugs.

[The Massachusetts HelpLine](#) (800-327-5050) is a 24/7 phone line for people wanting to access treatment and support.

[A Full List of Treatment and Recovery Resources](#) is maintained on the Hampshire HOPE website.

Resources for help in Hampden County

[Tapestry](#) provides a variety of harm reduction services in Hampshire, Hampden and Franklin and Berkshire Counties. These include onsite and mobile syringe access and disposal, Narcan training and access, overdose prevention and education and HIV, STI and Hepatitis C testing, health and prevention. In addition, Tapestry provides comprehensive community based healthcare including reproductive and sexual health services. Here is a [link](#) to a list of the harm reduction services provided and the locations and phone numbers for each of Tapestry's offices.

[Center for Human Development](#) (Easthampton Office 413-529-1764) is a large social service provider with housing, shelter and behavioral health services provided at locations across Western Massachusetts.

[Behavioral Health Network](#) is a large provider of behavioral health treatment, and recovery support services with locations across Western Massachusetts.

[Gandara Center](#) promotes the well-being of Hispanics, African Americans and other culturally diverse populations through innovative, culturally competent behavioral health, prevention and education services

[Baystate Behavioral Health Services](#) offers comprehensive behavioral health services and multiple levels of care throughout Western Massachusetts. See the website for contact information at the site closest to you.

[River Valley Counseling Center](#) (413-540-1234) provides mental health and addiction services in Holyoke and other Hampden County locations.

[Holyoke Health Center](#) (413-420-2200) provides a full range of integrated medical, addiction and mental health treatment services including Medication Assisted Treatment.

[Holyoke Medical Center](#) (413-534-2698) provides inpatient and outpatient behavioral health treatment.

[AISS \(All Inclusive Support Services\)](#), based in Springfield, is a program of the Hampden County Sheriff's Department which assists formerly incarcerated people in all aspects of their lives as they transition from incarceration into the community

[Health Care Resource Centers](#) (413-584-2404) provides Medication Assisted Treatment (MAT) services, including Methadone treatment, in Northampton, Greenfield, Westfield and Chicopee.

[Learn to Cope](#) is a statewide non-profit support network that offers education, resources, peer support and hope for parents and family members coping with a loved one addicted to opiates or other drugs.

[Narcotics Anonymous](#) (866-NA-HELP) is a fellowship of people for whom drugs has become a major problem who meet regularly to help each other stay abstinent from drugs.

[A Full List of Treatment and Recovery Resources](#) is maintained on the Hampshire HOPE website.

3) INFORMATION AND TRAINING ON NARCAN AND OVERDOSE PREVENTION AND INTERVENTION

Naloxone (Narcan) is a readily available drug that can temporarily reverse the life-threatening effects of opioid overdoses. It is available in the form of a nasal spray from a pharmacy without a prescription.. It can be easily and safely administered by laypersons. Since Naloxone only affects people who are experiencing opioid overdoses and has no harmful effects on others it is a safe drug. Recognizing symptoms of overdose and responding to an overdose with Naloxone will save lives.

Fatal overdoses in the workplace are rising. Any opioid user can be at risk. This includes employees, customers and passersby. However, each workplace must determine whether to have a workplace Naloxone program. Consider the following:

- Should your workplace maintain a supply of Naloxone in your first aid supplies? Is your first aid supply readily available to all staff?
- Should employees be trained to administer Naloxone? Would your employees be open to this?
- If the workplace does have a program, what policies and protocols govern the use of Naloxone? Policies will need to be developed.
- What are the expectations of employees in responding to overdose situations? Are they protected from liability?
- What are the liability and legal concerns for the business? Consult with your attorney. The Massachusetts Good Samaritan Law encourages friends, family and bystanders to assist people having an overdose and to seek emergency medical assistance for that person [Here is a link to a helpful summary of the Mass Good Samaritan Law](#)

Here are some resources to assist you in developing a Naloxone program:

- [Hampshire HOPE](#) (413-587-1219) can help with developing a policy, training staff and supplying Naloxone. Also see there is information about [overdose prevention](#) on their website.
- [Tapestry](#) (413-586-0310) provides training and information about Naloxone as part of their harm reduction programming
- [HelplineMA.org](#) has a handy downloadable pocket pamphlet with the steps to take to stop an overdose.
- There are many on-line training videos about how to use Naloxone to prevent overdoses. [StopOverdose.org](#) a program from the State of Washington has a good short demonstration video.

- [The National Safety Council summary of "Naloxone in the Workplace"](#) provides an overview of some of the issues in creating an overdose prevention program.

To see a sample and customizable policy on Naloxone use and overdose prevention go to [Sample Policies and Procedures](#) and scroll down.

4) OVERDOSE PREVENTION FOR WORKPLACES THAT HAVE CUSTOMERS ON SITE

Workplaces that have customers on site such as restaurants and retail stores face unique circumstances in addressing opioids and potential overdoses. As with all workplaces, clear policies guiding staff in dealing with intoxicated customers and overdoses should be in place. Policies should clearly outline:

- Ways to deal with customers who may be under the influence.
- Responding to overdoses whether or not Naloxone is maintained on site.
- When to contact a supervisor.
- When to contact 911. Employees should be encouraged to call 911 in case of emergency. It should be clear that this will not negatively affect their employment status.
- Massachusetts' Good Samaritan Law protects individuals who intervene in potential overdose situations.
- Monitoring of restrooms and other private spaces which have the potential for overdoses.
- Resources for employees who may experience the trauma of witnessing an overdose or medical emergency
- Here is a link to some [sample, customizable policies](#) that can be adapted to your workplace.

A steady stream of individuals unknown to the staff may be on the premises in both public areas and more private spaces such as restrooms. Of particular note is the frequency of overdoses and deaths in restrooms.

Most important is for all on site to be familiar with the signs of overdose and the basics of what to do and how to help. [Hampshire HOPE's](#) website has clear explanations of these provided by the Commonwealth of Mass.

Have information handy and on site. If your worksite has Naloxone on site post the [Naloxone Quick Start Guide](#) developed by the makers of Narcan. Also, you can distribute copies of the [HelplineMass.org handy pocket guide](#) to people at your worksite. Here is a link to a [Poster for Restrooms](#) created by the Boston Public Health Commission.

Establishments that have restrooms for customers on site present a number of problems. Here are some of the decisions you may have to make before developing your policies:

- Restroom locks: In an emergency can the door to a restroom be opened by a staff member. Should a concerned staff member check on a restroom if a customer has not come out for a period of time? If so, few businesses have the capacity to monitor this. If businesses do adopt a policy of having staff check after a period of time, they need to have a clear system for how they are tracking the time such as setting a timer that all relevant staff will hear.
- How readily available should locks and keys to restrooms be? Some workplaces have made it more difficult for non-customers to use restrooms, by, for instance, having to ask at the counter for the key or a code, or putting the code on the customer's receipt. Business owners have varying views about their willingness to make their restrooms open to the community at large.
- If staff are concerned, what is the procedure for intervening? For instance, if alerted by another customer of an unusually long time of use in the restroom or other concern, do they knock first? If there is no answer, at what point do they enter to check?
- Single restrooms present more difficulty than restrooms with multiple stalls as they are easier and less intrusive to check
- Some establishments have cut the bottom of doors to stalls so they can easily see if a person has passed out (whether from overdose or medical emergency)
- Establishments grapple with whether they should strategize to discourage people using drugs in bathrooms vs recognizing that people will be using in bathrooms and implementing procedures to support harm reduction. For example
 - Some have replaced the lighting in bathrooms with blue bulbs. This makes it harder for a person to see their veins and to inject. Although there is evidence that this reduces use (and, consequently, overdoses), there is also concern that this could lead to less safe use and an increase in infections and wounds.
 - Exposure to discarded sharps and other drug paraphernalia creates a danger to staff and others using the bathroom. To protect others some establishments place sharps containers in restrooms. However, some are reluctant to do this as they are concerned that it will encourage use in their facility. Also, having sharps disposal containers requires regular pick up by a bio-hazard company.

Once you have thought through these questions and determined the priorities that fit your workplace you can develop your policies. Below are some sample guides for workplaces to address bathroom policies.

Here is one guide to bathroom best practices provided by the Boston Public Health Commission:

- Staff trained in narcan and overdose response as well as CPR/AED
- On-site narcan kit readily available/accessible near areas where a potential overdose can occur (ie: outside bathroom) in a break-away box or first aid kit
- Incorporate procedure to check on narcan stock (expiration dates, make sure wasn't stolen, etc)
- The ideal bathroom facility is:
 - One accessed by a code that is changed regularly (such as Panera bread's model)
 - Does not lock from the inside
 - Has installed sharps containers
 - Is easily accessible in case of an emergency (ie: can see under stall doors to check whether or not an individual is occupying stall)
 - Is easily opened by staff and easily opened by first responders in case of an emergency. All staff have a master key to the restroom that they carry with them at all times
 - In a controlled-entry situation for the bathroom (ideal), staff will monitor the comings and goings of patrons and perform 'checks' at regular intervals (15 minutes?)
 - OD memorandum + protocol publicly displayed and accessible to staff
- Narcan on site
 - The manager will ensure that naloxone is stored safely consistent with the manufacturer's guidelines and that adequate inventory of naloxone is maintained consistent within reasonable projected emergencies happening onsite. The naloxone inventory should be routinely assessed to ensure that first aid kits/overdose reversal kits are furnished with naloxone which has at nine (3) months and preferably twelve (6) months – prior to the expiration date.
- Overdose reversal kits should consist of:
 - Intranasal NARCAN® kit
 - Extra breathing masks
 - Latex gloves
 - Band-aids
 - Ambu bag for rescue breathing
 - Tongs (for syringes)
 - Puncture proof gloves
 - Notepad & pen
- Biohazard safety training + supplies for maintenance/facilities personnel

And here is a quick list of recommendations for bathroom safety

- Develop practices for monitoring the restroom use, which may include regularly timed restroom checks, physical equipment such as a timer, intercom system, and/or or electric door strike, or reverse motion detector.
- Clearly posted signs indicating restroom rules and/or expectations. This includes responsibilities related to safety of the bathroom facility and a schedule for cleaning the restroom.
- Staff members to be trained to respond to onsite overdose emergencies and familiar with response policy and procedures. This includes the order of actions in response to an emergency: call 911, perform rescue breathing, and administer naloxone. Following an incident, staff should report and be sure to follow the procedure for naloxone refill.
- Public restrooms should be equipped with: (a) sharps disposal containers; (b) onsite naloxone kit in case of overdose; (c) non-porous table or other surface; (d) puncture-proof gloves and tongs for disposing of used syringes and paraphernalia; (e) appropriate overhead lighting; and (f) electric strike buzz lock or easily accessible keys to open the bathroom in the event of no response.

5) EMPLOYEE LEGAL PROTECTIONS AND RESPONSIBILITIES RELATED TO MENTAL HEALTH, SUBSTANCE USE DISORDER AND ADDICTION TREATMENT:

Employees need to know that they have legal protections and rights in the workplace that can help them to take the time they need to care for themselves or a family member who may be struggling with a mental health, substance use disorder or addiction challenge.

It is important for employees to understand the laws that protect them and their employment during a time of difficulty. It is the employer's responsibility to post, communicate, and help educate employees as to what laws can protect them and their jobs during a difficult time. Employees also need to know that there are laws that can protect their employment in the event that their family member may be struggling with a mental health, substance use disorder or addiction challenge, and the employee needs to take time to help the family member get situated.

Several laws as stipulated below provide protections for employees.

- **The Americans with Disabilities Act (ADA)** [Americans With Disabilities Act \(ADA\)](#) prohibits employers from discriminating against employees or applicants with disabilities in all aspects of employment including hiring, pay, promotion, firing, and more. Private employers with at least 15 employees must follow the ADA.
- In Massachusetts, the state law, MGL c. 151B, [Employment rights of people with disabilities](#) covers employers with 6 or more employees. The ADA states that people with addiction to alcohol and those in recovery from addiction to opioids and other drugs are considered people with disabilities. They must, however, meet the ADA's definition of disability.

To learn more about employee rights and employer obligations under the ADA, contact the [New England ADA Center](#) or call 1-800-949-4232.

Here is a link to a summary they have created on [Addiction, Recovery and the ADA](#).

Specifically, under the terms of the ADA:

- Employers cannot fire, refuse to hire, or refuse to promote someone simply because she or he has a history of substance use.
- Employers also cannot fire, refuse to hire, or refuse to promote employees merely because they are enrolled in a drug or alcohol rehabilitation program.

There are many different scenarios that can play out for an employee requesting an accommodation under the ADA. The employee is advised to contact their manager, business owner or HR representative to discuss special accommodations that may be needed to assist the employee through their healing process of Recovery. For example, an employee can request to come in late one day per week so that they can attend their MAT appointment. The Employer and Employee will then enter into what is called the Interactive Accommodation Process where after a discussion with the employee and in consideration of the impact on the business, a decision will be made to either accommodate the request or not.

- **The Family and Medical Leave Act (FMLA)** is administered by the federal [Wage and Hour Division](#). The [Family and Medical Leave Act \(FMLA\)](#) requires employers of 50 or more employees to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the birth or adoption of a child or for the serious illness of the employee or a spouse, child or parent.

Employees who have worked for their employer for at least one year and who have worked at least 1,250 hours in the past 12 months may take up to 12 weeks of unpaid, job-protected leave because of their own serious health condition or to care for a spouse, child, or parent who has a serious health condition.

Eligible employees may use their FMLA leave to deal with mental health, substance use disorder or addiction problems, including:

- Treatment of drug or alcohol addiction
- Treatment of another physical illness or incapacity related to substance use (such as kidney failure)
- Caring for a close family member who is undergoing treatment for these conditions

It is the employer's responsibility to initiate the process for the Family and Medical Leave Act (FMLA) leave even if the employee has not asked for FMLA. FMLA regulations clearly state that the employee does not have to expressly request FMLA leave. However, it is the employee's responsibility to comply with the employer's request for medical certification and to do so in the time requirements as stipulated by the law.

- **Massachusetts Paid Family Leave Act:** Most Massachusetts workers are now eligible for paid family and medical leave under the Paid Family and Medical Leave (PFML) law.

Paid family and medical leave (PFML) is a Commonwealth program designed to give Massachusetts workers the resources to manage their own health and the health of their family.

All PFML benefits are now available. You must first inform your employer that you need to take leave before applying. Once you have talked to your employer, you can apply for available PFML benefits online by [creating a personal PFML account](#).

Key information for employees:

- Generally, PFML coverage is available to all W-2 workers who work in Massachusetts, whether full-time, part-time, or seasonal, as well as some 1099-MISC contractors
- You cannot opt-out of PFML if you are a covered individual, even if you don't plan on using the benefits. Talk to your employer to learn if you are covered.
 - Some types of employment are automatically excluded, and some employers may choose to seek an [exemption](#)
 - If you are a [self-employed individual](#), you can choose to [opt-in to PFML contributions](#)
- Your employer will handle the deductions; you do not need to take any action
- PFML availability is not dependent on who you are employed by. If you change jobs or become unemployed, PFML may still be available to you.
- PFML is separate from FMLA, the federally-mandated [Family and Medical Leave](#).

Eligible types of leave under PFML:

Paid medical leave may be taken to [Manage your own serious health condition](#)

Medical Leave provides up to 20 weeks per year of paid leave when you are incapacitated from doing your job due to a [serious health condition](#).

A “serious health condition” is defined as an illness, injury, impairment, or physical or mental condition that involves receiving care in a hospital, hospice, or residential medical facility, or continuing treatment by a health care provider. This includes treatment for mental health, substance use/misuse or addiction.

When you apply for medical leave, you will need a [Certification of a Serious Health](#)

[condition form](#) from your Health Care.

Paid family leave may be taken to [Care for a family member](#) with a serious health condition.

Up to 12 weeks of family leave may be taken per year to care for a family member with a [serious health condition](#).

For the purposes of family leave used to care for a family member, family members include your spouse, domestic partner, child, parent, grandchild, grandparent or sibling; the parent of your spouse or domestic partner; and guardians who legally acted as a parent when you were a minor. Where your family member lives does not affect their eligibility. You can take paid family leave to care for a family member with a serious health condition no matter where they are.

When you apply for family leave to care for a family member, you will need to provide:

1. Information from your family member's [health care provider](#) that states:
 - That your family member has a [serious health condition](#)
 - When your family member's condition began
 - How long they think your family member's condition will continue
 - Any other relevant details about your family member's condition
 - Information about how often and how long your family member needs you to care for them
2. The name and address of your family member and their relationship to you
3. Proof of your family member's identity

Below are examples of the types of Paid Family Leave that may be taken.

- [Bond with a child](#) during the first 12 months after the child's birth
- [Bond with a child](#) during the first 12 months after adoption or foster care placement
- [Care for a family member](#) who is or was a member of the Armed Forces, National Guard or Reserves and developed or aggravated a serious health condition in line of duty on active duty while deployed to a foreign country
- [Manage family affairs](#) when a family member is on or has been called to active duty in the armed forces, including the National Guard or Reserves

If you've been unemployed for up to 26 weeks, you may be eligible for PFML benefits.

For more specific information please see: [PFML Employee Toolkit](#)

Here is a short and simple video on the differences and similarities between FMLA and PFML. [How PFML is different than FMLA](#)

- **Worker's Compensation** covers employees injured at work. The widespread use of opioids in the general population, but more specifically among injured workers, puts more injured workers at risk for addiction and fatal overdose. Injured employees need to educate themselves on the risks of opioid pain medications.

You may be eligible for workers' compensation benefits for a work related illness or injury. If you qualify, you can receive payments to partially replace your paycheck and for medical care related to your injury. You may also be eligible for vocational rehabilitation if you need help getting back to work. If the workers' compensation insurance company denies your claim, you can file an appeal with the Department of Industrial Accidents (DIA), which oversees the workers' compensation system in Massachusetts. For more information regarding how to apply please refer to the following link. [Workers' Compensation for Injured Workers](#).

Employees are advised to thoroughly educate themselves on all medications that might be prescribed to them in the course of treatment for a work-related illness or injury.

Employees are encouraged to have good self-care following a worker's comp injury. How the employee is treated regarding taking time off to attend to their injuries will help in the healing process.

- **Employee Assistance Programs-** Many organizations have Employee Assistance Programs that can typically help employees with a range of issues from financial to mental health and substance use/misuse challenges.

Employees can ask their employer or look for notices on your organization's website or intranet site or posted in break rooms or common areas of employment for information on the company's EAP. Employees can access their employer's EAP anonymously. Participation in an EAP is considered confidential. Employers are not meant to have any

knowledge as to who in the workplace has sought the services of an EAP. Some EAP programs have more sophisticated services than others. For example, some EAP's can work with the manager and the employee concurrently on a plan for performance management and improvement.

Below are some examples of types of emotional issues an employee assistance programs might support:

- Financial struggles
- Mental health concerns
- Substance abuse issues
- Grief or loss of a loved one
- Workplace conflicts
- Marital and family problems
- Legal concerns
- Childcare and transportation struggles
- Emergency preparedness concerns
- Elder care issues

Most issues that may cause employees mental or emotional distress may be covered by an EAP.

- **Understanding your employer's benefits and health plans-** For employees, it is very important to understand the health and wellness plans offered by your employer. Often, these plans are complicated and you may feel the need for confidentiality in obtaining information relating to your benefits.

Here are two guides from the US Department of Health and Human Services (CMS) to help employees understand some of the most important basics;

[Roadmap Booklet](#)- provides an overview on putting your health first, understanding your health care coverage, knowing where to go for care and finding a provider etc.

[A Roadmap to Behavioral Health – A Guide to Using Mental Health and Substance Use Disorder Services](#)- builds on the information in the Roadmap Booklet with an emphasis on behavioral health.

Employees would benefit from understanding what services are covered in their plan if they should need inpatient treatment for a substance use disorder or for a mental health condition. Or, an employee may need to understand what the cost of seeing a behavioral health clinician would be and how to find providers in their plan.

It is recommended that employees understand how the various laws work and how they coincide with the benefits they receive from the company. For instance, if an employee needs to take an immediate leave of absence to address a substance use disorder, knowing how much accrued time off the employee has can help to minimize stress during an already challenging time.

- **Employees Should Understand Job Protections While Participating In A Medication Assisted Treatment Program.** The EEOC's new [guidance for employees](#) explains that the ADA allows employers to terminate and take other employment actions based solely on an employee's illegal use of opioids.

The guidance makes clear that “[i]f you are using opioids, are addicted to opioids, or were addicted to opioids in the past, but are not currently using drugs illegally,” the ADA may apply. Thus, if an employee is participating in a MAT program for opioid addiction, then the employee has a valid prescription for an opioid-based medication and their use of the medication is legal. As such, the ADA prohibits an employer from denying a job or terminating an employee because they are in a MAT program, unless the employer has objective evidence that the employee cannot do the job or poses a direct threat to their own health and safety or to others that cannot be eliminated by reasonable accommodation.

An employer cannot take an employment action because of remote or speculative risks. The guidance states that an employer may want an employee to undergo a medical evaluation to make sure it has enough objective evidence about what the employee can safely and effectively do.

6) EMPLOYER LEGAL RESPONSIBILITIES RELATED TO DRUG USE, TREATMENT AND RECOVERY

It is incumbent upon employers to understand their responsibilities related to employee mental health, substance use disorder, addiction treatment and recovery. Employer responsibility comes in many forms including adherence to federal, state and local laws as well as the

employer's humane and legal responsibility to provide a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. Furthermore, taking employer responsibilities seriously is good for business. Employees who feel treated fairly are retained and make for a positive workforce.

In the following sections, we will provide resources and information on the legal issues governing employer responses and other recommended actions employers can take to create a workplace that values and respects the employee in a time of personal challenge relating to mental health, substance use disorder or addiction challenges.

According to SAMHSA, the following laws most impact the workplace regarding mental health, substance use disorder or addiction challenges.

1) Most relevant federal laws applicable to protecting employees in the workplace:

a) Americans With Disabilities Act (ADA) of 1990

The [Americans With Disabilities Act \(ADA\)](#) is perhaps the most important federal civil rights legislation that affects employers when developing and implementing workplace policies that relate to mental health, substance use disorder or addiction challenges. It prohibits all U.S. employers with more than 15 employees from discriminating against qualified job applicants and employees because of a physical disability and/or mental health challenge. The ADA is landmark legislation that protects individuals who have a disability.

The ADA does not, in any way, prohibit employers from having a drug-free workplace policy, nor does it provide any special protection to individuals who are currently using illegal drugs. However, it is a violation of the ADA for employers to discriminate against people with addiction to alcohol and substance users who are in recovery and no longer engaging in the current illegal use of drugs.

Under the terms of the ADA:

- Employers cannot fire, refuse to hire, or refuse to promote people simply because they have a history of substance use.
- Employers also cannot fire, refuse to hire, or refuse to promote employees merely because they enrolled in a drug or alcohol rehabilitation program.

Employers who have [drug-testing programs](#) need to be extremely careful not to single out employees for testing simply because they look or act as though they are under the influence of drugs or alcohol without having clear criteria for behaviors that warrant testing. Many of the physical symptoms that are commonly associated with substance use—slurred speech, disorientation, or a lack of coordination—can also be the result of a serious physical disability or medical condition, such as diabetes, low blood sugar, or mental illness. Individuals with these conditions are protected under the provisions of the ADA. Singling them out for testing or disciplinary action could result in charges of discrimination.

Employers should refrain from asking employees about their legal prescription drug use as part of the pre-hiring or pre-promotion drug-testing process. While the case law in this area is still evolving, some state courts have ruled that requesting such information constitutes a form of discrimination and is in violation of the ADA.

Alleged violations of the ADA account for almost half of all lawsuits involving drug-free workplace programs, so it is extremely important for employers to acquaint themselves with the details of this legislation. Additional information about the ADA can be obtained by contacting the Department of Justice's (DOJ) ADA hotline at 800-514-0301 or accessing [DOJ's ADA Information and Technical Assistance website](#).

Here is a link to a summary developed by the New England ADA Project [Addiction, Recovery and the ADA](#).

The ADA of 1990 mandates that all employers must engage in an interactive process to determine if a reasonable accommodation of the employee's disability can be made.

The Equal Employment Opportunity Commission (EEOC) defines the interactive process as: "an informal, interactive process ... to identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

The **interactive accommodation process**, or simply **interactive process**, refers to the collaborative effort involving an employer and employee to determine if the employee can return to work subsequent to an occupational or non-occupational injury, disease or disorder.

The process typically involves a face-to-face meeting with the employee and representatives for the employer (usually a human resources or risk management representative). The parties bring various ideas to the table regarding whether the employee can be accommodated in returning to their usual and customary (U&C) position or some other type of work. The parties may agree that a certain aspect of the U&C position can be modified, or alternative work found, to accommodate the employee's change in capacity. For more information on the [Interactive accommodation process](#), click on this link.

It is important to remember that employers cannot fire, refuse to hire, or refuse to promote someone simply because she or he has a history of substance use. Additionally, employers also cannot fire, refuse to hire, or refuse to promote employees merely because they are enrolled in a drug or alcohol rehabilitation program.

This [guidance for health care providers](#) provides information on reasonable accommodations and how to address an employer's safety concerns. Reasonable accommodations include an altered break or work schedule, a change in shift assignment, or a temporary transfer to another position. However, an employer never has to lower production or performance standards, eliminate essential functions of a job, pay for work that is not performed, or excuse illegal drug use on the job as a reasonable accommodation.

With respect to employers determining whether an employee poses a direct threat to themselves or others, the guidance states that it is not enough for health care providers to provide the employer with restrictions such as "no operating heavy machinery." The guidance explains that employers need information that will help them assess the level of risk posed by the disability, taking into account the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the imminence of the potential harm. This information should include relevant medical events or behaviors that could occur on the job, the probability that they will occur, and whether any safety precautions would reduce the chances that the medical event or behavior will occur.

b) Civil Rights Act of 1964

The [Civil Rights Act \(PL 88-352\)](#) is a landmark law that prohibits private employers with 15 or more employees from discriminating against individuals on the basis of race, sex, religion, or nationality. Employers who implement substance use/misuse workplace policies need to keep in mind [Title VII of the Civil Rights Act](#).

Employers should make sure that their programs treat all workers equally and avoid singling out any particular racial, ethnic, or gender group for testing or disciplinary action.

In large workplaces that are racially and ethnically diverse, it is also wise to involve a diverse and representative group of employees in formulating your policy. Many organizations have a diversity and inclusion task force. In order to make this a substantive process as opposed to simply "window dressing" it is important that this group have access to and interact with the top leadership levels of the organization. This will help ensure that you produce a program that is culturally competent, fairly enforced, and sensitive to the needs of all employees.

More information on Title VII of the Civil Rights Act is available from the [Equal Employment Opportunity Commission \(EEOC\)](#).

c) Family and Medical Leave Act (FMLA) of 1993

The [Family and Medical Leave Act \(FMLA\) \(PL 103-3\)](#) is a federal law that applies to all public agencies and to private employers with more than 50 workers. Under FMLA, these employers must allow employees who have worked for the employer for at least one year and who have worked at least 1,250 hours in the past 12 months to take up to 12 weeks of unpaid, job-protected leave because of their own serious health condition or to care for a spouse, child, or parent who has a serious health condition.

Eligible employees may use their FMLA leave to deal with Substance Use Disorders and related problems, including:

- Treatment of drug or alcohol addiction
- Treatment of another physical illness or incapacity related to substance use (such as kidney failure)
- Caring for a close family member who is undergoing treatment for these conditions

FMLA also prohibits employers from retaliating against workers who request FMLA leave. For example, an employer cannot demote, fire, or refuse promotion to an employee simply because that employee takes 12 weeks off for treatment of a mental health or substance use/misuse disorder. Employers also are prohibited from taking any action against workers who request time off to care for addicted family members. For more information, visit the U.S Department of Labor's [\(DOL\) FMLA guide](#).

It is the employer's **responsibility** to initiate the process for Family and Medical Leave Act (FMLA) leave even if the **employee** has not asked for it. **FMLA** regulations clearly state that the **employee** does not have to expressly **request FMLA** leave.

Since its enactment in 1993, the Family and Medical Leave Act (FMLA) has served as the cornerstone of the Department of Labor's efforts to promote work-life balance and to support the principle that no worker should have to choose between the job they need and the family they love. With the FMLA, our country set a priority to give workers the ability to balance the demands of work and family. It made the healthy development of babies, healthy families, and healthy workplaces a priority. It was a remarkable accomplishment at the time and, since its enactment, the FMLA has been used more than 100 million times to help workers balance the demands of the workplace with the needs of their families and their own health.

For a complete guide to the FMLA, please see the [Employer's Guide to the Family and Medical Leave Act](#). Many states have passed additional legislation which compliments or builds upon the federal FMLA requirements.

d) The National Labor Relations Act (NLRA) of 1935 and Unionized Workplaces

Employers implementing substance use/misuse workplace policies in unionized workplaces need to be aware of the requirements of the [National Labor Relations Act \(NLRA\)](#). Passed in 1935, this law provides a legal framework for all management and labor negotiations.

Under the NLRA, any drug-testing program affecting unionized workers must be negotiated and agreed on with the union through a formal collective bargaining process. Even when an employer is required to implement a drug-testing program by another federal mandate, such as the [Omnibus Transportation Employee Testing Act of 1991](#), the employer must negotiate with the union to determine exactly when testing will be conducted and what penalties should apply to workers who test positive for drug or alcohol use.

All too often, employers assume that negotiating a drug-testing agreement or drug-free workplace policy with their unions will be an unpleasant and adversarial process. However, some unions support such programs because of their potential to reduce workplace injuries and accidents.

More information on how employers can work collaboratively with unions is available from the [National Labor Relations Board \(NLRB\)](#).

e) Occupational Safety and Health Act (OSHA)

Requires employers to comply with occupational safety and health standards issued by the Occupational Safety and Health Administration (OSHA) and to provide employees with a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm. Following are OSHA'S [Guidelines for Safety and Health Programs](#).

Stipulated below are [OSHA's Injury and Illness Recordkeeping and Reporting Requirements](#) which apply to employers with more than 10 employees:

Recordkeeping Requirements

Many employers with more than 10 employees are required to keep a record of serious work-related injuries and illnesses. ([Certain low-risk industries are exempted.](#)) Minor injuries requiring first aid only do not need to be recorded.

- How does OSHA define a recordable injury or illness?
- How does OSHA define first aid?

This information helps employers, workers and OSHA evaluate the safety of a workplace, understand industry hazards, and implement worker protections to reduce and eliminate hazards preventing future workplace injuries and illnesses.

Maintaining and Posting Records

The records must be maintained at the worksite for at least five years. Each February through April, employers must post a summary of the injuries and illnesses recorded the previous year. Also, if requested, copies of the records must be provided to current and former employees, or their representatives.

- [Get recordkeeping forms 300, 300A, 301, and additional instructions.](#)
- [Read the full OSHA Recordkeeping regulation \(29 CFR 1904\).](#)

Electronic Submission of Records

The Injury Tracking Application (ITA) is accessible from the [ITA launch page](#), where you can provide the Agency your OSHA Form 300A information. The date by which **certain** employers are required to submit to OSHA the information from their completed Form 300A is March 2nd of the year after the calendar year covered by the form.

Severe Injury Reporting

Employers must report any worker fatality within 8 hours and any amputation, loss of an eye, or hospitalization of a worker within 24 hours.

For more information, please refer to SAMHSA's document on [Workplace Legal Federal Laws](#).

2) Most relevant Massachusetts State laws protecting employees in the workplace and with which employers must comply:

a) Massachusetts Employment Rights Of People With Disabilities (Massachusetts State ADA)

In Massachusetts, the state law, [Employment rights of people with disabilities](#), MGL c. 151B covers employers with 6 or more employees. The ADA states that people with addiction to alcohol and those in recovery from addiction to opioids and other drugs are considered people with disabilities. They must, however, meet the ADA's definition of disability. To learn more about employee rights and employer obligations under the ADA, contact the [New England ADA Center](#) or call 1-800-949-4232.

Specifically, under the terms of the ADA:

- Employers cannot fire, refuse to hire, or refuse to promote someone simply because she or he has a history of substance use.
- Employers also cannot fire, refuse to hire, or refuse to promote employees merely because they are enrolled in a drug or alcohol rehabilitation program.
- Employees have a right to ask for a reasonable accommodation to take time off from work to enter a treatment or rehabilitation program. Employers have an obligation to provide a reasonable accommodation unless they can prove it would cause great difficulty or expense.

To learn more about employee rights and employer obligations under the ADA, contact the [New England ADA Center](#) or call 1-800-949-4232.

b) Worker's Compensation

All employers in Massachusetts are required to carry workers' compensation insurance covering their employees, including themselves if they are an employee of their company. This requirement applies regardless of the number of hours worked in any given week, except that domestic service employees must work a minimum of 16 hours per week in order to require coverage.

Employers are required to notify their employees of the name of the workers' compensation insurance carrier. A **NOTICE TO EMPLOYEES** poster must be posted in a common area of the workplace in English and other appropriate languages. The poster can be obtained by calling the DIA, or visiting the website at www.mass.gov/dia or from your insurance company. Failure to post this information may subject the employer to a fine of \$100.

The Massachusetts workers' compensation system is in place to make sure that workers are protected by insurance if they are injured on the job or contract a work-related illness. The system also limits employer exposure to liability for workplace injuries and illnesses (except in cases of willful negligence).

Under this system, employers are required by Massachusetts General Laws c. 152, § 25A to provide workers' compensation (WC) insurance coverage for all their employees. This insurance pays for any reasonable and necessary medical treatment related to the injury or illness and also pays partial compensation for lost wages after the first 5 calendar days of total or partial disability.

The Department of Industrial Accidents (DIA) is the agency responsible for administering the workers' compensation law in Massachusetts. Employers in Massachusetts have certain obligations under this law. This guide outlines an employer's requirements for compliance with the law. [Employers Guide To Workers Compensation](#)

As stipulated in the National Safety Council's document [A Fatal Cure for Injured Workers](#), employers and workers' compensation carriers have a moral and fiduciary obligation to protect injured workers from compensable harm by:

- Educating workers to the risks of opioid pain medications
- Managing opioid use with pharmacy benefit program
- Ensuring that medical providers adhere to evidence-based prescribing guidelines and use state prescription monitoring programs
- Obtaining a thorough patient history including mental health and substance use assessments at initiation of workers' compensation cases

c) Massachusetts Paid Family Leave Act- Employers must understand their responsibility to comply.

PFML stands for Paid Family Medical Leave. It's a state-offered benefit for anyone who works in Massachusetts and is eligible to take up to 26 weeks of paid leave for medical or family reasons. PFML is funded through a Massachusetts tax, and is separate from both the federally mandated benefits offered by the Family Medical Leave Act (FMLA) and from leave benefits that may be offered by your employer.

For more info, you may refer to [Massachusetts employers Paid Family and Medical Leave](#) for more details.

Eligible types of leave

Paid medical leave may be taken to:

- [Manage your own serious health condition](#)

Paid family leave may be taken to:

- [Care for a family member](#) with a serious health condition
- [Bond with a child](#) during the first 12 months after the child's birth
- [Bond with a child](#) during the first 12 months after adoption or foster care placement
- [Care for a family member](#) who is or was a member of the Armed Forces, National Guard or Reserves and developed or aggravated a serious health condition in line of duty on active duty while deployed to a foreign country
- [Manage family affairs](#) when a family member is on or has been called to active duty in the armed forces, including the National Guard or Reserves

d) Criminal Record Discrimination in the Workplace (Massachusetts)

Employers may not ask about, maintain a record of, or base any employment decision on the following information if they have requested it.

- Arrests or prosecution that did not lead to a conviction
- A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace
- Misdemeanors where the date of conviction or the end of any period of incarceration was more than five years ago, provided that there have been no subsequent convictions within those five years
- Note that in Massachusetts CORI records are sealed and cannot be seen three years after a misdemeanor has been resolved and, in most cases, seven years after a felony has been resolved
- Any record of a court appearance which has been sealed under state law
- Anything pertaining to juvenile record, including delinquency and child in need of services complaints, unless the juvenile was tried as an adult in Superior Court
- An employer may not take action against an applicant or employee for answering an unlawful question untruthfully. It is also illegal for an employer to request from an applicant or employee a copy of a probation or arrest record or to ask for an applicant or employee to sign a release permitting access to such information.

Employer Responsibilities:

It is lawful for an employer to ask the following:

Have you ever been convicted of a felony?

Within the last five years have you been convicted of, or released from incarceration for a misdemeanor which was not a first offense for drunkenness, simple assault, speeding, a minor traffic violation, or disturbing the peace?

An employer that applies for and is granted access to criminal record information by the Massachusetts Criminal History Systems Board under the Criminal Record Information Act (CORI) may obtain some information on the criminal records of an applicant or employee.

Access to information under CORI is limited to that which is necessary to perform the relevant criminal justice or statutory duties. Here is a link to the [C.O.R.I. Procedure Reforms Fact Sheet](#)

It is also illegal for an employer to request from an applicant or employee a copy of a probation or arrest record or to ask for an applicant or employee to sign a release permitting access to such information.

e. Good Samaritan Laws--Passed in 2012, [the Massachusetts Good Samaritan Law](#) encourages someone who witnesses an overdose to seek help from professionals by providing the caller, and the person who overdosed, protection from arrest and prosecution for drug possession. The goal is to protect people so they are not afraid to involve emergency services as soon as possible.

Good Samaritan laws vary from state to state. In MA, it does not protect people from arrest for other offenses, such as selling or trafficking drugs, or from existing warrants. The law does protect the caller and overdose victim from arrest and/or prosecution for simple drug possession, possession of paraphernalia, and/or being under the influence. To find out more information about the law in MA and other ways you can help prevent overdose, visit the MA Bureau of Substance Addiction Services [website here](#). To find out about this law in other states, [click here](#).

f. Laws Related To Confidentiality-Massachusetts Privacy: What you need to know

The Massachusetts Right of Privacy Act guarantees individuals the right to be secure from “unreasonable, substantial, or serious interference” with their privacy (*MA Gen. Laws Ch. 214 Sec. 1B*). Intrusions into areas in which the person has a legitimate expectation of privacy are prohibited. In determining whether an employer has violated the Privacy Act, courts balance

the employer's legitimate business interest against the substantiality of the intrusion on the employee's privacy (*Gauthier v. Police Comm'r of Boston*, 408 Mass. 335 (1990)).

Most relevant to employers, the law states that it is not a violation to have an office intercommunication system that is used in the ordinary course of business. Although the statutory language may be unclear, the courts have interpreted it to mean that it is lawful for an employer to monitor employees' phone calls and e-mail, provided the employer has a legitimate business reason to do so.

[HERE IS A LINK TO A CHART SUMMARIZING APPLICABLE FEDERAL, STATE, LOCAL AND UNION LEGAL REQUIREMENTS](#)

SUMMARY CHART OF APPLICABLE FEDERAL, STATE, LOCAL, UNION AND OTHER LEGAL REQUIREMENTS

The chart below illustrates an overview of applicable federal, state, local, union and other laws, or contractual obligations that employers must adhere to based on the number of employees.

Federal	Description	Er. SizeTo Comply	Posting Requirements
ADA	Makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business.	Covers employers with 15 or more employees.	Posting Requirements. Covered by Title VII posting requirements (below). Notice Requirements. None.
FMLA	Entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.	Covers employers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year.	All covered employers are required to display and keep on display a poster explaining the provisions of the FMLA and telling employees how to file a complaint with the Wage and Hour Division of violations of the Act. The poster must be displayed prominently where employees and applicants for employment can see it .The poster and all the text must be large enough to be easily read and contain fully legible text. Covered employers must display the poster even if no employees are eligible for FMLA leave. Where the employer's workforce consists of a significant portion of workers who are not literate in English, the employer is required to provide the notice in a language in which the employees are literate. Notice Requirements. Covered employers are required to provide certain notices (General, Eligibility, Rights and Responsibilities, and Designation) at different times. These notices are explained in WHD Fact Sheet #28D.(36)
Drug-Free Workplace Act of 1988(15) (41 U.S.C. § 8101 et	Requires some federal contractors and all federal grantees to agree that they will provide drug-free workplaces as a precondition of receiving a contract or grant from a federal agency.	Applies to each federal contract or grant on a case-by-case basis. You will need to determine coverage(16) for	Under the Drug-Free Workplace Act, government contractors or employers receiving federal grants must certify to the contracting agency that they will maintain a drug-free workplace. This can be done by: 1. Publishing a statement(17): Notifying employees that the unlawful manufacture, distribution, possession, or use of a controlled

seq.)		each federal contract or grant you have, or for which you are applying.	substance is prohibited in the workplace, Specifying the action that will be taken for violations of this policy; and 2. Establishing a drug-free awareness program to inform employees about the danger of drug abuse in the workplace, the contractor's drug-free policy, available counseling and employee assistance programs, and penalties for violations.
Mental Health Parity and Addiction Equity Act of 2008 (MHPEA)(62)	Requires group health plans and health insurance issuers to ensure that financial requirements (such as co-pays, deductibles) and treatment limitations (such as visit limits) applicable to mental health or Substance Use Disorder (MH/SUD) benefits are no more restrictive than the predominant requirements or limitations applied to substantially all medical/surgical benefits. MHPAEA supplements prior provisions under the Mental Health Parity Act of 1996 (MHPA), which required parity with respect to aggregate lifetime and annual dollar limits for mental health benefits.	Applies to employers with more than 50 employees.	Posting Requirements. None Notice Requirements. None
Occupational Safety and Health Act (OSH Act) of 1970(66) (29 U.S.C. § 651 et seq.)	Requires employers to comply with occupational safety and health standards issued by the Occupational Safety and Health Administration (OSHA) and to provide employees with a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm.	Applies to all employers.	Covered by Title VII posting requirement (above). Notice Requirements. None. All covered employers are required to display and keep displayed the OSHA Job Safety and Health: It's the Law(67) poster unless the employer's workplace is located in a state that operates an OSHA-approved state plan(68). There is a separate poster for Federal agencies. The OSHA poster must be displayed in a conspicuous place where employees can see it. Reproductions or facsimiles of the poster must be at least 8 1/2 by 14 inches with 10 point type. Notice Requirements. Employees, former employees and their representatives have the right to review the OSHA Form 300, Log of Work-related Illnesses and Injuries, in its entirety. Employers are required to post the Summary of Work-related Injuries and Illnesses (Form 300A) in a visible location so that employees are aware of the injuries and illnesses that occur in their workplace. Employers are required to post the Summary Form (300A) by February 1 of the year following the year covered by the form and keep it posted until April 30 of that year.
State	Description	Er. SizeTo Comply	Posting Requirements

PFML	<p>PFML is a Massachusetts law that provides up to 12 weeks paid leave to bond with a new child or to care for a family member with a serious health condition and up to 20 weeks of paid leave for an employee who is incapacitate from doing their job due to a serious health condition. PFML applies to all MA employers regardless of size. (There are a few exceptions). Other differences from the federal FMLA include a broader definition of family, waiting periods for eligibility, and size of the employers that are required to participate. Covered individuals include: W-2 workers who work in Massachusetts, whether they are full-time, part-time, or seasonal. Self-employed individuals. 1099-MISC workers who work in Massachusetts, do not qualify as independent contractors, and who make up more than 50% of their employer's workforce</p>		<p>Information about the Massachusetts PFML must be posted at the worksite. To learn about the requirements for employers and the law go to the Massachusetts PFML Fact Sheet Web Site.</p>
Mass ADA	<p>In Massachusetts, the state law, MGL covers employers with 6 or more employees. The ADA states that people with addiction to alcohol and those in recovery from addiction to opioids and other drugs are considered people with disabilities. They must, however, meet the ADA's definition of disability.</p>		
Local	Description	Er. Size To Comply	Posting Requirements
Other			
Union Contract	<p>Employers who have union contracts must refer to the negotiated contract for guidance on applicable articles referring to paid family leave and other protections for employees who suffer with mental health, substance use/misuse or addiction challenges.</p>	<p>refer to union contract</p>	<p>refer to union contracts.</p>

7) EMPLOYER ETHICAL AND MORAL OBLIGATIONS, INCLUDING MAINTAINING A SAFE AND HEALTHY WORKPLACE

Employers have ethical and moral obligations to fulfill as part of the [psychological contract](#) between employee and employer. There are many ways employers can demonstrate concern for their employees. Maintaining health and safety in the workplace is essential for supporting employees and their families, clients and customers. Employee retention and a healthy workforce are good for business!

According to a poll by the National Safety Council, 75% of U.S. employers have been directly affected by opioids but – startlingly – only 17% feel extremely well prepared to deal with the issue, according to a survey released by the National Safety Council in recognition of Poison Prevention Week. Thirty-eight percent have experienced absenteeism or impaired worker performance, and 31% have had an overdose, arrest, a near-miss or an injury because of employee opioid use. For more info on this report, please see: [Poll: 75% of Employers Say Their Workplace Impacted by Opioid Use](#).

According to this report, “The opioid crisis is truly encompassing nearly every aspect of American lives. Today’s survey confirms that the No. 1 cause of preventable death is not just taking its toll on our home lives, but companies across the country are also grappling with the impact of this epidemic,” said Nick Smith, interim president and CEO of the NSC. “If there is a silver lining, it’s that we have an opportunity to gain the attention and resources of American businesses to combat this societal scourge. NSC is committed to working with employers to define best practices and support a two-pronged approach of confronting the crisis in our homes and workplaces.”

For the first time in U.S. history, a person is more likely to die from an opioid overdose than from a motor vehicle crash, according to NSC calculations. In fact, workplace overdose deaths involving drugs or alcohol have increased by at least 25% for five consecutive years, according to the Bureau of Labor Statistics.

Other key findings from the survey include:

- Employers are more concerned about hiring qualified workers, and employee benefits and worker compensation costs than they are about employee use of legal prescription opioids or illicit use/sale of opioids. However, opioid misuse – legal or illicit – can impact all other issues employers cited as more concerning.
- 86% of employers believe taking opioids even as prescribed can impair job performance, yet only 60% have policies in place requiring employees to notify their employer when they are using a prescription opioid.

- Only half of employers are very confident that they have the appropriate HR policies and resources to deal with opioid use and misuse in the workplace.
- 79% are not very confident that individual employees can spot warning signs of opioid misuse
- Encouragingly, 41% of employers would return an employee to work after he or she receives treatment for misusing prescription opioids.

The following sections include resources and information on recommended actions employers can take to create a workplace that values and respects the employee in a time of personal challenge relating to a mental health, substance use/misuse or addiction challenge.

a) Ethical responses - what kind of workplace do you want to be ?

Because of the pandemic, today's workplace has been forced to pivot in ways previously never considered. Organizations are assessing new ways of conducting business that will optimize the current organization in transformative ways to carry it through to its future sustainable state. All across the globe today, organizations are considering new and creative organizational culture paradigm shifts that will set the workplace up for long term health for both the employees and the organization.

Think of an organizational paradigm as the broad set of norms, values, and practices in place that guide behavior and decision-making. Longstanding paradigms may no longer fit with the organization's current needs or those of its customers, beneficiaries, or environment, rendering it less capable of accomplishing its mission. This is a time of great soul searching and soul shifting for organizations and it is a great time to consider and effectively implement change.

Right now, employers have the ability to change the culture of their workplaces in every aspect of the organization from creating a culture of caring for employees to creating a culture of delivering a great customer/client experience. One of the strongest prevention mechanisms an employer can provide is a supportive workplace culture. This can lessen the impact of other factors that put people more at risk for developing a mental health, substance use/misuse, addiction disorder. If employees feel supported and encouraged to seek help when needed, an early diagnosis can help prevent emerging Substance Use Disorders from progressing and becoming worse.

Employers can commit to and promote a culture of health and wellness in the workplace. Activities may include employee committees on health and wellness, health fairs and brown bag lunches on health topics, and other activities promoting a healthy lifestyle.

Other paradigm shifts organizations can consider are the following:

- How to minimize stress in the workplace. How to encourage self-care, and support from managers and supervisors when employees express stress.
- How to promote ergonomic and overexertion initiatives and follow best practice to reduce all injury risk in the workplace
- How to support recovery in the workplace. Do not serve alcohol at work-sponsored events. Educate employees on treatment and recovery. Consider the impact on employees struggling with addiction when an employer holds a virtual or in person happy hour.
- How to connect with the community: host or participate in drug take- back programs, and learn about community initiatives and resources
- See the section in this toolkit on "[Recovery Supportive Workplaces](#)"

b) Employers can help stop the stigma:

In the workplace, mental illness, substance use/misuse and addiction remain a largely taboo subject. Employers can have a major impact on stopping the stigma associated with mental illness, substance use/misuse and addiction by educating their employees on understanding and on how to help an employee who may be struggling with these challenges.

The Employer's Role In reducing stigma and discrimination in the workplace

Employers can play an important role in addressing the stigma of Substance Use Disorder including opioid use disorder. According to the National Safety Council's report here are some ways to reduce stigma in the workplace. Also see the article: [NSC Understanding Stigma](#):

Key Steps For Employers:

- a. Openly discuss and provide education on SUDs and OUDs, which can help reduce the shame and stigma and open the door for people who need help
- b. Be advocates in the community, and support community partners and resources for recovery
- c. Ensure and support equal access to all treatments that have proven success records

- d. Provide a confidential employee assistance program
- e. Revise policies from “zero tolerance” to allow for recovery and potential relapse
- f. Use inclusive, non-stigmatizing verbal and written language in the workplace. Avoiding harsh, punitive language promotes a culture of support and understanding. Some examples include:
 - Instead of “drug/opioid abuse,” say “substance/opioid use or misuse.”
 - Instead of “drug/opioid abuser,” “addict” or “junkie,” say “person with a substance/opioid use disorder.”
- g. Gently correct people who use stigmatizing terms or who apply negative stereotypes to people with SUDs.

Here is a short 4 minute video called [Stop the Stigma](#). We invite you to view it. It will be worth your time.

Language in the workplace counts

Use This!	Not This!
Person with a substance use disorder, person engaged in risky use of substances	Junkie, Addict, Druggie, Alcoholic, user
Negative, Positive (when referring to drug test results), substance free	Clean, Dirty (when referring to drug test results)
Unhealthy/risky/harmful substance use, inappropriate use, hazardous use, problem use	Drug abuse, misuse, abuse
Maintaining recovery	Staying clean
Substance misuse disorder, alcohol and drug disorder, alcohol and drug disease, active addiction	Habit or drug habit

c) Employers can greatly influence and support employee retention:

According to the National Safety Council, [Implications of Drug Use for Employers](#), the typical employee misses about [two work weeks](#) (10.5 days) annually for illness, injury or reasons other than vacation and holidays. Workers with Substance Use Disorders, however, miss nearly 50% more days than their peers, averaging nearly three weeks at (14.8 days) a year. Workers with pain medication use disorders miss nearly three times as much – nearly six weeks (29 days). Most of these extra days of missed work are associated with illness and injury, adding up to more than 22 days annually.

Employees in recovery who report receiving substance use treatment in the past and have not had a Substance Use Disorder within the last 12 months miss the fewest days of any group – even the general workforce – at 9.5 days. According to one of our local recovery coaches, “People in recovery are the best employees. They are grateful for their recovery and for the opportunity to work.”

According to the Society for Human Resource Management, [How To Reduce Employee Turnover](#), employers have much control over the reasons for turnover in their workplaces. Roughly 42 million U.S. employees, or more than one in four workers, will leave their jobs to go work for another company, according to the *2018 Retention Report: Truth and Trends in Turnover*. Employers need to up their game in the realm of employee turnover and focus on the reasons why employees leave and the changes that are needed to keep turnover low in their organizations.

The costs of turnover to organizations can be extremely high, not only in financial terms but in terms of lost institutional knowledge, lost productivity, disengaged remaining employees and a potential negative impact on the organization’s reputation which can greatly impede the organization’s ability to continue to grow.

According to Employee Benefits News, they reported in 2017 that turnover can cost employers 33 percent of an employee’s annual salary. The culprit? The hiring of a replacement. To put a dollar amount on it, if the employee earned a median salary of \$45,000 a year, this would cost the company \$15,000 per person — on top of the annual \$45,000. In our experience the major reasons employees leave are related to their feeling devalued, disrespected, not supported and that they are not receiving the proper training and support to do their job correctly.

The costs of turnover include such factors as:

- Exit costs- HR, client, managerial time
- Absence costs - loss of work coverage, productivity disruption
- Recruitment costs - advertisement, recruitment, interviews
- Onboarding - new hire training, productivity ramp-up

Strategies to support employee retention can include the following:

- A thorough analysis of the position and the requirements including behavioral, technical and skill levels needed to successfully perform the job.
- A selection strategy based on understanding the skills, knowledge, behaviors and abilities needed to successfully perform the job.
- A comprehensive onboarding strategy that begins from day one and continues throughout the first 30, 60, 90 days of employment.
- Company leaders and managers that are committed to continuously focusing on the employee's needs and expectations to maximize the retention of the employee. This can be done by creating a safe environment for continuous learning and feedback through both an informal and formal process such as yearly reviews.
- Creating a company culture that focuses on a positive employee experience. This includes creating a culture of caring for, connecting with and valuing the contribution of each member of the organization.

d) Employers can work with their broker and/or health insurance company to build the best health and wellness plans for their workforce.

Employers can work directly with their broker and/or health insurance provider to ensure that their benefits package offers the necessary provisions for helping employees who may be struggling with mental health, substance use/misuse or addiction issues. Benefits and health care plans can provide preventative services as well as treatment.

Employers can also, on a quarterly basis or more frequently, work with their broker or health plan providers to review utilization of psychiatric services or treatment services to see if utilization is increasing. Employers can also review the utilization of pharmaceuticals to see whether there is an increase in drugs used for treating mental health, substance use/misuse, or addiction. These trends, including the utilization of pain medications such as opioids etc., should be reviewed and used only to guide the employer's actions in terms of training needs in the workplace.

For more info on working with your benefits broker or health care provider see [Preventing Opioid Misuse](#) which stipulates the following guidelines for employers in setting up health and wellness plans.

All services provided should be confidential, easy to access and easy to use.

- Ensure health care plans cover mental and behavioral health services
- Encourage annual screenings for Substance Use Disorders
- Ensure coverage of alternative pain management treatments including non-opioid drugs, acupuncture, chiropractic, physical and occupational therapy
- Add a program that helps manage the prescribing of opioids and prescription opioid use. Many pharmacy benefit management programs now offer opioid-specific services.
- Provide or increase access to employee assistance programs (EAPs). EAPs are an underutilized tool in providing help to employees and their loved ones who are working through an opioid use disorder. Easy access to support and medical care can prevent early stages of a Substance Use Disorder from becoming more serious.
- Encourage employers to review benefits including medical and prescription drug usage and ensure employer health plans cover all possible options – methadone, buprenorphine and naltrexone, as well as behavioral therapy.

Additionally, employers can design short and long term disability plans that can help an employee who may be suffering from the financial consequences brought on by the challenges of a mental health, substance use/misuse or addiction issue.

e) Communication strategy for employers and workplaces.

- There are many policies that organizations can implement to prevent opioid use /misuse. These policies can be customized to fit the needs of a specific workforce. Workplace policies help set expectations and boundaries for employees. For sample policies see the [section on sample policies in this toolkit](#).
- Have clear, compassionate substance use/misuse workplace policies in place. When employees understand and follow policies designed to prevent unnecessary opioid use, their risk for misusing opioids or developing an opioid use disorder decreases.
- Managers and supervisors are often the first to notice impairment or other signs of drug use. Train them on policies and procedures and on recognizing impairment. Identifying and addressing these situations early can prevent safety hazards, and prevent opioid misuse or OUD from becoming worse. See section 8 on How to Talk To Employees.
- Medical leave policies should be flexible enough for employees to attend medical appointments and heal fully before returning to work after an injury. Overly restrictive policies can lead to employees taking prescribed opioids for

longer than necessary or illegally obtaining opioids so they can return to work earlier even if they are not ready. This may also lead to skipping medical appointments necessary for recovery from injury or their recovery from an opioid use disorder.

f) Employers can get the most out of their Employee Assistance Programs

Workplaces have an opportunity to show concern and empathy for their employees by offering Employee Assistance Programs. An Employee Assistance Program is a work-based intervention program to help both the employee and employer deal with work performance issues that may be impacting an employee's performance on the job.

Typically, an employee would confidentially contact the EAP, however, there may be times when an employer needs to make a mandatory referral to an EAP. According to the Employee Assistance Professionals Association (EAPA) in its Standards and Professional Guidelines indicates, "Employees may voluntarily seek EAP assistance, or they may be referred to the EAP through constructive confrontation."

For more information on [can an employer require an employee to use the services of an employee assistance program](#), please see this reference article from the Society of Human Resource Management (SHRM).

Employers should communicate to employees that their job security will not be jeopardized as a consequence of seeking or using EAP services, except where mandated by law. However, employees who use an EAP are expected to adhere to the job performance requirements of the organization." Employers are urged to consult with legal counsel when deciding on a standing mandatory EAP referral policy or for use in specific circumstances.

In order for EAP's to be effective, they must be well communicated to members of the organization. Oftentimes, EAP utilization is low, however with the correct implementation and communication methods, employers can work to increase utilization of the EAP.

An EAP can help employees with a myriad of services including:

- Financial struggles
- Mental health concerns
- Substance abuse issues
- Grief or loss of a loved one
- Workplace conflicts
- Marital and family problems
- Legal concerns

- Childcare and transportation struggles
- Emergency preparedness concerns
- Elder care issues

Strong utilization is achieved with regular promotion through several key steps of promoting awareness, engaging employees and assessing and reassessing utilization. By building awareness of the EAP resources early, employees become familiar with the services and are more likely to use them. Quarterly Utilization Reports can provide a snapshot of how the EAP is being used within your organization and to uncover additional resources to help employees.

Employee assistance programs are entirely confidential, and [OPM](#) reports that there are laws in place protecting the privacy of people using services for alcohol and drug abuse. These records cannot be shared without the expressed consent of the employee. Therefore, jobs can be protected.

There may be instances where an EAP program is embedded in an employer's existing benefits package. Employer's can review their health and wellness benefits programs and/or speak with their brokers to maximize and communicate an existing EAP.

For more information on the history of EAP's please see [Employee Assistance Programs \(EAPs\)](#).

g) Employers can focus on Safety and Health in the workplace

Safety and Health in the workplace are important aspects of organizational life. Employees need to know that their employer has their health and safety in mind and is taking serious steps to protect each and every member of the organization. Health and Safety programs are most effective when all levels of management have committed to a serious focus on obstacles to health and safety in the workplace.

Employers have useful information at their fingertips and can use already collected data from the organization's Workers Compensation program to review accidents, injuries, illnesses and near misses. This information and analysis can help focus an organization on comprehensive workplace injury prevention programs.

Some workplace illnesses and injuries can cause chronic pain, which in turn can cause use or misuse of pain management medications or other substances to manage the pain. Unfortunately, this can sometimes lead to substance use/misuse and/or addiction.

Following is a comprehensive guide by OSHA that stipulates [Guidelines for Safety and Health Programs](#) as follows:

- Establishing a safety and health program in your workplace is one of the most effective ways of protecting your most valuable asset: your employees. Losing employees to injury or illness, even for a short time, can cause significant disruption and cost—to the employer as well as the workers and their families. It can also damage workplace morale, productivity, turnover, and reputation.
- Safety and health programs foster a proactive approach to “finding and fixing” workplace hazards before they can cause injury or illness. Rather than reacting to an incident, management and workers collaborate to identify and solve issues before they occur. This collaboration builds trust, enhances communication, and often leads to other business improvements.

In the attached document, OSHA recommends [10 Ways to Get Your Program Started](#):

- **Establish safety and health as a core value.** Tell your workers that making sure they finish the day and go home safely is the way you do business. Assure them that you will work with them to find and fix any hazards that could injure them or make them sick.
- **Lead by example.** Practice safe behaviors yourself and make safety part of your daily conversations with workers.
- **Implement a reporting system.** Develop and communicate a simple procedure for workers to report any injuries, illnesses, incidents (including near misses/close calls), hazards, or safety and health concerns, without fear of retaliation. Include an option for reporting hazards or concerns anonymously.
- **Provide training.** Train workers on how to identify and control hazards in the workplace, as well as report injuries, illnesses, and near misses.
- **Conduct inspections.** Inspect the workplace with workers and ask them to identify any activity, piece of equipment, or materials that concern them. Use checklists to help identify problems.
- **Collect hazard control ideas.** Ask workers for ideas on improvements and follow up on their suggestions. Provide them time during work hours, if necessary, to research solutions.
- **Implement hazard controls.** Assign workers the task of choosing, implementing, and evaluating the solutions they come up with.
- **Address emergencies.** Identify foreseeable emergency scenarios and develop instructions on what to do in each case. Meet to discuss these procedures and post them in a visible location in the workplace.
- **Seek input on workplace changes.** Before making significant changes to the workplace, work organization, equipment, or materials, consult with workers to identify potential safety or health issues. Develop regular chances for worker input. Ensure the input is shared with the organization’s leadership.
- **Make improvements.** Set aside a regular time to discuss safety and health issues, with the goal of identifying ways to improve the program.

Since the incidence of injury and subsequent substance use/misuse is higher in the construction, here is a specific guide for [Recommended Practices for Safety and Health Programs in Construction](#).

For an infographic on [How Opioids Impact Employee Safety and Your Bottom Line](#) please review this link.

h) Support Wellness, Well-Being and Self-Care for employees

All employees, including those in recovery, can benefit from workplaces that focus on health and wellness. Employers have an important opportunity to show concern and genuine interest in the health and well-being of their employees. This can have a positive impact on the culture of the workplace, employee engagement and the financial health of the organization.

Employers can consider steps that your company can take to promote policies that enhance wellness and self-care, support long-term recovery and aim to reduce stigma around substance use. Consider where there could be a more compassionate, informed approach when it comes to Substance Use Disorder and hiring, discipline, retention, and firing of staff. Set time on the leadership team agenda to talk about policies that could support recovery.

- If your company hosts social events or gatherings, ensure there are alcohol and drug-free events.
- Consider promoting the use of sick days for wellness. Encourage employees to use sick days for medical, dental, mental and/or substance use disorder or addiction.
- Review wellness programs at a leadership team meeting.
- Host monthly brown bag discussions about health and wellness. [Post this flyer to promote the brown bag lunch \(Word\)](#).
- [Post on social media about using sick days to support wellness \(Word\)](#).

The [Wellness Council of America \(WELCOA\)](#), an organization dedicated to the promotion of worksite wellness, has identified 7 best practices for employers to follow when building a workplace wellness program:

- **Gain senior-level support.** A commitment from the top is key to the success of any wellness initiative. Management must understand the benefits of a wellness program for both the employees and the organization, and be willing to commit sufficient funding.
- **Create a wellness team.** Wellness teams should include a variety of people from all levels of your company. These individuals will drive program development,

implementation and evaluation. Consider recruiting employees from HR, legal, marketing, management and administrative staff.

- **Collect data that will drive your health initiatives.** Gathering data to assess employee health interests and risks will help you develop your program. This process may involve conducting a survey of employee interest in various health initiatives and health risk assessments (HRAs) to determine your current employees' disease risk.
- **Craft an annual operating plan.** An annual operating plan is important for your program's success and should include a mission statement along with specific, measurable short- and long-term goals and objectives. A written plan provides continuity when members of the wellness committee change and is instrumental in holding the team accountable to the goals, objectives and timeline agreed upon.
- **Choose appropriate health initiatives.** The health initiatives that you choose should flow naturally from your data (survey and HRA aggregate report), be cohesive with your goals and objectives and make sure they are in line with what both management and employees want from a wellness program.
- **Create a supportive environment.** A supportive environment provides employees with encouragement, opportunity and rewards. Your workplace should celebrate and reward health achievements and have a management team that models healthy behavior. Most importantly, be sure to involve employees in various aspects of the wellness program, including in its design, implementation and evaluation.
- **Consistently evaluate your outcomes.** Evaluation involves taking a close look at your goals and objectives to determine whether you achieved your desired results. Evaluation allows you to celebrate goals that have been achieved and to discontinue or change ineffective initiatives.

For additional information, see: [Evidence to Practice: Workplace Wellness that Works](#).

i) Employer's Guide to a Robust Return To Work Program

For many, work can provide a sense of meaning and purpose in one's life. Work can also provide a sense of belonging, a sense of contribution, a sense of connection to others and a greater purpose. Work can also provide the necessary financial rewards as well as the opportunity to participate in health and wellness plans offered by the employer.

Whether one is returning from a workplace injury or from a physical or mental health disability, it is important for employers to have well thought out and implemented return to work programs.

In an early study (2009, Substance use, symptoms, and employment outcomes of persons with a workplace mandate for chemical dependency treatment. *Psychiatric Services*, 60(5), 646-654), it was found that employer supported and monitored treatment yields better sustained recovery rates than treatment initiated at the request of friends and family members.

The benefits of a return-to-work (RTW)/light-duty program for employers include:

- A productive workforce.
- Reduced costs due to overtime pay as other workers fill in.
- Reduced administrative costs associated with filling the position with temporary help.
- Controlled workers' compensation claim costs.
- Reduced short-term disability (STD) and long-term disability (LTD) costs.
- Reduction in absenteeism and days away from work.

Employees benefit from an RTW program because:

- They maintain some or all of their earnings.
- They maintain their skills and are productive contributors to the organization.
- They are likely to return to their pre-injury jobs more quickly.

j) Consider becoming A Recovery Supportive Workplace

Section 9 of this Workplace Toolkit will go in-depth into creating a Recovery Supportive Workplace which is becoming a model for workplaces to deal with employees in recovery from mental health, addiction or substance use/misuse.

8) HOW TO TALK WITH EMPLOYEES ABOUT YOUR CONCERNS

Employers have a unique opportunity to contribute to helping employees who may be struggling with mental health, substance use disorder or an addiction challenge by the way that the manager or supervisor treats that employee.

In this section, we look at some of the behavioral characteristics that may occur with mental health, substance use disorder or an addiction challenge and how to discuss and deal with these concerns with employees.

a. Supervisors and managers should be trained to spot warning signs such as these:

As identified by SHRM on [Employing and Managing People with Addictions](#), this guide focuses specifically on dealing with people with addictions. There are similarities for dealing with people with mental health challenges as well.

Following are some of the behavioral characteristics that may occur with substance abuse. Such characteristics do not always indicate a substance abuse problem, but they may warrant further investigation.

- Absenteeism, particularly absences without notification, or excessive use of sick days.

- Frequent disappearances from the worksite; long, unexplained absences; improbable excuses.
- Unreliability in keeping appointments and meeting deadlines.
- Work performance that alternates between periods of high and low productivity.
- Increase in accidents on and off the job.
- Mistakes attributable to inattention, poor judgment or bad decisions.
- Confusion or difficulty concentrating or recalling details and instructions.
- Increases in the effort and time required for ordinary tasks.
- Problems with interpersonal relations with co-workers.
- Shirking of responsibility for errors or oversights.
- Progressive deterioration in personal appearance and hygiene.
- Increasing personal and professional isolation.
- Signs of morning-after hangovers.
- Physical signs such as exhaustion, hyperactivity, dilated pupils, slurred speech or an unsteady walk.”

Workplaces can help employees in a dignified and humane way while applying empathy and skill in a legally sound manner. An employee who is in the midst of a mental health, substance use disorder or addiction challenge is also likely to be in a stressful or difficult time in their life. They may be dealing with a whole host of issues ranging from financial concerns to grief and loss.

b. How To Talk With An Employee Whose Work Performance is Impacted:

The way a manager, supervisor or business leader addresses performance gaps with an employee can be the ticket to a successful Recovery Supportive effort. Treating each and every employee with dignity and respect, no matter the circumstances, is of utmost importance. The safety of the affected individual and others in the workplace are crucial and should be analyzed in terms of the safety risk involved. It is the employer’s responsibility to ensure a safe workplace for all so measures should be taken to assess and mitigate risk.

Throughout one’s career, every HR professional, manager, business leader has had to have a tough talk with an employee about his or her performance. Sometimes it is in the context of an annual appraisal or it may be a final warning prior to termination. Careful planning is always a necessary step to ensure that the appraiser has all the facts and that the employee being appraised is not surprised by anything that may arise during the meeting.

A sound performance appraisal system entails the following components:

- 1) A well defined job description that details the essential functions, skills, knowledge and abilities required of the job. The job description is used to detail the job requisition and as a guide to finding the candidate who best meets the requirements and can perform the essential functions of the job.
- 2) The job description is used to create behavioral questions that are asked of all candidates who make it to the interview rounds.
- 3) Upon hire, the new employee is given their job description and signs off that they have read and understood the position requirements after a face to face conversation with their manager. This step ensures mutual understanding and a clear path to the employee's success in performing the job.
- 4) It is best to agree upon important milestones that must be reached and to have a face to face meeting early on, within 30, 60 or 90 days on the job. This can ensure that the employee is on target and has been given the feedback needed for success.
- 5) A one year review either on the anniversary of the employee's start date or at the time of the company's annual review date is important to keep the conversation about expectations and the employee's career moving forward. At the annual review, there should not be any surprises. New goals and expectations can be communicated and agreed upon in a mutual conversation between employee and manager.

The above is the ideal, assuming there are no problems or challenges that have intervened. However, if concerning behaviors, quality or other performance issues arise, the following is recommended to address performance concerns. It is important to keep the focus on concerns about the employee's work starting with a clear expression of those concerns. It is recommended to have a clear job description and mutual understanding of the objectives of the job, so that when employee's perform below, and also when they perform above, there is acknowledgment and an easier ability to discuss the gaps.

Tips for talking with an employee who is not meeting expectations:

- 1) Do not delay in speaking with the employee. Be sensitive to the time and space that the conversation takes place in, but do not put it off for any substantial amount of time.
- 2) Be sure to meet in a place that can ensure privacy and confidentiality.
- 3) Be prepared in having all of your concerns documented with specific examples of the problem you are addressing.
- 4) Be as factual, respectful and kind as possible in describing the concerns with objective descriptions of the problematic behavior.
For example: On April 22, May 2 and June 6, you arrived 20 minutes late to your shift. You did not follow the call in protocols which require all employees to call their manager directly at least one hour prior to your scheduled shift.
- 5) Be prepared to hand the employee a document that details the concerns.

- 6) Employers must be cautious when confronting an employee about suspected drug or alcohol addiction. There may be legitimate reasons for the symptoms, such as bloodshot eyes due to allergies or absenteeism due to a health reason. Some diseases such as diabetes can look like a person is on substances if the person with diabetes is having an exacerbation of their medical condition.
- 7) Don't speculate as to the reason for the performance deficiency such as saying that you think the employee may be depressed or anxious. However, there are plenty of supportive things you can say, such as, "We want you to succeed. Is there anything we can do to help?" If the employee mentions a disability, condition or religious belief, you must begin an interactive dialogue according to the ADA.
- 8) Give the employee an opportunity to talk and explain the reasons for the decline in their performance.
- 9) Agree on a performance improvement plan by clarifying what the problems are and how they must improve going forward.
- 10) Set up a time to follow up and check in on how the employee is meeting the clarified performance objectives. Encourage success at every opportunity.

c. Training of the company's supervisors and managers is key to the success of how an affected employee is handled and the implications it will have on the workplace.

SAMSHA- Substance Abuse and Mental Health Services Administration recommends these guidelines for supervisors in their [Supervisor Training](#):

1. Know the Organization's Policy and Program

Be familiar with the policy and the program, along with the rationale for implementing them. Ensure that these are clearly communicated to all staff members.

2. Be Aware of Legally Sensitive Areas

Where applicable, follow collective bargaining agreements. Maintain all employees' rights under the policy and follow the same procedures and policy in the same way for all employees. Provide due process and opportunity for response to allegations. If testing is a part of the policy, ensure laboratory quality control and confirmation of positive tests.

Provide updated information on changing local, state, and federal laws as they apply to alcohol, prescription drugs, and other drugs. Include any implications for the drug-free workplace policy.

Review [10 Steps for Avoiding Legal Problems](#).

3. Recognize Potential Problems

Observation is key to early detection of emerging patterns of performance and attendance problems. Do not wait for performance or attendance to deteriorate to the point that the employee has little chance of remediating the situation. Addressing potential issues before they become serious problems is an important step in creating a safe, healthy, and productive workplace.

The following signs alone do not indicate substance use, but they do indicate that perhaps the employee is experiencing personal issues that could affect job performance:

- Change in work attendance or performance
- Alteration of personal appearance
- Mood swings or attitude changes
- Withdrawal from responsibility or contacts with associates
- Unusual behavior patterns, including sleeping on the job or inability to concentrate
- Defensive attitude concerning any problems

4. Document

Documentation is an essential tool for identifying patterns in performance or attendance deficiencies. It is also essential for advancing corrective action. When you observe problem attendance or performance patterns, document them as they occur. When documenting, be specific about instances where performance and attendance failed to meet workplace standards. Be sure to provide employees with a well-defined job description, along with appropriate job training. In this way, you can be explicit about the behaviors you expect.

You will be more effective if you have a log of specific examples to refer to when addressing the employee. Examples will enable the employee to understand the true nature of your concern, serve to motivate, and then help you assign the appropriate corrective action. Remember, document concrete facts and observations rather than opinions, gossip, or assumptions.

5. Act

According to research by Paul M. Roman and S.C. Baker in the *Handbook of Mental Health in the Workplace*, constructively addressing the problem is a proven strategy for dealing with employees who have a performance problem in which substance use, including prescription drug misuse, may be a factor.

Constructively addressing the problem involves organizing a well-structured performance meeting. If your company has an employee assistance program (EAP), the program might be able to provide guidance on the process. During the consultation, the EAP can also help coach you, as the supervisor, through the constructive assessment process.

Present the employee with documented evidence of performance deficits. Include a union representative, if applicable, during the meeting. If you believe that personal problems could be contributing to the performance and attendance concerns, refer the employee to an appropriate support resource such as an EAP.

When addressing the employee with your documented concerns, consider the following:

- Identify the employee's strengths.
- Describe the specific job performance problem (or problems) identified in your documentation and provide the employee with her or his own copy.
- Discuss and describe performance expectations.
- Keep your discussions focused on job performance/attendance.
- Identify supervisory support to help the employee improve performance/attendance.
- Set a time period in which you expect the employee to improve job performance.
- Offer the employee a referral to the company EAP or other resource to address any personal problems that affect performance.
- Identify a time frame for another meeting with the employee to review progress.

6. Refer to Appropriate Programs

A referral is not an adverse action but can be the first step toward helping an employee get back on track. Guidelines for making a referral include the following:

- Choose the type of assistance based on the established effectiveness of available treatment options for particular issues.
- Consider a provider under the employee's health insurance plan.

- Ensure that the provider understands the employee's essential job requirements and the workplace culture.
- Consider referring to an EAP that specializes in conducting employee workplace assessments, locating substance use treatment resources, transitioning the employee back into the workplace, and monitoring his or her ongoing compliance with return to work.
- If a workplace is required to follow federal testing regulations (such as the [Department of Transportation rules](#)), a qualified substance abuse professional (SAP) may need to conduct both the initial and return-to-work assessments. SAPs are available through third-party national networks, and they typically offer fixed fees based on each individual case. The drug-free workplace policy should address who is responsible for any SAP fees.
- The employer should continue to be supportive of employees who have been referred for assistance with problems related to alcohol and misuse of prescription or other drugs. An EAP can provide supervisors with guidance on supportive measures.

7. Reintegrate

Recovery from alcohol, prescription drugs, or other drug problems is a gradual, nonlinear process. To prevent relapse and to promote sustained recovery, supportive re-entry and follow-up are key.

Responding to a Workplace Crisis

All supervisors should be prepared to deal with a crisis. Although these situations are not common, knowing what to do in case of emergency is important. Such highly charged situations might involve alcohol or other drugs, so an impaired person may not be a rational person. Document your observations and responses, and have another supervisor present if possible.

When investigating a potential crisis involving possible drug or alcohol use, ask these questions:

- Does unusual behavior appear to be taking place (for example, illegal activity or policy violations)?
- What specific behavior is visible?
- Does the situation involve an individual employee or a group?

- Are reliable witnesses available?
- What are the physical dangers of taking or not taking action?
- Is the situation serious enough to call security, law enforcement, or 911?
- Is there a specific policy that applies to the situation?
- Is it necessary to call in expert consultation with human resources, an EAP, or security?
- Does the situation call for reasonable-suspicion testing?

Approaching an Employee in a Possible Drug or Alcohol Crisis

Ask the employee to come to a private area with another supervisor, a human resources representative, security, or some combination of these. Inquire, in a nonjudgmental tone, about the behavior, rumor, or report. Stick to the facts, and do not involve the names of other employees.

Express your concern. Keep in mind that this is about a specific employee and the employee's workplace-related behaviors. Be sure to actively listen to the employee's statements and repeat them back to ensure that nothing is misunderstood.

If there is reason to believe that a violation has occurred, notify a management or labor relations representative as appropriate. If there is evidence or suspicion of recent use, follow the guidelines of your organization's policies on drugs in the workplace, which will detail how to handle the event.

Developing a Return to Work Agreement

If an employee does seek treatment and takes a leave from work they can work with the supervisor or the company's HR department to develop a return-to-work agreement upon their return. This is a recommendation by the Department of Labor.

Workforce magazine provides these guidelines for people returning from Rehab Treatment:

- The employee, the supervisor and HR staff, and the rehab facility should design the agreement together to answer key questions about continuance of care, testing, job position restrictions, and any other rules regarding returning to work.

- The agreement should outline who needs to know about the employee's treatment and what communication that might entail. Confidentiality should be protected regardless.
- Depending on the severity of substance abuse, this agreement may be more of a last chance contract.
- The return to work agreement provides accountability and clear communication

["Building a Pathway to Prevention: An Opioid Use Prevention H.R. Manual for Employers" developed by AGCMA is an excellent resource including tips and FAQs about how to talk to employees about concerns. It also includes tips for employees with questions about their own or their family's use](#)

9) SPECIAL POPULATIONS

RECOVERY SUPPORTIVE WORKPLACES FOR PEOPLE RETURNING TO THE COMMUNITY FROM INCARCERATION AND INVOLVED WITH THE CRIMINAL JUSTICE SYSTEM

Obstacles to Employment for Individuals Re-entering the Community

People re-entering the community after release from jails and prisons face numerous obstacles to obtaining employment. According to the Brookings Institution 2018 report [Work and Opportunity Before and After Incarceration](#), “After release, only 55 percent of former prisoners have any earnings and those that do tend to earn less than the earnings of a full-time job at the minimum wage.” Yet many have a strong desire and motivation to work and are excellent, dedicated employees when provided with the flexibility and support they may need to succeed.

Obstacles to employment include:

- A criminal conviction limits employment options. Many jobs are not open to people with a history of incarceration. In addition, many employers are hesitant to take the chance of hiring someone with a past conviction or those who have spent time in jail, who may not actually have been convicted of a crime. Stigma and stereotypes may influence potential employers hiring decisions. Thus, many formerly incarcerated people who are working, are working in the “informal” or “gig” economy with minimal opportunity for job security and benefits.
- A note about CORIs. Massachusetts law allows individuals to apply to “seal” their CORI records. The general waiting period is 3 years after a misdemeanor and 7 years after a felony conviction, although certain convictions are never eligible for sealing and others have longer timelines. Sealing your criminal record does not get rid of it, but fewer people can see it. After the records are sealed, most employers, landlords and others will not be able to see the records when they do a CORI check. When you apply for a job after your records are sealed, you can say “I have no record.” For assistance with CORI sealing and other legal reentry issues contact the [Community Legal Aid’s CORI and Reentry Project](#)
- Many re-entering people have not had the opportunity to develop marketable employment skills and have limited formal education prior to and during their period of incarceration. Jails and prisons vary in the availability of pre-release programs to support employment upon re-entry.

- Re-entering people who have had a positive record of employment are faced with explaining a significant gap in their work history.
- Re-entering people face an immediate need for stable housing and basic necessities such as health care, food, clothing at a time when they have minimal or no source of income. In addition, many may have debts for child support and court fines with no ability to pay them until they are able to secure employment. Public housing and other social support programs in many states are not available to re-entering individuals. These and other financial pressures, including lack of transportation compounds their difficulty in obtaining and keeping employment.
- Many have huge debts related to court costs and incarceration which they are required to pay off as part of probation. Some of these debts increase due to high interest rates. [Here is a link to an article outlining the problems with debts faced by justice involved individuals](#)
- Lack of financial support and capacity obtain needed funds quickly.
- Requirements of probation such as drug testing, therapy appointments and 12 step attendance may interfere with schedules required for employment. In addition, probation requirements to become quickly employed can increase the pressure on individuals.
- A high percentage of incarcerated people have a history of substance misuse and/or mental illness. Upon re-entering the community, they face challenges in their recovery while facing obstacles which seem stacked against them.

Supporting Employment and Recovery for Re-entering Individuals

Developing and supporting Recovery Supportive Workplaces is a primary target of this initiative. The principles of Recovery Supportive Workplaces are described in this Workplace Toolkit. People reentering the workplace from jails or prison can benefit from a variety of supports and interventions that address the unique challenges they face.

- **As noted above, many employers are hesitant to interview or consider hiring re-entering people.** If employers meet with individuals prior to knowing that they have been incarcerated they are more likely to feel comfortable employing that person. Massachusetts has a strong “**Ban the Box**” law which forbids employers from asking about criminal records on initial job applications. This law prevents employers from rejecting applicants immediately before considering their application.
- **The Georgia Center for Opportunity** provides a helpful list of Frequently Asked Questions: [Q and A on Hiring Ex Offenders](#). They write:

- **Blanket exclusions of individuals who have criminal records may constitute employment discrimination under Title VII of the Civil Rights Act.** The Equal Employment Opportunity Commission (EEOC), in its Enforcement Guidance on the Consideration of Arrest and Conviction Records, recommends the following guidelines to employers when considering job applicants who have criminal records:
 - **Employers should not ask about convictions on job applications.**
Inquiries made later in the hiring process should be limited to convictions for which exclusion would be job-related for the position.
 - **Employers should avoid policies that automatically exclude people from employment based on only certain criteria (such as criminal status) - particularly “blanket exclusion” policies.**
 - **Employers should be cautious about excluding employees from the hiring process based on their criminal record, especially if the criminal offense is unrelated to the job.**
 - **Employers should consider other factors relative to the conviction** including the facts or circumstances of the offense/conduct, the number of offenses the individual has been convicted of, the age of the convictions, the length and consistency of employment history before and after offense, rehabilitation efforts, and references.
 - **Employers should give all applicants a chance to explain their criminal records.**
 - **In addition, under the Americans with Disabilities Act (ADA), it is unlawful to exclude an applicant with a past drug use conviction based on the assumption that they are a current user of illegal drugs.**

They list regulations governing hiring and retaining ex-offenders:

- **Treat applicants with similar criminal records consistently.** For example, do not refuse to consider Hispanic applicants who have criminal records if you consider applicants of other national origins who have the same or similar criminal records.
- **Avoid using an employment policy or practice that excludes people with certain criminal records if the policy or practice significantly disadvantages individuals of a particular race or national origin, and does not accurately predict who will be a responsible, reliable or safe employee.** Do not draw unwarranted conclusions based on an applicant’s prior criminal history, such as single violation would likely be repeated.

- **If you ask applicants for criminal history information, consider waiting until later in the hiring process to do so.** That way, you'll have the opportunity to consider applicants' qualifications for the job before you assess the relevance, if any, of the applicants' criminal history. However, in some circumstances, you may need to request criminal history information early in the hiring process to comply with certain laws or regulations, such as certain businesses such as day care centers and nursing homes.
- **Determine how the applicant's criminal history relates to the risks and responsibilities of the job.** Among other things, consider the nature of the crime; the time that has passed since the criminal conduct occurred; the nature and duties of the job, rehabilitation efforts by the applicant, and the applicant's record since the conviction.
- **Treat arrest records differently than conviction records.** It is generally unlawful to make hiring decisions based on arrests that did not result in conviction.
- **Consider reviewing the accuracy and relevance of a conviction record before basing an employment decision on that record.** Conviction records are usually proof that a person participated in criminal activity. However, in certain circumstances, you may decide not to rely on a conviction record when making an employment decision. For example, you may conclude that the record is inaccurate or outdated.
- **Give applicants an opportunity to explain their criminal history.** Inform applicants if they may be excluded from consideration because of prior criminal conduct (this may be required under the Fair Credit Reporting Act: FCRA). Provide them with an opportunity to respond, and consider reevaluating them based on their explanation.

Here are some additional tips for hiring and supporting individual re-entering the workforce:

- **Educational and training initiatives in the community.** Spread awareness of available educational, GED, vocational and other employment support programs in the community. Work with people who are reentering to help navigate these opportunities and to address obstacles and barriers to participation.
- **Be supportive while not being intrusive with employees.** Express concerns as they relate to the job performance but avoid getting into an employee's personal business.

- **Develop peer support networks.** One of the most common strategies for pursuing work is to talk with friends in one's social network. Peer and mutual support networks of re-entered persons can expand individuals' personal and family networks.
- **Use Supported employment programs** Supported Employment is considered a best practice in assisting people with mental health and substance use problems by SAMHSA (The US Substance Abuse Mental Health Services Administration) Supported Employment includes assistance in the following areas:
 - Identification of job preferences
 - Skills in job searching, applications etc
 - Skills to interview and obtain employment
 - Help in addressing the barriers to employment
 - Coaching individuals in how to raise concerns and to talk to co-workers and employers
 - Determining the level of disclosure desired by the employee with employers and co-workers
 - Assistance in problem solving on the job. If desired by the employee this may include intervention with the employer.
 - Follow up supports.
- **Spread education to encourage employers to hire re-entering people.** Share positive experiences hiring people with criminal records.
- **Support re-entering individuals by creating flexibility so that they can meet their obligations to the criminal justice system as many released individuals are still under correctional supervision.** Also, flexibility can help to support their participation in social support, training and recovery programs
- **Expand available treatment services** and ensure that they are offered in a manner to support maintaining employment
- **Address housing needs as possible**
- **Transportation** can be a major barrier to employment. Many are dependent on public transportation, availability of which varies by community. Some have lost drivers licenses due to the nature of their offense.
- **Community information and ad campaigns encouraging hiring**
- **Spread awareness to businesses of the Work Opportunity Tax Credit (WOTC).** Assist employers in accessing this credit as it can be a burdensome process for smaller businesses. The WOTC can provide a credit of up to \$9600 for businesses employing people with a history of a felony conviction and members of other under employed groups.
- **All of the principles of recovery friendly workplaces apply here.**

Here are some answers to questions frequently asked by job seekers and employees who have been involved with the criminal justice system:

There are a number of protections available to individuals with criminal records when applying for a job. This section is taken from the Massachusetts Attorney General Guide to Rights on Criminal Records; [Criminal Records](#) answers some frequently asked questions about these rules.

Can an employer ask me about my criminal history on a job application?

Probably not. Under the “Ban the Box” law, most employers in Massachusetts are not allowed to ask you about your criminal record on a job application. There are a few limited exceptions for certain types of jobs in specific industries (for example, jobs at daycares and certain financial institutions) where employers can ask about criminal records on job applications because they are legally prohibited from hiring people with criminal records for those jobs.

Can an employer ask me to provide a copy of my own criminal record?

No. Employers are never allowed to ask you to provide a copy of your own criminal offender record information (CORI) or arrest records.

What type of criminal records can an employer ask me about during the hiring process?

As a general matter, employers are permitted to ask you about felony convictions and some misdemeanor convictions during the hiring process (after the initial job application). However, most employers are not allowed to ask you about any of the following at any point during the hiring process:

- ☐ Criminal cases that did not end in a conviction (including CWOFFs);
- ☐ An arrest or detention (e.g., being held at a police station) that did not end in a conviction;
- ☐ A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace;
- ☐ Misdemeanor convictions where the date of the conviction or the release from incarceration was 3 or more years ago (unless there were subsequent convictions within the 3-year time period);
- ☐ Juvenile court records; or
- ☐ Sealed or expunged criminal records.

My conviction is sealed. Do I have to tell my employer about it if I am asked about prior convictions?

No. A job applicant whose criminal record is sealed or expunged does not have to provide an employer with any information about the sealed or expunged case. In response to any questions about prior convictions, a job applicant with no convictions other than a sealed or expunged case may answer that he or she has “No Record.”

Is my employer allowed to conduct a criminal background check on me as part of the hiring process?

Yes, but employers must obtain your written permission before accessing your CORI records through the state system. Employers must follow additional steps if they use a private consumer reporting agency, rather than the state, to conduct criminal background checks.

Can an employer refuse to hire me because of my criminal records?

Employers may refuse to hire you based on your criminal record if there

is some relationship between your criminal record and the work to be performed. However, employers cannot refuse to hire you based on your criminal record without first notifying you, giving you a copy of your CORI or criminal history information, and providing information to you about how to correct an inaccurate criminal record.

In addition, employers that automatically reject all applicants with criminal records may be violating state and federal civil rights laws because using criminal records in this way can have a disproportionate effect on protected groups, including racial minority groups. To avoid potential liability for civil rights violations, employers should conduct an individualized assessment before determining that a particular criminal record disqualifies an applicant for a particular job. Relevant considerations generally should include:

Criminal Records - Know Your Rights

The facts or circumstances surrounding the offense or conduct; The number of offenses for which the individual was convicted; Age at the time of conviction, or release from prison;

Evidence that the individual performed the same type of work, post- conviction, with the same or a different employer, with no known incidents of criminal conduct;

The length and consistency of employment history before and after the offense or conduct;

☐ Rehabilitation efforts, e.g., education/training; and

☐ Employment or character references and any other information regarding fitness for the particular position.

See e.g., *EEOC Enforcement Guidance: Consideration of Arrest and Conviction Records*, No. 915.002 (April 25, 2012), https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

Summary of Rules Applicable to *Most* Employers

Job Application	Later During Hiring Process	Never
<p>May NOT ask about criminal history on initial application.</p>	<p>May ask about any felony convictions (if not sealed) and misdemeanor convictions that were not first-time convictions for drunkenness, simple assault, speeding, a minor traffic violation, an affray, or disturbing the peace.</p>	<p>Never permitted to ask about:</p> <ol style="list-style-type: none"> 1. Criminal cases that did not end in a conviction; 2. An arrest or criminal detention that did not end in a conviction; 3. A first conviction for drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace; 4. Convictions for a misdemeanor where the date of the conviction OR the release from incarceration was 3 or more years ago; 5. Most juvenile records unless tried as an adult; 6. Sealed or expunged criminal cases.
	<p>May obtain a CORI from the state system if written permission from applicant is obtained. Employers must follow additional steps if they use a private</p>	

	<p>consumer reporting agency, rather than the state,</p> <p>to conduct criminal background checks.</p>	
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Here Are Some Resources Supporting Re-Entering Individuals in Western Massachusetts

- Treatment and Recovery Services: See the list and links in the chapter on [Resources and services that are available from Hampshire HOPE in the region](#)
- Hampshire County Sheriff’s Office Work Release Program assists jailed individuals to obtain and maintain jobs in the community that they will continue upon release
- [MassHire: Franklin Hampshire Career Center](#) assists with job searches and connects job seekers with employers
- [MassHire: Hampden County Workforce Board](#) assists with the same services in Hampden County
- [AISS \(All Inclusive Support Services\)](#), based in Springfield, is a program of the Hampden County Sheriff’s Department which assists formerly incarcerated people in all aspects of their lives as they transition from incarceration into the community
- [Community Legal Aid’s CORI and Reentry Project](#), provides legal assistance to individuals facing criminal records-related barriers.

RECOVERY SUPPORTIVE WORKPLACES FOR VETERANS TRANSITIONING FROM MILITARY TO CIVILIAN LIFE

Veterans regularly report higher rates of substance use than the general population. Prevalence for alcohol and marijuana are slightly higher. Opioid use is closely tied to high rates of physical pain and PTSD. Often opioid misuse starts with prescription drugs ordered for pain. The addictive nature of prescribed opioids combined with the mental health struggles experienced by veterans places them at great risk. As reported by NIDA, up to two thirds of veterans report they experience pain with 9% reporting severe pain (compared to 6.4% of non-veterans). All of the issues related to recovery described in this toolkit apply to veterans. However, veterans also face unique challenges in employment which, when coupled with substance misuse can create difficulties in transitioning to civilian life and returning to or joining the workforce. These unique challenges are described in this chapter.

Although they are highly trained and have developed unique sets of skills during their service, those skills are not always easily transferable to civilian workplaces. However, the experience of working in teams, following complex directions, learning to problem solve, time management, ethics and other work related skills can make veterans an asset to any workplace.

In one survey (Prudential, 2010) 64% of veteran respondents reported that they had a difficult transition to civilian life.

Challenges for transitioning veterans include:

- Having a difficult time transitioning to civilian life in general and in figuring out what next steps to take. Veterans may feel pressured to find employment but also to need time to decompress and adjust to the very different environment of civilian life. Many feel they have not been adequately prepared for civilian life.
- Figuring out how to translate the skills they learned in the military to the civilian job market. Some have unrealistic expectations for civilian jobs. They are well trained in skills that are specific to military life but those skills may not easily translate. They may miscalculate how their experience translates to nonmilitary jobs. They may be surprised and taken aback that they are hired at lower levels, due to lack of training and experience, than the level at which they worked while in military service. Although their military assignments may include tremendous responsibilities for the lives of others, they may feel like they are forced to “start over” in the civilian world.

- Veterans have been out of the workforce for the time they were serving. While they were in the military, others may have completed their education and/or training for civilian based jobs. They can be competing for jobs with others who have been able to complete their education and gain more applicable work experience. Their service is seen, by some employers, as a gap in their employment history. Although they may have skills they may not have the degrees or certifications that others who have been in the civilian world have gained.
- Members of the military tend to be assigned responsibilities. Veterans may have not had the experience of searching for, applying for or interviewing for civilian jobs. They may never have created a resume.
- Culture clash. Dealing with a very different culture in civilian life and concerns that employers may not understand military culture and that they in turn may not understand the expectations of civilian life. For instance; communication in military settings tends to be more direct and “top down”. In civilian workplaces there may be subtle nuances in conversations that are unfamiliar to veterans. Many worry about employer bias towards veterans; that their experience is not respected by employers or co-workers.
- Military jobs emphasize self sacrifice, a mission and purpose greater than oneself and a spirit of camaraderie. Many civilian workplaces can be interpersonally competitive and self promoting.
- Concerns that employers may be reluctant to hire veterans due ongoing commitments of the Reserve Corps and fears of dealing with veterans’ disabilities.
- Physical and mental health challenges. Up to two thirds of veterans report physical and/or mental health challenges. These can make their transition more difficult and require the need for more flexibility in their employment to address these service connected disabilities. Employers may be reluctant to hire based on their fear that the veteran may be damaged and, consequently, a risky hire.
- Many veterans have to manage multiple VA appointments each month due to their physical and/or mental health challenges. This calls for flexibility on the part of employers. Veterans may be reluctant to ask for this flexibility due to pride or concerns that they will lose their employment

How can employers support Veterans to succeed in the workplace:

- Helping to provide the support and flexibility that many Veterans may need as they are transitioning to civilian life will help them to succeed at work and give employers access to a highly committed and well trained section of the workforce. For instance, Veterans may need flexibility to follow up with medical and other supportive appointments

- Make allowances for Veterans who continue to participate in the Reserves. Remember that you as a workplace are participating in supporting the country as a whole.
- Providing work accommodations to meet the special needs of Veterans dealing with physical and mental health impairments will enable Veterans to participate and succeed at work
- Send a clear message from the leadership of your organization that Veterans are welcome and will be supported in your workplace
- Don't assume that a Veteran will fall apart at some point. Campaign against stigmatizing language.
- All of the components listed in the section on Recovery Supported Workplaces apply in building a culture in which Veterans are supported and will succeed
- Veterans have access to numerous job training and employment support programs. Employers can actively work with these programs to hire and support Veterans in their workforce

10) INFORMATION ON HOW TO DEVELOP AND MAINTAIN A RECOVERY SUPPORTIVE WORKPLACE

About Recovery Supportive Workplaces

A Recovery Supportive Workplace promotes and provides a supportive environment for employees, their families and customers. Policies and relationships in the workplace support the unique individual needs of people who are employed at the workplace.

According to the Harvard Health Blog, [Creating recovery-friendly workplaces](#), and quoting a recent National Safety Council report, 75% of U.S. employers have been directly affected by opioids but – startlingly – only 17% feel extremely well prepared to deal with the issue. The financial cost to employers in lost productivity is significant: in Massachusetts alone, opioid addiction cost businesses \$2.5 billion annually from employees who aren't functioning at full capacity, and \$5.9 billion in lost productivity from people who can't join the workforce due to addiction. Opioid use disorder has kept nearly 33,000 people in Massachusetts from participating in the labor force each year, on average, over the past five years.

Recovery Supportive Workplaces are good for business! According to the nonpartisan and objective research organization NORC at the University of Chicago, each employee who recovers saves a company over \$8500 on average. Workers in recovery miss 13.7 fewer days each year than workers with an untreated substance use disorder and workers who are actively in recovery help employers avoid \$8,175 in turnover and replacement costs. [\(NORC substance use calculator\)](#)

Establishing Recovery Supportive Workplaces helps employers to access an underutilized and successful workforce while addressing a vital social need. People in recovery from substance use/misuse commonly describe their core recovery goals as needing to work, to keep busy, achieve financial self-sufficiency and to recapture the dignity of being a contributing member of society. Treatment and support can help people on the road to recovery but useful work and financial independence are essential for maintaining one's recovery.

Recovery Supportive Workplaces encourage a safe and healthy environment where employers, employees and communities collaborate to create positive change and eliminate barriers for those impacted by addiction.

From the top. Getting employers and senior managers to buy in.

In every organization, regardless of the size or the industry, exists an organizational culture that has been built over the years of operation. An organizational culture can best be described as the values, behaviors, assumptions and ways of interacting that contribute to the unique social and psychological environment of the business or workplace.

In order for an organization to change its unique culture, the senior management must be fully committed to the end goals of the organizational change effort. If the senior leaders of an organization fully commit to changing the culture of the organization and to walking the talk at every opportunity, only then will a change of organizational culture succeed. [Here is a link to a sample letter from senior management to employees outlining the organization's commitment.](#)

Key Features of Recovery Supportive Workplaces

- Recognize recovery from substance use/misuse as a strength in the workplace and in our communities
- Support harm reduction. Understand that recovery is individualized and some people in recovery may still be using but are able to control their use and maintain their jobs and family life. Participation in harm reduction and treatment activities may require flexibility for employees.
- Supervisors are trained to understand the challenges and needs of people in recovery. Individuals in recovery may relapse or have a “slip” as part of their recovery journey..
- Large employers may consider making treatment and support services available at the worksite. This supports employees who may have difficulty accessing support during off hours and enables them to cut down on hours missed at work, benefitting both employees and employers. Investing in treatment and recovery supports can help to improve workplace safety, employee retention and relationships between employers and employees.
- Providing policies that clearly and explicitly forbid the use, purchase of drugs at the workplace and the use of the workplace to arrange use or purchase. This provides protection to people who are struggling to maintain their recovery.

- Committing to hiring people in recovery. This includes the understanding that people in recovery may have work and life histories that include lack of success or criminal history related to when they were actively involved in substance use/misuse.
- Responding to decreased work performance due to relapse by supporting employees to pursue treatment and stability while holding their employment open.
- Develop return to work plans for those returning from treatment with clear expectations to alleviate stress and help to ease employees back into their work role
- Support flexibility. Supporting recovery requires making the workplace as flexible as possible without compromising the quality of the workplace. To support treatment, hours may need to be flexible. People in recovery may have challenges that others do not face. Some examples are: if a person has lost their driver's license they may be dependent upon public transit which may not run regularly. Court dates or other legal appointments and needs may be inflexible and work teams can support a person in recovery to maintain their job while meeting activities that are required of them. People engaged in Medication Assisted Treatment (e.g. Suboxone and Methadone programs) may need more flexible schedules and a flexible response to drug testing for those companies that do drug tests.
- Support families. People in recovery may have complicated family arrangements that require flexibility. Also, employees may be actively supporting their family members who are in recovery or are actively involved in substance use/misuse. Flexibility and understanding of the effects of substance misuse on families enables family members to maintain their jobs while supporting their loved ones. This may include providing supportive letters to families who are working to support and parent their children.
- Building a trauma informed environment. Most people who have had problems with substance use/misuse have experienced trauma which helped to lead to their substance use/misuse and/or trauma as a result of their use/misuse.
- Educating all employees about the organization's policies and stance about recovery. Educate all employees that substance use/misuse and addiction are ongoing medical disorders and that recovery takes ongoing work. Support open and respectful conversation and teamwork between people who do not use drugs and people who are in recovery or using
- Educate employees about the company's substance use policies upon hire and on an annual basis thereafter.

- Committing to a healthy and safe workplace through clearly written policies and procedures that are regularly communicated, agreed to and signed off by all employees.
- Publicly declaring the commitment to becoming a Recovery Supportive Workplace (RFW). This sends a strong message of health to the workplace and the wider community.
- Ensure all employees are aware of available health and wellness programs
- Protect the confidentiality of employee health information

A Checklist for Recovery Supportive Workplaces

✓	RECOVERY SUPPORTIVE WORKPLACE CHECKLIST
	Make an organization wide decision to become a “Recovery Supportive Workplace”
	Publicize this decision to employees and post in public areas
	Remove obstacles and commit to hiring people in recovery
	Ensure compliance with employer mandates such as FMLA, PFMLA, ADA are applied fully to employees with substance use problems and mental health problems
	Create policies that support flexibility for staff to pursue recovery activities for themselves and their families
	Ensure policies clearly state expected employee responses to potential overdoses and are clear that employees who intervene to prevent overdoses are supported by the organization
	Provide staff with education about substance use and mental health disorders as they affect the workplace at hire and annually
	Address stigma and stigmatizing language in the workplace
	Commit to working to retain people in recovery
	Offer benefits such as sick time and personal time to support people with long term conditions with potential relapse such as substance use and/or mental health disorders
	Promote recovery, health, safety and wellness in the workplace

	Ensure employee confidentiality
	Support families of people with substance use are supported by providing employee flexibility

11) TERMS AND DEFINITIONS

Terms and Definitions Related to Substance Use, Treatment, Support and Harm Reduction

- D.A.R.T. - Drug Abuse Response Teams are made up of a police officer, a recovery coach and a harm reduction specialist. These teams work together using a harm reduction approach to contact people who have recently overdosed or are in danger of overdosing and encourage and assist them to access treatment and support services. They also support families and assist them in accessing helpful services and support systems.
- Acute treatment - Programs designed to medically supervise and support withdrawal from alcohol or drugs that are physically addictive.
- Harm Reduction - Harm Reduction approaches are aimed at reducing the negative consequences associated with substance use (or other risky behaviors). Harm reduction accepts that people may not want to stop using or may not always be able to stay drug free and focuses on minimizing the harmful effects of drug use rather than ignoring or condemning people for using. Examples of harm reduction approaches are the distribution of Naloxone, syringe exchange, opioid prevention sites, resources to check heroin for inclusion of Fentanyl.
- Intensive Outpatient Program (IOP) - An outpatient based program providing intensive treatment and support to people struggling with their use while living in the community. IOPs are usually at least 3 days per week, 3 hours per day.
- Medication Assisted Treatment (MAT) - A treatment program for opioid users using a “whole patient approach: a combination of medications with counseling and support. MAT is considered a “best practice” to treat people with opioid disorders and to support people in sustaining their recovery.
- Methadone - A medication used in MAT to help people maintain a stable life and to sustain long-term success and live meaningful lives in recovery. Methadone is an opioid “agonist” drug. Like other opioids, it attaches to opioid receptors in the brain and reduces craving and withdrawal. It is taken once per day. When people start MAT using Methadone, they need to visit the program daily to receive their Methadone.
- Naloxone (Narcan) - Naloxone is a medication used to reverse an opioid overdose. It comes in intranasal spray and injectable forms. Naloxone is readily available and is considered a safe medication as it will not cause harmful effects to people who are not experiencing an overdose. People who are given Naloxone may experience uncomfortable effects of withdrawal symptoms.
- Naltrexone (Vivitrol) - Naltrexone is the third medication used in MAT. It is a long term (approximately monthly) injectable medication. Naltrexone binds and blocks opioid receptors and reduces cravings. People must be opioid free for 7-10 days prior to their

first injection and then stay opioid free as use will bring on precipitous withdrawal symptoms.

- Overdose Prevention - Efforts to address potential overdoses include community education about how to respond to overdoses and the distribution of Naloxone.
- Peer Support - Supportive services to provide recovery support and help to address barriers to recovery (eg transportation, economic, access to health care, legal, family) provided by people with lived experience.
- Recovery Coach - Trained people with lived experience who provide peer support services.
- Rehab - A residential program (usually inpatient) providing intensive treatment, support and care for people who are having difficulty staying drug free in the community. Many Rehabs are abstinence based programs
- Section 35 - The section of Massachusetts law providing for involuntary commitment and treatment in a locked facility for people with severe and life threatening substance misuse problems.
- Suboxone (Buprenorphine and Naloxone) - Suboxone is a medication used in MAT to help people maintain and to sustain long term success and live meaningful lives. Buprenorphine differs from Methadone in that it is considered a “partial agonist”: it produces some of the effects of opioids in milder form. In Suboxone, Buprenorphine is mixed with Naloxone to decrease the likelihood of misuse or diversion. When crushed and injected, the Naloxone blocks euphoric effects and brings on uncomfortable withdrawal symptoms.
- Supported Employment - An evidence based practice designed to provide intensive support for people with a major mental illness so enable them obtain employment and to succeed in the workplace. This practice has now been adopted to assist people with Substance Use Disorders. Here is a [link to a description of the supported employment model](#).
- Syringe Access and Disposal - A harm reduction program providing clean syringes to IV drug users to help them avoid the potentially serious negative consequences of sharing syringes and risking infection. This program is meant to be combined with education about safe syringe use. In addition, referral to treatment and support resources are available for those ready to decrease or stop using.
- Trauma Informed - This concept, originally developed in health care settings has now been used in a variety of workplace settings as well. Trauma informed implies the organization understands and considers the pervasive nature of trauma in people’s lives and promotes environments of healing and recovery rather than practices that may inadvertently re-traumatize people.

Terms and Definitions Related to Human Resources, Employer Expectations and Legal Responsibilities

- [Americans With Disabilities Act \(ADA\)](#) prohibits employers from discriminating against employees or applicants with disabilities in all aspects of employment including hiring, pay, promotion, firing, and more. Private employers with at least 15 employees must follow the ADA.
- [Interactive accommodation process](#) or simply interactive process, refers to the collaborative effort involving an employer and employee to determine if the employee can return to work subsequent to an occupational or non-occupational injury, disease or disorder.
- [Civil Rights Act \(PL 88-352\)](#) is a landmark law that prohibits private employers with 15 or more employees from discriminating against individuals on the basis of race, sex, religion, or nationality.
- [Family and Medical Leave Act \(FMLA\) \(PL 103-3\)](#) applies to all public agencies and to private employers with more than 50 workers. Under FMLA, these employers must allow employees who have worked for the employer for at least one year and who have worked at least 1,250 hours in the past 12 months to take up to 12 weeks of unpaid, job-protected leave because of their own serious health condition or to care for a spouse, child, or parent who has a serious health condition.
- [Drug-testing programs](#) - Workplace drug-testing programs are designed to detect the presence of alcohol, illicit drugs, or certain prescription drugs. Drug testing is a prevention and deterrent method that is often part of a comprehensive drug-free workplace program. Both federal and non-federal workplaces may have drug testing programs in place.
- Massachusetts workers' compensation system- is in place to make sure that workers are protected by insurance if they are injured on the job or contract a work-related illness.
- [National Labor Relations Act \(NRLA\)](#)- provides a legal framework for all management and labor negotiations.
- Occupational Safety and Health Act (OSHA)- Requires employers to comply with occupational safety and health standards issued by the Occupational Safety and Health Administration (OSHA) and to provide employees with a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm.
- [Massachusetts Employers Paid Family and Medical Leave](#) is a Massachusetts state-offered benefit for anyone who works in Massachusetts and is eligible to take up to 26 weeks annually of paid leave for medical or family reasons. Employees may take up to 12 weeks to bond with a new child and up to 20 weeks to care for themselves or a

family member with a serious illness. PFML is funded through a Massachusetts tax, and is separate from both the federally mandated benefits offered by the Family Medical Leave Act (FMLA) and from leave benefits that may be offered by your employer.

- Employee Assistance Program is a work-based intervention program to help both the employee and employer deal with work performance issues that may be impacting an employee's performance on the job.
- Recovery Supportive Workplaces provide a positive environment for employees, their families and customers. Policies and relationships in the workplace support the unique individual needs of people who are employed at the workplace.
- Employee turnover is the loss of talent in the workforce over time. This includes any employee departure, including resignations, layoffs, terminations, retirements, location transfers, or even deaths. Recovery Supportive Workplaces improve retention.
- Psychological contracts are a set of 'promises' or 'expectations' that are exchanged between the parties in an employment relationship. These parties include employers, managers, individual employees and their work colleagues. Unlike formal contracts of employment, they are often tacit or implicit.

12) SAMPLE POLICIES AND PROCEDURES

Subject of Policy: Responding to intoxicated customers in the workplace

Purpose: To guide employees in responding to individuals who appear intoxicated in the workplace

Policy: Employees will maintain a safe environment for all staff and customers by intervening cautiously when a customer exhibits signs of intoxication that may jeopardize the safety of themselves or others or create a nuisance or harassing situation

Procedure:

1. All employees will be educated in signs of intoxication and in types of behaviors that create a threatening environment or harassing environment on the premises
2. Employees will ensure their safety by not approaching what appears to be a dangerous situation without support from other employees. 911 should be contacted if there is a threatening or dangerous situation
3. Employees will take the following steps
 - a. [outline clearly the steps specific for your workplace
 - b.
4. Employees will notify their supervisor of the incident and document the incident in writing using the [detail the procedure for this workplace. In larger workplaces there might be an existing incident form. In smaller workplaces this might be in the form of a note or memo to the supervisor]

Subject of Policy: Responding to overdoses in the workplace

Purpose: To guide staff in responding to overdoses at the workplace.

Policy: Staff will become familiar with the signs of overdose and intervene to prevent and reverse the overdose [Note that this will vary depending on whether the workplace has Naloxone on site]

Procedure:

1. Staff will be educated in the signs of overdose by
2. Staff will be trained in use of Naloxone. If naloxboxes are available they will be placed in restrooms with proper signage. Staff will be trained in their use.
3. Workplace needs to make a determination if restrooms will be kept locked so that customers or visitors will have to obtain the key or code. Restrooms with codes have codes changed on a regular basis
4. Workplace needs to make a decision re: staff will have access to a master key to restrooms in case of emergency.
5. Restrooms with stalls are designed so employees can easily check underneath the doors if emergency occurs.
6. Workplace needs to make a decision about if and how employees check the restroom on a regular basis [depending on the type of business and staff availability]
7. Make a policy and how and upon what criteria staff will respond to emergencies.

Example:

- a. Staff will call 911
- b. Staff will clear the area
- c. Follow procedure for emergency
- d. Follow procedure for Naloxone use

Subject of Policy: Recovery Supportive Workplace

Purpose: To ensure that the organization is a Recovery Supportive Workplace

Policy: This organization has made the commitment to be a Recovery Supportive Workplace. We support all efforts of staff towards recovery for individuals and their families

Procedure:

1. The organization hires people who are in recovery. It is understood that people in recovery may have had work histories interrupted by breaks in employment due to difficulties related to substance/use misuse
2. The organization provides education to all staff about drug use in the workplace and options for pursuing treatment and recovery
3. The organization provides flexibility in work schedules when possible for staff to pursue recovery treatment and support for themselves and their families.
4. The organization provides the same support and assistance to staff pursuing help for substance use/misuse issues as for those pursuing help for other medical conditions.
5. The organization prioritizes safety in the workplace.
6. Drug testing is done in the following manner (This varies by organization depending on 1)safety requirements of the job 2)funder requirements of the organization 3) the determination of the leadership of the organization. If drug testing is a part of the workplace policy it is recommended that it is only pursued in response to concerns about the person's work performance and possible impairment due to use while on the job). Outline drug testing guidelines here.
7. Response to positive drug testing is focused on assisting the employee to pursue treatment and maintain or return to their position at the workplace.
8. (include return to work policy)

Subject of Policy: Drug and Alcohol Policy

Purpose: To maintain a safe, healthy work environment which enhances the welfare of employees and others at our workplace.

Policy: Impairment due to substance use and use while on the job are prohibited in order to maintain a safe work environment for all. It is the goal of the company to assist employees who are struggling with substance misuse to work on their recovery and continue to be employed.

Procedure:

1. Being under the influence of substances while performing company business is prohibited. “ Under the influence” is defined as an employee noted to be adversely affected by drug or alcohol use.
2. It is understood that employees may be adversely affected by prescription or over the counter medications. When these therapies adversely affect the employee’s work or safety they will be asked to participate in a fitness for duty evaluation. This can be done by the employee’s medical provider or one selected by the company.
3. Participating in the use, sale, purchase, or transfer of illegal drugs or alcohol while on company business or property is prohibited.
4. The company may request testing of employees suspected of being under the influence of a drug or alcohol. This request must have reasonable cause to believe that the employee is impaired while on the job or on company property due to consumption of alcohol or drugs.
5. If an employee is referred for testing they will be transported to a local testing facility who will obtain a specimen from the employee. Results of the screening will be made available only to the designated staff in charge of human resources. The results of the test will be kept strictly confidential
6. The employee will have an opportunity to rebut, explain the test results or to refuse to be tested
7. The following procedure will be followed:
 - a. Concern about an employee acting “under the influence” should be reported to a supervisor. An attempt should be made to clearly observe and document the behavior or job performance that has led to the concern
 - b. Before questioning the employee the supervisor should consult with HR staff or the company manager.
 - c. While questioning the employee it is recommended to have a witness present
 - d. Focus of questioning should be solely on information that has led to the employee’s current condition and job performance.
 - e. If the employee denies the use of alcohol or drugs leading to the behavior in question but the supervisor continues to be concerned, the supervisor may

request a test/screening. At this time the supervisor should also offer to assist the employee in obtaining treatment and support for their recovery.

- f. If the employee refuses to be tested then it is considered to be a positive test. The employee will then be asked to leave the workplace, and placed on administrative leave until appropriate disciplinary action may be taken, up to and including termination from employment. The employee should be offered a ride home via taxi.
- g. If the employee does consent to the testing, they should be placed on administrative leave until the results of the testing are obtained.
- h. Depending upon the results of the test further action may be taken. This may include referral for treatment if the employee is willing or disciplinary action as appropriate.
- i. At all times the supervisor should be open to assisting the employee with obtaining appropriate treatment and support including referral to the Employee Assistance Program (EAP) if the company does have an agreement with an EAP.
- j. Employees who decide voluntarily to enter treatment for substance use should be provided information about the federal FMLA program and the Massachusetts PFMLA program.
- k. [Note - companies must determine if administrative leave is unpaid or paid. If it is unpaid and the employee returns with a negative drug screen, they should be reimbursed for unpaid leave]

(adapted from "Opioid Use Prevention H.R. Manual for Employers"; AGCMA)

PLACEHOLDER FOR A MORE IN-DEPTH A & D POLICY

Drug and Alcohol Policy

Purpose

In compliance with the Drug-Free Workplace Act of 1988, [Company Name] has a longstanding commitment to provide a safe, quality-oriented and productive work environment. Alcohol and drug abuse poses a threat to the health and safety of [Company Name] employees and to the security of the company's equipment and facilities. For these reasons, [Company Name] is committed to the elimination of drug and alcohol use and abuse in the workplace.

Scope

This policy applies to all employees and all applicants for employment of [Company Name]. The human resource (HR) department is responsible for policy administration.

Employee Assistance

[Company Name] will assist and support employees who voluntarily seek help for drug or alcohol problems before becoming subject to discipline or termination under this or other [Company Name] policies. Such employees will be allowed to use accrued paid time off, placed on leaves of absence, referred to treatment providers and otherwise accommodated as required by law. Employees may be required to document that they are successfully following prescribed treatment and to take and pass follow-up tests if they hold jobs that are safety-sensitive or require driving, or if they have violated this policy previously. Once a drug test has been initiated under this policy, unless otherwise required by the Family and Medical Leave Act or the Americans with Disabilities Act, the employee will have forfeited the opportunity to be granted a leave of absence for treatment, and will face possible discipline, up to and including discharge.

Employees should report to work fit for duty and free of any adverse effects of illegal drugs or alcohol. This policy does not prohibit employees from the lawful use and possession of prescribed medications. Employees must, however, consult with their doctors about the medications' effect on their fitness for duty and ability to work safely, and they must promptly disclose any work restrictions to their supervisor.

Work Rules

1. Whenever employees are working, are operating any [Company Name] vehicle, are present on [Company Name] premises or are conducting company-related work offsite, they are prohibited from:
 1. Using, possessing, buying, selling, manufacturing or dispensing an illegal drug (to include possession of drug paraphernalia).

2. Being under the influence of alcohol or an illegal drug as defined in this policy.
3. Possessing or consuming alcohol.
2. The presence of any detectable amount of any illegal drug, illegal controlled substance or alcohol in an employee's body system, while performing company business or while in a company facility, is prohibited.
3. [Company Name] will also not allow employees to perform their duties while taking prescribed drugs that are adversely affecting their ability to safely and effectively perform their job duties. Employees taking a prescribed medication must carry it in a container labeled by a licensed pharmacist or be prepared to produce the container if asked.
4. Any illegal drugs or drug paraphernalia will be turned over to an appropriate law enforcement agency and may result in criminal prosecution.

Required Testing

Pre-employment

Applicants being considered for hire must pass a drug test before beginning work or receiving an offer of employment. Refusal to submit to testing will result in disqualification of further employment consideration.

Reasonable suspicion

Employees are subject to testing based on (but not limited to) observations by at least two members of management of apparent workplace use, possession or impairment. HR, the plant manager or the director of operations should be consulted before sending an employee for testing. Management must use the Reasonable Suspicion Observation Checklist to document specific observations and behaviors that create a reasonable suspicion that an employee is under the influence of illegal drugs or alcohol. Examples include:

- Odors (smell of alcohol, body odor or urine).
- Movements (unsteady, fidgety, dizzy).
- Eyes (dilated, constricted or watery eyes, or involuntary eye movements).
- Face (flushed, sweating, confused or blank look).
- Speech (slurred, slow, distracted mid-thought, inability to verbalize thoughts).
- Emotions (argumentative, agitated, irritable, drowsy).
- Actions (yawning, twitching).
- Inactions (sleeping, unconscious, no reaction to questions).

When reasonable suspicion testing is warranted, both management and HR will meet with the employee to explain the observations and the requirement to undergo a drug and/or alcohol test within two hours. Refusal by an employee will be treated as a positive drug test result and will result in immediate termination of employment

Under no circumstances will the employee be allowed to drive himself or herself to the testing facility. A member of management must transport the employee or arrange for a cab and arrange for the employee to be transported home.

Post-accident

Employees are subject to testing when they cause or contribute to accidents that seriously damage a [Company Name] vehicle, machinery, equipment or property or that result in an injury to themselves or another employee requiring offsite medical attention. A circumstance that constitutes probable belief will be presumed to arise in any instance involving a work-related accident or injury in which an employee who was operating a motorized vehicle (including a [Company Name] forklift, pickup truck, overhead crane or aerial/man-lift) is found to be responsible for causing the accident. In any of these instances, the investigation and subsequent testing must take place within two hours following the accident, if not sooner. Refusal by an employee will be treated as a positive drug test result and will result in immediate termination of employment.

Under no circumstances will the employee be allowed to drive himself or herself to the testing facility. A member of management must transport the employee or arrange for a cab and arrange for the employee to be transported home.

Collection and Testing Procedures

Employees subject to alcohol testing will be transported to a [Company Name]-designated facility and directed to provide breath specimens. Breath specimens will be tested by trained technicians using federally approved breath alcohol testing devices capable of producing printed results that identify the employee. If an employee's breath alcohol concentration is .04 or more, a second breath specimen will be tested approximately 20 minutes later. The results of the second test will be determinative. Alcohol tests may, however, be a breath, blood or saliva test, at the company's discretion. For purposes of this policy, test results generated by law enforcement or medical providers may be considered by the company as work rule violations.

Applicants and employees subject to drug testing will be transported to a [Company Name]-designated testing facility and directed to provide urine specimens. Applicants and employees may provide specimens in private unless they appear to be submitting altered, adulterated or substitute specimens. Collected specimens will be sent to a federally certified laboratory and tested for evidence of marijuana, cocaine, opiates, amphetamines, PCP, benzodiazepines, methadone, methaqualone and propoxyphane use. (Where indicated, specimens may be tested for other illegal drugs.) The laboratory will screen all specimens and confirm all positive screens. There must be a chain of custody from the time specimens are collected through testing and storage.

The laboratory will transmit all positive drug test results to a medical review officer (MRO) retained by [Company Name], who will offer individuals with positive results a reasonable opportunity to rebut or explain the results. Individuals with positive test results may also ask the MRO to have their split specimen sent to another federally certified laboratory to be tested at the applicant's or employee's own expense. Such requests must be made within 72 hours of notice of test results. If the second facility fails to find any evidence of drug use in the split specimen, the employee or applicant will be treated as passing the test. In no event should a positive test result be communicated to [Company Name] until such time that the MRO has confirmed the test to be positive.

Consequences

Applicants who refuse to cooperate in a drug test or who test positive will not be hired and will not be allowed to reapply/retest in the future.

Employees who refuse to cooperate in required tests or who use, possess, buy, sell, manufacture or dispense an illegal drug in violation of this policy will be terminated. If the employee refuses to be tested, yet the company believes he or she is impaired, under no circumstances will the employee be allowed to drive himself or herself home.

Employees who test positive, or otherwise violate this policy, will be subject to discipline, up to and including termination. Depending on the circumstances, the employee's work history/record and any state law requirements, [Company Name] may offer an employee who violates this policy or tests positive the opportunity to return to work on a last-chance basis pursuant to mutually agreeable terms, which could include follow-up drug testing at times and frequencies determined by [Company Name] for a minimum of one year but not more than two years as well as a waiver of the right to contest any termination resulting from a subsequent positive test. If the employee either does not complete the rehabilitation program or tests positive after completing the rehabilitation program, the employee will be immediately discharged from employment.

Employees will be paid for time spent in alcohol or drug testing and then suspended pending the results of the drug or alcohol test. After the results of the test are received, a date and time will be scheduled to discuss the results of the test; this meeting will include a member of management, a union representative (if requested), and HR. Should the results prove to be negative, the employee will receive back pay for the times/days of suspension.

Confidentiality

Information and records relating to positive test results, drug and alcohol dependencies, and legitimate medical explanations provided to the MRO will be kept confidential to the extent required by law and maintained in secure files separate from normal personnel files. Such records and information may be disclosed among managers and supervisors on a need-to-know

basis and may also be disclosed when relevant to a grievance, charge, claim or other legal proceeding initiated by or on behalf of an employee or applicant.

Inspections

[Company Name] reserves the right to inspect all portions of its premises for drugs, alcohol or other contraband; affected employees may have union representation involved in this process. All employees, contract employees and visitors may be asked to cooperate in inspections of their persons, work areas and property that might conceal a drug, alcohol or other contraband. Employees who possess such contraband or refuse to cooperate in such inspections are subject to appropriate discipline, up to and including discharge.

Crimes Involving Drugs

[Company Name] prohibits all employees, including employees performing work under government contracts, from manufacturing, distributing, dispensing, possessing or using an illegal drug in or on company premises or while conducting company business. [Company Name] employees are also prohibited from misusing legally prescribed or over-the-counter (OTC) drugs. Law enforcement personnel may be notified, as appropriate, when criminal activity is suspected.

[Company Name] does not desire to intrude into the private lives of its employees but recognizes that employees' off-the-job involvement with drugs and alcohol may have an impact on the workplace. Therefore, [Company Name] reserves the right to take appropriate disciplinary action for drug use, sale or distribution while off company premises. All employees who are convicted of, plead guilty to or are sentenced for a crime involving an illegal drug are required to report the conviction, plea or sentence to HR within five days. Failure to comply will result in automatic discharge. Cooperation in complying may result in suspension without pay to allow management to review the nature of the charges and the employee's past record with [Company Name].

Definitions

"Company premises" includes all buildings, offices, facilities, grounds, parking lots, lockers, places and vehicles owned, leased or managed by [Company Name] or any site on which the company is conducting business.

"Illegal drug" means a substance whose use or possession is controlled by federal law but that is not being used or possessed under the supervision of a licensed health care professional. (Controlled substances are listed in Schedules I-V of 21 C.F.R. Part 1308.)

"Refuse to cooperate" means to obstruct the collection or testing process; to submit an altered, adulterated or substitute sample; to fail to show up for a scheduled test; to refuse to complete the requested drug testing forms; or to fail to promptly provide specimen(s) for testing when directed to do so, without a valid medical basis for the failure. Employees who leave the scene

of an accident without justifiable explanation prior to submission to drug and alcohol testing will also be considered to have refused to cooperate and will automatically be subject to discharge.

“Under the influence of alcohol” means an alcohol concentration equal to or greater than .04, or actions, appearance, speech or bodily odors that reasonably cause a supervisor to conclude that an employee is impaired because of alcohol use.

“Under the influence of drugs” means a confirmed positive test result for illegal drug use per this policy. In addition, it means the misuse of legal drugs (prescription and possibly OTC) when there is not a valid prescription from a physician for the lawful use of a drug in the course of medical treatment (containers must include the patient’s name, the name of the substance, quantity/amount to be taken and the period of authorization).

Enforcement

The HR director is responsible for policy interpretation, administration and enforcement.

Drug and Alcohol Policy Certificate of Receipt

I hereby certify that I have received a copy of [Company Name’s] Drug and Alcohol Policy.

Employee Signature

Date

NOte - are there other sample policies we should include

SAMPLE LETTER TO EMPLOYEES FROM SENIOR MANAGEMENT

Dear Employees of [workplace]

At our company we have made a commitment to be a Recovery Supportive Workplace. We are a stronger workplace when we work together to support employees and their families who are struggling with substance use and mental illness. We know that we can build a stronger workplace culture with committed hard-working employees when we help each other by supporting them in gaining the treatment and services they need to maintain their recovery.

By taking this stance we are doing our part in addressing major crises that the USA is facing: addiction, including the opioid epidemic sweeping our country.

It is estimated that more than 22 million Americans suffer from a Substance Use Disorder. In 2017 over 70,000 died of drug related overdoses.

We have made a commitment to meet the standards of a Recovery Supportive Workplace as established by Hampshire HOPE. To meet those standards we are taking the following steps [outline steps here]

It is our goal to create a stigma-free environment in our workplace. Towards that end, in addition to adapting the steps above, we [outline other steps such as workplace meeting, educational materials available]

I look forward to working with all of you to make our Recovery Supportive Workplace community a reality.

Thank you

[Name]

13) A LIST OF RESOURCES USED IN THIS TOOLKIT

- [Addiction, Recovery and the ADA; from the New England ADA Center](#)
- [Addiction Policy Forum](#)
- [AGC-MA HR guide for opioids in the workplace](#)
- [CDC Report on Mental Health, Substance Use and Suicidal Ideation in a One Week Period During the COVID-19 Pandemic](#)
- [Employing and Managing People with Addictions; Society for Human Resource Management](#)
- [Guide to Federal Regulations Relating to Employment; SAMHSA \(Substance Abuse and Mental Health Services Administration\)](#)
- [Massachusetts Bureau of Substance Addiction Services](#)
- [Massachusetts PFML Fact Sheet](#)
- [Mass Library System Guide to Opiates](#)
- [Mass Paid Family Leave Info](#)
- [Minnesota opiate toolkit](#)
- [Minnesota Recovery friendly workplace toolkit from Recovery](#)
- [MN webinar on Subs Abuse Prevention: It's good for business](#)
- [National Safety Council Toolbox](#)
- [NH Recovery Friendly Workplace](#)
- [NORC, the nonpartisan and objective research organization at the University of Chicago](#)
- [Open Society's Harm Reduction at Work](#)
- [Overdose Deaths Accelerating During Pandemic, Centers for Disease Control, 12/17/2020](#)
- [Overdose Deaths and Jail Incarceration; A Report By the Vera Institute](#)
- [Overdose Deaths Have Surged During Pandemic, NY Times 4/14/2021](#)
- [SAMHSA's Drug Free Workplace](#)
- [States of Incarceration. The Global Context; A Report by the Prison Policy Initiative](#)
- [Stop The Stigma: A short video by the Gestalt Project](#)
- [The Biden Harris Administration Drug Policy Priorities for Year One](#)
- [The Implications of COVID-19 for Mental Health and Substance Use: A Report for the Kaiser Family Foundation, 2/10/2021](#)
- [US Department of Labor, Wage and Hour Division](#)
- [Wellness Council of America](#)
- [What Is The Drug War: A History of the War on Drugs From Prohibition to Gold Rusk; A short video by Sean Jay-Z Carter and Molly Crabapple](#)

Resources for supporting people re-entering from incarceration

- [APA - From Prison to Communities: Confronting Re-Entry Problems and Social Inequality](#)
- [Brookings Institution - Work and opportunity after incarceration](#)

- [Georgia Center for Opportunity FAQ on Hiring Ex Offenders](#)
- [Out of Prison and Out of Work: A Report of the Prison Policy Initiative](#)
- [Urban Institute: Employment After Prison: A Longitudinal Study of Releasees in 3 States](#)
- [Know Your CORI Rights: A Project of the Greater Boston Legal Services CORI Sealing and Re-Entry Project](#)
- [Greater Boston Legal Services: Link Page to a Series of Pamphlets About the Rights of Re-Entering Individuals](#)
- [MASS Legal Help: CORI Sealing Project](#)
- [Western MASS Community Legal Aid CORI and RE-Entry Project](#)
- [The New Debt Prisons; Gene Sperling, The NY Times, Feb. 16, 2021](#)
- [Know Your Rights: Criminal Records; A Guide to Rights in Employment and Housing; Attorney General's Office, Commonwealth of Mass](#)

Resources for supporting veterans returning to the workforce

- [Veterans Employment Challenges; A Prudential Report](#)
- [Law for Veterans: Employment Issues Facing Veterans](#)
- [Vets Facing Difficult Transition to Civilian Jobs, Military.com, 2021](#)
- [Veterans Employment Toolkit. U.S. Department of Veterans Affairs](#)
- [5 Reasons Veterans Struggle to Transition to the Civilian Workforce; Combat Veterans to Careers](#)
- [The American Veteran Experience and the Post-9/11 Generation; Pew Research Center](#)
- [Substance Use and Military Life DrugFacts; NIDA](#)

Other Resources to Investigate

- [National Recovery Study; Recovery Research Institute](#)
- [Hampden County's Recovery Ready Workplace Program](#)
- [Recovery Friendly Workplace toolkit; Peer Recovery Now](#)