

3.8



LEGAL CONSIDERATIONS

KEY POINTS TO REMEMBER

It's important to know that Recovery Friendly Workplace programs are relatively new, and their legal ramifications are still taking shape. Employers should contact their firm's attorney or initiate a conversation with a firm that is experienced in employment law.

They can help you navigate the legal issues successfully, including:

- Employee privacy and confidentiality
- Compliance with federal, state and local regulations
- Potential conflicts between state laws vs federal laws
- CT law 21a-408 and medical marijuana usage
- Employer rights vs Employee rights
- Union relationships
- Industry regulations and standards
- Reasonable Suspicion and drug testing policies
- Termination policies
- Family Medical Leave Act (FMLA) provisions
- Occupational Safety and Health Administration (OSHA)
- Mental Health Parity Act
- Americans with Disabilities Act (ADA) provisions.

- Health Insurance Portability and Accountability Act HIPAA privacy provisions
- Workers Compensation

Specific legal considerations

There are federal laws, statutes, and provisions that may pertain to someone with substance use disorder in the workplace. Please note that laws and requirements can vary by state and business type.

Americans with Disabilities Act (ADA)

The American with Disabilities Act prevents an employer from discriminating against an employee simply for having a disability, disease, or medical condition, such as substance use disorder. Current alcohol or illegal drug use is not protected, but those in recovery or treatment are covered by the ADA.

CT Fair Employment Practices Act (CFEPA)

This Act (CFEPA) protects employees from discrimination on the basis of a mental disability as defined by the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

The DSM-5 is the latest edition of the Manual and it includes addiction to illegal opiate drugs as an Opioid Use Disorder. And so, under CT state law, drug addiction



would be a mental disability entitled to protection against discrimination.

Family Medical Leave Act (FMLA)

The Family Medical Leave Act legally ensures that employees are able to take unpaid leave for serious medical conditions, including treatment for substance use disorder.

Covered employees can take job-protected leave for a total of 12 workweeks in any 12-month time period (federal FMLA) and/or 16 workweeks in any 24 month time period (CT FMLA) for treatment that is administered by a health care provider.

However, not all companies or employees are eligible for FMLA.

Occupational Safety and Health Administration (OSHA)

OSHA is concerned with on-the-job safety and health. Its policies extend into a few key areas that overlap with a Recovery Friendly Workplace programs.

The Alliance Program

OSHA is becoming involved with Recovery Friendly Workplace programs through its Alliance Program, which enables the agency to develop voluntary, collaborative working relationships with organizations that are committed to workplace safety and health.

Through the Alliance Program (which has been adopted by New Hampshire's RFW program) OSHA works with organizations to provide information, guidance and access to

training resources to help protect workers, particularly by raising awareness of physical well-being and empowering workplaces to provide support for people recovering from substance use disorders.

Mental Health Parity Act

The Mental Health Parity and Addiction Equity Act of 2008 requires insurance groups offering coverage for mental health or substance use disorders to make these benefits comparable to general medical coverage.

Deductibles, copays, out-of-pocket maximums, treatment limitations, etc., for mental health or substance use disorders must be no more restrictive than the same requirements or benefits offered for other medical care. (SAMHSA)

Workers Compensation

Workers' compensation benefits may be denied if the employee suffered injuries on the job while intoxicated or under the influence of illegal substances.