



Their Tales and Yours: Complying with Regulation While Supporting Recovery

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What does recovery
really look like?

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Demographics/Background

- All shapes and size
- However, some drugs are more common with some groups than others.



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Indiana Treatment Demographics

- 41.8% employed (25.7% nationally) → Estimated 17,000+ Hoosier/year
 - 30.4% full time (18% nationally)
 - 11.4% part-time
- 41.6% unemployed (38.3% nationally) → Estimated 17,000+ Hoosier/year
- 16.7% not in labor force (36% nationally) → Estimated 7,000+ Hoosier/year



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Onset

- 75% of those with substance use disorder started at 17 or younger
- 95% started at age 25 or younger



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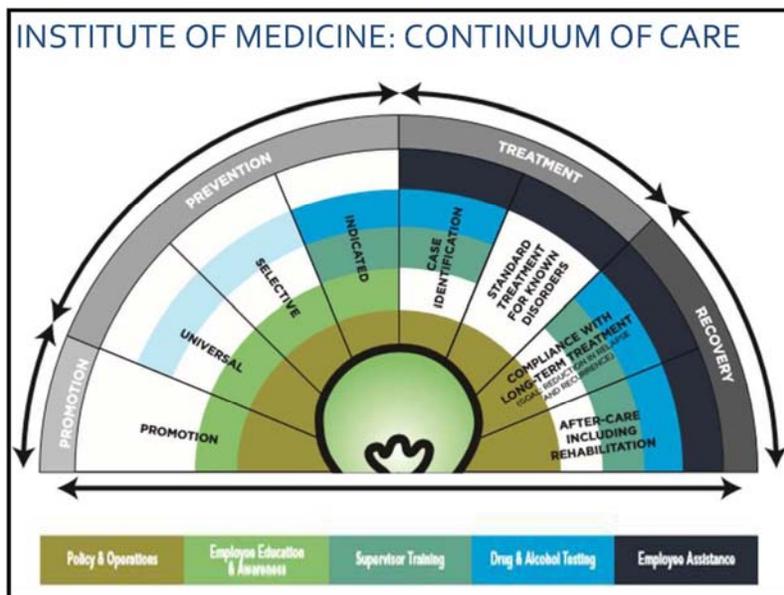
Just so we're all on the same page...

- Most people use drugs with impunity – zero to very mild consequences. Experiment, then grow out of it
- The simplest definition of addiction? Continued drinking and/or use despite negative consequences



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Consequences

- Problems with work/school
- Legal problems
- Relationships
- Health



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Intervention

- Nudge, grudge, or a judge
- Workplace Mandate
 - "Participants with a workplace mandate stayed in treatment longer, had better abstinence outcomes, and did as well on other outcomes as those without a workplace mandate. Given that their perceived need for treatment for substance use problems was low, it is likely that they would not have entered treatment without pressure." - (2009) Substance use, symptoms, and employment outcomes of persons with a workplace mandate for chemical dependency treatment. Psychiatric Services, 60(5), 646-654



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Intervention – When & How

- Drug testing.
- Performance discussion: Is there something going on that we can help with? Is there something you need from us to help you do your job?
- Both may lead to discussions about reasonable accommodations.
- BEST PRACTICE: Develop/Share/Discuss transparent and clear policies so individuals know what will happen if they self-report need for assistance



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Intervention – Drug and Alcohol Testing

- Prior to offer
 - YES: ask questions about ability to perform job functions
 - NO: make an inquiry about a disability
 - NO: require “medical examination” ie... test for alcohol
 - YES: test applicants for illegal drugs
- After offer
 - YES/IF: Require “medical examination” ie... test for alcohol
 - ONLY: if employer tests all applicants in the same job category



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Intervention – Public Works Contractors

- Covered employers must specify a protocol for employee discipline, treatment, and re-testing.
- After the first positive test, an employee must be:
 - Suspended from work for 30 days.
 - Directed to a program of treatment or rehabilitation.
 - Subjected to unannounced drug testing for one year, beginning the day the employee returns to work.
- After a second positive test, an employee must be:
 - Suspended from work for 90 days.
 - Directed to a program of treatment or rehabilitation.
 - Subjected to unannounced drug testing for one year, beginning the day the employee returns to work.
- After a third or subsequent positive test, an employee must be:
 - Suspended from work for one year.
 - Directed to a program of treatment or rehabilitation.
 - Subjected to unannounced drug testing for one year, beginning the day the employee returns to work.
- Directing an employee to a program of treatment or rehabilitation requires advising the employee of either:
 - Any program of treatment or rehabilitation covered by employer-provided insurance.
 - Agencies known to the employer that provide drug treatment or rehabilitation programs, if the employer does not provide insurance that covers these programs.



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National Labor Relations Act (NLRA)

- Before conducting any drug or alcohol testing, employers with unionized workforces should both:
 - Refer employees to their applicable collective bargaining act (CBA).
 - Recognize that the CBA controls whenever employment terms set out in a policy differ from terms expressed in their CBA.



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Treatment

- Varies in type, intensity and duration from one-time educational session (seminar, group, conference, etc.) up to inpatient treatment facility



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Recovery

- “Reasonable accommodation”
- Continuous care vs. acute care
- Return to normalcy



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Americans With Disabilities Act (ADA)

- “Reasonable Accomodation”
 - Does not apply to current unlawful drug users
 - Does not apply to individuals misusing a legal prescription
 - Includes individuals who:
 - Are incorrectly regarded as engaged in the illegal use of drugs
 - Have been successfully rehabilitated and no longer use drugs
 - Are currently participating in a rehabilitation program and are not using drugs
 - Active alcoholics not currently under influence
 - Recovered or recovering alcoholics
 - Does not mean an employer must tolerate an employee’s drinking at work, poor performance, or poor attendance



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Indiana Employment Discrimination Against Disabled Persons Act (IEDADPA)

- The Indiana Employment Discrimination Against Disabled Persons Act (IEDADPA) prohibits discrimination based on disability and protects employees who:
 - Are incorrectly regarded as engaged in the illegal use of drugs.
 - Formerly engaged in the illegal use of drugs and:
 - have successfully completed a supervised drug rehabilitation program;
 - are participating in a supervised drug rehabilitation program; or
 - have otherwise been rehabilitated successfully
- Covered employers are specifically permitted to:
 - Prohibit the illegal use of drugs and alcohol at the workplace by all employees.
 - Require that employees not be under the influence of alcohol or engage in the illegal use of drugs at the workplace.
 - Require that employees conform to the requirements established under the Drug-Free Workplace Act of 1988
 - Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if the unsatisfactory job performance or behavior is related to the drug use or alcoholism.
 - When applicable, require employees to comply with the standards established in the regulations of:
 - the US Department of Defense;
 - the US Nuclear Regulatory Commission; and
 - the US Department of Transportation.



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Accommodation Options

- Reduced or altered work hours/flexible scheduling
- Frequent breaks
- Altering work location or assignments
- Referral to EAP or other treatment program
- Leave (paid/unpaid)
- Transfer to another position
- See the Job Accommodation Network website, a service of DOL's Office of Disability Employment Policy. Resources for developing accommodations for employees with substance abuse problems.



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Reasons to Accommodate

- Decrease absenteeism
- Increase productivity
- Reduce healthcare claims



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Questions?

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