

Abuse and Addiction: It's in Your Workforce, Too

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ICMA Conference Presenter

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BALTIMORE
104th Annual Conference
SEPTEMBER 23-26 **2018**



Who Am I?

- Management-side labor and employment attorney
- Licensed to practice in several federal and state courts
 - Fourth Circuit Court of Appeals (MD, NC, SC, VA, WV)
 - Ninth Circuit Court of Appeals (AK, AZ, CA, HI, ID, MT, OR, WA)
 - United States District Court for the District of Maryland
 - Maryland
 - Washington, D.C.
- Clerkships with D.C. Superior Court and Maryland Court of Special Appeals



Legal Considerations

- The ADA, FMLA, and drugs/alcohol
 - Lawful questions
 - Reasonable accommodations
 - Medical marijuana
- The Drug-Free Workplace Act of 1988
- Workplace drug testing
 - Lawful policies
 - Employee rights
- Public safety considerations



“The Five C’s” For Employers

- 1. Currentness** - Only *current* illegal use of drugs/alcohol is not ADA-protected. How *current* was the usage?
- 2. Certification** - Does the applicant have *certification* for his medical marijuana? If requested, has the employee provided medical *certification* for her return to work following rehab?
- 3. Communication** - Have you *communicated* your policies to employees? Have you *communicated* with employees who request an accommodation (interactive process)?
- 4. Confidentiality** - Have you maintained medical information *confidentially*? Have you only shared information with those who have a need to know?
- 5. Consistency** - If taking action against an employee, have you been *consistent* in taking action against similar employees whose situations did not involve drug or alcohol use?

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