

NC Attorney General Talks Opioid Epidemic at Employment Law Symposium

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North Carolina Attorney General Josh Stein identified opioid abuse and cybersecurity as top challenges businesses face, while also giving attendees at Ward and Smith’s 2019 Employment Law Symposium a look at the broad responsibilities of his office.

Ward and Smith labor and employment attorney Devon D. Williams interviewed Stein in a Q&A-style discussion that covered a wide range of topics, from Medicaid fraud investigations to how companies can help attack the devastating problem of opioid addiction.

When attendees were polled about what issues they thought were important, opioid abuse was a common concern. Williams noted that the American Society of Addiction Medicine estimates that opioid abuse is costing U.S. employers about \$10 billion from absenteeism and “presenteeism.”

“Presenteeism,” Williams said, “is being physically present at work, but not really being there, not really being productive.”

Stein said he thought that, if anything, the \$10 billion-estimate might be understating the economic impact of opioid abuse.

“The biggest cost of this epidemic is born by the business community,” he said. And then he added, “The human cost is incalculable.”

On average, Stein said, five people each day die from opioid overdoses in North Carolina, making overdoses the No. 1 source of accidental death — well above the rate of automobile accidents. The opioid epidemic, he said, has also caused the average U.S. lifespan to decline, the first time it’s done so three years in a row since World War I and the 1918 flu endemic.

“It requires us to have a comprehensive and deep-seated strategy,” he said. “It’s not a light switch problem. We can’t just flip it and make it go away.”

Stein outlined a three-pronged approach to the problem: prevention, treatment and recovery, and law enforcement.

In 2017, he said, the N.C. General Assembly passed the STOP Act, which aims to reduce over-prescribing of opioids.

“We hope by reducing over prescribing we’ll reduce addiction,” he said. He cited the Centers for Disease Control study that found that 20 percent of people who are prescribed an opioid for pain and take it for at least ten days will still be taking them a year later.

Employers, he said, can also help prevent and treat substance abuse problems. On the prevention side, Stein encouraged companies to review their insurance policies on pain treatment. Businesses should allow reimbursements for potentially more expensive treatments, such as physical therapy, rather than pushing doctors to default to inexpensive but potentially addictive pain pills.

“Make sure your policies adequately cover pain management and alternative pain therapy — acupuncture, hydrotherapy, whatever it takes for people to get healthy,” he said.

He also said companies should ensure they have good substance abuse treatment coverage.

“There are people who are struggling with addiction in your employ. So what can we do to help them get healthy because it is a chronic illness?” he said. “Heart disease is a chronic illness, diabetes is a chronic illness, substance abuse is a chronic illness. It is not a moral failing.”

Williams added that drug addiction or past drug addiction can be considered a disability under the Americans with Disabilities Act.

Finally, Stein suggested that companies review their hiring policies. While drug testing may still be critical for safety-sensitive positions, he said, employers should consider whether someone who tests positive for, say, a bit of marijuana, should be denied a job outright.

He also encouraged companies to reconsider how they handle job applicants with criminal records and to perform a criminal background check after deciding someone might be a good hire, rather than rejecting them at the beginning of the process.

“If you don’t give people who are getting their lives together an opportunity to make it, all you’re doing is making it more likely that they’ll make ... wrong decisions down the road,” Stein said. He cited the example of a Nevada employer that found their best workers were those with “a checkered past” because they were so committed to doing their jobs correctly.

Stein told attendees that one of the biggest areas his office interacts with business is through the Office of Consumer Protection, a division he ran for several years before he ran for elected office.

“We probably get 20,000 consumer complaints every year,” he said. “Not every one of those is valid. Not every one of those is subject to litigation.

He said his office also sometimes sees cases where fraudsters target small businesses, and he urged attendees to make sure their businesses were being vigilant and training employees.

“Small businesses are often targeted, just like individuals are, for scams,” he said. “Businesses need to be smarter consumers like individuals do. If somebody’s pitching you on some new way that you can make a lot of money and it sounds too good to be true, it very likely is. So be suspicious; take your time.”

Identity theft and false invoices are a big problem for businesses, Stein said.

“Just understand how sophisticated these scammers are in their ability to engage in impersonation, even

internally,” he said. The biggest source of identity theft now, he said, occurs when outsiders steal databases from businesses.

“You have to train your employees on how not to click on phishing [links],” he said. “I urge you all to take your customer data very seriously.”

Stein also gave attendees an overview of the broad responsibilities of the Attorney General’s Office. The N.C. Department of Justice, which he runs, operates the State Crime Lab and sometimes prosecutes criminal cases. It also investigates and prosecutes Medicaid fraud cases.

On the civil side, the N.C. Attorney General’s Office also serves as legal counsel for most of the state’s agencies, handling environmental cases for the Department of Environmental Quality and insurance-related matters for the N.C. Department of Insurance, for example.

Stein said his office also partners with other state attorneys general to pursue national investigations and cases. He is leading, for example, a coalition of some 40 states investigating the role of pharmaceutical manufacturers in the opioid epidemic.

“If they don’t step up to clean up the mess they’ve created, then I’ll take them to court,” he said.

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