

HR QUESTION ? of the month



Work injury – Is offering Over-the-Counter (OTC) medication a risk for business?

Question: An employee was stung by bees while working outside. The employee refused medical treatment, and the company submitted the workers' compensation claim as first aid only. The employee was given the rest of the day off with pay, and offered modified duty until they felt ready to go back. The employee went back to work the next day with no problem. Could the company have recommended that the employee take an antihistamine? Since medical treatment was refused, all the company had available was OTC/first aid.

Response: We are not aware of any specific employment statute that addresses a private sector employer providing over-the-counter (OTC) medication such as Tylenol, Advil or antihistamines to its employees. That said, we generally do not recommend that employers supply employees with any kind of medication, even OTC medications, or advice concerning what OTC medicines they should take, because doing so could expose the company to unnecessary liability on a number of fronts.

For starters, there is a percentage of the population that is allergic to any given medication, and certain medications are contraindicated by even OTC pain relievers or decongestants (i.e., they could result in employees taking other medications having an adverse reaction to even common OTC medications, such as aspirin or decongestants). Thus, for example, if an employee is taking certain blood thinners, such drugs can accelerate the blood thinning properties of aspirin (or ibuprofen), and if an employee helps him or herself to such medicine provided by the employer and suffers internal bleeding as a result, not only is there the possibility that the company could be potentially liable from a negligence standpoint, but it could, perhaps, also be faced with potential OSHA violations.

In addition, there could be added liability associated with dispensing medication (even OTC), given that the employer is not a medical practitioner or licensed druggist, etc., depending on the laws in your state as they pertain to dispensation of medication (which is not governed by employment laws and, therefore, outside the purview of this service). Also, there is potential for a choking situation when consuming OTC medications, which is another risk. Accordingly, we typically recommend that companies play it safe and tell employees to use their own OTC medications if they have a headache or minor illness or injury at work (which would include a bee sting, in most cases). Of course, a first aid kit that includes non-medicinal items such as hand sanitizer, alcohol swabs, gloves, gauze, and/or bandages to clean minor cuts and scrapes is generally fine for the employer to provide. We recommend that the employer contact the local OSHA office for further guidance on this topic: <https://www.osha.gov/html/RAmap.html>

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