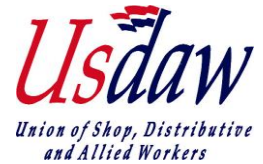




Guide To Workplace Drug and Alcohol Policies



Introduction

The Health and Safety Executive (HSE) advises that employers should have a clear policy on misuse of drugs or alcohol. Information is available on the [HSE website](#).

Drug misuse can include use of controlled drugs (heroin, cannabis, Ecstasy, etc.), misuse of legally prescribed drugs or misuse of solvents. In some workplaces, solvents that can be used for their narcotic effect will be present because of the nature of the work.

Under health and safety law (***Health and Safety at Work Act 1974, Management of Health and Safety at Work Regulations 1999***) employers have a duty to ensure the health and safety of employees and others so far as is reasonably practicable. Allowing an employee to continue working while under the influence of drugs or alcohol when this causes a risk could be an offence. Individual employees also have a duty to take reasonable care and not to put themselves or others at risk.

For certain workers (e.g. train drivers) the ***Transport and Works Act 1992*** makes it a criminal offence to work while unfit because of the influence of drink or drugs. As a result routine testing of train drivers is common.

Under the ***Road Traffic Act 1988*** it is an offence for an individual to be in charge of a vehicle when unfit to drive because of drink or drugs.

The ***Misuse of Drugs Act 1971*** makes it an offence to knowingly allow the supply of controlled drugs, smoking of cannabis or certain other drug-related activities on your premises.

There are therefore a number of legal reasons for employers to have a clear policy.

The HSE advice states that the policy should be welfare-based. Disciplinary action may be necessary on some occasions, but the main approach should be to educate staff about the dangers and to offer assistance to users to control their problem. The policy should be worked out in consultation with employees and their union reps.

Drug and Alcohol Testing

One of the trickiest questions in relation to any drug and alcohol policy is the issue of testing.

Screening or testing for drugs is a sensitive issue because of the civil liberties, data protection and employment issues involved. In recent years companies that offer screening services have stepped up the marketing of their products to employers. They sell their services with claims that a drug-free workforce is healthier and more productive and that testing helps to show that the employer is complying with health and safety duties.

However, an [independent inquiry](#) published in 2004 by the Rowntree Trust concluded that there was no evidence that drug-testing was of any value except in safety-critical industries.

The Information Commissioner's Office has recently published [a Data Protection Code of Practice](#) on information about workers' health, which includes advice on drug and alcohol testing. This specifies that:

- The collection of information through drug and alcohol testing is unlikely to be justified unless for health and safety reasons
- Because of its intrusive nature, an employer should carry out an impact assessment before introducing testing
- Workers must be fully informed what they are being tested for.
- The least intrusive methods should be used
- If random testing is done it must be truly random
- If other criteria are used to select for testing workers must know what they are
- Testing that is designed to detect impairment rather than illegal use of substances in private life should normally be used.

Alcohol testing with an accurate breath-testing machine is reasonably straightforward. The testing procedure is familiar because it is similar to road-side testing for drink driving. Most organisations who test for alcohol adopt the same limit as for drink driving – 80 milligrams of alcohol per 100 millilitres of blood (equivalent to 35 micrograms of alcohol per 100 ml of breath). Some choose to adopt a stricter standard of 50 mg alcohol per 100 ml blood which is more common in other European countries. But whichever standard adopted the test is clearly a test for impairment.

For other drugs, however, there are no reliable tests for impairment from the illegal use of substances. Testing typically consists of taking a sample of urine or of saliva. The sample is divided into two parts, one of which is sealed for later, more accurate testing in a laboratory. A testing kit is used to test for five or six of the commonest types of illegal drug. If there is a positive result for any of these drugs then the second sample is sent for further analysis. The procedure requires the consent of the individual and care must be taken to ensure the 'chain of custody' for the sample – e.g. use of tamper-proof bottles to seal the sample – to avoid any possible attempt to doctor the sample by the tester or the person being tested. The Information Commissioner states that any testing that is done must be carried out by professionally competent people using rigorous integrity and control procedures.

The procedure is therefore not as straightforward as breath-testing for alcohol. Most testing regimes give evidence of use but do not give information on when exactly within the last few days (or weeks) the substance was used or whether the drug is affecting performance at work.

Testing is therefore likely to be financially costly and may also be damaging to good employee relations.

Both the HSE and the UK Anti Drugs Co-ordination Unit have made it clear that they do not think that widespread use of testing is appropriate or necessary. There may be certain jobs for which testing offers some assurance because of the scale of risk to staff or members of the public. The testing of train drivers is a good example. More recently the government has also announced plans for random testing of police officers. But for many organisations education, awareness and prevention policies will be much more effective than any testing regime.

Testing in the workplace can take a number of forms:

- Pre-employment screening
- Random testing of the whole workforce
- "For cause" testing of individual workers.

Pre-employment screening of potential employees is used by some organisations but is of questionable value. The vast majority of drug users are "recreational" users. The screening test gives only a "snapshot" at the time of the job interview. If the user knows they are going to be tested and abstains for the necessary period of time, or if they happen not to have used their drug of choice in the period before the test they will not be detected.

Random Testing involves routine testing of all or a part of the workforce.

If this is used there are a number of practical questions. What proportion of the work-force will be sampled, how will it be truly randomised, etc.? The acid test should be that the managing director is just as likely to be selected for testing as the night-shift cleaner. To have a reasonable statistical chance of detecting the minority of controlled drug users in a workplace, the sample would have to be quite large. Unless there is a history of a serious drug culture in the workplace, it is unlikely that random testing would be worthwhile.

“For cause” testing is far more likely where an employer does decide to introduce drug screening. This means testing individual employees where circumstances suggest it may be appropriate – e.g. following an accident, when an employee’s behaviour suggests they may be under the influence of drugs or when the employee is in a rehabilitation programme. By its very nature it is not random. The policy should make it clear that a worker has access to the grievance procedure or any harassment procedures in place if they feel they are being unfairly selected for testing, perhaps because they are being victimised by a particular manager.

There are several problems associated with testing such as the cost of a truly effective service, the need for fair procedures and protection of samples against tampering, and, most importantly, what will be done with the results of the testing.

This last point is made more difficult because of the sensitivity of testing techniques available. Drug metabolites can be detected in urine samples for several days after the drug was taken. In the case of cannabis traces can still be detected up to a month after smoking a joint. Workers who genuinely believe they are fit for work but who choose to use drugs in their own time may still test positive. For example, if a worker has an accident driving a fork lift truck and tests positive for cannabis, does the fact that they smoked a joint several weeks ago really have any bearing on their accident?

One employment issue raised by any testing regime that affects current employees (i.e. random testing or “For cause” testing) is whether this is a contractual change. Unfortunately there is no clear answer to this question. The duty to obey any reasonable and lawful instruction is an implied term of any employment contract. If, for example, “For cause” testing was introduced, employers would argue that the request to provide a sample was reasonable because the person’s behaviour led them to suspect that he was under the influence of drugs or alcohol.

If an employer decides that they do want to introduce testing they need to realise that it will not be cheap and will not “solve” any drug problem there may be in their workplace. More importantly they also need to persuade the employees that it is necessary to prevent risks to safety in the workplace.

Testing should be seen to be part of a wider occupational health policy and should be clearly designed to prevent risks to the user or to others who may be affected by their actions.

Rehabilitation

A commitment to rehabilitation is central to a welfare-based policy. The policy should encourage individual employees who may have a problem with drug or alcohol misuse to come forward for help. As far as the law allows, employees should be assured that their problem will be dealt with in confidence. The policy should also make it clear that staff who co-operate with a rehabilitation programme will be protected. Absence for treatment should be regarded as normal sickness absence.

Disciplinary Action

An employer could be judged to have unfairly dismissed a worker whose problems at work are related to drug misuse if they have made no attempt to offer help. However, there are still circumstances where disciplinary action including dismissal may be appropriate - for example, where an employee refuses help or fails to improve with treatment, where an employee is guilty of gross misconduct, or where someone is found dealing or using drugs on the premises. The policy should make this clear.

Education and Awareness

All staff including part-time and temporary workers need to know what the policy is on drug and alcohol misuse. They also need to be aware of the reasons why the policy has been introduced. If testing is to form part of the policy, fully informed consent to being asked for a sample is essential. Staff need to know why and when they may be tested. They also need to know what the outcome will be if the test is positive. Managers and supervisors are likely to need more detailed training on recognising signs and symptoms of drug misuse and on their role in the effective operation of the policy.

Information Sources

Health and Safety Executive: INDG91 “Drug Misuse at Work – A Guide for Employers”, 2001

Health and Safety Executive: INDG240 “Don’t mix it - A guide for employers on alcohol at work”, 1996

Health and Safety Executive: <http://www.hse.gov.uk/alcoholdrugs/>

Information Commissioners’ Office: Employment Code Part 4, June 2005

Joseph Rowntree Trust: Drug testing in the workplace: The report of the Independent Inquiry into Drug Testing at Work, 2004

TUC advice to health and safety reps on drug and alcohol policies:
<https://www.tuc.org.uk/sites/default/files/drugsalcoholinworkplace.pdf>

TUC advice to health and safety reps on drug testing in the workplace:
<https://www.tuc.org.uk/sites/default/files/DrugTestingintheWorkplace.pdf>

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