



# Drugs and alcohol at work

An employee who is affected by drugs or alcohol in the workplace presents a risk to themselves, other employees, customers and your business. Costs to the business can include increased sick leave, damage to property, injury and reputational damage. But what can you do about it?

## Can I test employees?

An employer's Occupational Health and Safety obligations are generally viewed as paramount when compared to an individual employee's privacy concerns, at least where the employee is working in what is called 'safety sensitive' work (for example, using heavy machinery, working at heights or with flammable materials, driving or flying). Where disputes have arisen in Australia in the past over whether the employer should be able to undertake such testing on employees, industrial tribunals have upheld the employer's right to do so where 'safety sensitive' work is involved. Ideally, the right to undertake drug and alcohol testing should be a specific part of an employee's employment contract with their employer, or part of an enterprise agreement at the workplace, but in the absence of such instruments, employers will have to establish that such a right is impliedly justified in the employment relationship, including being a 'legitimate business purpose' of the employer.

## What should be in my drug and alcohol policy?

An employer's drug and alcohol policy has to be developed to meet the needs of its particular workplace (or workplaces) and the type of work involved – there is no 'one size fits all'.

There are a number of key elements and questions that have to be addressed in developing and implementing a policy on this highly sensitive issue:



1. When will testing be conducted?
2. How will testing be conducted?
3. What will happen to the results?
4. What if an employee refuses to undergo a test?
5. What if an employee returns a positive test?

The drug and alcohol policy should also be openly communicated to employees. All employees should be given a copy of the policy and asked to sign an acknowledgment that they have read, understood and accepted the policy.

It may go without saying, but it is equally important that the policy is actually followed on each and every occasion. If the policy is altered for one employee, then other employees may feel entitled to expect the same leniency.

## What if an employee refuses?

The first matter that should be determined is whether an employee is actually refusing to take a test. They may merely wish to speak to their manager, union representative or legal advisor before undergoing a test.

If an employee does refuse to take a test, the first step for any employer should be to find out why.

Drug and alcohol testing is obviously an

invasion of privacy, albeit one that has been generally accepted as reasonable. Therefore, an employee who refuses should be treated with sympathy. Most policies provide for a refusal to take a test to be treated as a positive test.

## What if an employee returns a positive test?

There are many factors that can affect a drug and alcohol test. Therefore, it is important first of all to ensure that the test is actually positive by conducting a second test. This should be done at a doctor's practice or a pathology office.

The implications of a positive test should focus on rehabilitation, rather than discipline. An employee should be offered counselling and assistance in dealing with what most likely is an underlying problem. Depending on the type of work, it may be necessary to stand an employee down whilst they are undergoing treatment, to avoid endangering the employee and their colleagues.

If an employee returns a second positive test, then disciplinary action may be considered, up to and including dismissal. Before a decision is made to dismiss an employee, however, they should be given the opportunity to present their position, and this should be taken into account in determining the most appropriate action.

Testing and responding to the use of drugs and alcohol in the workplace are very sensitive matters. The legitimacy of an employer's actions can only be determined on a case-by-case basis.

Having a well-constructed, detailed policy that is focused on workplace safety, is implemented fairly and uniformly, and is understood by all employees will go a long way to ensuring, firstly, that employees are satisfied with their treatment under the policy and, secondly, that your actions are upheld as reasonable in the event of a dispute. **HC**