



DRUG AND ALCOHOL TESTING

the easy complete guide for employers

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DRUG AND ALCOHOL TESTING

Introduction

The Health and Safety in Employment Act requires that employers provide a safe workplace for their employees. Persons under the influence of drugs or alcohol are not necessarily a hazard to other employees so, unless there is a clear policy in place, testing is not an employer's right unless the employee is putting themselves and others at risk.

For instance, suspicion that an office worker is under the influence of drugs would not be grounds for requiring a test unless the employee's behaviour puts anyone at obvious and immediate risk. It is more likely that the employee could be disciplined for poor performance or other reasons associated with unreasonable behaviour due to drugs or alcohol.

However, if an employee works in a safety sensitive area eg:

- is in a role where they operate machinery (e.g. fabricator, driver)
- handle materials that could cause harm such as glass, chemicals and metal (e.g. glaziers, installers)

there is potential for serious harm if an employee is impaired by drugs or alcohol.

In such circumstances the employer may be in breach of the Health and Safety in Employment Act if they do not take adequate steps to investigate the hazards posed by an employee at work under the influence.

The term "safety sensitive" has been used by the Employment Court to determine when random tests are acceptable but unfortunately the term was not specifically defined. Before random testing is introduced, there needs to be consultation with employees about the policy.

What steps should be taken

- 1 Implement a drug and alcohol testing policy. Include it in your House Rules/Employee Handbook and specifically refer to it in the employment agreement.

Make it clear in the policy that persons under the influence of drugs and alcohol must not be in the workplace and that drug and alcohol testing, following a set procedure, will be carried out to enforce the policy. The policy must state that refusal to take a test when requested may lead to dismissal or it could be legally challenged.

- 2 Consider whether to require prospective employees to take a drug test prior to employment.

This is not considered discrimination under the Human Rights Act. You would need to obtain the prospective employee's written permission (i.e. by including the requirement for a test on your application form).

Note: once someone is employed, the employer requires reasonable grounds to make an employee take a test (unless it is a random test in a safety sensitive area and has been agreed to as part of the Employment Contract). In other words it is only in the pre-employment situation in most cases that the employer can discriminate on moral grounds against a person for drug taking in their own time that does not affect their performance at work.

- 3 If an incident occurs that leads to a conclusion on reasonable grounds that drugs or alcohol may be involved – follow the drug and alcohol policy.

Take into account the fair process steps outlined in the section below (for employers without a drug and alcohol policy)

- 4 The employer must take care with the request for a test as there will have to be reasonable evidence, able to be produced later, that led to the conclusion that an employee may be under the influence and therefore putting themselves and others at risk of serious harm.

Circumstances that may lead to this conclusion may be:

- *An accident or near miss*
- *Misuse of equipment or serious breach of safety rules*
- *Dangerous actions or erratic behaviour that may result in harm to the employee or others*

Remember, the above would have to be accompanied by signs that the employee's behaviour may be due to drugs or alcohol.

- 5 If a test proves positive follow the normal serious misconduct disciplinary process.

No policy in place

If an incident occurs and a drug testing policy is not in place undertake the following procedure.

- 1 If the employee is currently working, meet with them in a private place and if you feel that they are incapable of carrying on in a safe manner, ask them what they think about taking the rest of the day off.

This consultation is important as you are suspending them. After listening to their views, make your decision.

- 2 Send the employee a letter calling them to a disciplinary meeting.

The purpose of the meeting is for you to hear the employee's explanation for the behaviour. Follow the normal disciplinary meeting process.

- 3 If the employee admits that he/she was under the influence of drugs or alcohol the employer should consult with the employee and agree on counselling and attending a rehabilitation programme (paid for by the employee, possibly with contributions from the employer - if that is what is agreed). If the employee refuses these options or subsequently fails to follow the agreed programme another disciplinary meeting should be held on this.

After hearing the employee's explanation you then decide on the next step which may be:

- *If the employee's explanation is satisfactory the matter is closed.*
- *If the employee's explanation is unsatisfactory or none is offered send a letter of warning or dismissal.*

Remember, it is most important to implement a drug testing policy and publish it to staff. Reference to it must be noted in each employee's employment agreement.

See the Documents tab for suggested clauses for your employment agreements, house rules and job application form, as well as special disciplinary letters to use.