Controlling Substance Abuse on the Job Site

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Guidelines for Removing Users from Your Payroll

The abuse of illegal drugs, prescription drugs, look-alikes, synthetics and alcohol on the job cost our nation’s economy over $70 billion in 1985 in lost productivity, accidents, health/medical expenses and theft of property. Drug traffickers have netted over $110 billion in profits from the sale of illegal drugs to Americans in 1985. We currently have over fourteen million people using cocaine regularly with an additional 5,000 new users per day. Over 24 million Americans are using marijuana daily. Recent government figures have revealed that there are over 500,000 heroin addicts in the United States.

Fourteen out of every 100 employees abuse drugs on the job and 60 percent of them sell drugs to other employees. One out of every four users steals from their company to support these habits and approximately 50 percent of all post-accident urine drug screen samples are positive for the presence of illegal drugs, alcohol or controlled substances. We know that the drug user is five times as likely to file a compensation claim and is 3.6 times as likely to suffer a work-related injury. Additionally, both the user and their dependents file 20 percent more hospitalization on their employer’s group insurance plan.

One must only look at the fate of our young adults to understand why we are having so many problems with...
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jobsite drug abuse. The average age of substance abusers in our schools today is 12 years old. Each year over 5,000 teenagers are killed and 44,000 crippled in drug and alcohol-related vehicle accidents. A teenager attempts suicide every 90 minutes in America and each year 6,000 of them succeed. One-third of those deaths are substance abuse related.

The National Institute of Drug Abuse estimates that two-thirds of people entering the work force today have used drugs and 44 percent of them have taken drugs during the past year. It’s no wonder that employers are experiencing a variety of disruptions, accidents and insurance claims as a result of the type of society we are hiring from.

Additionally, many employers are finding it difficult to absorb increasing worker’s compensation rates. They are fighting back against jobsite drug abuse by developing comprehensive policies and training programs that allow them to work within the parameters of court-related decisions. It is important that businessmen understand that they have more rights in the private sector to protect their property and employees than those in the public sector.

Most courts have upheld the employer’s rights to aggressively seek out and discipline those employees abusing drugs on the job if the program meets certain criteria. The most acceptable cases have been those in which the employer has a sound comprehensive policy that places his procedures as part of a safety and health program to provide a safe place to work. The General Duty Clause of the Occupational Safety and Health Act (OSHA) states that employers are required to provide a safe and healthful place to work free from recognizable hazards. Substance abuse certainly can fall into this category.

This type of approach will also assist those employers who are currently working under the requirements of a government contract. Government contractors have a restriction against terminating employees as a result of a particular disability under the 1973 Federal Rehabilitation Discrimination Act. Chemical dependency has usually fallen in that category as a handicap. Remember, in certain situations, employers must accommodate the handicapped unless they pose a serious threat to the safety and well being of themselves or other personnel. Most government contractors have successfully worked within these guidelines by offering help to dependent employees through the aid of Employee Assistance Programs; however, they have usually handled the abuse or possession of illegal and unauthorized drugs through sound disciplinary action to protect the workplace.

Starting at The Beginning . . .

The first step an employer should consider to reduce his exposure to employee drug abuse is at the pre-employment level. The first phase of this process is to actually identify and eliminate the people who associate themselves with illegal and unauthorized drugs through the technology of urine drug screening.

It is important to understand that pre-employment drug screening is a cost effective risk management tool that makes sense. Employers have a right to use pre-employment drug screening techniques because it is merely a prerequisite for employment. The key to this type of disqualification process is to never turn away an applicant for anything that you are not enforcing upon your current workforce. It only ‘seems logical to be able to disallow the hiring of those applicants using illegal drugs if you also prohibit their use at work.

Collectively, those contractors polled who presently utilize urine drug screening at the pre-employment level are disqualifying from 24 to 42 percent of all applicants due to the presence of
illegal or unauthorized drugs in their urine at the time they apply for a job. Fourteen percent of these disqualifications are from the ranks of the professional/technical or white-collar group. An average of twelve percent of those applying never show up for the actual drug test. This will save you all of the money a company might have spent on other pre-employment medical tests. Consider what amount of drug users you have already hired if you are disqualifying a high percent at pre-employment.

Those companies having the greatest success at disqualifying drug users at the pre-employment level, with few or no challenges, have followed similar methods that are outlined below:

1) Formulate a comprehensive drug interdiction policy.
2) Give each applicant a pre-employment drug screen. (This will reduce your exposure to an adverse impact claim should you disqualify too many applicants from a certain minority group.)
3) Have each applicant declare in writing what types of medication he/she has taken prior to the test.
4) Have them read and sign the company’s pre-employment drug screen consent form. The form should include the following:
   A) Statement of drug policy
   B) Disqualification for consideration of employment clause for those with positive test results.
   C) Hold harmless agreement for the use of the results of test.
   D) Authorization of release of test results to the employer.
   E) Optional second methodology testing on same sample at applicant’s expense.
   F) A copy of the signed form is retained with the applicant’s file while the applicant brings the original to the laboratory or clinic.
5) Disqualify applicants on a fair and equitable basis and maintain records of those you have tested and disqualified.
6) Employers either working under the Federal Handicap or a state statute should consider offering “conditional hiring agreements” to those qualified applicants who have indicated that they are recovering from addiction. This type of agreement would require that the employee continue either his/her prescribed treatment or counseling and would allow him/her to be routinely tested to prove that they have stayed clean from drug problems. This type of action would seem to be legal since a handicapped employee using drugs could pose a serious threat to the safety and well being of both himself/herself and others on the job.

Remember! Pre-employment urine drug screening is a changeable risk factor that the employer has a right to use to assist them in providing a safe and healthful place to work. A North Carolina consulting firm recently surveyed 180 companies selected randomly from Fortune Magazine’s list of 500 industrials and 500 service companies and found that 18 percent use drug screening on prospective or current employees. The list is growing daily. Two-thirds won’t hire applicants who failed, while others allow them to either reapply for a position in 6 months or sign a conditional employment agreement when they are hired.

The cost for these types of tests will usually run between $18 to $40. But the sensitivity of the test will also vary depending on who you are. Some firms have paid for a test that screens for only eight drugs while other firms prefer to deal directly with a toxicology lab that tests up to 34 different types of drugs. Additionally, most doctors offices and clinics wind up sending their samples to a laboratory for testing anyway.

The technology is there for the employer to pick and choose his methods; however, there are two questions that should always be asked of any professional before you sign them up to perform pre-employment drug screens:

1) Does this facility provide and maintain chain of custody documentation to prove the validity and integrity of the positive urine sample?
2) Is the professional who informs the employer that a particular specimen is
positive for the presence of illegal or controlled substances also willing to make that same statement to either a judge or unemployment referee?

I would question my decision on the use of any facility who answered NO to either of these questions.

But they key to any successful drug abuse program is the development of a comprehensive policy to reduce the company’s exposure from related accidents, incidents and insurance claims from the current work force.

According to the Department of Transportation, in the past ten years drunk or drugged railroad employees have caused at least 48 train accidents resulting in 37 deaths, 80 injuries and $35 million in property damage.

Additionally, each year an average of 2,100 people in the United States who handle nuclear weapons are removed from their duties for substance abuse problems—over 22,000 total in the past ten years.

Some of the topics to consider when developing a policy are: employee assistance programs, contraband searches, urine drug screening, illegal and unauthorized drugs (including look-alikes and synthetics), alcohol abuse, prescription drug abuse, stolen property, weapons and firearms, explosives and ammunition, rights of employees, and rights of employers.

The company’s position on Employee Assistance Programs should appear in any drug abuse policy. This shows employees and the courts that the company is willing to assist employees seeking confidential help.

The rest of the policy should outline all of the elements that will be used to reduce your exposure to accidents, theft, poor quality control, absenteeism, health claims and lost productivity. These sections should contain the proper wording to protect the company while enforcing its policy through supervisor training, searches, urine drug screening, and blood and plasma testing.

Some suggestions to consider when formulating these elements are as follows:

OBJECTIVE—to provide a safe and healthful work environment for everyone. This should include subsidiaries, subcontractors and vendors.

PREMISES DEFINED—Where is this policy enforceable (buildings, work areas, work locations, vehicles, equipment, personal effects, premises and scope of employment)?

POLICY DEFINED—What items are prohibited? Illegal and unauthorized drugs (discovered through a jobsite search or urinalysis testing), alcoholic beverages, weapons, ammunition, explosives, prescription drug abuse (must be defined), stolen property, and drug paraphernalia.

ENFORCEMENT—How will the company back up the policy? Searches and inspections, urine drug screening
(including post-accident testing), blood
and plasma testing, and EAP referrals.

SUBS AND VENDORS—What right
does a subcontractor or vendor have
to enforce his policy on your property
if you require him to have a program?

DISCIPLINARY ACTION—What
happens to employees and visitors if
they violate the policy? What happens
if they refuse to be searched or
screened?

AUTHORIZED SIGNATURE AND
EFFECTIVE DATE—The policy
should be signed by the highest official
in the company and dated.

Keep in mind that this outline is not
meant to be considered as legal advice
or to be used as a policy. It is merely
a guideline. You should also solicit the
opinions and advice of your attorney
before introducing any type of pro-
gram to your current workforce.
Those companies having the most suc-
cess with their programs are those who
have prudently laid the groundwork
before putting their policy into effect.

Additional items to consider are:
—Offer Employee Assistance to those
who request confidential help and treat
them like any other employee when
they return to work.
—Train the first line supervisor to
administer the policy and how to
recognize the signs and symptoms of
employee drug abuse.
—Disseminate the policy to employees
and mail a letter to the employee’s
home.
—Hold Employee Orientation Pro-
grams to introduce the positive aspects
of a drug-free workplace (when feas-
ible) or instruct the trained supervisor
to inform his/her employees at the
worksite.
—Secure signed Employee Consent
Forms from the current workforce
since you are effectively changing their
hiring agreement.
—Post all jobsites and private
property.
—Use licensed, certified testing facili-
ties that will back up the employer in
court.
—Reprimand, suspend and terminate
on an equitable basis.
—Never be vague with enforcement
and always back up your threat of
discipline.

Remember these programs must be
properly thought out before implemen-
tation to avoid violation of any state
or federal laws.