

JUST SAY "NO"

STARTING A MODEL SUBSTANCE ABUSE POLICY

EDITOR'S NOTE: Sometimes it's not so great to be Number One.

Yet, out of all industries, the construction industry is number one in death per year. The National Safety Council says the construction industry averages 2,140 deaths per year (based on estimates for the years 1982 through 1991 inclusive).

That statistic is horrifying in itself, but consider the truly terrifying aspects of this one: In a 1988 survey of construction workers, 28.1 percent admitted to using drugs illegally, according to the national Institute on Drug Abuse.

The information above was presented by in July 1993 by the Business Roundtable's Construction Committee Substance Abuse Task Force, which gathered the data for a white paper designed to improve the safety performance of the construction industry. In the background of the white paper, the committee states that 28.1 percent is probably a low number, "since some people refuse to admit illegal drug use, even in a confidential survey."

It is obvious to most that drug abuse and alcohol abuse have a significant impact on construction safety. Substance abusers involved in accidents do not admit to using drugs because they fear criminal charges and the loss of employment. Also, according to the white paper, "contractors' supervisors and owners' representatives are often not trained to recognize behavior associ-

EXHIBIT 1

Title IV of H.R. 5210 requires federal contractors to certify that they are providing a drug-free workplace as a condition for receiving the contract. The "drug-free workplace" provision would deny the awarding of a government contract unless the contractor certifies to the contracting agency that it will provide a drug-free workplace by meeting the following requirements.

- Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing or use of illegal drugs is prohibited in the contractor's workplace and specifying the actions that will be taken if the prohibition is violated.
- Establishing a drug-free awareness program to inform employees of (a) the dangers of workplace drug abuse; (b) the contractor's drug-free workplace policy; (c) any available drug counseling, rehabilitation and employee assistance programs; and (d) employee penalties for drug abuse violations.
- Requiring that each employee engaged in the performance of the contract be given a copy of the employer's anti-drug statement and, as a condition of employment, agree to abide by its terms and to notify the employer in writing of any criminal drug conviction for use of illegal drugs at the workplace, within five days after the conviction.
- Notifying the contracting agency within 10 days after learning of an employee criminal drug conviction for use of illegal drugs at the workplace.
- Imposing a sanction, up to and including termination of employment, on any employee convicted of illegal use of drugs at the workplace or requiring the employee's "satisfactory participation" in an employee assistance or rehabilitation program.
- Making a good faith effort to continue maintaining a drug-free workplace by implementing the previous five requirements.

Contractors who falsely certify that they are providing a drug-free workplace, or who fail to carry out the requirements described above, are subject to contract suspension, or termination, or both. In addition, the contractor can be debarred from future government work for up to five years. Determinations as to whether sanctions against a contractor are authorized shall be made by the respective agency's board of contract appeals. An adverse decision can be appealed to the U.S. Court of Appeals for the Federal Circuit within 60 days. Sanctions could be waived if the contracting agency concludes that they would "severely disrupt" the operation of the agency to the detriment of the government of the general public.

EXHIBIT 2

Drug Abuse Detection/Time Limits Per Usage:

The following drugs are taken orally, except for heroin and morphine, which are administered through intravenous injections, and marijuana, which is smoked.

Drug	Dosage In Milligrams	Detection Time After Usage
Amphetamines	30 15 5	1-120 hrs 1-72 hrs 3.5-30 hrs
Barbiturates:		
Short-acting	100	4.5 days
Phenobarbital	40	7 days
Benzodiazepines	25	48 hrs
Diazepam	10 10 mg/5 times daily	None detected 3-7 days
Cocaine		0-40 hrs
Opiates:		
Heroin	10	1-4 days
Meperidine	100	4-24 hrs
Methadone	38	7.5-56 hrs
Morphine	10	84 hrs
Methaqualone	150 250 300	Up to 60 hrs Up to 72 hrs Up to 90 hrs
Marijuana	Once per week Daily usage	7-34 days 6-81 days

Reference: 'Drug Testing In the Workplace,' American Society of Clinical Pathologists

ated with substance abuse; therefore, many accident reports they prepare many not indicate substance abuse as a contributory factor. In some cases, substance abuse may be deliberately omitted either to avoid embarrassing the people involved or to prevent reprisals by the uses.”

Four years ago, when the Association of the Wall and Ceiling Industries—International, the American Subcontractors Association and the Foundation of the American Subcontractors Association first came out with *Conquering the Safety Crisis: A Model Program for Subcontractors*, a construction industry safety manual, there was little reference to substance abuse. Today, as the manual is being updated, the topic merits an entire chapter.

This article is a reprint of that chapter. Because of the alarming statistics, starting a substance abuse policy for your company should be a necessity; however, it is not a decision that may be well-received by

employees who do abuse substances. The Business Round table suggests it is easier to implement substance abuse provisions when they are imposed on the contractor as a condition of contract by the owners.

In all, if all contractors in the industry initiated and enforced a substance abuse policy for their companies, workers—who face enough hazards everyday without having to worry about drug or alcohol abuse—would indeed be safer on the job site.

The need for a policy on employee use of drugs, alcohol and controlled substances is something each organization should individually address. Any policy developed should clearly indicate how it will be enforced and the consequences of noncompliance. Issues of prevention, education, enforcement, protection from misadministration and treatment/Employee Assistance Plans become the policy's main components.

Some key points to consider when developing a policy and an enforcement program are the focus of this article.

Qualifications of Policy Developers

The employer should select qualified individuals to take part in the development of the policy. External legal assistance is highly recommended during the policy development phase to ensure compliance with all applicable state and federal laws.

Policy Design. The policy should not be designed to dictate moral conduct or to enforce the law. However, reasonable rules may be implemented to discourage employees' possession or distribution of illegal drugs at work. In addition, federal contractors must incorporate the six elements of the Drug-Free Work Environment rules listed in Exhibit 1 into their company drug policies.

Enforcement. The policy must be

IMPLEMENTING THE SA POLICY

OBJECTIVE

To help determine the step-by-step process required to make our company's SA policy fair in all respects to everyone involved.

DIRECTIVES

Once the company has developed a substance abuse policy, steps should be taken to ensure that all employees clearly understand the policy implications. This is extremely important! The policy should be presented in such a manner that the company can prove, to the satisfaction of an unemployment commissioner or judge, that it made a reasonable effort to inform all persons affected by the policy.

IMPLEMENTATION

The following key areas were more fully explained in the Program Development Section of this document, but briefly include:

- * Prevention (*pre-employment*)
- * Education
- * Enforcement
- * Treatment

After the policy is announced and publicized, allow at least a 30-day grace period for employees to clear their system of illegal substances. This demonstrates fairness on the part of the company. At the end of this period you should begin testing. You may elect to begin testing on a pre-employment basis in order to get the staff familiar with reporting, record keeping and the details of testing. When you begin testing your employees, pay careful attention to logistics and timing.

If not well-planned, random testing of employees can disrupt operations. Again, state and local laws must be consulted to determine whether such testing is permissible and, if so, the specific conditions under which tests may be conducted.

The sample acknowledgement (*Exhibit 3*) may be used to ensure that your existing employees have read and understand the company's policy.

Included in the exhibits is an example of a typical substance abuse policy. Other sources for film, posters and pamphlets on substance abuse and related topics include: The National Safety Council, The International Film Bureau, and the Film Library.

NOTE: This information was adapted from programs known to be in use and is not intended to be all-inclusive. Further, it is highly recommended your own legal counsel be consulted prior to implementing a substance abuse policy.

EXHIBIT 3

Acknowledgement "Company Name"

Substance Abuse Policy -Urinalysis Drug Screening-

By my signature below, I _____ hereby acknowledge that I have read and understand the Substance Abuse Policy of "company", which outlines the company's policy regarding the use or possession of drugs and related items. I understand that the company requires employees to submit urine specimens to be analyzed for the presence of drugs. I realize that the presence of detectable trace of any unauthorized substance is grounds for disciplinary action and that this may include termination of my employment. I further realize that my cooperation is voluntary and that refusal to submit a specimen for testing is grounds for termination.

I agree to cooperate and abide by this policy and understand that any failure to do so on my part is grounds for termination.

Employee Signature

Date

Signature of Supervisor
or Witness

Date

fairly enforced and in keeping with the intent of the policy. Violations should be handled consistently, on a non-discriminatory and confidential basis. Decide before you start what action will be taken if violators are found, rather than "after the fact."

Pre-employment Screening. Screening should be the backbone of an employer's drug testing policy. However, corporation must check and obey local and state laws before undertaking such screening and incorporating it into any job candidate program. Both employer and employees have the right to consistent and reasonable procedures in administering the test. It is at this time that the employer is required to advise all applicants considered for employment and they will be tested for use of illegal drugs, or at anytime thereafter in accordance with established policies. This should be stated in the application for employment. Amend your employment application to reflect these changes.

Employee Involvement. The best way to gain support for the program is to involve employees at the first stages of policy development. Get their input and answer their questions so they understand that the policy is designed to improve working conditions. Indicate exactly what drugs will be included in the testing. The most commonly tested drugs are listed in Exhibit 2. Levels of detection also included are those recognized as levels of abuse by the national Institute on Drug Abuse. These levels have been successfully defended in numerous legal challenges.

Policy Section. The policy should include the employer's or laborator+ method of maintaining the integrity of specimens. This portion of the policy should state the employees' rights and, at minimum, should include the employer's commitment to maintaining confidentiality in enforcing the drug testing policies. The employees rights should also include freedom from libel, slander and humiliation, and proper administration of the test. This section should also include statements of the

EXHIBIT 4

SAMPLE POLICY AND PROCEDURE ON ALCOHOL AND DRUG ABUSE

A. Objective

The purpose of this procedure is to set forth general guidelines to be followed in implementing the company's drug and alcohol abuse program as it applies to employees, contractors, visitors and non-employees.

B. Procedures

General

* The company has a strong commitment to providing a safe place and establishing programs promoting high standards of employee health and safety. All employees are encouraged to report drug abuse or impairments to fitness for duty.

* In cases of suspected drug and/or alcohol involvement, except for cases of obvious or probable false or harassing reports, unescorted access to protected areas should be suspended until management action has been completed.

* While the company has no intention of intruding into the personal lives of its employees, it is recognized that serious involvement with drugs or alcohol off the job eventually takes a toll on job performance. Employees having a drug or alcohol problem are strongly encouraged to seek assistance through the Employee Assistance Service Program.

Company Policy on Illegal Drugs and Alcoholic Beverages

Illegal Drugs

The possession, sale or use of illegal drugs (defined as any drug or drug-like substance whose sale, use or possession is unlawful) is inconsistent with the company's objective of operating in a safe and efficient manner. Accordingly, no officer, employee, agent, contractor or visitor shall use, or have in his or her possession, illegal drugs during working hours or on company property at any time. Additionally, no officer, employee, agent or contractor shall report to work while under the influence of illegal drugs. The services of any employee who engages in such conduct will be subject to disciplinary action up to and including discharge, according to vested authority. The only exception is the taking of prescribed drugs under the direction of a physician.

The unlawful involvement with drugs or narcotics off company property will constitute grounds for severe disciplinary action up to and including termination of employment.

Alcoholic Beverages

The use of alcoholic beverages by employees or contractors engaged in the construction, operation or maintenance of the company's facilities is inconsistent with the objective of operating in a safe and efficient manner. Accordingly, no officer, employee, agent visitor or contractor shall use alcoholic beverages during working hours nor shall alcoholic beverages be served at a company function without prior approval by the appropriate senior officer of the company as designated by the chief executive officer. Additionally, no officer, employee, agent or contractor shall report to work under the influence of alcoholic beverages. Employees in violation of this policy will be subject to disciplinary action up to and including termination of employment, according to vested authority.

Drug and Alcohol Testing

Applicants Considered for Employment

**All applicants considered for employment will be tested for drugs as part of our screening procedure.

** Applicants will be requested to sign a consent release form authorizing the clinic to perform the drug test and submit the results to the company.

** Applicants who refuse to sign the consent release form or who show traces of illegal drugs will not be considered for employment for a period of six months. Applicants who reapply for employment after the six-month period will again be asked to sign a consent release form and be required to successfully pass a drug test.

** Applicants will be given only one valid drug test within a six-month period.

** Positive results from the drug test will be communicated only to the applicants by the company.

Fitness for Duty

**Employees whose performance indicates that they are unfit for duty and possibly abusing drugs or alcohol will be subject to a drug or alcohol screening test by a company-designated clinic.

**Employees who are requested to submit to a drug or alcohol test will be asked to sign a consent release form authorizing the clinic to conduct the test. The consent release form will be supplied by the company physician

**Employees who refuse to sign a consent release form or who are identified as having prohibited substances in their system may be discipline up to and including discharge, according to vested authority.

Employees Returning After an Absence of 45 Days or More

**Employees returning from leaves of absence may be subject to a drug test if they have given management a reason to suspect possible illegal drugs and/or alcohol abuse. Possible reasons to suspect substance abuse include, but are not limited to:

- A history of excessive absenteeism not related to a specific illness
- Documented evidence of deteriorating job performance
- Documented history of aberrant behavior
- Documented involvement with drugs off the job

**A positive result from the drug test will result in the employee being required to seek rehabilitation or being disciplined, according to vested authority. The employee may be subject to further tests.

**Failure of the employee to enroll or participate in a recognized rehabilitation program at the request of the company will result in the employee being disciplined up to and including discharge, according to vested authority.

**Employees who refuse to submit to a drug test or who are identified as having prohibited substances in their system may be disciplined up to and including discharge, according to vested authority.

Notation: State legislation in some jurisdictions provide financial incentives to employers who implement testing procedures for:

1. Pre-employment
2. For cause (Unusual behavior)
3. Post accident

Management should consider this action as part of their cost containment plan.

EMPLOYEE ASSISTANCE SERVICE (EAS)

A. Objective

If the company so desires, an employee support system can be adopted as part of the substance abuse program.

NOTE: *Employee Assistance Service (EAS) is strictly voluntary on part of the company except in specific industries regulated by state or Federal law. If EAS is considered, the company should contract with a recognized firm specializing in this unique service.*

B. Approach

The company recognized that drug and alcohol abuse are serious illnesses and, through Employee Assistance Services (EAS), provides counseling and referrals to help employees with these problems.

Employees are expected to report for work able to do their jobs. Any employee who is unfit for work because he or she is under the influence of alcohol or drugs may be sent home and subject to disciplinary action up to and including termination. Any employee who unlawfully sells, distributes, possesses or uses drugs on company premises may be terminated

C. Supervisor's Responsibilities

*If you think alcohol or drug abuse is interfering with an employee's performance, contact an Employee Assistance Services counselor. The Employee Assistance Services counselor will recommend a course of action. Don't discuss your suspicions with the employee before talking to Employee Assistance Services.

*If an employee reports for work unfit to do his or her job, require that the employee leave the premises and have him or her safety escorted by taxi. Although there may be a question about whether an employee is under the influence of drugs or alcohol, you may decide that he or she is unable to perform assigned duties regardless of the cause. If possible, have another supervisor corroborate your observations. Consult with an EAS counselor to determine further action, which may include a medical evaluation of fitness to return to work. Be sure to document all observations and actions taken.

*Give the employee time off for counseling or treatment if necessary. The Employee Assistance Services counselor will contact you regarding a disability leave of absence if extended treatment is needed.

*Deal with an employee's unsatisfactory job performance by following the "Corrective Action Guidelines" (not included in this exhibit), regardless of whether the employee accepts Employee Assistance Services counseling. The counselor will let you know whether the employee you referred has accepted Employee Assistance Services' recommendation, but will not reveal any specific information about the nature of the problem or recommended treatment. Keep the EAS counselor informed if performance problems continue.

*Report the sale or distribution of illegal drugs on company premises to your personnel officer. Immediate termination of employment may be recommended.

D. Recognizing the Problem

Sometimes alcohol or drug abuse is easy to recognize. In other cases, it is more subtle. Some common clues to alcohol or drug abuse are regular Monday or Friday absences, tardiness, changes in mood during the day, lower job efficiency or a change in work patterns, accidents on the job, or conflicts with coworkers.

E. Legal Requirements

If you suspect alcohol or drug abuse is causing a performance problem, you should refer the employee to Employee Assistance Services. State and federal laws require 'reasonable accommodations' to help employees solve alcohol or drug abuse problems. The EAS counselor will advise you about accommodations. ☐

right of the employer to conduct the test and the action that will be taken if an employee refuses. Typically, refusals to submit a sample can result in termination or other disciplinary action.

Employee Challenge. An employer may provide an appeals process to employees or job applicants who challenge a positive test. A typical provision is challenge testing at a cost to the employee/applicant with a provision that the challenge test must be conducted on the same sample as the first test. If retesting proves negative, the employer pays the cost. The employer's explicit intentions should be in the written policy prior to implementation of the program. No statement regarding challenge testing should be made unless the contract With the laboratory guarantees they will retain the specimen for further testing.

Positive Test Results. Job applicants who are currently abusing any of the chemical substances being tested should not be hired. When an applicant or an employee tests positive for any of the listed substances, a confirmation test by an alternate, more specific, method must be conducted. The test must be conducted before reporting the positive results.

Education of Employees. Once the policy is implemented, an education program should be conducted that includes issuing copies of the policy to current employees, posting the policy at entrances, lunchrooms, bulletin boards, etc. In addition, schedule meetings with all supervisory personnel to make them aware of what is about to happen. Employers should allow at least a 30-day "grace period" to answer any questions, give everyone the opportunity to comply without duress, and give individuals currently using drugs sufficient time to discontinue drug use.

Employee Agreement. All employees should be required to sign an acknowledgement that they have been informed of and agree to comply with, the new drug policy. This acknowledgement constitutes an amendment to the initial employment agreement, whether stated of or implied. (See Exhibit 3.) □