

Drugs and Alcohol in the Workplace[©]

Sheena Kane

Kane Independant Consulting, P.O. Box 367, Warburton VIC 3799, Australia

Email: skane@kaneindependentconsulting.com.au

INTRODUCTION

Thank you for attending the NGIV-IPPS presentation on drugs and alcohol in the workplace. This can be a confusing and controversial issue in any workplace, so we'll look at some of the main areas of workplace law so see what you may need to consider if you have a problem, or are looking to develop a policy before trouble strikes.

Many people will think of accidents, particularly for employees in dangerous roles such as driving or operating heavy machinery, as a potential outcome of being affected by drugs or alcohol. Although Occupational Health and Safety may be the primary concern and motivation, there are other problems, such as taking "sickies" if hangover or affected by drugs and alcohol, other co-workers becoming disgruntled at a known problem "getting away with it," mistakes in paperwork, or your company being seen as unprofessional. There can be claims such as unfair dismissal or discrimination if a policy is badly drafted, or inequitably implemented or not supported in the workplace.

THE OCCUPATIONAL HEALTH AND SAFETY ACT (VICTORIA)

The Occupational Health and Safety Act (Victoria) 2004 places a duty of care on employers to "provide and maintain for employees of the employer a working environment that is safe and without risks to health" (sec 21), as well as not placing others, such as members of the public or suppliers, at risk. A risk assessment, asking what could go wrong, and what's the worst that could happen, can be a good start. Employers are also obliged under this Act to consult with employees. This can assist with making a policy that fits your workplace.

Many companies think of drug testing when they suspect they have a problem with someone. This can be easier said than done. For this to be done legally, you need a policy that outlines when, how, and who you will test. Will you test randomly or after an accident? If you suspect someone is affected? Will you use swab tests? How much will it cost? Will you only test your manual workers? What if someone refuses to take a test? What will you do if you get a positive result?

Answers to these questions can often be found through research and consultation. This may include consultation with an Employee Relations and/or Occupational Health and Safety specialist. Your company may also need to consult with employees and their representatives, such as union delegates. This will assist in developing a policy that will be accepted by your employees, have the support of the union and be defensible if a claim is made against your company.

EQUAL OPPORTUNITY ISSUES

You will also need to consider equal opportunity issues. No type of addiction is recognised as a protected attribute or a disability under legislation; however, if an employee is adversely affected by a prescribed medication for a recognised condition, you could find yourself with a discrimination claim.

This leads to an important question; what do you do if you think an individual is affected by drugs or alcohol? Answer: TALK to them! In a private setting, with an appropriate, trusted person, tell them what you have noticed (red eyes, slurred speech, smell of alcohol) and ask what they think may explain this. There may be more than one explanation for what is being presented.

Stress, fatigue, problems at work and home, prescribed medications, over the counter medicines, shock, can all produce side effects that may lead you to think alcohol or drugs are to blame. Always take into account alternative explanations, especially when you

know you have an employee with a good work history and you are seeing unusual behaviour for them.

Sometimes your biggest obstacle in getting a drug and alcohol policy accepted and implemented by management. Trying to get other bosses, supervisors, and leading hands to understand and support this sort of a policy and understand their obligations can be extremely difficult. Are they just giving it lip service whilst enjoying lunchtime drinks themselves? Neither your employees nor bodies such as the Industrial Relations Commission are going to take your company's commitment to your policy seriously if this is what's happening. Does a well meaning supervisor allow a particular employee with a known problem to just do an easy job when it can be seen they are "worse for wear?" Worksafe probably won't feel the same consideration if they have to attend the scene of a serious accident. Management needs to understand that they should be covered by the same policy as everyone else, and will be looked to as an example. Supervisors need to understand their role goes further than just ensuring production. They have legal obligations under the Occupational Health and Safety Act (Vic) 2004, and play a key role in ensuring the successful implementation of any policy. Supervisors need to be trained in what this policy means and what steps they are expected to take if they suspect a breach, or have a breach reported to them.

EDUCATION

Education is a key part of implementing your policy. Employees are often unaware that their company even has a drug and alcohol policy. If you have one, then people should know if this means they have to be 0.00 BAC (blood alcohol count) at work, or under 0.05 BAC. They should know when and how they can be tested. Education also can mean for some people finding out how long different substances remain in their body. This usually means that an employee cannot be sacked for a first time offence under a policy. It may also mean helping an employee through drug or alcohol programs, or discussing with employees beforehand how long different drugs may remain detectable in their system.

It can be important to remember that the presence of drugs or alcohol may not mean the employee is impaired. THC, the active constituent in marijuana, can show up in a urine test up to two weeks after use. This means it is important to use testing methods, such as swab testing, or breath analysis for alcohol, which are more likely to show results which indicate impairment, to ensure fairness. Also important for fairness, is whether in the eyes of your employees, or other bodies, is that everyone is treated the same. This includes who is tested, and how someone is treated if they have a positive result after being tested.

Hopefully this has helped to provide a basic guide to a very complex issue. If your company is confronted by drugs and alcohol in the workplace, or looking to draft and implement a policy first, this should provide some food for thought. And don't be afraid to consult, discuss and educate.