

DRUGS AND ALCOHOL ISSUES

Introduction

It is a fact that alcohol and drug use in the UK has been rising for some years. An employer should be concerned if the level of use has an impact on individuals' attendance or performance or if it could increase the risks of accidents at work or have an impact on the health and safety of the general public.

Health and safety legislation is another reason why companies should take the issue of alcohol and drug misuse at work seriously. The Health and Safety at Work (NI) Order 1978 requires both employers and employees to maintain a safe working environment and the employer, the employee or both could be liable if an alcohol or drug related accident occurs at work.

When dealing with alcohol or drug misuse at work, employers have to strike a balance between using the disciplinary procedure for conduct-related incidents and providing support where individuals have acknowledged they have a problem.

Developing a policy

Developing a policy on drug and alcohol misuse can provide a framework to enable companies to:

- improve health and safety standards;
- reduce employee absence levels;
- enhance productivity;
- retain key people.

It is important for each company to identify its own particular needs and to reflect these in the policy. For example a company that operates in a safety-critical industrial sector e.g. construction, chemicals, nuclear energy etc, will probably require a more complex and punitive policy with strict and specific rules than a company that operates in the leisure and tourism sector.

What needs to be communicated?

Three main issues need to be communicated:

- the reasons why alcohol and drugs should not be brought into the workplace, and the potential adverse effects on employees, customers and the public;
- the existence and the operation of the company's policy;
- the advantages of seeking help and gaining access to support and treatment.

Training

Directors, senior managers, line managers, supervisors and union employee representatives would all benefit from training, which could include:

- information on the effects of drug and alcohol misuse at work;
- help and support available for staff;
- basic interviewing and advisory skills.

Sample Policy

See Appendix 20A for a Sample Workplace Alcohol and Drug Policy.

Support or discipline?

Drug and alcohol misuse can trigger a number of different issues for managers and supervisors to deal with, including misconduct, performance, health and safety, and dishonesty.

Employers will need to review the specifics of each case and consider what action is most appropriate. Employers should be mindful of their duties under disability legislation and seek further advice where necessary.

It is good practice to approach these issues from a supportive standpoint where appropriate – unless the facts allow for an obvious and immediate assessment of inappropriate behaviour.

A disciplinary approach would be appropriate in instances of serious drunkenness at work or an employee taking, storing or dealing drugs on the premises.

Issues relating to illegal drugs and the articles associated with them on the premises come under the Misuse of Drugs Act 1971 and must be immediately reported to the police.

Where disciplinary measures are taken, they need to be proportionate and be seen by employees to be fairly applied.

Once a performance issue has been defined, the causes of the problem can be considered. However, whether or not an answer is available at this point in the process, it is possible to follow usual performance management procedures, that is to set targets, offer training to the employee if needed and monitor for a specific period. See section 14 – Managing Employee Performance.

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During this process, and particularly if it moves towards the possibility of dismissal, the person may eventually admit they have an alcohol or drugs problem.

Different types of problem and diverse jobs will lead to different performance issues which will require different approaches, for instance:

- safety-critical work;
- alcohol;
- illegal drugs taken during leisure time;
- illegal drugs brought onto company premises for own use or to deal;
- prescription medicines;
- solvents (issues include young people at work, health and safety procedures for solvent storage/use);
- one-off incident;
- a pattern of incidents;
- dependency;
- repeat problems or a relapse.

Conduct and Performance

Conduct and performance issues can be addressed whether the person acknowledges alcohol or drugs as the cause of a performance problem or not.

Recognising this enables managers and supervisors to take these issues forward with more confidence.

Employers should carry out a thorough investigation into any allegations about drug or alcohol misuse.

A key issue will be whether the incident suggests that the employee suffers from an addiction, or whether the misuse is occasional.

If it is occasional, it is more likely that it should be treated as misconduct.

The misconduct can manifest itself in different ways, for example:

- breach of a specific term in the contract or policy (for example a provision requiring staff not to attend work while under the influence of alcohol or drugs);
- unauthorised absence;
- erratic behaviour, fighting or insubordination;
- inability to perform duties;
- bringing the employer into disrepute.

Alcohol and drug misuse impairs judgement, concentration and co-ordination (among other problems). The following indicators are signs of possible alcohol or drug misuse (it is important to note that these can also be caused by other factors, such as stress, physical illness, mental health problems or the effects of prescription drugs; each case should be considered on its merits):

- repeated patterns of depression, or fatigue from sleeplessness, which last two to three days;
- erratic performance;
- unusual irritability or aggression;
- overconfidence;
- inappropriate behaviour;
- sudden mood changes from extreme happiness to severe depression;
- reduced response times;
- a tendency to become confused;
- reduced productivity;
- absenteeism;
- poor timekeeping;
- lack of discipline;
- deterioration in relationships with colleagues, customers or management;
- dishonesty and theft;
- financial irregularities.

The initial performance interview

When a performance or conduct issue is raised there should be an initial meeting between the line manager and the employee to discuss the performance issue and the actions that need to be taken by all parties to rectify the situation.

A record should be kept of all meetings with the time, date, those present and the actions agreed upon.

It is important that the approach taken at this initial meeting is supportive rather than confrontational to leave open the possibility for the employee to request assistance in the future.

The performance or conduct issue(s) that have been occurring should be defined and possible reasons or causes discussed (not assumed).

The company's policy on health support, once a problem is declared, should be made clear and the employee reassured of confidentiality, job security and that help will be offered within certain parameters.

The actions that could be taken by all parties should be discussed. For example training or counselling can be offered to the employee.

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A plan should be agreed and put into place and targets should be set for improvement in the performance problems. The arrangements and performance are then monitored for an agreed period.

Where there is no improvement over the agreed time period refer to section 14 – Managing Employee Performance and section 18 – Disciplinary Issues and Dismissal, as appropriate, for further guidance.

Disciplinary action

Unacceptable conduct, which may be alcohol or drug related, should be subject to normal disciplinary procedures.

If the person rejects help and support for the performance issues, disciplinary procedures can be instigated. Dismissal should be a last resort.

There is always the option to suspend disciplinary action at any time if the person admits to the cause of the problem and asks for help.

Best practice would then, in the majority of cases, be to offer them help and support, but with the provision that the disciplinary proceedings will be reinstated if the agreed course of treatment is not completed, or the problems reoccur.

Health and safety

Employers have legal duties to both employees and third parties in relation to health and safety. If an employee might place colleagues in danger by their behaviour, the employer has a responsibility to remove that danger. This may mean increasing the level of supervision or, in extreme cases, proceeding to a suspension or dismissal (preceded, of course, by any appropriate warnings).

An employer will have an equivalent duty to ensure the safety of the employee themselves, so may need to take steps to remove them from the working environment, either temporarily or permanently, if their behaviour persistently results in them being a danger to themselves.

Employees have an individual legal responsibility in relation to their own health and safety and that of their colleagues. In theory, they could be sued for negligence if they fail to carry out their work with reasonable care due to the influence of drink or drugs and cause damage or injury as a result.

In safety-critical working environments e.g. construction, chemicals, nuclear energy etc, employers need to be extra vigilant.

Treatment considerations

Treatment options for substance misuse are diverse. They can take place in a mixture of in-patient and out-patient settings. Medical advice should be sought with probable onward referral to supportive counselling and treatment.

NICAS (The Northern Ireland Alcohol and Drug Treatment Charity) offer a confidential, professional counselling service to those who have developed a problem with alcohol, drugs or both and can provide the following services for employers (at a cost):

- Alcohol and drug awareness training;
- Assistance with policy development for dealing with alcohol and drug misuse in the workplace;
- Treatment programmes for individual employees who are dependent on alcohol or drugs;
- Written progress reports in confidence to your company designated person (person with responsibility for overseeing your Alcohol and Drug Policy);
- Contributing to health and lifestyle events in the workplace by using screening tools designed to identify risk of alcohol and/or drug misuse.

Testing for drug and alcohol abuse at work

Employers should think carefully before introducing a policy for testing for drug and alcohol misuse at work.

Companies that introduce testing regimes that are not proportionate to the risks to health and safety or to the business that they are trying to manage could find themselves falling foul of the law.

The Data Protection Act 1998 sets out rules to make sure any personal information on employees held by employers is managed properly. This includes any information on employees from drug and alcohol testing.

Key points

- Testing must be justified and appropriate for the nature of the business;
- Personal information obtained through testing should be kept to a minimum;
- Random testing should be limited to workers in safety-critical roles;
- Policies on testing must be clearly communicated to all workers.

When can you test?

Pre-employment

When a job offer is made contingent on a satisfactory medical examination that includes a drug test.

Pre-promotion

As in the applicant situation. However, unlike an applicant, the employee who is being considered for promotion has proven to be a good employee. Accordingly it would behave an employer to assist an employee who had a positive test result during the vetting process. How the employer would assist the employee would depend on the particular facts, but at a minimum the employee should be afforded the opportunity to receive treatment, with continued employment contingent on successfully completing the recovery programme.

Routine Testing

Testing is carried out at specific times, e.g., during periodic medical examinations.

Reasonable Cause

After the testing of applicants, testing based on reasonable cause is the most common time when an employer would test. It is also, perhaps, the easiest to defend because an employee under the influence of drugs or alcohol would be a threat to safety.

Random

Using coded employee identification system, a random number generator computer program selects employees for testing. The specimen to be tested is collected just as the employee starts work or just before the end of the work day. This is the most vigorously resisted method of selecting employees for testing.

Treatment Follow-up Tests

Periodic testing on an unpredictable random basis may be absolutely necessary in order to encourage and ensure recovery programme compliance. Consent to testing during the recovery period is not usually a problem because continued employment should be contingent on successful completion of the treatment programme.

Confidentiality

It is, of course, vital that any information about an employee's health is kept in strictest confidence. The Data Protection Act 1998 requires employees to give explicit consent to the processing of any 'sensitive personal data' by their employer.

Further information sources

The Health and Safety Executive for Northern Ireland (www.hseni.gov.uk)

The Northern Ireland Community Addiction Service (www.nicas.info)

The Chartered Institute for Personnel and Development (www.cipd.co.uk)

NI Business Info (www.nibusinessinfo.co.uk)

Alcohol and Drug Policy

1. Introduction

(Insert company name) has adopted this positive policy designed to encourage early identification of alcohol and drug related problems and so provide (Insert company name) with a constructive and preventative strategy regarding alcohol and drug problems amongst its employees.

Alcohol and drug problems can affect an individual's health and wellbeing and cause a wide range of social problems. This policy is concerned primarily with the effects of alcohol and drug problems on the job performance and career prospects of (Insert company name) employees.

The Alcohol and Drug Policy has four main objectives:

- To **retain** employees;
- To **encourage** employees with alcohol and/or drug problems to seek help;
- To **refer** employees for help;
- To **restore** health and productivity.

The Policy is intended to:

- Reduce and help prevent the incidence of alcohol and/or drug related work impairment; and
- Reduce the personal suffering of employees with alcohol and/or drug related problems and also the consequential effects on colleagues.

2. (Insert Company Name) POLICY

(Insert company name) recognises that alcohol and drug related problems are primarily health and social concerns and therefore, employees with such problems require help and treatment.

Alcohol and drug related problems in the context of this policy are defined as any misuse of these substances, either intermittent or continual, which interferes with an employee's work performance in the areas of efficiency, productivity, safety or attendance at work.

When it becomes evident that an employee has an alcohol and/or drug problem affecting conduct at work or work performance, that employee will be asked to discuss the matter with the person designated by the company. The employee concerned will have the right to be accompanied by a trade union representative or colleague.

When discussing these problems with employees the desire of (Insert company name) to assist the employee will, at all times, be uppermost in the mind of the designated person. As a result of this discussion the designated person will offer the employee the opportunity to seek an outside assessment of the problem and, if necessary, treatment from an appropriate agency. The designated person will make clear to the employee that during any period of treatment all benefits and rights laid down in the contract of employment will be safeguarded. When the employee is judged fit to resume working it will normally be in that person's original post. If for some reason that is not possible, every effort will be made to find that employee suitable alternative employment in the company. Should the employee be unsatisfied with the arrangements being offered, the matter will be referred to the Grievance Procedure.

The procedure established by this agreement for assisting an employee with alcohol and/or drug related problems is quite distinct from the Disciplinary Procedure. An employee with an identified problem, which affects conduct at work or which prevents the achievement of a satisfactory level of work performance and who refuses the opportunity to receive help, may have the matter referred to the Disciplinary Procedure. Equally, if an employee denies the existence of an alcohol and/or drug related problem or discontinues a course of treatment and then reverts to the previous unsatisfactory levels of conduct or performance, the matter may be referred to the Disciplinary Procedure.

An employee who accepts the opportunity to receive help, but whose conduct or work performance afterwards reverts to the problem level, will have the new situation considered on its merits. If appropriate a further opportunity to accept and co-operate with help and treatment will be offered.

The application of this policy is limited to those instances of alcohol and/or drug related problems which affect the health and/or work performance or conduct of the employee. The policy does not apply to employees who, because of indulgence in alcohol and/or drugs on random occasions, behave in a manner contrary to the standard of safety and conduct required by (Insert company name). Such instances will be dealt with in accordance with the normal recognised Disciplinary Procedures.

3. Confidentiality

All discussions with an employee in connection with this policy will be strictly confidential. This will equally be the case with any counselling or other treatment undertaken by the employee. While appropriate personnel records will be kept it is accepted that any record of treatment will be the property of the person administering that treatment. No discussion about the employee will take place with another party without the permission of that employee.

4. Training

All employees will be given a copy of the agreed alcohol and drug policy.

Specific training will be given to those with special responsibility for implementing the policy. Depending on the level of responsibility and the knowledge and skills considered necessary, training programmes will cover, as appropriate, the following:

- (i) Basic understanding of alcohol and drugs and the rationale and procedures of the policy;
- (ii) The nature of problem alcohol and/or drug misuse, its possible causes and effects;
- (iii) The relationship between alcohol and/or drugs misuse, problems, occupation, behaviour, efficiency, safety and general work performance; and
- (iv) The kind of help available, such as counselling, from local agencies.