

Personnel Notebook

For Your Most Important Resource -- The Human Resource

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DRUGS IN YOUR WORKPLACE?

WHAT'S LEGAL, WHAT'S FAIR, WHAT WORKS?

More than a legal problem, drug abuse is a personal and a national people problem. And it appears that for the foreseeable future the major battlefield for this problem will be the job site. And maybe that's where it should be. The problem here is much more clearly recognizable. The people who want to, have to and can deal with it are here. Since World War II, there probably has been no greater common enemy facing Americans than drug abuse and most of us would agree that's no exaggeration!

I. ARE DRUGS IN YOUR WORKPLACE?

A Federal health study estimated that 37 million Americans are using an illegal drug. More than 23 million use illicit drugs at least monthly. More than six million now use cocaine.

A U.S. Department of Transportation (DOT) study linked 48 train accidents to drug abuse in the last 10 years. Those accidents killed 37 people and cost \$34 million in property damage.

A congressional study estimated that American businesses lose \$33 billion annually in lost productivity and health expenses.

Drugs and alcohol cause:

- impaired eyesight.
- slower reaction times.
- lessened concentration.

- poor coordination.
- poor judgment.
- low productivity.
- less cooperation with others.
- low motivation.
- poor quality of work.
- thefts, illnesses, accidents and deaths.

Workers with drinking and drug problems reflect the following personnel statistics:

- work accidents
4 times greater than non-drug users.
- worker's compensation claims
5 times greater.
- absenteeism
16 times greater.
- sickness benefit
33% more use.

The total cost to the economy for drug abuse is estimated at \$100 billion annually. How much of that comes from your company? How much will you contribute next year?

II. WHAT'S LEGAL?

The diagram on page 5 will show an outline of the

current Federal requirements regarding drug abuse on the job. Although there are many other Federal laws and regulations, particularly for Defense contractors, these three areas will relate to almost all of us.

- The Drug Free Workplace Act of 1988 (DFWPA).
- The Department of Transportation (DOT) Drug Regulations.
- The Private Sector.

The Drug Free Workplace Act of 1988 (DFWPA)

DFWPA became effective March 18, 1989 and applies to all Federal procurement contractors of \$25,000 or more. This Act requires employers to initiate a drug-free workplace program that applies to all employees directly working on such contracts. The program must contain the following seven elements:

1. Publish a statement to employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance in the workplace is prohibited and specify the penalties for violations.
2. Initiate a drug-free awareness program informing employees of drug abuse dangers, the company's drug-free policy, the sources for assistance, counseling and rehabilitation for drug abuse.
3. Provide each covered employee a written copy of the company's policy.
4. Notify covered employees that they must abide by the policy and that they must notify the employer of any criminal drug conviction within 5 days.
5. The company must notify the Federal contracting officer of such a conviction within 10 days.
6. Require or recommend such a convicted employee to participate in a drug

rehabilitation program.

7. Make a good faith effort to maintain a drug-free workplace.

Failure to comply can lead to debarment from Federal contracts.

The Department of Transportation (DOT) Drug Regulations

The DOT regulations became effective on December 21, 1988 and applies to any of the following categories of employment:

- A DOT procurement contract of \$25,000 or more,
- A transportation employer with 50 or more employees,
- An employer operating a 26,000 lb. vehicle interstate, and
- An employer operating a vehicle carrying hazardous material

The regulations also apply to employees in the following industries:

- aviation
- interstate truck or bus
- mass transit
- railroad workers
- mariners on commercial vessels
- pipeline workers working in security or safety functions.

The DOT regulations, for any employers identified above, require the use of drug testing. The following five categories of testing are required:

- Pre Employment. Prior to, and as a condition of employment, job candidates must pass a drug test. (The most acceptable form of testing with very few employee objections).

- Random. Randomly selecting employees at unannounced times for drug testing. (The most volatile form of testing. Often creates distrust and law suits).
- Periodic. Regularly scheduled drug testing. (Also volatile except when used in a drug rehab program or EAP).
- Reasonable Cause. Used for specific cases where an employee appears to be under the influence of drugs or alcohol. (Generally accepted by employees).
- Post Accident. After an accident, all involved employees are tested. (Generally accepted by employees).

Employees who test positive or refuse to test must be removed from duty.

DOT requires an Employee Assistance Program (EAP) to be initiated when testing starts. The EAP must provide, at a minimum, information and training on the effects of drug abuse and where to obtain help. Employer must appoint medical review officers.

The Private Sector

For private sector employers, there are no definitive Federal regulations. Most suits are brought to court through state laws. Not all states have drug laws. Have your attorney check to see if your state has its own law. There are, of course, many civil suits brought by individuals. Most suits cite "invasion of privacy" through drug testing or searching. Unions will generally take a firm stand on drug testing and will assist members who are tested or searched.

In labor relations, there is a time tested verse that asks, "What would a reasonable person do, knowing what we know?" Those of us in the private sector, as yet unencumbered by Federal mandates, are still in a position to ask and answer this question. The answer is: we would do what's fair and what works!

III. WHAT'S FAIR?

A fair and reasonable start is to recognize that our

employees are not our enemies. They are the people with whom we have chosen to work. Our goal is not to "catch" an employee with drugs. You want to be a coach, not a cop!

Write a policy. Start with the union representatives if you have a union or set up a committee of people who communicate with your employees. Assess the problem. Are there signs of drugs? Are accidents, low productivity, absenteeism or illnesses on the rise? Do you have areas of significant safety concerns, such as explosives, chemicals, dangerous equipment, or work at dangerous heights? Such conditions may indicate a need for drug testing.

You should provide employee assistance. Whether this will be a formal EAP or not needs to be considered. At a minimum, you should offer referral to drug counseling and drug rehabilitation. Your patience and cooperation by continuing employment during this period is fair and reasonable. Employees on rehabilitation should be placed on conditional probation. Failure to comply with counseling and rehabilitation provisions or repeated occurrence should result in termination. The goal should be to assist employees to overcome the problem and to eliminate drugs from the workplace, not to catch offenders.

Inform employees of the policy. Have "all employee" meetings with top management to announce the policy and follow up with meetings between the first line supervisors and employees. Post the policy, include it in your employee handbook or personnel manual and stick to it. You should give 30 to 60 days advance notice to employees before you initiate employee drug testing. If someone is playing with drugs, this will give them a chance to clean up.

Train supervisors to understand the problem, how to recognize it and how to deal with it legally, fairly and effectively. Provide them with a written guideline to assist them.

Initiate testing. Drug testing is a major decision. If you don't really feel that you need it, don't do it. It's expensive, time consuming, creates distrust and is loaded with liability! If you do test, consider this:

- Select a testing laboratory that specializes in toxicology, not a quickie, low-cost clinic. (Testing costs are approximately \$25-\$55 for the first test and \$40 to \$100 for retest of positives). Standards for selecting drug labs are available.
- Pre-employment testing. This means testing all candidates for employment *before* a final offer of employment is made. Failing the test voids employment for six months to one year. Apply testing to *all* jobs in the company.
- Test for cause. If an employee is unable to stand or walk straight or appears inebriated or is operating a vehicle erratically, then you have reasonable cause to test that employee. Handled fairly, this method produces good results with very little employee objection.
- Special purpose testing. Such jobs as those dealing with life threatening safety functions are tested regularly or even randomly. Employees have normally understood and accepted this.
- Post accident testing. After any accident where a death or major damages occur, all involved employees are tested.
- Keep testing results confidential. Protect employees' reputations. Handle all drug matters confidentially, with records locked up. These are not matters for coffee pot conversations.

- Seven things to make it work for you:
 - Policy fairness.
 - Employee orientation
 - Supervisor training.
 - Drug testing (if and where needed).
 - Rehabilitation (with employment tied to successful completion).
 - Confidentiality (protect your employees' reputation and avoid defamation suits).
 - Have legal counsel check latest state statutes before starting any drug testing program.

Most employers who initiate drug testing, particularly pre-employment testing, begin to notice that the number of "positive" tests begin to diminish. They often remark that the drug abuse problem seems to be clearing up. However, what is really happening is that word gets around that a specific company is testing, so drug-taking job applicants don't apply there. Guess where they do apply.

Bill Cook
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IV. WHAT WORKS?

- The Union Pacific cut absenteeism by 74% and employee accidents by 87% within two years of initiating a drug free program.
- Southern Pacific accidents attributed to employee error declined by 66% after drug testing was instituted.
- A Pennsylvania study showed that 60% of substance abusers on rehabilitation will recover with employer support. Without support only 8% will recover.

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DRUG ABUSE PROGRAMS

FEDERAL EMPLOYEES AND CONTRACTORS

The Drug Free Workplace Act of 1998 (DFWPA)
(Replaces section 628 of Public Law 100-440
enacted 9-22-88)

Effective Date: 3-18-89

Applies To:

- All Federal contractors of \$25,000 or more.
- All individuals on Federal contract of any dollar amounts
- All recipients of Government grants of any dollar amounts

Requirements:

- Drug testing neither required nor prohibited.
- Posted statement to employees.
- Drug-free training programs.
- Copy of policy to employee.
- Statement by employee, re: convictions.
- Statement by employer, re: convictions.
- Refer employees to rehab.
- Maintain a drug-free workplace.

The Department of Transportation (DOT) Drug
Regulations

12/21/88

- All DOT contractors of \$25,000 or more.
- Or
- All transportation employers with 50 or more employees.
- Or
- Employer operating a 26,000 lb. vehicle interstate.
- Or
- Employer operating a vehicle designed to carry 15 passengers (counting driver).
- Or
- Employer operating a vehicle that transports hazardous material.
- Six categories of transportation employees:
 - Aviation
 - Interstate truck & bus
 - Mass Transit
 - Railroad workers
 - Commercial mariners
 - Pipeline workers in safety/security jobs

- 5 kinds of drug testing required:
 - Pre-employment
 - Random
 - Periodic
 - Commercial Mariners
 - Post Accident

- Remove employee for positive test results or refusal to test.
- Reinstate after 1 year only with medical officer authority.

PRIVATE SECTOR

No Definitive Federal Legislation.
Many State Laws.
Union Contracts.
Private Civil Suits.

RECOMMENDED GUIDELINES

- Design policy:
 - meet with union (if unionized).
 - adopt, write and circulate the policy.
 - train supervisors.
- Initiate testing (if necessary).
 - Non-discriminatory, all levels.
 - Pre-employment.
 - Testing for cause.
 - Special purpose testing.
 - Post accident testing.
 - Protect employees reputation.
- Provide rehabilitation
 - Establish EAP or hospital rehab or counseling.
 - Conditional return to work.
 - Protect employee reputation.
- Maintain drug-free workplace.