

Specific Policy Topics: Substance Abuse and Harassment

Substance Abuse

Alcohol (and/or drugs) and work are a dangerous mix. Communications dealing with them may follow discipline guidelines, but a special policy is best to treat the behavioral, performance, safety, and legal ramifications. An employer who has an employee with a drinking or drug problem has a responsibility to deal with it.

Encountering an apparently impaired employee on the job requires immediate decisions to protect personal safety, equipment, and operations, while not violating worker rights. When reasonably suspecting that an employee is working under the influence, a manager can attempt to balance company and personal interests by proceeding as follows:

1. Attempt to verify whether alcohol or a drug is the cause of an employee's impairment. Find out whether something else, such as sickness or stress, is causing the behavior that has raised concern.
2. Make a record of the event and the perceptions of any witnesses available.
3. Take steps to remove an impaired employee from the workplace, particularly to ensure that no harm comes to the employee or others from operation of equipment or vehicles.
4. Act with discretion, defer judgments, and err on the side of caution. It is often best to have the employee take the day off, with or without pay, pending a careful assessment and consideration of disciplinary measures.

Although legal, logistical, and cost considerations often weigh heavily against testing employees for drug use, testing after an accident or at intervals for people in safety-sensitive jobs can be a good investment. Generally, random testing or testing without a reason is best avoided as an unnecessary invasion of privacy.

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A client of mine had a supervisory employee who seriously injured three fingers on a table saw. The investigation discovered that the supervisor had removed the saw guard in violation of company policy. We took the employee to the local clinic for drug testing, and he showed positive for marijuana. In line with company policy, he was fired. We learned a lot from this. If a testing plan had not been in place, we would not have known how potentially impaired this person's thinking was when he was seriously injured. The company's response made an important statement to the rest of the people there. Ultimately, it reduced the possibility of a recurrence and helped them out on workers' compensation premiums in the long run.





An employer is in a good position to help individuals with chronic drinking or drug use habits that may erode performance but not manifest in acute problem incidents on the job. A manager who knows about employee substance abuse and does nothing about it may assume risks as an “enabler,” a person who allows the problem to persist.

General guidelines for dealing with employees apparently using drugs are:

1. Discuss the problem with the employee in a private meeting. Prepare notes in advance about the circumstances that raised concern.
2. Focus on the problem behavior, not on the individual. Avoid nagging, provoking, and verbal, as well as physical, aggression.
3. Let the employee know you would like to see any problem resolved. Outline what will happen if the employee’s performance does not improve.
4. Do not specifically warn of disciplinary consequences unless prepared to follow through.
5. Stick to the subject. Do not allow employee to divert attention to other topics.
6. Know what professional help is available in the area and encourage the employee to seek it.

The Drug-free Workplace Advisor, an online resource from the U.S. Department of Labor, includes step-by-step guidance to developing a drug-free workplace policy and other program elements. It interactively provides crisis management advice and presentation materials to help employers inform themselves, supervisors, and other employees about substance abuse issues and applicable laws. This resource can be accessed from *AgHelpWanted.org*.

Below are selected guidelines advising supervisors, managers, and employers in general.

If you suspect that an employee has a drug problem:

- Emphasize concern with work performance and the conduct that affects it.
- Have documentation of performance in hand when talking with the employee.
- Remember that many problems get worse without assistance.
- Explain that an employee assistance plan (EAP), if available, is voluntary and exists to help the employee.
- Emphasize that conversations with an EAP representative are confidential.
- Call the EAP, if applicable, to discuss how to make a referral.

Be careful not to:

- Try to diagnose the problem.
- Moralize. Limit comments to job performance and conduct issues only.
- Discuss alcohol and drug use.
- Be misled by sympathy-evoking tactics.

- Cover up or try to protect people, thereby enabling them to maintain their patterns.
- Make threats that you cannot or do not intend to carry out.

If an employee must be confronted:

- Tell the employee his/her performance is an issue.
- State the problem.
- Refer to documentation of specific events.
- Avoid over-generalizations.
- Ask for an explanation.
- Avoid getting involved in discussions of personal problems.
- Try to get the employee to acknowledge the problem.
- State what must be done to correct problem.
- Set time frame for performance improvement.
- Specify consequences if problem continues.

Consider legally sensitive areas to:

- Safeguard the employee's confidentiality.
- Ensure the policy is clearly communicated.
- Establish procedures to thoroughly investigate alleged violations.
- Provide due process and ample opportunity for response to allegations.
- Ensure quality control and confirmation of positive tests if testing is included.
- Conform to union contracts, if applicable.

Sexual Harassment

An employee's right to be free of sexual harassment has been clarified under federal and state laws, and employers are now legally obligated to make the workplace safe in this respect. Sexual harassment is a form of disruptive conduct and legally a form of discrimination that violates Title VII of the Civil Rights Act of 1964, as well as state laws. Employers are encouraged, and in some states specifically required, to write a non-harassment policy, post a no-harassment notice, give each employee a copy of information on sexual harassment, and provide for receiving and investigating all allegations of sexual harassment. Brochures to help, in English and Spanish, are at *AgHelpWanted.org*.

Recent federal court cases indicate that employers may prevail in defending against sexual harassment charges if they can show having communicated and properly implemented an anti-harassment policy. Sexual harassment encompasses any sexual attention that is unwanted. It includes both verbal and physical conduct. Some examples of sexual harassment prohibited by law are:

1. Physical assault
2. Direct or implied threats that submission to sexual advances will be a condition of employment, work status, or promotion
3. Direct proposition of a sexual nature



4. Subtle pressure for sexual activity
5. A pattern of conduct that discomforts or humiliates the person at whom the conduct is directed and that includes one or more of the following:
 - a. Comments of a sexual nature
 - b. Sexually explicit statements, questions, jokes or anecdotes
 - c. Unnecessary touching, patting, hugging, kissing, or brushing against a person's body
 - d. Remarks of a sexual nature about a person's clothing or body
 - e. Remarks about sexual activity or speculations about previous sexual experience
6. Persistent, unwanted attempts to change a professional relationship to an amorous one

Appeals and Tests for Justice

An appeals process is critical to a good discipline system for employees who feel unjustly treated. A separation of key roles, as in the civil justice system, may not prevail at the workplace. The operator or a supervisor is often a policeman, judge, and trial jury all wrapped into one.

Issuance of formal warnings and penalties can be risky. They may trigger questions, informal complaints, formal grievances, or litigation. Most managers try hard to be fair, and in most cases the combination of roles works fine. But there is always a chance of a bad decision, and it is important for employees to have a way of calling for a less-involved person—a personnel officer, general manager, other supervisor, or outsider—to review any disciplinary action.

While all employees have appeal rights in courts of law, internal processes can both reduce an employer's exposure to legal action and help in correcting misapplications of policy. Means for challenging disciplinary action can be incorporated in the discipline policy or created as a separate grievance procedure. Two major variables differentiating appeals procedures are (1) level of ultimate appeal (e.g., to personnel manager, general manager, employee-management committee, outside arbitration), and (2) time limits for appeal submittal and management response. Where an equitable review procedure is provided and followed by the employer, courts are reluctant to even consider employee charges of wrongful discipline or discharge.

Arbitrators and judges, as well as employees, assess whether managers acted fairly in taking disciplinary action. They consider not only whether a disciplined worker has in fact committed an offense, but also whether management followed fair procedures in administering a penalty and the appropriateness of the penalty to the offense. Typical tests used for determining the justice of discipline include the following questions:

1. Was the employee adequately warned of the consequences of his or her conduct? Did he or she know what would happen?