

Drugs & Alcohol Testing

Many safety critical industries including construction and transport, have introduced drug and alcohol testing for employees.

This Bulletin is intended to provide an overview on some of the legal and employment aspects around drugs and alcohol testing. This is a complex area of law and the information contained within should be treated as a guide only.

This Bulletin refers to alcohol separately from other drugs. Although alcohol is a drug, it is referred to separately because society tends to regard it differently from other drugs. In practice however, the measures needed to deal with alcohol problems in the workplace are very similar to those appropriate to other drugs and substances.

For further information please visit the following websites:

- HSE Website – Alcohol and drugs at work: <http://www.hse.gov.uk/alcoholdrugs/>
- HSE INDG91(rev2) - “Drug misuse at work – a guide for employers”
<http://www.hse.gov.uk/pubns/indg91.pdf>
- Talk to Frank: www.talktofrank.com
- Unite the Union Guidance on Drugs and Alcohol:
[http://www.unitetheunion.org/uploaded/documents/Drugs%20and%20Alcohol%20\(Unite%20guidance\)11-5322.pdf](http://www.unitetheunion.org/uploaded/documents/Drugs%20and%20Alcohol%20(Unite%20guidance)11-5322.pdf)

Signs of Drug or Alcohol Abuse

Some of the signs associated with drug or alcohol abuse may be caused, or aggravated, by other factors such as stress, and should be regarded only as indications that an employee may have a drug or alcohol problem:

- Sudden change in behaviour pattern
- Memory lapses and tendency to become confused
- Abnormal fluctuations in mood and energy
- Impaired job performance
- Poor time keeping
- Increase in short term sickness absence
- Deterioration in relationships with other people
- Physical deterioration

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The legal position

The primary legislation in the UK for controlling drug use and preventing abuse is the Misuse of Drugs Act 1971. Nearly all drugs that can be misused and/or are addictive are covered by the said legislation. The act makes production, supply, possession, import and export of controlled drugs unlawful except in specified circumstances (for example where controlled drugs are produced and supplied by healthcare professionals for medical purposes).

Under the Health and Safety at Work Act 1974, employers have a general duty to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all their employees.

Under the Management of Health and Safety at Work Regulations 1999, employers also have a duty to assess the risks to the health and safety of employees. If employers knowingly allow an employee, under the influence of drug and/or alcohol, to continue working, and his or her behaviour places the employee or others at risk, they could be prosecuted.

Employees are also required to take reasonable care of themselves and others who could be affected by the work they carry out.

The Transport and Works Act 1992, Part 2 Section 7, specifically notes the need for employees to be free from the effects of alcohol and drugs.

The Road Traffic Act 1988 makes driving or attempting to drive a vehicle on a road or other public place, while unfit to drive through drink or drugs, an offence.

Drug and Alcohol Testing

Drug and alcohol testing is usually carried out on one of the following basis:

- Pre-employment drug and alcohol testing of potential employees as a condition of taking them on;
- Random drug testing of employees; and
- With-cause drug testing of an employee after a specific workplace incident or accident and/or where there is a reasonable suspicion that the employee's performance or conduct is impaired by drugs or alcohol, giving rise to a safety risk.

The majority of drugs tests do not involve the checking for the presence of a particular drug in the body, as some drugs can be broken down quickly. Instead, most tests look for the chemicals which remain in the system after the drug breaks down. These chemicals are called metabolites and can be found, for instance, in hair, sweat, saliva, urine or blood.

Employer Drug and Alcohol Policies

If an employer tests employees for drug or alcohol use, it should have an agreed policy allowing this. The policy should be clearly communicated to employees. Any policy should ideally be developed in consultation with Unite the Union. An example Joint company/Unite Drug and Alcohol Policy has been included in Appendix One. It should be noted this is a policy template only and some clauses may not be applicable to all companies and circumstances.

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The aim of such a policy is to ensure the safety of all employees, workers, and visitors by having clear rules in place regarding use and possession of alcohol and drugs, and to support those who have reported a problem with alcohol or drug dependence.

Where an employee volunteers information of a problem with alcohol or drugs, a tribunal will usually expect the employer to try and assist them (e.g. by providing counselling) rather than automatically dismissing them.

It is important that both employers and employees are aware that some prescription drugs can give positive results in certain drug tests. An individual may be taking a prescribed drug to treat a condition that falls within the definition of a disability under the Equality Act. An employee who is dismissed after testing positive for drugs in these circumstances would be likely to have a claim for disability discrimination.

JIB National Working Rule 19 sets out a disciplinary and dismissal procedure (that meets the standards of the Acas Code of Practice Disciplinary and Grievance Procedures) that can be used to deal with employee's drug and alcohol misuse in the workplace. JIB member companies are strongly advised to follow this Rule where they do not have an internal procedure or a policy in place.

Guidance for Operatives

- 1) If your employer has a drug and alcohol policy, ensure you read through and familiarise yourself with the terms of the Policy. Take note of any time parameters specified, for example, you should not drink 24 hours prior to the start of a shift.
- 2) If your employer does not have a policy in place, it may still request that you undertake a test if they have reason to believe that you are at work under the influence of drugs or alcohol.
- 3) Be aware that refusal to take a test without a justifiable reason may lead to your employer using your refusal as grounds for reasonable belief that you might be under the influence of drug and/or alcohol.. A refusal to take a test, without a valid reason, can also be seen as a failure to follow reasonable management instructions.
- 4) If you believe you have a justifiable reason for refusing to undergo a test, state it at the time and ensure that it is recorded in writing. Your employer may ask for evidence from your GP or a Health Professional.
- 5) Further information can be found using the web links detailed in the first section of this Bulletin

Appendix One

Example Joint Company/Unite the Union Drug and Alcohol Policy

(Note: This is a negotiable policy. The elements below are suggested clauses that may not be applicable to all companies and circumstances.)

1. Introduction

..... (Company name) and Unite have agreed the need for drug and alcohol policy which applies to all employees irrespective of status. Its objective is to ensure employees receive training and information on sensible drinking and drug awareness. The aim is to encourage those with drug or alcohol-related problems to seek the support of medical advice and counselling by an outside agency.

2. General Principle

..... (Company name) and Unite recognise that drug or alcohol abuse at its various levels is a health problem requiring sympathetic help and special treatment. It is the aim of this policy to provide this.

3. Organisation

.....is the Director with responsibility for implementation of this policy.
.....will be responsible for advice on suitable outside agencies and counsellors.
..... will be responsible for implementing a training programme.
The names of external drug and alcohol counsellors and how they can be contacted will be posted on notice boards. All such counsellors will be made aware of this policy on drugs and alcohol.

4. Arrangements

4.1 Information

Every employee will be given a summary of the main points of this policy, and anyone with a drug or alcohol related problem will be encouraged to seek counselling. A training Unite Health and Safety Unit issue1 09 session and leaflets on sensible drinking and drug awareness will be provided and repeated periodically.

4.2 Removal of Stress

It is accepted that stress at work can contribute to drug or alcohol abuse. We are therefore committed to identifying and reducing workplace stress factors.

4.3 Reducing Opportunity to Drink at Work

Research shows quite clearly that some jobs involve a much higher risk of alcohol abuse than others. The social pressure to drink can be stronger in some working communities. Irregular hours, travel and separation from the family, and the strain of a heavy workload are just some of the common job-related causes of alcohol abuse.

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The Company and Unite recognise that such problems, coupled with the opportunity to drink at work, create a hazard. Therefore,

- a) Alcohol will not be available on company premises during working hours. This will apply throughout the company, at all levels, without exception.
- b) At any social functions organised by the company or Unite, among the beverages provided, there will always be non-alcoholic drinks available.

4.4 Solvent abuse at work

Where problems involve the deliberate or unintentional abuse of solvents, whether or not used in the workplace, the person concerned will be covered by this policy. Where abused solvents are specifically work related, the employer will ensure that the use of solvents has been subject to the provisions of the Control Of Substances Hazardous to Health Regulations (COSHH Regs), that the risks involved have been assessed and that measures have been taken to reduce all exposures to solvents to the lowest that is reasonably practicable.

4.5 Prescribed drugs

Where problems involve the deliberate or unintentional abuse of prescribed drugs, the person concerned will be covered by this policy.

5. Confidentiality

The company undertakes to ensure that any counselling is strictly confidential, and that any records compiled by a counsellor will be treated as the individual property of that counsellor. No discussions about an employee will take place between the company and the counsellor without the written permission of the person concerned.

All employees will have the right to be represented by their Unite representative in any meeting with the company if they so wish. If an employee gives their written consent, then their Unite official will be kept informed at all stages of the treatment.

6. Job Security

The company accepts that job security will be maintained for any employee participating in treatment and/or counselling in an attempt to deal with drug or alcohol abuse.

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Where an employee has to be away from work to undergo treatment, their job will be held open in accordance with normal sickness procedures. However, it has to be accepted that, in the long-term, job security must depend on work returning to an acceptable level.

Advice will be sought and consideration given as to whether the person's original job would be consistent with maintaining recovery. The employee's pension rights will be protected during treatment and counselling.

7. Disciplinary Procedures

Drug or alcohol abuse will not in itself constitute grounds for dismissal, unless the person's action or performance reaches an unacceptable level. Such cases will be dealt with under normal disciplinary procedures with the employee's appropriate Unite representative being involved at all stages.

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Where an employee is referred for treatment under this policy, any disciplinary procedures associated with drug or alcohol abuse will be suspended and remain so for the duration of the treatment.

Where an employee with a drug or alcohol-related problem is able to continue to perform his/her duties whilst undergoing treatment, adequate time off for treatment will be allowed.

Relapses will be referred to the independent counsellor for assessment, and consideration given to further job protection.

8. Treatment and Advice

Any employee with a drug or alcohol-related problem is encouraged to seek guidance and assistance from the recommended local counselling agency.

Where indicators, such as poor work performance, absenteeism, poor health or deteriorating behaviour, indicate a possible problem, employees will be advised to refer themselves for confidential counselling and advice. Paid time off for counselling and treatment will be allowed in accordance with the normal sick pay scheme. Refusal of treatment will not in itself be grounds for discipline, unless an employee's action or performance reaches an unacceptable level. Such a case would then be dealt with under normal procedures, with the involvement of the appropriate Unite representative at all stages.

9. Testing

The company agrees that there will be no random or company-wide drug or alcohol testing.

Any proposals to introduce testing will be discussed in detail between the employer and the Unite, in light of the practical, legal, industrial relations and ethical implications.

Proposals for testing will be subject to:

- written justification for the tests
- description of test procedures and their verification/effectiveness
- stating of standards to be reached
- the consequences of failing the test
- safeguards on continuity of employment
- verification of the qualifications of the testers
- medical confidentiality of results

If testing procedures are agreed, they must only be enacted on suspicion based on specific personal observations that the person concerned is under the influence of drugs or alcohol. Tests will be at the expense of the company.

Any person testing positive shall have the right to challenge the results and obtain an Independent analysis of the sample.

Any person testing positive, who accepts the results, will be referred for treatment and advice in accordance with the rest of this policy.