

Guidelines for a Drug-Free Workforce 3rd Edition

DEA TESTING GUIDELINES

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Introduction

Background

The abuse of drugs and alcohol is widespread in our society and affects us all in many ways. It contributes to crime and to the costs of our already overburdened health care system and financially strapped social welfare system.

A recent Gallup poll indicates that public concern about the drug abuse problem remains high. According to the poll, drug abuse rates second only to violent crime as the issue Americans consider the most serious facing the nation. Ninety-four percent of the respondents to the poll considered the problem a "crisis" or "serious." When explicitly asked about several issues, respondents expressed greater concern about the drug problem than about health care, the welfare system, the federal budget deficit, public education, societal moral values, the economy and unemployment.

Although federal, state, and local efforts have begun to show encouraging results, the problem of drug and alcohol abuse remains a serious issue. We need to address the drug abuse issue in all segments of our communities, especially the workplace. The workplace is probably the only consistent arena where we have our adult population as a captive audience and can influence their attitudes about drugs and alcohol, provide information and resources to help them and their family members, and intervene on behalf of those in need of help.

We know that adult drug users are more likely to be employed than unemployed. According to the Department of Health and Human Services' 1998 National Household Survey released in August 1999, almost 73 percent of all adult illicit drug users were employed. Some other statistical highlights from the survey show that in an average month:

33 million Americans engaged in binge drinking

13.6 million Americans were current users of illicit drugs;

11 million Americans were current users of marijuana;

1.8 million Americans were current users of cocaine;

12 million Americans had five or more drinks per occasion, five or more times a month.

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According to the Department of Labor, the annual cost to American employers of on-the-job substance abuse is estimated to be one hundred billion dollars (\$100,000,000,000). This figure includes lost productivity, theft, accidents, and additional health-care costs. Studies reported by the Institute for a Drug-Free Workplace show:

Of all workplace drug users who test positive, 52 percent are daily users;

Employees who test positive for drugs were 60 percent more likely to be responsible for plant accidents, use a third more sick leave, and have many more unexcused absences;

One national automobile manufacturer reports that drug-using employees averaged 40 days of sick leave each year, compared with 4.5 days for non-users;

The state of Wisconsin estimates that expenses and losses related to substance abuse average 25 percent of the salary for each worker affected.

A study conducted from 1987 to 1990 by the U.S. Postal Service provided conclusive evidence that drug using employees perform poorly compared to non-using employees. During the study period, the Postal Service hired job applicants regardless of whether they passed or failed their drug tests. The two groups of employees (those who failed the drug tests and those who passed) were then closely monitored. The results indicated that employees who tested positive for marijuana had 55 percent more industrial accidents than the group of non-using employees. They also had 85 percent more injuries, a 55 percent greater discipline rate, and a 78 percent increase in absenteeism. For the cocaine-positive group, absenteeism was 145 percent higher and there were 85 percent more injuries.

Drug and alcohol abuse is a bottom-line issue for employers, and no workplace is immune to it. Employers have a vested interest in eliminating the problem. Recognizing the importance of protecting their bottom lines against drug and alcohol abuse, employers have begun implementing drug-and-alcohol-free workplace programs. The impetus for these programs has grown tremendously in the past few years. They have spread from the federal government and large corporations to small and medium-sized businesses. In addition, the expansion of private-sector programs has been driven by several mandates: Department of Transportation and Nuclear Regulatory Commission regulations for those industries; Department of Defense regulations for their contractors; the Drug-Free Workplace Act of 1988, requiring many federal grantees and contractors to

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provide drug-free workplaces; and several State Workers' Compensation insurance incentives.

Details

These guidelines intend to prevent substance abuse among the workforce and within the workplace, and where a problem may exist--to encourage those who abuse drugs and/or alcohol to seek help in overcoming their problem. Toward this end, these guidelines provide a full continuum of substance abuse education, prevention, intervention and treatment resources and include:

- a policy statement;
- an employee orientation and drug-awareness education program and supervisor training;
- an employee assistance program, including intervention and treatment referral components;
- information about drug testing;
- information about legal issues;
- information about compliance with federal and state mandates; and
- resources to assist employers in maintaining a drug-and-alcohol-free workplace.

For the purposes of these guidelines, drug abuse is defined as "any activity involving illegal drugs, chronic or improper use of alcohol, and misuse of over-the-counter and prescription medications."

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Chapter 1

Summary of Recommendations For a Drug-Free Workforce

In order to achieve a drug-and-alcohol-free workforce, you must take a comprehensive approach. The approach should include:

A Written Policy

Prepare and circulate a written statement for acknowledgement by all employees that illegal drug use will not be tolerated and that job performance deterioration resulting from abuse of legal drugs, including alcohol, will result in adverse personnel actions. The statement should explain that drug and alcohol abuse creates both economic and social consequences that are unacceptable to your community.

An Employee Assistance Program

Establish an Employee Assistance Program (EAP) that provides counseling and referral programs, to be operated either by your own staff or by a contractor. The program should be operated in a confidential manner.

Employee Awareness and Education

Provide a drug orientation program to advise all employees of your organization's policies and the drug-and-alcohol-related economic, health and legal liabilities that brought about the policy. Ongoing educational efforts to inform employees about the negative consequences of drug and alcohol abuse are also essential in changing their attitudes about the problem. This can be accomplished with meetings, brown bag lunches, and educational handouts.

Supervisor Training

Offer supervisors substance abuse training so those closest to the problem can be coached on the signs, symptoms, behavior changes, performance problems and intervention concepts attendant to drug and alcohol abuse.

Drug and Alcohol Testing

Consider a drug and/or alcohol testing program to detect and deter drug and/or alcohol use or abuse. If testing is adopted, it should conform to proper procedures.

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Sanctions

Determine the consequences for those who violate the policy. Will employees be terminated or offered rehabilitation? If the latter, will it be offered on a one-time basis only? Who will be responsible for the cost of the program, you or the employee? Differentiate among penalties for various policy violations. For example, most employers terminate employees who are involved in drug trafficking in the workplace, even though the employee is a drug user who would otherwise be a candidate for treatment.

Appeals Process

Include an appeals process in the program, and clearly define it in the policy. Employees who disagree with positive drug test results should be allowed an opportunity to request a second test at their own expense. The second test should be conducted on the original urine sample or the second half of the original sample that was split for the specific purpose of a second test. A new urine sample should never be taken, since some drugs pass through the system quite rapidly and may be present one day and absent the next.

Evaluation

Monitor cost effectiveness and success of the program.

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Chapter 2

Policy

Summary

You have but two policy options for dealing with drug-and/or-alcohol-abusing employees: You can ignore the issue, or you can devise and implement a substance abuse prevention program. In pursuing the latter, you must determine your goals for the program and consider what restrictions on drug and alcohol use will be asked of employees and what will be done when an employee is found to be in violation of the policy.

In the interest of fairness and good business practice, it is wise to create a written policy statement and announce it to the workforce before initiating any drug-and-alcohol-abuse prevention program. The document should be clear, acknowledged by each employee (in writing), and applied in a fair and consistent manner. Any drug prevention technique (searches, urinalysis, etc.) should be described in the policy statement along with the adverse personnel actions or mandatory treatment requirements that would be levied against violators.

Details

The first and most important step in a drug-or alcohol-free workplace program is to develop a policy that makes your position about drug and alcohol use in the workplace very clear. You have clear guidelines on attendance, performance, conduct, and even smoking in the workplace; why shouldn't you also have a policy that tells employees not to be present at work with drugs or alcohol in their systems?

Such a policy should also have reasonable business objectives. You should provide notice of the violations that will result in disciplinary action. The policy should be written, acknowledged in writing by all employees, and prominently displayed for a reasonable period before instituting it.

At a minimum, the following elements need to be addressed in the policy statement:

Your overall position on drug and alcohol abuse (e.g., drug and/or alcohol abuse is a medical problem, often a legal problem, but always unacceptable in the workplace);

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Your position on the consequences for an employee using, selling, or possessing drugs or alcohol in the workplace (discipline, termination, due process, etc.);

Your position on job performance as it relates to drug and alcohol use;

Your position on safety of the public, your clients, and the abuser's co-workers as it relates to drug and alcohol use;

Your position on treatment and rehabilitation services available to employees who have drug and/or alcohol problems, including who will be responsible for paying for such treatment;

The responsibility of the employee to seek treatment;

The need for strict confidentiality for employees who are in treatment, and procedures for dealing with any violation of confidentiality;

How you will enforce the policy? For example, will supervisors be trained to conduct interventions? Will employees be subject to searches? Will drug and/or alcohol testing be included in the program? If testing is to be included, what types of testing will be conducted: random, post-accident, reasonable cause, post-rehabilitation, etc.?

The policy should define key terms such as "illegal drugs" and "post-accident testing." The policy should prohibit employees from "being at work with any detectable trace amount of drugs or alcohol in their system." The policy should refrain from prohibitions such as "being under the influence" or "impairment" since drug tests cannot establish either of these situations. A drug test can only detect the "presence" of a drug metabolite or the "presence" of alcohol.

Avoid mixing policy with procedures. Your policy should rarely change, but procedures can and probably will change periodically. Procedural issues should be defined in a separate document, not the policy.

If you plan to conduct drug and/or alcohol testing of employees and job applicants, that should be disclosed in your policy.

If you have an EAP, workers should be informed in the policy about the program and be encouraged to use it. However, the initiation of discipline following a drug or alcohol infraction should not be postponed pending the employee's involvement in such a program.

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Once a policy is adopted, all employees should know what is expected of them by the employer and what they can expect from the employer.

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Chapter 3

Steps in Policy Development

Preparing for the Policy

In preparation for developing a drug and alcohol prevention policy, the following steps should be considered:

Commit your organization's senior managers to a drug-free workplace;

Identify organizational indicators of substance-abuse-related liabilities such as increases in accidents, theft and property losses, security breaches, benefits utilization, absenteeism, training costs, and Workers' Compensation claims;

Obtain national, state and/or local statistics gathered by substance abuse agencies (health or law enforcement), medical or health societies, hospitals or treatment facilities, chapters of the National Council on Alcoholism and Drug Dependency, and business and industry or trade organizations;

Gather workers' views, formally or informally, as to whether drug or alcohol use is present and whether it is undermining health, safety, security, or other aspects of work activity; ask for input from employees on the best way to implement a drug-and-alcohol-free workplace program;

Call together representatives of key units within your organization, such as occupational safety and health, security, employee benefits, personnel, and the EAP to get a company-wide sense of the problem; employee representatives should be part of the process;

Compare hard data with subjective views to get some idea of the productivity toll exacted by drugs and alcohol;

Decide whether drug and/or alcohol testing will be a part of your program and when, how, and for whom testing will be administered (e.g., job applicants, all employees, employees in jobs involving safety or security, employees who have had accidents), whether testing will be periodic and announced or random and unannounced;

Determine what disciplinary measures (e.g., dismissal, suspension, demotion, transfer) you will take against employees who violate the policy;

Determine what the appeals process will be for employees who wish to appeal positive tests and resulting discipline;

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Recognize that alcohol abuse and illegal use or misuse of prescription drugs are major drug abuse problems, just like illegal drug use, and need to be addressed comprehensively also;

Estimate the costs of employee assistance and rehabilitation programs as they relate to health insurance, Workers' Compensation and unemployment;

Ask your health insurance agent about coverage for alcohol and other drug-related problems for your employees and their family members.

Drafting the Policy

Once you have a clear idea of what you expect from your drug and alcohol prevention policy, you should:

Draft a preliminary policy on drug and alcohol abuse in the workplace;

Coordinate your policy and program internally with those individuals responsible for labor relations, personnel, medical care, security, public affairs, and occupational safety and health;

Ensure legal counsel clears the policy's substance and language to ascertain that it:

Is consistent with other corporate policies;

Complies with relevant federal, state and local laws regarding drug and alcohol testing; and

Reduces your vulnerability to legal challenges

Collectively bargain with your union or employee association representatives, if any, regarding your intent to implement a drug-and-alcohol-abuse prevention policy and program (especially regarding testing, which is mandatorily subject to collective bargaining), and enlist their cooperation and support;

Issue a formal, written policy statement on drug and alcohol abuse that explains:

- Your commitment to a drug-free workplace;
- Under what circumstances, if any, drug and/or alcohol testing will be conducted
- The consequences of refusing to be tested

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- The consequences of violating the policy; and
- The fact that law enforcement officials will be contacted when appropriate regarding the use, sale, purchase, or possession of illegal drugs on the job.
- Enforcing the Policy

Proper enforcement of the policy is essential. Otherwise, the policy is just a piece of paper. Some basic rules of policy enforcement include:

- * Enforce the company policy consistently. Be prepared to make the same response when a "positive" drug or alcohol test is confirmed for a long-term, highly placed employee whose performance is marginal as you would for a short-term or "non-essential" employee.
- * Maintain thorough, secure and confidential records for drug and alcohol test results and for drug-and/or-alcohol-related accidents or incidents. The best defense to a legal challenge to disciplinary action based on drug or alcohol abuse, and an important safeguard for protecting innocent employees, is documentation.
- * Show full support for supervisors. This will:
 - o Demonstrate the commitment to and seriousness of the company's policy;
 - o Assure supervisors and employees that they should cooperate in efforts to identify those employees who violate the law and the company's policy; and
 - o Deter further violations.
- * Discipline supervisors who, in administering and enforcing the company's substance abuse prevention program, abuse their power, harass employees, lie, do not take action when violations are committed, or otherwise act in bad faith. Employees must be shown that the company's prevention program is fair and consistent in order to assure meaningful cooperation and maintain positive morale.
- * Some drug detection techniques should be used only when necessary to address severe drug selling or abuse problems. Use discretion in employing:
 - o locker, office, or vehicle searches;
 - o hidden cameras;
 - o undercover operations;
 - o dogs trained to detect drugs;
 - o or other vigorous surveillance and detection techniques.

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Law enforcement officers can advise you on the best way to proceed.

Issues to Consider in a Policy

Testing

Many employers include provisions for various forms of testing in their substance abuse prevention policies. Many employers consider testing an excellent tool for both detecting and deterring drug and alcohol abuse. Alcohol tests may analyze a subject's breath, blood or saliva. When testing for drugs other than alcohol, urine samples are typically utilized, although some employers test hair samples.

Regardless of which drugs you test for, follow these basic guidelines:

- * Testing is only one aspect of a comprehensive strategy to prevent substance abuse in the workplace.
- * Contract with a reliable, professional testing service that will assure quality control and chain-of-custody for test samples. Ensure that the personnel providing the services are trained and that the manufacturer's instructions for testing apparatus are followed to the letter. It is also advisable to use a service that has professionals qualified and available to serve as expert witnesses.
- * Implement testing in as fair, accurate, and legally defensible a manner as is reasonable considering your company's situation. Extreme caution must be used to assure that the collection, handling, and testing procedures are reliable and accurate and to prevent misidentification. Because relevant laws are constantly changing, consult with legal counsel before implementation.
- * Provide job applicants a copy of your policy that defines the company's requirements for drug and/or alcohol testing of employees. Request that applicants acknowledge in writing at the time of hire their recognition that participation in the company's testing program is a condition of continued employment. Place the signed acknowledgement form in their permanent personnel file.
- * When an employee's sample tests positive, before taking disciplinary action, have a second test performed using the gas chromatography/mass spectrometry (GC/MS) method. While other methods are acceptable and standard for the initial screening process,

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GC/MS is the only legally defensible testing method and should always be used for confirming positive results.

- * Require that the testing laboratory retain positive test samples as evidence, preserving refrigerated samples for at least one year as a legal precaution. If a legal claim arises on a particular sample, ensure that the laboratory retains it until the dispute is completely resolved.
- * Make every effort to observe reasonable employee expectations of privacy and confidentiality.
- * Provide timely and complete notification to employees who test and retest positive for drugs, informing them of the test results and what they mean.

Rehabilitation

All workplace substance abuse prevention policies should include consequences for violations of the policy. Some employers terminate violators, others suspend them, and still others offer rehabilitation for employees whose violations do not include serious misconduct such as violent behavior, trafficking or possession of large amounts of drugs. Most employers allow for voluntary self-referral to rehabilitation, not related to an employee being detected as being in violation of the policy. Some states require employers to offer violators rehabilitation rather than termination. It is important to learn what requirements, if any, exist in your state.

It is also important for an employer to recognize that the identification of a drug problem is only the first step in a long process that optimistically should end in rehabilitation of the employee. In achieving this goal, employers should consider these issues:

- * Provide the opportunity, when feasible and appropriate, for employees who test "positive" to participate in company-sponsored employee assistance and rehabilitation programs. These programs should be state or nationally certified and should include medical monitoring, treatment, re-testing, and counseling.
- * Provide referrals to local counseling and treatment centers for employees with substance abuse problems as an alternative to, or as a supplement for, company EAPs.
- * Insist on a high-level of accountability for employees in company-sponsored or company-referred drug-rehabilitation programs. Make

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such programs available only to those employees who acknowledge the existence of a substance abuse problem and demonstrate a desire to deal with their problem. Stress that strict adherence to the requirements of the program and random retesting are the only alternatives to their dismissal.

- * Address the problems of the families of employees who are substance abusers, emphasizing group, family, personal, and outpatient counseling.
- * Require individuals to test negative before returning to work after rehabilitation, and require them to participate in a post-rehabilitation testing program wherein they are frequently randomly tested to monitor their abstinence.
- * Insist on regular participation in an after-care program to prevent relapse.

Disciplinary Action

Violations of substance abuse prevention policies frequently lead to disciplinary action against the violators. Some guidelines for initiating disciplinary action are:

- * Document as fully as possible the relationship between declining job performance and substance abuse before taking disciplinary action against employees. This is especially important for employees in jobs involving either
 - o minimal risk to the safety of the public or co-workers;
 - o little need for public trust;
 - o or no access to substantial amounts of cash or valuables.
- * Dismiss chronic abusers who:
 - o are unable or unwilling to rehabilitate;
 - o are unable to perform their duties because of impairment or incapacity due to illegal drug use; or
 - o have been apprehended selling drugs illegally on the job.
- * Establish a mechanism for a quick and fair review of employee complaints and resolution of grievances filed by employees who are discharged, suspended, demoted, or transferred for violation of the company's substance abuse policy.

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- * Monitor legislative and legal developments and revise your company's substance abuse prevention program accordingly regarding relevant:
 - o federal, state and local legislation;
 - o special requirements imposed on federal contractors by the U.S. Congress;
 - o special requirements imposed on private contractors by their clients
 - o National Labor Relations Board decisions
 - o arbitration rulings; and
 - o court decisions regarding the employment-at-will doctrine and its relationship to employees discharged for on-the-job substance abuse.

It is important to evaluate, periodically and at the senior management level, how well your program's and policies' objectives are being achieved. Make changes where necessary and appropriate.

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Chapter 4

Employee Education, Training and Communication

Summary

Once your policy has been finalized, it should be implemented with your workforce. To effectively implement the program, you should take these important steps:

- * Distribute the policy to all employees;
- * Post notifications of your drug-free workplace program well in advance of implementation;
- * Educate your employees about the program.

Educating your employees about drug and alcohol abuse is important. It gives the program a high priority and says that everyone in the organization needs to be involved. It fosters a spirit of cooperation. It helps to dispel myths about drug and alcohol abuse and acknowledges the impact of substance abuse on friends, family members and co-workers. It encourages employees to accept the program and reinforces the importance of addressing drug and alcohol abuse in the workplace.

Details

Some basics for providing education, training and communication to your workforce about your company's drug and alcohol prevention policy include:

- * Communicating your policy to employees through:
 - o briefings;
 - o notices in company newsletters;
 - o notices in paycheck envelopes
 - o notices on company bulletin boards; and
 - o letters from the company president or plant manager.
- * Informing employees of the reasons for the policy, recognizing the success of the program is dependent upon its acceptance by the employees and job applicants themselves.
- * Making being drug and alcohol free a condition of employment and informing job applicants and employees of that through statements on job applications and in employee handbooks.
- * Applying, to the extent permissible and appropriate, company policies to temporary or subcontractor employees when they are on company

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premises. This includes temporary secretarial, security, delivery, and janitorial personnel. Provide notice to both the employees and their employers.

- * Educate employees about the dangers of drug abuse through:
 - o lectures for employees and family members by experts in the community;
 - o films;
 - o brochures; and
 - o fact sheets to stress prevention of drug and alcohol abuse through education and awareness.

- * Inform employees of any available EAP or other resources within the organization or in the community for getting help with a substance abuse problem.

- * Designate a contact person with whom employees can discuss drug and alcohol abuse concerns regarding themselves or their fellow workers. Inform employees of how, where, and when this person can be reached, and make this contact person regularly and readily available. Keep the lines of communication open, and recognize the importance of employee suggestions and feedback to the program.

- * Require employees in jobs involving safety or security, who legally are using prescription drugs for medical conditions that could impair their performance, to ensure through their prescribing physicians that they are "fit for duty" and capable of performing in a safe manner.

- * Inform employees that supervisors will be trained how to:
 - o detect the symptoms of drug and alcohol abuse;
 - o identify patterns of performance frequently related to drug and/or alcohol abuse;
 - o identify illegal drugs and drug paraphernalia;
 - o respond to crisis situations, such as receiving reports of illegal drugs in plain view or being confronted by an employee who is obviously under the influence of drugs or alcohol and may need to be restrained or medically assisted;
 - o document performance and behavior indicators that may be linked to substance abuse;
 - o intervene on behalf of troubled employees; and
 - o refer employees to resources for help.

- * Cooperate with local police regarding criminal investigations.

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- * Support community drug abuse prevention programs to
 - o demonstrate to employees and the public your company's commitment to combatting drug and alcohol abuse; and
 - o assume a positive civic responsibility, including involvement in, support of, and contributions to drug education and awareness programs at local schools and colleges.

- * Consider extending the education to employees' family members, including providing parenting programs.

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Chapter 5

Employee Assistance Programs and Treatment

Summary

Many firms have adopted a combination prevention/treatment philosophy. This means that persons detected using prohibited drugs or alcohol are offered a medical regimen to help them give up their drug and/or alcohol abusing lifestyle. An Employee Assistance Program (EAP) can help you properly assess an employee and refer him or her to the appropriate treatment program. Even employers who do not offer treatment to employees who are detected using drugs or alcohol usually encourage those employees to voluntarily seek treatment. EAPs provide a valuable resource for employees to turn to in identifying the proper course of treatment.

Most EAPs also include other employee services, such as financial and legal counseling, exercise and weight reduction programs, stop smoking assistance, and marriage counseling. An EAP is conceived to maximize the health and efficiency of the workforce while conveying a caring attitude on the part of the employer. EAPs often help prevent employees from starting to abuse drugs and/or alcohol by addressing personal problems before they become unmanageable by the employee. EAPs are also excellent tools for supervisors to use when dealing with troubled employees.

EAPs are paid for by the employer and make available to employees specified services. Any company considering an EAP should evaluate for itself the financial factors and success actuarials of such programs as well as the number of times an employee would be allowed to participate. Some companies set up their EAPs internally, and they are administered by employees of the company. Other companies contract with an outside entity to privately interview troubled employees and, when appropriate, refer them for treatment or counseling.

Companies that choose not to participate directly in an EAP may still offer employees a firm choice of abandoning their drug and/or alcohol abusing lifestyle in return for continued employment. Under this condition, the employer might offer a reasonable time period off the job for the employee to participate in treatment. In the absence of a formal EAP, it is a good idea for employers to maintain a list of treatment facilities that the employee can refer to for help, and to become familiar with the services the facilities offer.

Most health insurance includes some coverage for drug and alcohol treatment, but the uncovered portion of treatment is typically expected to be covered by the employee just as in the case of any other illness. Most employers offer

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treatment in lieu of termination only once, because offering more than one chance at treatment is not normally cost-effective.

In weighing the costs of rehabilitation, employers should consider the costs of terminating and replacing employees. When an employer has invested a considerable amount in training an employee, sometimes termination can be much more costly than rehabilitation. Consider the value of your employees. If the violating employee is your top sales person, what will happen to the sales of the company if the individual is terminated? Will he or she take along major clients when he or she leaves the company? If the violating employee has specialized skills, what will it cost the company to train a replacement? If the employee is a long-term veteran and has acquired large amounts of knowledge about the overall operation of the company, what is the cost of losing this valuable and versatile person? What about potential legal challenges of terminated employees, such as unemployment claims?

All of these costs must be weighed. And whatever you decide about one employee, you must apply to all of your workforce. Consequences for violations to your policy, and opportunities for rehabilitation treatment, must be applied consistently and in a non-discriminatory manner.

Details

Various types of EAPs are available to employers. The most common types include:

- * **Internal/In-House Programs.** These are most often found in large companies with substantial resources. The EAP staff is employed by the organization and works on-site with employees.
- * **Fixed-Fee Contracts.** Employers contract directly with an EAP provider for a variety of services, e.g., counseling, employee assessment, and educational programs. Fees are usually based on the number of employees and remain the same regardless of how many employees use the EAP.
- * **Fee-for-Service Contracts.** Employers contract directly with an EAP provider but pay only when employees use the services. Because this system requires employers to make individual referrals (rather than employees self-referring), care must be taken to protect employee confidentiality.
- * **Consortia.** An EAP consortium generally consists of smaller employers who join together to contract with an EAP service provider. The consortium approach lowers the cost per employee.

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- * Peer-Based Programs. Less common than conventional EAPs, peer, or co-worker-based EAPs give education and training, assistance to troubled employees and referrals, all through peers and co-workers. This type of program requires considerable education and training for employees.

Not every EAP will be right for every organization. To determine whether a particular program will meet your specific needs, ask the EAP provider the following questions:

- * Do your staff members hold the Certified Employee Assistance Professional (CEAP) credential?
- * Do members of your staff belong to a professional EAP association?
- * What is the education level of each member of your staff?
- * Do you have references we can contact?
- * Do you provide on-site employee education and supervisor training services?
- * What cost/fee programs do you offer?
- * Will you do on-site visits? Are you able to conduct a needs assessment of our organization?
- * What types of counseling services are available to employees? How many sessions?
- * How easy will it be for employees to use the EAP? Where and how often is the EAP available to employees?
- * To which programs and services do you make referrals, and under what circumstances?
- * Does the EAP have a system for evaluating the effectiveness of the program?

Professional EAP officials warn employers to shy from unscrupulous EAPs that:

- * Own or manage treatment facilities, creating a possible conflict of interest;
- * Refer patients to their own facilities or to the same group of facilities, indicating a hidden contract or unethical relationship exists;
- * Refuse to allow clients to audit their business transactions or monitor their referrals
- * Lack the Certified Employee Assistance Professional credential.

When weighing employee assistance programs and treatment options, consider the following suggestions:

- * Recognize that the identification of a drug or alcohol abuse problem is only the first step and that rehabilitation is the ultimate and most desirable goal. Provide the opportunity, when feasible and appropriate,

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for employees who test positive to participate in company-sponsored employee assistance and rehabilitation programs. Ensure that the programs include medical monitoring, treatment, re-testing, counseling, and after-care.

- * Provide employees with referrals to local counseling and treatment centers as an alternative to, or as a supplement for, company employee assistance programs.
- * Insist on a high level of accountability for employees in company-sponsored or company-referred drug rehabilitation programs. Make such programs available only to those employees who acknowledge the existence of a drug and/or alcohol problem. Stress that strict adherence to the requirements of the program and random retesting are the only alternatives to dismissal.
- * Address the family and dependent problems of employees who are drug abusers, with emphasis on group, family, personal and outpatient counseling.

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Chapter 6 **Drug Testing**

Summary

Tests to detect drug use can be conducted using various biological specimens. Testing for alcohol is typically conducted by obtaining a breath, blood or saliva sample. However, when a person is being monitored following treatment for alcoholism, and abstinence is expected, urine may be tested. Testing for drugs other than alcohol is typically conducted using urine samples although some employers use hair samples. Employers regulated by federal testing programs are required to use urine samples only for testing of drugs. Department of Transportation regulations require breath testing for alcohol.

Most employers test applicants and employees in one or more of the following situations:

- * During an annual physical;
- * Before promotions or transfers;
- * Before being placed in--or routinely while in--positions involving money, security, or safety;
- * After accidents;
- * For past users;
- * Following treatment;
- * When referred by management through just cause or reasonable suspicion;
- * On a random basis.

Details

The only methodology for drug testing approved by the U.S. Department of Health and Human Services is urinalysis.

Urinalysis involves screening urine for the presence of drug metabolites in a relatively simple and inexpensive procedure. Samples with positive results are then subjected to a highly accurate but more expensive confirmation procedure known as gas chromatography/mass spectrometry (GC/MS). No adverse personnel action should ever be taken before completing the two-step procedure.

Most employers look for a vendor to handle drug testing requirements. In determining how to go about drug testing and what facility to use, consider the following:

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- * The laboratory should provide guidance in the development of collection procedures to assure that samples are properly obtained and not falsified;
- * The vendor should provide all materials for collecting samples as well as specific written instructions for doing so. These may include containers, chain-of-custody and report forms, evidence tape, prepaid tamper-proof mailers and labels. The contract price should include these items as well as courier service. Separate financial arrangements may be needed if a urine collection vendor is required in addition to the laboratory services. If a separate collection vendor is used it should be a facility that specializes in specimen collection for the purpose of workplace drug testing.
- * Containers should not contain preservatives that might alter the drugs or metabolites being sought. Containers should also include a built-in temperature strip that is capable of measuring the temperature of the urine sample. This is useful in detecting sample substitutions or other attempts at cheating the test.
- * The laboratory and its personnel must comply with state licensing and certification requirements.
- * A clear, up-to-date laboratory methods procedure manual must be included. Most reputable laboratories follow the procedural guidelines approved by the U.S. Department of Health and Human Services.
- * Tests must be performed only by technicians trained and experienced in the specific drug test procedures.
- * The laboratory must furnish an analytical plan to assure that a positive test is followed by a GC/MS confirmatory test and that no results are transmitted to the company based solely on a screening result. In other words, all positives should automatically be submitted for GC/MS confirmation and quantitation.
- * The limits of sensitivity and specificity for each test procedure should be defined. Most employers, including non-regulated employers, follow the cutoff levels established by the testing program of the U.S. Department of Transportation. Any change from the laboratory's normal thresholds for detection should be agreed upon in writing.
- * The technical and administrative procedures used should differentiate legitimate therapeutic drug use from illicit drug use. In other words, legal

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medications used by the employee for legitimate medical reasons should be ruled out before a positive is declared. Many employers use the services of a physician known as a Medical Review Officer (MRO) to determine whether legal medications are involved. Employers regulated by the Department of Transportation are required to use an MRO.

- * The laboratory should be able to identify any of the normally abused illegal drugs or their metabolites and to offer several "panels" or combination of tests as a cost-effective option to general testing.
- * Once the specimen has arrived at the laboratory via approved courier, a confirmed written test result should be delivered within two to three days. Employer actions should never be based upon a verbal test result. Procedures should be established to maintain confidentiality both at the laboratory and in the company, and refrigerated storage of positive samples should be offered by the laboratory.
- * Expert testimony in the form of written records and personal appearances concerning results, methodology and opinions should be available with timely notification.
- * Laboratory personnel, technical and managerial, should be subject to a program of drug testing.

In conducting drug testing, employers must balance legal liabilities due to lawsuits (brought by unhired applicants and employees who refuse to take the test or who are discharged or disciplined for positive test results) against the well-being of customers, clients, fellow employees, and members of the general public who may be injured or affected by a drug-using employee. Settlements in the former category are usually in the low thousands of dollars, while those in the latter are often in the millions.

Courts are holding more and more companies responsible for mistakes made by poorly trained personnel operating without well-conceived guidelines. As courts have declared, there is enormous liability when a company does nothing or does the wrong thing in the face of the clear evidence of drug and/or alcohol abuse throughout the workplaces of our country.

Many states have drug testing laws that determine what an employer can and cannot do. It is important that employers determine what laws, if any, exist in the states where they conduct business to ensure that the testing rules and procedures established are in compliance with state regulations.

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PART II: ACKNOWLEDGEMENT

I acknowledge receipt and understanding of the above written notice and agree to abide by the terms of the company's/organization's policy pertaining to drugs and alcohol.

(Signature)

(Date signed)

(Printed name

(Signature of witness)

NOTE: This form should be customized with your company or organization's name and should reference only drugs or alcohol, or both, depending upon which options you select for testing requirements.

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Chapter 7

Supervisory Training

Summary

After developing a policy statement, a company may wish to offer supervisory training to those closest to the workforce, including information about drugs and alcohol, drug paraphernalia, signs and symptoms of usage, and performance deterioration signals. Training enables supervisors to properly establish reasonable suspicion before referring employees for testing and aids in the implementation of a drug and alcohol abuse prevention program.

All supervisors should be provided with basic information about their employer's prevention program and their role in carrying it out. At a minimum, this should include:

- * The rationale and specific details of the program start up and implementation;
- * The supervisor's specific responsibilities;
- * Ways to recognize and deal with employees who have job performance problems that may or may not be related to drugs or alcohol, including personal and family problems.

Training programs for supervisors need not be more than half a day and can be performed by outside instructors or law enforcement personnel specially trained in workplace drug abuse programs. All training should be documented.

Details

Drug and alcohol abusers can be spotted by observing them directly, by identifying associated drugs and paraphernalia, and by reviewing performance. Direct observation can reveal physical and/or behavior changes, mood swings and long-term changes in personality or physical appearance. It should be stressed that even the best trained supervisor is working with subjective clues and therefore may not notice a drug or alcohol abuser until he or she is well along the path of chemical dependency.

Literally hundreds of drugs are abused, ranging from clearly illegal substances with no medical value, like heroin, to prescription drugs and alcohol, which are ingrained in society. However, all drugs fall into three categories: stimulants, depressants and hallucinogenics--or combinations thereof--each with revealing telltale signs depending on when in the use cycle an observation is

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made. The three most troublesome drugs in the workplace are alcohol, marijuana and cocaine.

An employer should not focus on discovering "alcoholics," "cocaine abusers" or "pot heads" but rather on identifying a broad category of "substance abusers." Thus, a supervisor should not be expected to be an amateur diagnostician but rather should concentrate on a general approach of whether chemicals may be interfering with the performance of those working under his or her supervision.

One way of spotting problem employees is based on the fact that people who abuse drugs or alcohol, either at work or off the job, perform differently from those who do not live a drug- or alcohol-abusing lifestyle. And those differences can be measured either by observation or with the aid of an electronic database.

Note the performance indicators of a drug- or alcohol-abusing employee:

- * Late to work 3 times more often;
- * Requests early dismissal or time off 2.2 times more often;
- * Uses 3 times more sick leave;
- * Is 5 times more likely to file worker compensation claims;
- * Is 3.6 times more likely to have an accident at work and 9 times more likely to have a domestic or car accident away from work;
- * Has inconsistent work quality and lowered productivity;
- * Makes more mistakes, is careless and makes judgment errors;
- * Has mood swings that, over several days, seem to occur at similar times of the day;
- * Is overly reactive to supervisory admonishments or compliments;
- * Deliberately avoids co-workers and supervisors, especially supervisors who have been trained to spot abusers;
- * Has deteriorating personal appearance, hygiene and ability to get along with co-workers;
- * Inspires poor morale and reduced productivity among co-workers as a result of their "covering" for the abuser or their frustration with management ignorance of or inaction to what they perceive to be an obvious drug and/or alcohol problem;
- * Takes needless risks in an attempt to raise productivity after supervisory admonishments;
- * Carelessly handles and/or maintains machinery, equipment or office supplies;
- * Disregards co-workers' safety;
- * Increasingly complains about problems at home or with family or friends;
- * Has frequent and recurring financial problems, including borrowing from co-workers or supervisors to "get to payday."

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Close observation and documentation of the signs of drug and alcohol abuse should be asked only of supervisors who have had training in such techniques.

A clear policy statement in combination with training of supervisors will allow for the identification and intervention of drug and/or alcohol dependent workers in a manner consistent with law and good personnel practices.

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Chapter 8 Legal Issues

Summary

Ignoring the drug problem in the corporate setting can bring legal problems. Conversely, reasonable and well-intended drug prevention programs may also be challenged in arbitration or court. However, experience reveals a relatively large legal exposure by waiting to address the issue (reactive) versus potentially small penalties in trying to mitigate the problem of drugs and alcohol in the workplace (proactive). Ultimately an employer must decide the potential legal costs from instituting a prevention program and the occasional legal challenge from an affected employee versus potentially much larger losses from not instituting a program.

Details

Legal action related to maintaining a drug-free workplace has so far been concentrated in the following six areas:

- * Right to privacy;
- * Freedom from unreasonable searches;
- * Due process;
- * Negligence (including negligent hiring, supervision, libel and slander);
- * Contract law;
- * Discrimination (including racial, sexual, and disabilities).

Cases brought under the first three categories usually involve public employment, although there have been exceptions. Private companies need not be as concerned about those issues if they already exercise good personnel practices. However, the last three--negligence, contracts, and discrimination--clearly apply equally to all employers.

While an employer cannot be guaranteed protection from legal challenge, some things can be done to minimize successful legal challenges:

- * Inform employees that drug use on or off the job is a concern. Write your policy to prohibit employees being at work with "any detectable trace amount of drugs or alcohol in their system," not "under the influence" or "impaired." Drug tests detect "presence," not "impairment."
- * Intra-company communications concerning current employees' performance, conduct or problems should be treated with appropriate confidentiality. Only management personnel with a "need to know" the particular situation should be involved. Additionally, managers must be

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consistent and thorough in documenting employee performance, investigations, and workplace observations.

- * Minimize negligent hiring by requiring all job applicants to pass a drug test prior to being hired.
- * Minimize negligent retention by routinely testing employees and being prepared to intervene when a worker is identified as having, or shows signs indicative of, substance abuse problems.
- * Minimize negligent testing by adhering to the testing standards established by the U.S. Department of Health and Human Services.
- * Conduct personal searches only on a limited basis, and obtain clear documentation of employee consent prior to conducting a search.
- * Ensure that workers are not, or do not perceive that they are, being detained against their will in any workplace investigations of suspected drug or alcohol use or possession.
- * Minimize breach of contract and wrongful discharge claims by following established policies and revising policies that lack sufficient flexibility to deal effectively with various confrontational situations.
- * Establish your drug- and alcohol-free workplace policy in writing, and ensure that all employees receive and acknowledge (in writing) receiving a copy of it.

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Chapter 9

Compliance with Federal and State Mandates

Summary

Employers must be aware of several federal and state rules, regulations, and laws when implementing a drug- and alcohol-free workplace program, particularly when the program includes testing. Not all laws will be relevant to all employers, but it is important to determine which ones are relevant to your particular situation.

Some of the more common mandates that affect employers and the ways in which they conduct their programs include:

- * Title VII of the Civil Rights Act of 1964;
- * State drug testing laws;
- * Americans With Disabilities Act of 1990;
- * State Workers' Compensation laws;
- * Federal Drug-Free Workplace Act of 1988;
- * U.S. Department of Defense regulations;
- * U.S. Department of Transportation regulations.

Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act of 1964 applies to all private employers with 15 or more employees and prohibits discrimination against applicants or employees on the grounds of race, sex, religion or national origin.

Challenges to drug- and alcohol-free workplace programs under Title VII are not common or likely, but an employer must be sensitive to the impact of the program upon groups who are protected under this law. It is important that a program and its procedures not provide even the perception, let alone the practice, of treating any employee differently because of race, sex, religion or national origin. The program must be consistently enforced with employees.

State Drug Testing Laws

Some states have enacted drug testing statutes. Some of the laws restrict testing, require specific procedures to be followed, restrict sanctions that can be imposed on employees who violate policies, and authorize private lawsuits against employers, laboratories and medical facilities that violate the laws. It is imperative that employers determine what laws (if any) exist in the states in which they conduct business and ensure compliance with the laws. The Institute for a Drug-Free Workplace in Washinton, D.C. publishes a guide to state and federal drug testing laws. Information can also be obtained from the U.S.

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Department of Labor in Washington, D.C., and the federal Center for Substance Abuse Prevention in Rockville, Maryland.
Americans With Disabilities Act of 1990

The Americans With Disabilities Act of 1990 (ADA) is a comprehensive civil rights bill that applies to all employers with 15 or more employees.

ADA prohibits employers from discriminating in employment decisions against a "qualified individual with a disability... because of his disability." A "qualified individual with a disability" does not include any applicant or employee who is currently abusing drugs or alcohol.

The Act specifically permits employers to adopt drug testing and drug-free workplace policies, and to prohibit employees from using illegal drugs. However, "qualified individuals" may include persons who have successfully completed rehabilitation programs, or are in a program and are no longer using illegal drugs.

Purported violation of the ADA is one of the most common types of legal challenges facing employers in administering drug- and alcohol-free workplace programs. It is, therefore, extremely important that employers fully familiarize themselves with this law, which is available on the Internet.

State Workers' Compensation Laws

States vary as to the legal impact on Workers' Compensation claims when drug and/or alcohol are determined to be contributing factors. Some states have laws that cause an injured worker to become ineligible for Workers' Compensation benefits when an employee's injury is caused by the willful and serious misconduct of the injured employee or by his intoxication.

Many states have also enacted laws that provide financial discounts on Workers' Compensation insurance premiums to employers who maintain drug- and alcohol-free workplace programs.

It is important for employers to determine what, if any, Workers' Compensation laws exist in the states in which they conduct business before implementing a drug- and alcohol-free workplace program.

Federal Drug-Free Work Place Act of 1988

The Federal Drug-Free Workplace Act of 1988 became law on March 18, 1989. The law requires that all federal contractors who receive \$100,000 or more, as well as all federal grant recipients, must comply with its requirements. Drug testing is not required under this law, but other provisions of a drug-free workplace are. The following guidelines give the minimum requirements:

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- * Publish a policy statement prohibiting unlawful use, possession, manufacture, or distribution of controlled substances in the workplace;
- * Notify employees of said prohibition and the penalty for violating it;
- * Establish a drug-free awareness program;
- * Provide employees engaged in a contract with a copy of the policy statement;
- * Notify employees that compliance with the policy statement is a condition of employment;
- * Require (in writing in your policy) employees to notify the employer within five days if they are convicted of a criminal drug statute violation occurring in the workplace; additionally, notify the contracting agency of such violations, and impose a sanction or require completion of a drug assistance program by a convicted employee;
- * Make a good-faith effort to maintain a drug-free workplace through these provisions.

If you are a federal government contractor or grantee, you may wish to contact the agency that awarded your contract or grant to determine whether it has additional requirements.

U.S. Department of Defense Regulations

The U.S. Department of Defense (DOD) has issued rules and regulations that obligates defense contractors to establish and maintain a drug-free workplace program for all personnel who work in "sensitive jobs."

General guidelines of the DOD regulations include:

- * Contractor, in concert with the contracting agency, is responsible for determining which jobs are "sensitive" by analyzing the type of work performed and the duties of the various jobs and their relationship to security.
- * Drug testing is required for individuals in "sensitive" jobs.
- * Drug testing is permitted in circumstances such as 1) reasonable suspicion, 2) post-accident, and 3) as part of rehabilitation and is required in pre-employment situations.
- * In unionized settings wherein contract clauses conflict with testing regulation, drug testing must be discussed in the next round of contract negotiations.

U.S. Department of Transportation Regulations

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The U.S. Department of Transportation (DOT) has issued rules and regulations that require the implementation of drug- and alcohol-free workplaces, including drug and alcohol testing, by employers in the transportation industry. The rules and regulations are applicable to employers regulated by one or more of the following transportation regulators:

- * Federal Aviation Administration (FAA);
- * Federal Highway Administration (FHWA);
- * Federal Railway Administration (FRA);
- * United States Coast Guard;
- * Urban Mass Transportation Administration;
- * Research and Special Programs Administration (pipelines).

Specific requirements vary from administration to administration, but basic guidelines under the DOT regulations include:

- * Circumstances under which testing is required:
 - o pre-employment;
 - o reasonable suspicion;
 - o random;
 - o post accident; and
 - o return-to-duty and follow up.
- * DOT has established strict testing procedures that must be followed. All drug testing must be conducted in laboratories certified by the U.S. Department of Health and Human Services.
- * All positive drug tests must be reviewed by a Medical Review Officer (MRO), and employees must be afforded an opportunity to consult with the MRO prior to the test result being reported to the employer.
- * Five classes (and only these five classes) of drugs must be tested for:
 - o marijuana;
 - o cocaine;
 - o amphetamines;
 - o opiates;
 - o and phencyclidine (PCP).
- * Cut-off levels established by DOT must be used in drug testing.
- * Alcohol testing of employees must be conducted using only devices and equipment approved by DOT and in accordance with procedures established by DOT. Alcohol testing of applicants is not required.

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- * Depending on the agency, employees must receive drug awareness training, including information about the company's drug- and alcohol-free workplace program. Employees must also be provided awareness information about alcohol misuse.
- * All supervisors must receive a minimum of 60 minutes of training in drug abuse detection, documentation and intervention, and an additional 60 minutes of similar training about alcohol abuse.
- * Employees determined to have drug and/or alcohol abuse problems must be referred by the employer to a Substance Abuse Professional (SAP) for evaluation. Before the abusing employee can be returned to duty, a recommendation of "return to duty" must be made by the SAP.

Employers who are subject to any of these mandates would be prudent to thoroughly research the specifics of the relevant mandates to ensure that they develop a comprehensive drug- and alcohol-free workplace program that adheres precisely to the requirements.

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Chapter 10 Evaluation

Summary

Program evaluation is an important part of any drug-free workplace program. Periodic evaluation lets you know if you are saving money and improving your bottom line. It also helps to ensure that you are meeting your goals of a drug- and alcohol-free workplace.

Details

You can evaluate your program in several ways. Some employers hire a consultant, while others elect to conduct their own evaluations. For organizations with limited resources, self-evaluation is the most likely option. Use the following guidelines to conduct a basic evaluation of your program:

Step One

- * Establish a baseline; in other words, assess your organization as it is today. Specifically, check your company records for the past two years and compute the incidence and prevalence of some or all of the following indicators of drug and/or alcohol abuse:
 1. absenteeism;
 2. tardiness;
 3. use of health care benefits;
 4. Workers' Compensation claims;
 5. theft;
 6. accidents;
 7. turnover.

- * Estimate the costs of these factors in dollars if possible. If records are not available for years past, start tracking the trends now. Also talk to employees at all levels of the organization to assess the current overall morale of the staff. This will give you baseline data for determining the impact of your program during the coming years.

Step Two

If you have not already begun your drug- and alcohol-free workplace program, do it now.

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- * Review the records at the end of the first year (and in subsequent years) for the factors listed above. Also reassess employee morale. Compare the results to your baseline data. Have there been any changes?

Step Three

- * Revisit your original goals to determine the success of your program.
- * Ask employees and supervisors for their feedback on the impact of the policy and/or program. Cost savings may take some time to accrue, but improved employee morale may be evident right away.

Step Four

- * Establish a plan for assessing the cost/benefits of continuing your drug- and alcohol-free workplace program.

Step Five

- * Use the results to modify your program. Establish a regular review period, perhaps annually, and use that time to assess the progress of the program.
- * Determine the steps needed in the next year to reach your program goals.
- * Consider speaking with employees at all levels of the workforce to assist in both the ongoing evaluation and the implementation of program changes.

It is important when evaluating your program that you consider any changes in laws, established procedures, and accepted practices in this area and that you make needed changes.

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Chapter 11

Seven Points to Remember

The seven points listed below are steps that should be followed when implementing and maintaining a drug- and alcohol-free workplace program. Although they may seem obvious, some employers have neglected one or more and later regretted their omissions.

- * Keep written records that objectively document suspect employee performance. These can be used as a basis for referral for testing.
- * Know your employees. Become familiar with each one's skills, abilities, and normal performance and personality.
- * Become familiar with common symptoms of drug use.
- * Document job performance regularly, objectively, and consistently for all employees.
- * Take action whenever job performance fails, regardless of whether drug or alcohol use is suspected.
- * Know the exact steps to be taken when an employee has a problem and is ready to go for help.
- * Communicate immediately with your supervisor when you suspect a problem, and have a witness to your action when confronting an employee.

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Chapter 12

Eleven Mistakes to Avoid

Here are some things to avoid when implementing and maintaining a drug- and alcohol-free workplace program:

- * Don't misuse the drug prevention program to discipline employees for problems not related to the program.
- * Don't single out any employee or group of employees for scrutiny under the company's policy. Too much attention to any one group could leave the company/organization liable for charges of discrimination. Be consistent with all employee groups or classes.
- * Don't confront a suspected drug dealer alone. Always have a witness to your actions. Consult local law enforcement for advice or assistance in these cases.
- * Don't assume anyone in your organization is immune to the problem of drug and alcohol abuse.
- * Don't implement a verbal policy. An effective policy must be written, circulated, and acknowledged (in writing) by employees.
- * Don't treat employees who test positive differently. All employees who test positive must be treated consistently to maintain the integrity of the program.
- * Don't take action against employees based on the positive results of a drug screen only. Always obtain the results of a gas chromatography/mass spectrometry (GC/MS) confirmation before taking action.
- * Don't offer rehabilitation selectively.
- * Don't address drug abuse without including alcohol abuse in the policy.
- * Don't implement a policy and program unilaterally if you have a unionized workforce. The National Labor Relations Act requires that working terms and conditions be included in your bargaining agreement, and a drug program falls into that requirement.
- * Don't forget that the majority of the nation's workforce is drug-free and does not abuse alcohol. They support you in your efforts to rid your

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company, neighborhood, and ultimately your nation of the menace of drug and alcohol abuse.

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Chapter 13 Resources

Summary

Several sources of outside help are available to employers who want to start or expand a drug-free workplace. Which source is most appropriate will depend on the type of program and the assistance needed.

Fee-Based Services

Many resources available to employers in establishing or expanding a drug- and alcohol-free workplace are fee-based services. Providers of these services typically include:

- * Drug-free workplace consultants;
- * Attorneys, arbitrators, and mediators;
- * Drug testing labs;
- * Health insurance carriers;

Fees for outside assistance vary widely throughout the country. The following ranges are typical costs for a variety of services:

- * Consultants, attorneys, mediators: \$30-100+/hour
- * Drug testing services: \$15-75/test
- * Residential treatment: \$3,000-20,000
- * Outpatient treatment: \$2,000-8,000
- * Group addiction counselors: \$25-60/appointment
- * Individual addiction counselors: \$50-100/hour
- * Employee assistance services: \$14-50/employee/year (depends on the number of employees and the range of services)

When negotiating for services, be clear about what you want and can afford, and ask questions. Include questions about:

- * Fees and how they are calculated;
- * What work will be done;
- * Who will do the work and their qualifications;
- * When work will be completed;
- * What results can be anticipated;
- * Whom you can call for references.

Free and Low-Cost Services

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Several national helplines can provide telephone consultation, lists of resources and referrals, and videos and prevention materials at no cost to the caller, including:

- * The Center for Substance Abuse Prevention (CSAP)'s Workplace Helpline 1-800-WORKPLACE
- * The National Clearinghouse for Alcohol and Drug Information 1-800-729-6686
- * NIDA's Treatment Hotline 1-800-662-HELP
- * The Department of Transportation (DOT)'s Anti-Drug Information Center 1-800-CAL-DRUG
- * The Employee Assistance Professionals Association 703-522-6272
- * National Association of State Alcohol and Drug Abuse Directors 202-293-0090

Most communities also have local resources. Local initiatives and coalitions link employers who are interested in drug-free workplace programs. The coalitions may provide sample policies, technical assistance, low-cost drug testing services, and ongoing training sessions for supervisors. Some have developed special low-cost Employee Assistance Programs (EAPs) designed for smaller employers. They may also have information about and experience with the services and costs of laboratories and Medical Review Officers (MROs) and Substance Abuse Professionals (SAPs) in your area.

For help with finding local initiatives and coalitions:

- * Look in the telephone book for entries like "Drug-Free Business Initiative" or "Coalition for Drug-Free Workplaces."
- * Call or write your state or county office for alcohol and drug abuse services and ask if they have a list of groups near your workplace.
- * Call or write your local mayor's office, police department's community relations office, office of economic development, or business relations office and ask if they have a list of coalitions.
- * Call or write your Chamber of Commerce or business or trade association and ask if they have services to help employers start a drug-free workplace program.
- * Call CSAP's Workplace Helpline at 1-800-WORKPLACE.

Additionally, many communities have Councils on Alcoholism and Drug Abuse, Narcotics Anonymous and Alcoholics Anonymous groups, local labor councils and professional associations that can provide assistance and referral services for employers. Check your local telephone directory under headings such as "alcohol and drug abuse information," "treatment," or "counseling."

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Finally, the Drug Enforcement Administration (DEA) has a force of Demand Reduction Coordinators (DRCs) who are specifically trained to assist communities in reducing the demand for drugs. They can provide employers with free technical support, speakers, awareness materials, and referrals to other resources to help establish and maintain drug- and alcohol-free workplaces. The following list provides information on how to contact the DEA DRC nearest to your location:

(The abbreviation S/A stands for Special Agent. Geographic areas served by Demand Reduction Coordinators are given in parentheses.)

DEA Headquarters Washington, D. C.
Demand Reduction Section
600 Army Navy Drive
Arlington, VA 22202
202/307-7936 Fax 202/307-4559

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Chapter 14 **Conclusion**

The Drug Enforcement Administration (DEA) offers this manual as a summary of available solutions to the problem of drugs in the workplace. It is designed to offer a wide range of options to enable any employer to reduce drug- and alcohol-related operational problems while simultaneously helping in the common effort to eliminate America's drug and alcohol abuse problem.

We believe America's employers have a unique opportunity to help eliminate the negative consequences of drugs and alcohol on society, and we urge that this manual be reviewed with appropriate company decision makers to determine your best course of action.

Remember, you can make a difference, and it is not difficult. Model policies and programs are available. Some sample forms are included in this manual as well as a model policy.

Developing an effective workplace program is not expensive. Using existing materials, you can get started at virtually no cost. If you want to develop a comprehensive program to include employee assistance, supervisor training and employee education and/or testing, many free services and resources are available, and you can form or join a consortium to negotiate favorable testing and EAP rates.

Finally, remember to:

- * think things through;
- * involve employees;
- * emphasize fairness;
- * protect confidentiality;
- * ensure accurate testing and objective review;
- * ensure proper use of the program;
- * ask for legal review;
- * pay attention to the human factor;
- * ensure good communication and ongoing review;
- * consider the collective bargaining process;
- * stay current;
- * address concerns and barriers.

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Appendix

Sample Drug and Alcohol Abuse Policy

1. POLICY

1.1 [EMPLOYER NAME] has a vital interest in maintaining a safe, healthy, and efficient working environment. Being under the influence of a drug or alcohol on the job poses serious safety and health risks to the user and to all those who work with the user. The use, sale, purchase, transfer, or possession of an illegal drug in the workplace, and the use, possession, or being under the influence of alcohol also poses unacceptable risks for safe, healthy, and efficient operations.

1.2 [EMPLOYER] has the right and obligation to maintain a safe, healthy, and efficient workplace for all of its employees, and to protect the organization's property, information, equipment, operations and reputation.

1.3 [EMPLOYER] recognizes its obligations to its member companies for the provision of services that are free of the influence of illegal drugs and alcohol, and will endeavor through this policy to provide drug-and alcohol-free services.

1.4 [EMPLOYER] further expresses its intent through this policy to comply with federal and state rules, regulations or laws that relate to the maintenance of a workplace free from illegal drugs and alcohol.

1.5 As a condition of employment, all employees are required to abide by the terms of this policy and to notify [EMPLOYER's] management of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

2. PURPOSE

2.1 This policy outlines the goals and objectives of [EMPLOYER'S] drug and alcohol testing program and provides guidance to supervisors and employees concerning their responsibilities for carrying out the program.

3. SCOPE

3.1 This policy applies to all departments, all employees and all job applicants. The term employee includes contracted employees.

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4. DEFINITIONS

4.1 Alcohol means any beverage that contains ethyl alcohol (ethanol), including but not limited to beer, wine and distilled spirits.

4.2 Company premises or company facilities means all property of [EMPLOYER] including, but not limited to , the offices, facilities and surrounding areas on [EMPLOYER]-owned or -leased property, parking lots, and storage areas. The term also includes [EMPLOYER]-owned or -leased vehicles and equipment wherever located.

4.3 Contraband means any article, the possession of which on [EMPLOYER] premises or while on [EMPLOYER] business, causes an employee to be in violation of [EMPLOYER] work rule or law. Contraband includes illegal drugs and alcoholic beverages, drug paraphernalia, lethal weapons, firearms, explosives, incendiaries, stolen property, counterfeit money, untaxed whiskey, and pornographic materials.

4.4 Drug testing means the scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens of the human body for the purpose of detecting a drug or alcohol.

4.5 Illegal drug means any drug which is not legally obtainable; any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level other than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with bona fide medical therapy. Examples of illegal drugs are cannabis substances, such as marijuana and hashish, cocaine, heroin, methamphetamine, phencyclidine (PCP), and so-called designer drugs and look-alike drugs.

4.6 Legal drug means any prescribed drug or over-the-counter drug that has been legally obtained and is being used for the purpose for which prescribed or manufactured.

4.7 Reasonable belief means a belief based on objective facts sufficient to lead a prudent person to conclude that a particular employee is unable to satisfactorily perform his or her job duties due to drug or alcohol impairment. Such inability to perform may include, but not be limited to, decreases in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior.

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Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable belief" situations.

4.8 Under the influence means a condition in which a person is affected by a drug or by alcohol in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion, a scientifically valid test, such as urinalysis or blood analysis, and in some cases by the opinion of a layperson.

5. EDUCATION

5.1 Supervisors and other management personnel are to be trained in:

- a. detecting the signs and behavior of employees who may be using drugs or alcohol in violation of this policy;
- b. intervening in situations that may involve violations of this policy;
- c. recognizing the above activities as a direct job responsibility.

5.2 Employees are to be informed of:

- a. the health and safety dangers associated with drug and alcohol use;
- b. the provisions of this policy.

6. PROHIBITED ACTIVITIES

6.1 Legal Drugs

a. The undisclosed use of any legal drug by any employee while performing [EMPLOYER] business or while on [EMPLOYER] premises is prohibited. However, an employee may continue to work even though using a legal drug if [EMPLOYER] management has determined, after consulting with [EMPLOYER'S] health and/or human resources officials, that such use does not pose a threat to safety and that the using employee's job performance is not significantly affected. Otherwise, the employee may be required to take leave of absence or comply with other appropriate action as determined by [EMPLOYER] management.

b. An employee whose medical therapy requires the use of a legal drug must report such use to his or her supervisor prior to the performance of [EMPLOYER]

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business. The supervisor who is so informed will contact [EMPLOYER'S] designated human resources officials for guidance.

c. [EMPLOYER] at all times reserves the right to judge the effect that a legal drug may have on job performance and to restrict the using employee's work activity or presence at the workplace accordingly.

6.2 Illegal Drugs and Alcohol

a. The use, sale, purchase, transfer, or possession of an illegal drug or of alcohol by any employee while on [EMPLOYER] premises or while performing [EMPLOYER] business is prohibited.

7. DISCIPLINE

7.1 Any employee who possesses, distributes, sells, attempts to sell, or transfers illegal drugs on [EMPLOYER] premises or while on [EMPLOYER] business will be discharged.

7.2 Any employee who is found to be in possession of or under the influence of alcohol in violation of this policy will be subject to discipline up to and including discharge.

7.3 Any employee who is found to be in possession of contraband in violation of this policy will be subject to discipline up to and including discharge.

7.4 Any employee who is found through drug or alcohol testing to have in his or her body a detectable amount of an illegal drug or of alcohol will be subject to discipline up to and including discharge except that, depending on the circumstances of the case and the employee involved, the employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program that has been approved by [EMPLOYER]. During rehabilitation, the employee will be subject to unannounced drug or alcohol testing. Upon return to work from rehabilitation, the employee will be subject to unannounced drug or alcohol testing for a period of 60 months. Any test that is confirmed as positive during or following rehabilitation will result in discharge.

8. DRUG AND ALCOHOL TESTING OF JOB APPLICANTS

8.1 All applicants for employment, including applicants for part-time and seasonal positions and applicants who are former employees, are subject to drug and alcohol testing.

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8.2 An applicant must pass the drug test to be considered for employment.

8.3 An applicant will be notified of [EMPLOYER'S] drug and alcohol testing policy prior to being tested; will be informed in writing of his or her right to refuse to undergo such testing; and will be informed that the consequence of refusal is termination of the pre-employment process.

8.4 An applicant will be provided written notice of this policy, and by signature will be required to acknowledge receipt and understanding of the policy.

8.5 If an applicant refuses to take a drug or alcohol test, or if evidence of the use of illegal drugs or alcohol by an applicant is discovered, either through testing or other means, the pre-employment process will be terminated.

9. DRUG AND ALCOHOL TESTING OF EMPLOYEES

9.1 [EMPLOYER] will notify employees of this policy by:

a. Providing to each employee a copy of the policy, and obtaining a written acknowledgement from each employee that the policy has been received and read.

b. Announcing the policy in various written communications and making presentations at employee meetings.

9.2 [EMPLOYER] may perform drug or alcohol testing:

a. Of any employee who manifests "reasonable belief" behavior.

b. Of any employee who is involved in an accident that results or could result in the filing of a Workers' Compensation claim.

c. On a random basis of any employee.

d. Of any employee who is subject to drug or alcohol testing pursuant to federal or state rules, regulations or laws.

9.3 An employee's consent to submit to drug or alcohol testing is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, including discharge, for a first refusal or any subsequent refusal.

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9.4 An employee who is tested in a "reasonable belief" situation may be suspended pending receipt of written tests results and whatever inquiries may be required.

10. APPEAL OF A DRUG OR ALCOHOL TEST RESULT

10.1 An applicant or employee whose drug or alcohol test reported positive will be offered the opportunity of a meeting to offer an explanation. The purpose of the meeting will be to determine if there is any reason that a positive finding could have resulted from some cause other than drug or alcohol use. [EMPLOYER], through its health and/or human resource officials, will judge whether an offered explanation merits further inquiry.

10.2 An employee whose drug or alcohol test is reported positive will be offered the opportunity to:

a. Obtain and independently test, at the employee's expense, the remaining portion of the urine specimen that yielded the positive result;

b. Obtain the written test result and submit it to an independent medical review at the employee's expense.

10.3 The employee may use [EMPLOYER'S] medical benefits, to the extent that coverage may apply, for meeting the costs of 10.2 (a) and (b);

10.4 During the period of an appeal and any resulting inquiries, the pre-employment selection process for an applicant will be placed on hold, and the employment status of an employee may be suspended. An employee who is suspended pending appeal will be permitted to use any available annual leave in order to remain in an active pay status. If the employee has no annual leave or chooses not to use it, the suspension will be without pay.

11. REHABILITATION AND EMPLOYEE ASSISTANCE

11.1 Rehabilitation assistance in lieu of discharge may be offered:

a. To any employee who has requested rehabilitation assistance, provided that the request is unrelated to an identification of the employee as a violator of this policy.

b. To any employee who has violated this policy, provided that the violation does not involve selling or transferring illegal drugs, or serious misconduct.

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11.2 An employee who is in rehabilitation will be suspended, except that--when indicated by the circumstances of the case and the written recommendation of a licensed physician or recognized rehabilitation professional--an employee may be permitted to work while undergoing rehabilitation on an outside-of-work basis. The written recommendation must include a statement to the effect that the employee's presence in the workplace will not constitute a safety hazard to the employee, co-workers or others.

11.3 An employee whose rehabilitative therapy involves drug maintenance, hospitalization or detoxification will not be considered for the exception from suspension described in 11.2.

11.4 An employee who is in rehabilitation or who has completed rehabilitation will be allowed to return to work upon presentation of a written release signed by a licensed physician or recognized rehabilitation professional. The release must include a statement to the effect that the employee's presence in the workplace will not constitute a safety hazard to the employee, co-worker or others.

11.5 Rehabilitation assistance given by [EMPLOYER] will be:

a. Limited to those medical benefits that may be available in the employee's medical benefits plan.

b. Obtained through a rehabilitation program that has been pre-approved by [EMPLOYER].

c. Obtained by the employee during times that will not conflict with the employee's work time, except that the employee may use any available sick leave or annual leave to be absent from the job with pay.

11.6 [EMPLOYER] will provide to any employee, upon request and at no cost to the employee, information concerning local resources that are available for the treatment of drug and alcohol related problems.

12. INSPECTIONS AND SEARCHES

12.1 [EMPLOYER] may conduct unannounced general inspections and searches for drugs or alcohol on [EMPLOYER] premises or in [EMPLOYER] vehicles or equipment wherever located. Employees are expected to cooperate.

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12.2 Search of an employee and his or her personal property may be made when there is reasonable belief to conclude that the employee is in violation of this policy.

12.3 An employee's consent to a search is required as a condition of employment, and the employee's refusal to consent may result in disciplinary action, including discharge, even for a first refusal.

12.4 Illegal drugs, drugs believed to be illegal, and drug paraphernalia found on [EMPLOYER] property will be turned over to the appropriate law enforcement agency and the full cooperation given to any subsequent investigation. Substances that cannot be identified as an illegal drug by a layman's examination will be turned over to a forensic laboratory for scientific analysis.

12.5 Other forms of contraband, such as firearms, explosives, and lethal weapons, will be subject to seizure during an inspection or search. An employee who is found to possess contraband on [EMPLOYER] property or while on [EMPLOYER] business will be subject to discipline up to and including discharge.

12.6 If an employee is the subject of a drug-related investigation by [EMPLOYER] or by a law enforcement agency, the employee may be suspended pending completion of the investigation.

13. CONFIDENTIALITY

13.1 All information relating to drug or alcohol testing or the identification of persons as users of drugs and alcohol will be protected by [EMPLOYER] as confidential unless otherwise required by law, overriding public health and safety concerns, or authorized in writing by the persons in question.

NOTE: This sample policy is not intended and should not be construed to be legal guidance. Anyone who wishes to implement a substance abuse program should first obtain the advice of legal counsel.

Not all employers will select all of the options outlined in this policy. It is important that you read every section carefully and decide whether it applies to your particular program.

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SUPERVISOR'S CHECKLIST FOR MAKING REASONABLE CAUSE DETERMINATION

Employee's name_____

Department_____

Date(s)_____

KNOWING THE SIGNS

The indicators listed below are "warning signs" of drug and/or alcohol abuse and may be observed by supervisors:

Moods:

- * Depressed
- * Anxious
- * Irritable
- * Suspicious
- * Complains about others
- * Emotional unsteadiness (e.g., outbursts of crying)
- * Mood changes after lunch or break

Actions:

- * Withdrawn or improperly talkative
- * Spends excessive amount of time on the telephone
- * Argumentative
- * Has exaggerated sense of self-importance
- * Displays violent behavior
- * Avoids talking with supervisor regarding work issues

Absenteeism:

- * Acceleration of absenteeism and tardiness, especially Mondays, Friday, before and after holidays
- * Frequent unreported absences, later explained as "emergencies"
- * Unusually high incidence of colds, flus, upset stomach, headaches
- * Frequent use of unscheduled vacation time
- * Leaving work area more than necessary (e.g., frequent trips to water fountain and bathroom)
- * Unexplained disappearances from the job with difficulty in locating employee

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- * Requesting to leave work early for various reasons

Accidents:

- * Taking of needless risks
- * Disregard for safety of others
- * Higher than average accident rate on and off the job

Work Patterns:

- * Inconsistency in quality of work
- * High and low periods of productivity
- * Poor judgment/more mistakes than usual and general carelessness
- * Lapses in concentration
- * Difficulty in recalling instructions
- * Difficulty in remembering own mistakes
- * Using more time to complete work/missing deadlines
- * Increased difficulty in handling complex situations

Relationship to Others on the Job:

- * Overreaction to real or imagined criticism (paranoid)
- * Avoiding and withdrawing from peers
- * Complaints from co-workers
- * Borrowing money from fellow employees
- * Persistent job transfer requests
- * Complaints of problems at home such as separation, divorce and child discipline problems

OBSERVING AND DOCUMENTING CURRENT INDICATORS

Patterns of any of the above conduct or combinations of conduct may occur but must be accompanied by indicators of impairment in order to establish "reasonable cause." Please check all indicators listed below that are currently present:

- | | |
|--------------------------------|------------------------------|
| ---- Constricted pupils | ---- Drowsiness |
| ---- Dilated pupils | ---- Odor of alcohol |
| ---- Scratching | ---- Nasal secretion |
| ---- Red or watering eyes | ---- Dizziness |
| ---- Involuntary eye movements | ---- Muscular incoordination |
| ---- Sniffles | ---- Unconsciousness |
| ---- Excessively active | ---- Inability to verbalize |
| ---- Nausea or vomiting | ---- Irritable |

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- | | |
|-----------------------|-------------------------------|
| ---- Flushed skin | ---- Argumentative |
| ---- Sweating | ---- Difficulty concentrating |
| ---- Yawning | ---- Slurred speech |
| ---- Twitching | ---- Bizarre behavior |
| ---- Violent behavior | ---- Needle marks |

---- Possession of paraphernalia (such as syringe, bent spoon, metal bottle cap, medicine dropper, glassine bag, paint can, glue tube, nitrite bulb, or aerosol can)

---- Possession of substance that appears to possibly be a drug or alcohol

---- Other _____

DETERMINING REASONABLE CAUSE

If you are able to document one or more of the indicators above, ask yourself these questions to establish reasonable cause:

Y N

[] [] Has some form of impairment been shown in the employee's appearance, actions or work performance?

[] [] Does the impairment result from the possible use of drugs or alcohol?

[] [] Are the facts reliable? Did you witness the situation personally, or are you sure that the witness(es) are reliable and have provided firsthand information?

[] [] Are the facts capable of explanation?

[] [] Are the facts capable of documentation?

[] [] Is the impairment current, today, now?

Do NOT proceed with reasonable cause testing unless all of the above questions are answered with a YES.

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TAKING ACTION

_____ Reasonable cause established

_____ Reasonable cause NOT established

Prepared by:

Supervisor's/Manager's Signature:_____

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APPLICANT'S CONSENT TO DRUG/ALCOHOL TESTING

I understand it is the policy of the company/organization to conduct drug and/or alcohol tests of job applicants for the purpose of detecting drug and/or alcohol abuse, and that one of the requirements for consideration of employment with the company/organization is the satisfactory passing of the company's/organization's drug and/or alcohol test(s).

For the purpose of being further considered for employment, I hereby agree to submit to a drug and/or alcohol test.

I understand that favorable test results will not necessarily guarantee that I will be employed by the company/organization.

If I am accepted for employment, I agree to take drug and/or alcohol tests whenever requested by the company/organization, and I understand that the taking of such tests is a condition of my continued employment.

I also give consent to the testing agency to release to the company/organization and other officially interested parties the results of my tests.

At this time I consent to a drug and/or alcohol test.

(Signature of applicant)

(Date signed)

(Printed name of applicant)

(Signature of witness)

NOTE: This form should be customized with your company or organization's name and should reference only drugs or alcohol, or both, depending upon which options you select for testing requirements.

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**EMPLOYEE NOTICE AND ACKNOWLEDGEMENT OF EMPLOYER TESTING
REQUIREMENTS**

PART 1: NOTICE

This is to inform you that the company/organization conducts testing to identify job applicants and current employees who may be abusing drugs and/or alcohol.

A copy of the company's/organization's policy on this matter is either attached to this notice or will be given to you upon request.

You have the right to refuse to undergo testing. However, the consequences of refusal to undergo testing or a refusal to cooperate in testing by an applicant will result in the termination of the pre-employment selection process, and the consequences of refusal to undergo testing or a refusal to cooperate in the testing by an employee will result in disciplinary action up to and including discharge.

An applicant who fails a test will not be hired, and an employee who fails a test will be subject to disciplinary action up to and including discharge.

Remaining drug-and/or alcohol-free and participation in the company's/organization's drug and/or alcohol testing program is a condition of continued employment.

PART II: ACKNOWLEDGEMENT

I acknowledge receipt and understanding of the above written notice and agree to abide by the terms of the company's/organization's policy pertaining to drugs and alcohol.

(Signature) (Date signed)

(Printed name (Signature of witness))

NOTE: This form should be customized with your company or organization's name and should reference only drugs or alcohol, or both, depending upon which options you select for testing requirements.

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**EMPLOYEE NOTICE AND ACKNOWLEDGEMENT FOR TESTING
AFTER REHABILITATION**

PART 1: NOTICE

The company/organization is pleased to learn that you are returning to duty after successfully completing an approved program of drug and/or alcohol rehabilitation.

In accordance with the company's/organization's drug-and alcohol-free workplace program, you will be subject to a reasonable program of follow-up drug and/or alcohol testing without prior notice for not more than 60 months after return to duty.

This program of follow-up testing will be in addition to the other testing requirements imposed on all employees, such as reasonable cause testing, post-accident testing and random testing.

PART II: ACKNOWLEDGEMENT

I acknowledge receipt, understanding and acceptance of the above written notice.

(Signature) (Date signed)

(Printed name) (Signature of witness)

Note: This form should be customized with your company or organization's name and should reference only drugs or alcohol, or both, depending upon which options you select for testing requirements.