



Drugs, Death, and Costs

WORKPLACE SUBSTANCE ABUSE!

Complements of:
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A Guide



Seeking Excellence Team©

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Drugs, Death, and Costs: Societal and Workplace Substance Abuse.

What You Must Know and How to Benefit!

The Way It Is:

You're concerned about the potential for employee substance abuse within your organization. You are aware of the liabilities and costs. That concern arises due to your sense of the level of societal drug abuse.

Well, your concerns are justified.

In a report, from the Office of the Surgeon General, dated November 15, 2016, entitled, Facing Addiction in America: The Surgeon General's Report on Alcohol, Drugs, and Health annual costs of \$442 billion are estimated in health care, criminal justice, and lost productivity.

So, what about the specifics of substance abuse in the workplace?

Well, according to the National Council on Alcoholism and Drug Dependence Inc., drug abuse cost employers an estimated \$81 billion annually. That estimate was made in 1992. What do you think it is today given the Surgeon General's November 2016 report?

Some 70 percent of the estimated 14.8 million Americans who use illegal drugs are employed.

Got your attention? Read on.

Contemporary Statistics:

"Following years of declines, the percentage of employees in the combined U.S. workforce testing positive for drugs has steadily increased over the last three years to a 10-year high. Since 2013 there has been a 47 percent increase in the detection of amphetamine, heroin, and marijuana". This revelation was reported by Quest Diagnostics in their Annual Drug Testing Index, dated September 15, 2016.

The logical question is, given these stats, is substance abuse a realistic possibility within your organization?

Questions Seeking Answers:

You question if you are doing enough to prevent intrusion of substance abuse into your

organization and if what you are doing is enough and working.

Further complicating your concerns is that at the state level the legalization of the recreational and medical use of marijuana is trending up.

How are you going to manage that reality?

Good question.

What's your answer?

Impression:

You want to keep your organization safe and free of workplace substance abuse. You understand all the negatives that go with it; you've taken precautions. You've developed what you think is an effective drug testing policy. This policy protects managerial rights while respecting your employees' legal rights.

Figuratively, you've deployed an umbrella shield.

Under your umbrella, you have developed a series of basic pre and post-employment random, post-accident, and reasonable suspicion drug testing requirements.

Pre-employment drug testing is pretty simple. That's a done deal.

Post-employment testing requirements are new and cover the basics. These are mandatory drug tests that apply to all employees. Each category of testing and requirements is published in your *Employee Handbook*. Each employee has acknowledged this requirement and signed a consent form.

Post-employment tests range from random, post-accident to return to work and reasonable suspicion. Each test is intended to expose workplace substance abuse. This ensemble of tests comprises the basics. Theoretically, problem employees are identified and all relevant legal and contractual issues are resolved.

For-cause testing is omitted; might be too intrusive and there are legal caveats that can be avoided.

You've met all requirements of applicable state and federal laws.

You're legal and Human Resource professionals have vetted both your pre and post-employment drug testing policies and given a thumbs-up on both. Furthermore, they think the policies comply with the requirements of The Americans with Disabilities Act (ADA). But, compliance with ADA has yet to be tested; this is another legal exposure that is to be determined.

Overall, you're feeling relatively comfortable with what you're doing.

Your drug testing policies appear to mitigate the occurrence of some of the following major risks:

- Workplace substance abuse

- High turnover of personnel
- Drug overdoses
- vehicle accidents
- Fatal vehicle accidents
- Injuries lost time and production
- Fatal workstation accidents
- Workman's compensations claims
- Absenteeism
- Abuse of sick leave
- Loss of production
- Illegal activities including drug sale and theft
- Supervisor and co-worker attitudinal interaction action issues

From all appearances, your drug testing policies are working as planned.

But what if?

It seems like there is always a "But what if?" question, or two, or more.

Well, the "But what If?" question is about to be answered.

Weakness Disclosed:

In a men's restroom, an executive overdoses on Heroin...and dies.

His behaviors had indicated that something was wrong; but what?

You thought you were covered.

If he had a drug problem it would show in the next required test perhaps a random. Due to health privacy issues, and lacking an alternative testing policy, you had to wait for a routine test to hit to determine if the suspicious behaviors were drug abuse-related. He had not disclosed the use of prescription medication.

And the executive who acted is not the only employee with questionable behavior issues.

This is when you realize that long intervals occur between routine testing.

This gap in testing is problematic as an employee can develop a substance abuse issue that goes unresolved

You're not feeling so comfortable now.

This gap in drug testing has to be closed.

So you reluctantly developed a policy authorizing a for-cause test.

The real world has arrived. Don't make the mistake of omitting for-cause drug testing from your post-employment drug testing protocols.

The For-Cause Test Fills The Gap:

Time-lapse intervals between routine post-employment testing can be significant. Testing

gaps can last weeks and even months. This occurrence can create substantial life

safety risks and legal liabilities if an employee develops a substance abuse problem in the interim and reports for work.

Therefore, as a supplement to routine post-employment testing, you've developed a policy that authorizes for-cause drug testing. For-Cause means that an employee will be required to submit to a drug test if a supervisor has reasonable suspicion to believe that the employee is working under the influence of drugs or alcohol.

For-cause testing is on-demand testing. The employee is immediately removed from their work assignment. Exigent circumstance dictates this immediacy.

This is your catch-all policy.

Good that you have it; you need it.

But, for all its good intent, implementation of this policy creates a list of red flag issues for management.

For instance, the employee may hire a lawyer and complain that:

- The test is an invasion of privacy.
- The test was unnecessary.
- The test was excessively imposed.
- Test results were indiscriminately disclosed.
- Specimen collection was indiscreet
- The test was done based on some discriminatory basis, such as race, sex, or disability.
- The test was an unreasonable search and seizure conducted without reasonable cause.
- The test was not in compliance with the Americans with Disabilities Act

Managing the problem is your job.

You best get it right if potential legal issues are to be avoided or mitigated.

Management of For-Cause Drug Testing:

As noted management of for-cause drug testing is fraught with a matrix of fairness, legal, privacy, definitional, drug testing policy, and procedure compliance issues.

Why? This test is discretionary.

Unlike other testing categories, where all employees are tested, the for-cause test identifies and singles out a specific employee suspected of workplace substance abuse.

Ordering a for-cause, on-demand drug test is a serious decision.

Such a decision must be well-thought-out before implementation. And a supervisor may not have a lot of time to make the assessment or have been properly trained in how to objectively identify and document common behaviors associated with

drug abuse.

Therefore, comprehensive training of supervisory personnel is required. At least a couple of hours is needed. That is if you want to ensure consistency in the establishment of reasonable suspicion. So if your organization is not under federally mandated testing requirements you'll have to develop and administer your policies, guidelines, and training lesson plans.

Here are a few best practices that should be included in your supervisory training:

- For-cause, on-demand drug testing should be an element of a drug testing policy, and while discretionary, it is predicated upon the establishment of reasonable suspicion before implementation.
- An organization's drug testing policy should be explained to each employee with particular emphasis on the requirement for a for-cause, on-demand test following the supervisory establishment of reasonable suspicion.
- Supervisory training should include, but not be limited to life safety issues, both internal and public, legal liabilities, negative business, personal and societal consequences, costs, etc. Provide clues via a comprehensive checklist that identifies common, objective, observable, physical, psychological, emotional, behavior characteristics associated with substance abuse, legal or illegal, in or out, of the workplace. Documentation requirements.
- If the test sample is not taken on-site do not allow the suspect employee to drive to the offsite test location. The operation of a company vehicle is only permitted after a negative test result.
- Provide an appeal and retest provision for those employees testing positive.

For-cause drug testing is only initiated after an analysis of an employees' observable, identifiable, documentable, physical, and emotional behaviors establishes reasonable suspicion of substance abuse.

Warning! Rumors, whisperings, hunches, and or suspicion alone of workplace substance abuse is not sufficient verification to justify for-cause drug tests.

Don't act on an impulse.

As a supervisor, once suspicion becomes a valid concern, if possible, collaborate with another supervisor in establishing reasonable suspicion that the suspect employee is working in an impaired state. This collaboration is intended to protect both the supervisor and the employee.

Reasonable Suspicion Defined:

So, what is the definition of reasonable suspicion?

The U.S. Supreme Court in *Ornelas v. the United States*, 517 U.S. at 695-96 (citations omitted) has said "...Articulating precisely what "reasonable suspicion" and "probable cause" means is not possible. They are commonsense, nontechnical conceptions that deal with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. As such, the standards are not readily, or even usefully, reduced to a neat set of legal rules."

Possible translation: Be prepared to objectively identify, articulate, and document behaviors commonly associated with substance abuse and do so in sufficient detail so that a reasonable and prudent person looking at the same set of facts would concur that the ordering of a for-cause drug test was based upon reasonable suspicion of workplace substance abuse and justified.

Of course, you should get a legal opinion from your attorney as to what constitutes reasonable suspicion. That opinion should guide your analysis of suspected workplace substance abuse and the objective documentation of same.

Substance Abuse Defined:

So, how is substance abuse defined?

According to MedicineNet.com, in a report collated December 1, 215, there is no universally accepted definition of substance abuse.

But, here are two definitions for your consideration:

(1) From the Fourth Edition of the Diagnostic and Statistical Manual of the Mental Disorders issued by the American Psychiatric Association:

"A maladaptive pattern of substance use leading to clinically significant impairment or distress, as manifested by one (or more) of the following, occurring within 12 months:

- Recurrent substance use results in a failure to fulfill major role obligations at work, school, or home. (e.g., repeated absences or poor work performance related to substance use; substance-related absences, suspensions or expulsions from school; neglect of children or household)
- Recurrent substance use in situations in which it is physically hazardous. (e.g., driving an automobile or operating a machine when impaired by substance use)
- Recurrent substance-related legal problems. (e.g., arrests for substance-related disorderly conduct)
- Continued substance use despite having persistent or recurrent social or interpersonal problems caused or

exacerbated by the effects of the substance. (e.g., arguments

with spouse about consequences of intoxication, physical fights)."

(2) Medicine Plus, a service of U.S. National Library of Medicine and National Institutes of Health cites this definition: This definition includes the misuse of medications, alcohol, or illegal substances.

"Substance abuse is the use of a mood or behavior-altering substance resulting in significant impairment or distress. This abuse can affect a person's physical health and personal or social functioning. Substance abuse can include regular, excessive, compulsive drinking of alcohol and the habitual use of illegal drugs."

Analysis:

Each definition does not distinguish between legal or illegal substances; either may be abused and are. Further, noted indicators of substance use are generalized. Reference is made to observable physical and emotional behaviors without citing examples.

You need specific examples of behaviors that characterize substance abuse and your supervisory personnel must be trained to identify those characteristics.

You must have credible, actionable direction if you are to act appropriately in establishing reasonable suspicion of workplace substance abuse.

well, there you have it.

Of course, you'll require much more information than provided herein. Hopefully, you'll find this information helpful. Maybe even a wake-up call is stimulated.

What Observable, Documentable, Physical, and Emotional Behaviors Objectively Establish Reasonable Suspicion of Workplace Substance Abuse Thereby Justifying a For-Cause, On-Demand Drug Test?

In the book, *How to Recognize and Manage Workplace Substance Abuse*, Part IV: General Clues and Warning Signs, five (5) behavior categories associated with substance abuse are outlined:

- Physical behavior clues:
 - Eighteen (18) specific illustrations.
- Psychological clues:
 - Eight (8) specific guides.
- Physical appearance clues:
 - Thirteen (13) specific markers.
- Speech issue clues:
 - Four (4) classics.
- Body odor clues:

- Three (3) markers.

The book is prepared as an educational resource and as a quick reference guide for management and supervision.

Included is a nine-page in-depth multipart checklist for use by supervision, as an aid, in the objective identification and documentation of behaviors commonly associated with substance abuse; thereby establishing reasonable suspicion of substance abuse justifying for-cause drug tests.

In Part VI: Clues of Substance Abuse for Specific Substances, thirteen (13) common legal and illegal substances are identified ranging from alcohol to Flakka.

- Alcohol
- Amphetamine
- Barbiturates
- Benzodiazepine
- Cocaine
- Crystal Meth
- Flakka
- Heroin
- Marijuana
- Methamphetamine
- MDMA (Ecstasy)
- Opiates
- Phencyclidine (PCP)

Each of these substances is separated into four (4) categories. These categories aid in objective, documentable, recognition of abuse with supplemental qualifying notes:

- Sample Behavior Clues (196)
- Sample Commercial Names (46)
- Sample Street Names (192)
- How Ingested (52)

Part V: Alcohol and Drug Detection Timeframes outline detection timeframes for each drug using urinalysis.

Conclusion:

The book *How to Recognize and Manage Workplace Substance Abuse* is crafted as a multidimensional resource. The author draws upon his experience as the chief security officer for a large corporation, and extensive subject matter research, in preparing this work.

Take it from a person who has lived and worked in the trenches of the real

world...you need this resource.

The book intends to provide management and supervision credible information, practical insight, structure, and guidance that will aid in the objective establishment and documentation of reasonable suspicion of workplace substance abuse and management of for-cause substance abuse cases.

A valuable multi-dimensional checklist is included.

This checklist provides structure and guidance that aids in the organization, identification, and documentation of common substance abuse behaviors. Mediate guesswork in establishing reasonable suspicion. Your management and supervisory personnel will value this checklist.

Also provided is an overview of the historical evolution of workplace substance abuse, mitigation efforts, its dollar costs, negative business, personal, and societal consequences.

¹ Excerpted from an article by Carolyn Buppert, INP, JD, on Medscape.

<http://www.medscape.com/viewarticle/523617> ² Excerpted from Quest Diagnostics report titled Reasonable Suspicion Testing. www.questdiagnostics.com.

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In the course and scope of his life and career, he's learned a lot about people, the legal profession, civil and criminal business legal risks, the requirement for professional competency in the resolution of legal issues, and the importance of integrity and trust in all relationships. He's a LegalShield Independent Associate.