

Drugs and Alcohol in the Workplace: A Cocktail for Disaster?

The Occupational Health and Safety Act 2004 (Vic) requires employers to take positive steps to provide and maintain safe working environments for workers and to ensure that others are not exposed to risks to health and safety arising from the workplace.

It is self-evident that drug and alcohol consumption results in impaired judgment, coordination, concentration and alertness. The residual effects of drug and alcohol consumption away from the workplace and outside working hours can create serious occupational health and safety risks in the workplace as well as impacting on employee performance, and productivity.

Employers ought to assess the risks in their individual workplaces of employees attending work under the influence of drugs or alcohol. The most obvious workplaces where such risk assessments should occur are those where employees are driving vehicles, using any form of machinery, handling hazardous substances or working at heights. However, most workplaces involve some elements of risk.

Policy development

There is no such thing as a one size fits all policy and care must be taken to ensure that the right policies and procedures are developed for each workplace, taking into account the nature of the workplace and its individual health and safety requirements.

For example, where employees are required to undertake tasks for which coordination, alertness and concentration are particularly important (eg driving), it may be appropriate to introduce mandatory drug and alcohol testing and implement a zero tolerance approach to drugs and alcohol, while a less severe approach may be appropriate for employees engaged to perform less dangerous tasks, such as administrative tasks in an office environment.

Where drug and alcohol testing is introduced, care should be taken to choose fair, reasonable and non-discriminatory methods for testing and for selecting individuals or groups to undergo testing. Consideration should also be given to the potential for objections or refusal to undergo testing and a secure chain of custody should be put in place in respect of any samples taken for testing.

Good drafting is important in any workplace policy and a drug and alcohol policy should be written in clear and understandable terms, setting out the employer's expectations, the obligations of employees, and identifying the disciplinary or other consequences that may flow from a breach of the policy. Vague or subjective terminology, loopholes and overly complex or restrictive procedures should be avoided.

Implementation

As is the case with any workplace policy, education and awareness are key to ensuring that a drug and alcohol policy is worth the paper it is written on.

Clear explanation and training should be provided to all individuals covered by drug and alcohol policies and procedures, including those who have a role in enforcing them. Employers and employees both need to be aware of their obligations with respect to occupational health and safety.

Policies and procedures should also be regularly reviewed and updated to keep up with changes to the law and the requirements of the workplace. Enforcement.

Decisions of the Australian Industrial Relations Commission and Fair Work Australia have repeatedly confirmed that employers are entitled to rely on reasonable drug and alcohol policies in support of the discipline of employees, including dismissal in appropriate cases. However, in some cases, employees have succeeded in unfair dismissal claims where the drug and alcohol policy relied on was unclear or unreasonable, procedures were not properly followed, or where the employer did not follow a fair procedure in relation to the employee's dismissal.

Drug and alcohol policies and procedures should be applied and enforced consistently so that employees know what to expect and there is less scope for an employee to claim that he or she has been treated harshly in comparison to others. Inconsistency in application and enforcement may

result in a particular dismissal being perceived to be unfair or discriminatory, even where a valid reason existed for the dismissal.

Summary

The adoption of appropriate drug and alcohol policies and procedures is an important step towards ensuring occupational health and safety compliance and minimising the risk of accident and injury in the workplace. Emphasis should first be placed on developing and implementing policies and procedures that are suitable to the particular requirements of your workplace and then on enforcing those policies and procedures in a fair, reasonable and effective manner.

Should you require assistance with OH&S matters, workplace relations and development and implementation of policies and procedures in your workplace, Harwood Andrews Lawyers can assist you and provide advice on these matters.

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