

Drug and Alcohol Detection in the Workplace

A Guide for Employers



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Introduction

This guide is for businesses and organisations that require a drug and alcohol policy which complies with current regulations and have a need to identify employees under the influence of drugs and / or to detect drugs in the workplace.

Our guide will walk you through everything you need to know about how to minimise your risk, how to identify a problem at your workplace, and how to deal with it quickly and effectively.

Drugs and alcohol have no place in the workplace. An employee who is chemically impaired may find it hard to focus and stay on task and is more inclined to risk-taking behaviours as their judgment may be clouded, all of which makes them a hazard to themselves and others in the workplace.

With advances in science, new drug testing methodologies are becoming available at a quickening rate. This can be a minefield for those not having a background in the analytical sciences. ScentTECH, having a qualified biochemist at the helm, are experts in the field and can explain the pro's and con's of each testing method and their legal and privacy implications, in terms that the employer can easily understand.

The advent of new oral fluid drug testing methods, in conjunction with the updated NZ standard (NZ 4760:2019 - Procedure for specimen collection and the detection and quantification of drugs in oral fluid) have significantly benefited both employers and employees. This technique provides the option to determine the potential for drug intoxication in a manner far superior to traditional testing methods.

Also gaining popularity is the use of Drug Detection Dogs. Detector Dogs are a proven tool in areas where rapid screening, and risk assessment are a high priority. The presence of a drug dog team is a high-profile deterrent which sends a clear message to contractors and employees reinforcing the seriousness that the employer places on

Health and Safety in the workplace.

Under the Health and Safety at Work Act 2015, both employers and employees must take reasonable steps to maintain a safe working environment. A compliant drug and alcohol policy combined with regular detection and / or testing events is part of an effective policy.



The Basics

Testing employees for drugs or alcohol is becoming a regular practice in New Zealand workplaces. This has now become commonplace in safety sensitive industries.

Employee testing is an effective deterrent to the possession and use of drugs in the workplace but is often considered as an invasion of privacy which, if not done with care and compassion, can have a negative effect on the relationship you have with the employee.

Generally, an employer may only ask employees and other workers to

agree to alcohol or drugs tests if this is a condition of their employment and there is an agreed drug testing policy. The policy should include provisions for when, and what kind of testing, will be carried out. It should also indicate the possible consequences – for example disciplinary action – if the employee tests positive or refuses to participate in testing.

While it's important to have a policy in place, this alone isn't enough. To be effective, it needs to be backed up by regular communication and the consistent actions.

Effective Drug and Alcohol Policies

An employment agreement and job description sets out the employer's requirements regarding the employee's specific job. A policy can further help to frame the expectations that an employee needs to meet regarding the workplace and organisation as a whole.

Having these expectations set out clearly also means that the business has thought about the actions required to prevent or reduce the impact of alcohol or drugs on the workplace and its people.

Having a fair and socialised policy is at the core of creating a drug-free environment. However, for it to be considered an effective risk mitigation strategy under the Health and Safety at Work Act 2015, the following actions should also be implemented.

1. Any policy requires consultation with the employees and their representatives (if the employee chooses) before being introduced,
2. The measures described in the Policy need to be applied regularly and consistently,
3. The policy should be reviewed and updated annually, and
4. The employee must have had access to the documents and be given the opportunity to familiarise themselves with any changes that may affect them.

Workplace drug testing can be a difficult process to undertake and it will present a range of legal hurdles that an employer must consider. Drug testing involves the collection, storage and use of information about employees, so you will need to recognize the implications of the Privacy Act, Employment law and other pieces of legislation such as the Bill of Rights Act.

Keeping abreast of Case Law and updating your Policies appropriately is essential for your business to maintain compliance with these pieces of legislation

Reasonable and Applicable Policies

Employers and employees have a legal requirement to ensure a workplace is safe, and drug and alcohol testing can help manage risks and increase the safety of the workplace. Employees must comply with any reasonable policy or procedure relating to health and safety, though what is reasonable will depend on the circumstances in which it is applied.

The more invasive the type of drug testing, the stronger the justifications will need to be for its use. The reason for testing and the frequency of testing are also highly relevant when deciding whether testing is reasonable and appropriate.

For example, it is easier to justify drug testing for staff working in areas where safety is a real issue (for example, public transport, or operation of heavy machinery). Testing for a specific reason, following an accident, for example, is much easier to support than random testing.

A drug and alcohol policy at your business will help you:

1. Improve health outcomes and workplace safety for employees,
2. Communicate a clear understanding of the limit on drinking in relation to work,
3. Show consistency and efficiency in response to issues or incidents,
4. Show a clear commitment to being a supportive and healthy

workplace,

5. Save on costs by reducing the impact of alcohol and drugs in the workplace, as well as managing any substance-related issues more effectively.

How to make your policy effective

Any new policies, especially one as invasive as drug and alcohol testing, require wide ranging consultation with management, supervisors, occupational health and safety personnel, employees and unions.

An effective drug and alcohol policy will be:

1. Agreed to by a majority of employees and fully supported at all management levels,
2. Applied universally and consistently to all employees irrespective of their seniority,
3. Easy to understand, reiterating that illegal drugs are not permitted and/or when alcohol is (if ever) permitted at your workplace,
4. Communicated to all employees clearly so they appreciate,
5. what the policy entails,
6. what their responsibilities are, and
7. what happens if they breach its terms.
8. Fit specifically with the workplace's needs and operating conditions and be compatible with your organisation's culture and purpose,
9. Reviewed and updated regularly to determine if the policy's aims are being achieved.

Finally, a drug education programme and / or confidential counselling service should be considered as part of an effective policy.

What should a Workplace Drug and Alcohol Policy cover?

Your policy will need to outline why and when you will test, and include information about:

1. The situation which will result in a request for a drug & alcohol test to be performed and what the test will cover, e.g. alcohol and the types of drugs detected,
2. The method of testing e.g. breath testing for alcohol, oral fluid / urine testing for drugs and whether drug detection dogs may be used on site and for what purpose,
3. The frequency of testing (if random tests are used),
4. What the consequences of a positive result or refusing to undergo testing may be. You must give the worker the opportunity to explain a positive test before deciding on an appropriate action.
5. Who will see the test results (and any information associated with the test) and what will happen with the information – where the information will be stored and for how long, and if it will be eventually destroyed.



The Practicalities of Workplace Drug & Alcohol Testing

When can an employee be tested?

Testing for drugs in the workplace is often undertaken because of health and safety issues in relation to the employee concerned, or of other employees or members of the public. There are three main types of drug testing you might consider:

Compulsory testing

This can only be done through appropriate workplace policies and procedures, where processes allow for drug and alcohol testing in

specific circumstances (for example, at the pre-employment stage, as part of a rehabilitation process, or for the site access requirements of a third party).

Testing for cause

This is based on “reasonable suspicion” or ‘just cause’. i.e.

1. The employee is behaving in such a way that they could be under the influence of drugs or alcohol. This testing may be hard to justify as it depends on the viewpoint of the person observing the behaviour, or
2. For a reason specified in the employment agreement or workplace policy such as after an incident, accident or near miss.

Random testing

Random testing is appropriate for businesses that operate in industries that are considered safety-sensitive in terms of health and safety, such as manufacturing, transport, courier services, and logistics for example. The employee must be given notice that random testing may occur and be informed of any results throughout the process.

Many companies try to save money by conducting their own staff drug testing. Unless this is done by an experienced and trained individual, it can compound bad practices and may be perceived as compromising the impartiality of the testing process. Workplace drug testing is fraught with pitfalls and is best conducted by an independent, knowledgeable and accredited drug-testing technician.

Requesting employees submit to a Drug and Alcohol test?

A business may request employees and other workers to submit to drug and alcohol test when they are on site, but only if it is relevant to the

safety of the workplace. For employees this must be a condition of their appointment which has been recorded in their employment agreement.

Employers must also have provided clear information on their alcohol and drug testing policies to the employee prior to giving the direction. The policy should describe the situations that warrants testing to be carried out and what kind of testing is involved in various situations.

An Employee has submitted a Not-Negative Workplace Screening result – what now?

Your workplace policy should indicate what happens if an employee returns a not-negative screening result. Before any disciplinary action can be taken, the results of the workplace screening test will need to be confirmed by an IANZ accredited Laboratory. As this process could take several days, the policy also needs to outline how the subject is treated in the interim.

The employer should discuss the results with the employee. It's important to keep the employee informed at all points throughout the testing process and beyond, including the possible consequences of a positive laboratory result. The latter will eventually come down to the individual circumstances, but the course of action must be consistent with the Drug and Alcohol Policy.

If there is a risk to health and safety and depending on the circumstances, the employee may be suspended and an investigation or disciplinary process should be commenced in line with the employer's policies and procedures.

Some employers may also choose to support the employee in attending a rehabilitation programme as part of their drug and alcohol policy.

As part of the fair process for determining misconduct, the employer should consider the following:

1. Was there a good reason for testing given the workplace policies and procedures and the employee's employment agreement?
2. Was there reasonable suspicion for testing in terms of a perceived impact on the employee's behaviour, and / or on their own safety or the safety of others?
3. What has the employer done previously in similar situations? Has a precedent been set?
4. Is there any witnesses or further evidence, that points to the fact the employee was intoxicated whilst working?
5. How impaired the employee's performance is and their actual job should also be taken into consideration. For example, driving a vehicle while intoxicated could have more serious consequences than data entry.

Refusal to be Tested

The policy should explain what can happen if the employee refuses to take a drug or alcohol test. If an employee does not have a good reason for the refusal when there is a clear policy in place, then depending on the circumstances, it may be considered serious misconduct. This is possible grounds for a written warning, final written warning or potentially dismissal provided the employer has followed a fair and reasonable process prior to completing these actions.

Can I ask an employee / job candidate if they use drugs?

Drug testing can impact on the employee's rights, particularly the employee's right to privacy under the Privacy Act 2020. This Act protects the use of an employee's personal information.

Asking the employee whether they have taken drugs if there is no testing policy in place can be seen as discriminatory.

In a job interview you can tell the employee what the job requirements are and ask whether the employee has any medical or physical conditions or disabilities that would prevent them from doing the job as you described it. But you can't simply ask for a list of medications as this may be a breach of their privacy. If the candidate tests positive in pre-employment testing you also need to be careful how you explain that they are unsuccessful to avoid a claim about discrimination based on health.

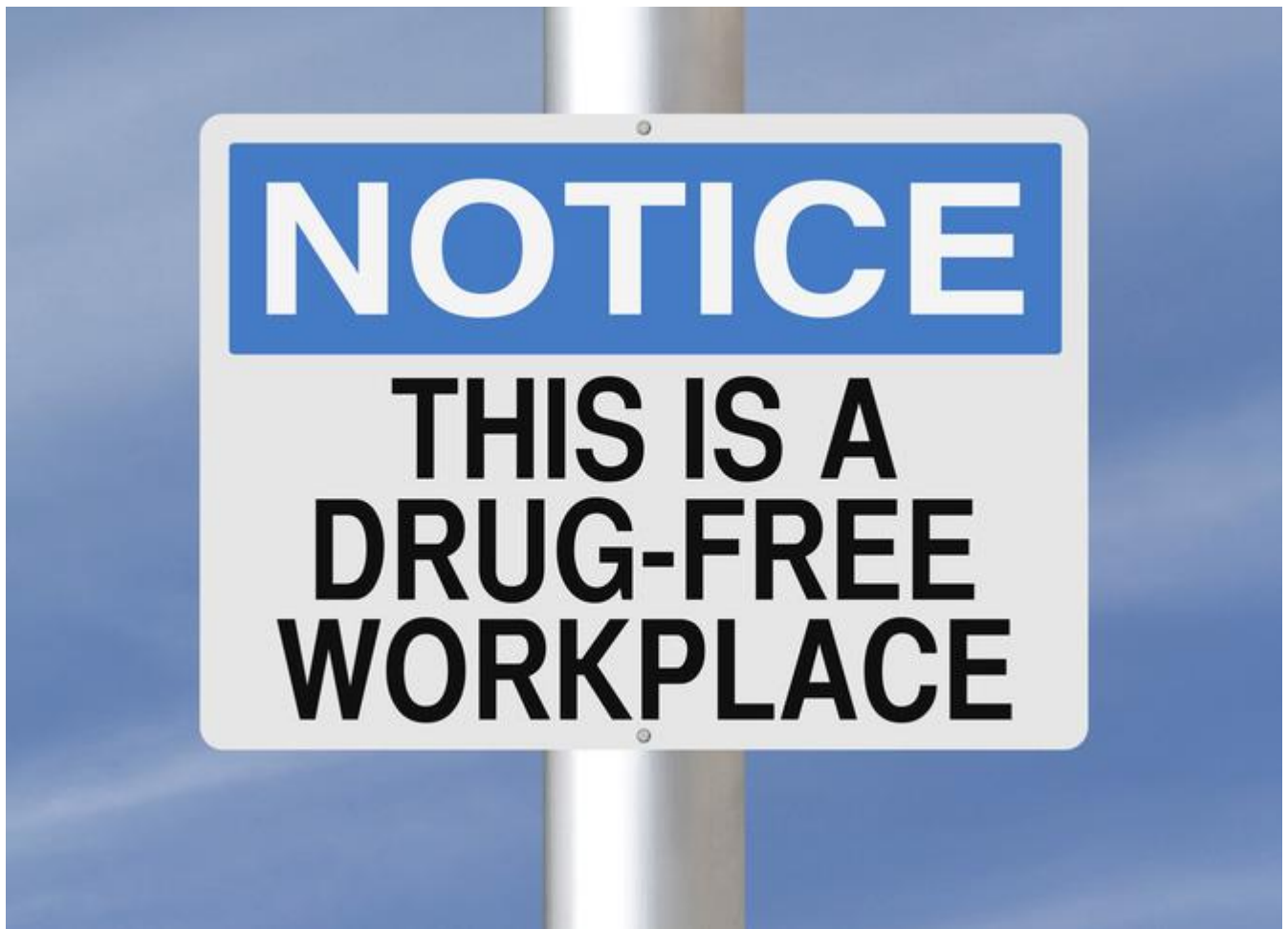
Pre-employment Testing

Pre-employment testing provides a risk assessment of the potential candidate and is focused on identifying long-term consistent use drug users. In particular it is relevant to high risk working environments which require a high level of safety management and risk mitigation, however it can equally be applied to any workplace.

It is, however crucial to have a clearly written Drugs and Alcohol policy in place from the start, as it details clearly what are acceptable employee behaviours before the first day of work.

Employers should advise if testing is part of the recruitment process when advertising for the role. Tests are generally conducted by means of a urine or oral fluid test and may be repeated at a defined frequency for the trial / probationary period stated in the employment contract. Usually, employers will screen for the same suite of drugs as done during standard workplace drug testing.

Employers should wait for the result before making an offer of employment rather than offering employment on the condition that the prospective employee returns a negative test. This is to prevent the candidate making any claims against the business.



Workplace Drug Use

How to identify drug use in the workplace

Many companies are rightfully concerned that identifying drug issues in their workforce is becoming an everyday priority. To many observers, it can be difficult to spot a high-risk employee who is abusing drugs and alcohol before it becomes a problem. There are four key behaviours to be aware of:

1. Changes in attendance

People who have drug and alcohol issues miss more days of work per year, and often have punctuality issues compared with their sober colleagues. Look for regular, and longer than average, breaks or trips

out of the office or truck cab as these may indicate usage during work hour. Scan for patterns; if they're always late after payday there's a good chance they are topping up drug supplies and in a high-usage period.

2. Performance issues

If an employee's performance drops off or fluctuates you may have a drug issue on your hands. For example, a drug user may complete documentation well at the beginning of the week but poorly as they get closer to the weekend. People can appear groggy, slower, forgetful and incapable of operating at the same level as their sober colleagues.

3. Erratic behaviour and over-reactions

Emotional sensitivity, angry outbursts, and being defensive to constructive or mild criticism are all behavioural indicators of drug use. Drugs are commonly linked with anger, anxiety, and depression amongst other symptoms.

Many managers are inadequately trained and prepared to deal with employees presenting these symptoms, particularly aggression. Aggressive behaviours are challenging to deal with and can quickly spiral out of control. A plan to de-escalate a suspected drug related incident is a valuable management tool in the workplace .

4. Visual clues

Someone abusing drugs and alcohol may leave drug paraphernalia like pipes, baggies and prescription blister packs in plain sight. There are also symptoms to recognise. Rapid weight loss, unusually constricted or dilated pupils are physical signs of drug use. If the subject is visibly shaky or have a loss of balance, testing for drug use is recommended.

In the above situations all observations should be recorded and preferably witnessed by a second employee before any action is taken.

What are the commonly used drugs at work?

Cannabis is the most commonly detected drug in workplace testing. The increased THC potency in the cannabis currently available to users, directly correlates with side effects that deteriorate mental and physical capabilities.

Amphetamine type stimulants and prescription medications such as opioids have become increasingly common in the workplace. This includes illegal drugs such as methamphetamine, heroin, opium and fentanyl but also prescription medications such as morphine, oxycodone, codeine and tramadol.

People who are under the influence of any such drugs, whether illicit or prescription, will often present a myriad of symptoms, varying from hyperactive, aggressive and risk-taking behaviour, through to the other spectrum of drowsiness, confusion, a lack of concentration, severe fatigue and nausea. Under no circumstance should these people operate any vehicles or equipment in this state as they are a clear risk to themselves and others.

It is impossible to test for every drug. Usually, employers will screen for the following drugs although employers can choose to test for additional substances if their use is suspected.

1. Marijuana,
2. Cocaine,
3. Amphetamines and methamphetamines,
4. Benzodiazepines, and
5. Opiates.

Testers should be accredited and follow proper processes to avoid contamination and tampering.

N.B. oral fluid testing is less susceptible to tampering and substitution than is urine testing.

Prescribed medications

Employers should also consider testing for some legally-prescription substances that may have serious side-effects, in particular those used for pain relief, sleep and anxiety-type disorders. These prescribed medications can include:

1. Morphine,
2. Oxycodone,
3. Tramadol, and
4. Valium (Diazepam).

These medications can be highly addictive and commonly misused. The side effects of these prescription drugs include drowsiness, confusion, nausea and a lack of concentration and workers under the influence of these medications should not have access to safety sensitive areas.

N.B. some legitimate medications can cause false positive results, only a qualified and experienced Drug Testing Technician will recognize this.



Workplace Drug Testing Methods

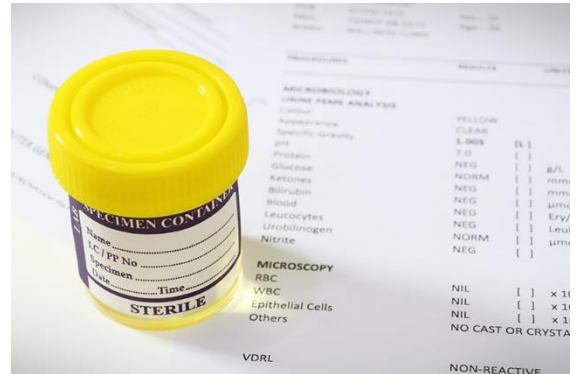
When it comes down to testing current employees or future ones, you need to ensure you have chosen the method most appropriate for the situation. An accredited company (like ScentTECH or Drugwise) will advise you on implementing a regular testing programme and discuss what form of screening can be set up to best meet a company's needs and avoid legal grievances.

Workplace Drug Screening can be either qualitative, such as Canine Drug Detection or quantitative, such as Oral Fluid and Urine Drug testing. All methods have their merits and, in many cases, are used consecutively to get the best results for both the employee and employer.

Urine Drug Testing

Urine drug testing has been a widely used drug test method in New Zealand workplaces since the release of the NZ standards 4308 in 2008.

The test detects the parent drug as well as their metabolites. The latter may remain in urine for lengthy periods and can return a positive result several days after a person has smoked cannabis. This would amount to a breach of a drug policy, even though the drug use was in their own time and did not affect their capacity to do their job safely. N.B. THC metabolites do not contribute to intoxication.



As part of the urine test, the tester will have to watch the employee providing the sample to ensure there is no sample switching. This is quite invasive therefore it's important it is done by an external testing agency and that the candidate's privacy is only infringed upon as far as reasonably necessary.

Oral Fluid Drug Testing

The next generation of oral fluid or saliva drug testing technology, combined with the recently developed standard, NZS 4760:2019, provides a method that is less invasive and more difficult to adulterate. It also brings a new standardisation that delivers value to employers and employers alike by ensuring that oral fluid testing is carried out in a way that will deliver accurate and reliable results.



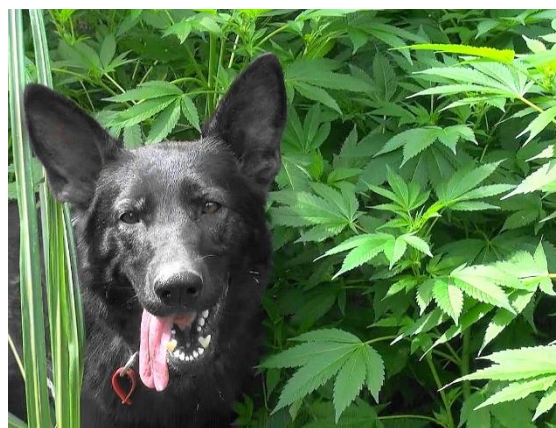
Using drug cutoff concentrations which correlate to acute impairment, oral fluid drug testing results indicate the likelihood of recent use, thus making it popular with employees, their Unions and employers, and business owners.

As this is a relatively new technology, businesses considering using oral fluid devices should request to see a “certification of verification” from an independent accredited lab to ensure the device meets the requirements of the standard. Similarly, businesses that are serious about compliance and health and safety must use a technician accredited with the appropriate unit standards i.e. 32327 & 32328

Canine Drug Detection

Dogs are a proven drug detection tool and provide a highly reliable, cost-effective method to screen people, or locations at scale, without causing delays.

Properly trained drug detection dogs are able to indicate on actual or the recent presence of a variety of illegal drugs in areas such as vehicles, trucks, offices, locker rooms, warehouses and outdoor environments. They can also identify individuals who have recently taken drugs recreationally with minimal disruption to workplace productivity. Their acute sense of smell is able to quickly and easily establish 'reasonable cause' to allow the search of, or drug test of a person which doesn't rely on other staff, a supervisor's observations or reports.



The visual nature of the canine service also provides a high-profile deterrent which, when used on a regular basis, has been proven to reduce the use or flow of drugs in your workplace.

Due to the technical nature of this detection method, it is recommended that when selecting a Canine drug detection provider, that you ensure that all training records are readily available and that the Canine Team has undergone and passed an independent validation process.

Breath Alcohol Testing

Breath alcohol testing is often overlooked as part of a workplace testing programme. Alcohol is the most used and abused of all the impairing substances that can make people inclined to risk-taking behaviours.

Breath alcohol testing, as part of a routine drug test, can identify the risk of alcohol impairment and individuals who may be a hazard to themselves and others in the workplace.



What testing method should you choose?

Urine and oral fluid testing each have acknowledged and well understood strengths and weaknesses. The option that you choose needs to be one that fits your workplace based on the desired testing outcomes. Urine testing has a longer window of detection and therefore a greater chance of identifying use of illegal drugs and intoxication outside of working hours. However, if knowledge of “recent use” is more important than historical use, oral fluid testing is more useful.

Another common questions that employers have is whether or not the test will hold up in court. Australian Courts have held that saliva testing should be used instead of urine testing. The Employment Authority in New Zealand concluded that ultimately both methods were capable of being compliant with the Health and Safety at Work Act 2015, specifically when an employee was using drugs in the workplace or reporting to work under the influence of drugs.

Hiring a service provider

Don't hire a service provider unless they are able to demonstrate:

1. A Track Record

What experience does the provider have in the drug detection industry? Do they have testimonials to back up their claims, as well as show the excellent knowledge of the services they provide? Using accredited professionals may legally protect a company from financial and legal repercussions.

2. Certifications and Accreditations

Accredited professionals bring systems, processes and technologies to work that have been checked and vetted by independent, third party organisations, governing bodies and other experts in their fields. At a minimum, the technician providing the service should hold NZQA Unit standards 25458: Perform urine specimen collection in the workplace for drug testing and 25511: Perform urine drug screening in the workplace, for Urine testing, and Unit standards 32327: Perform oral fluid specimen collection in the workplace for drug testing, and 32328: Perform oral fluid drug screening in the workplace for Oral Fluid testing.

Documentation showing that the chosen testing methodology has been independently validated as being compliant with the standard for all drugs tested, should be available.

Unaccredited testers, poor policies and practices, coupled with bad technology with drug and alcohol testing can destroy people's livelihoods and reputations. They can also become hugely problematic for a business if employment lawyers get involved.

Training and education

Implementing or changing an existing workplace drug and alcohol policy can be difficult to do. It should be handled carefully by accredited testing professionals, in conjunction with a human resources person experienced in workplace health and safety law.

Training and education is the key to effective implementation of all drug and alcohol policies. You need to get “buy-in” from employees so they understand what the risks are with drug and alcohol abuse, how they will be tested on the job, what testing procedures look like, and what to expect. It's better to inform your team members about the why, how and what proactively rather than in isolation.



Workplace health and safety compliance

HSW and Duty of Care Obligations Explained

The Health and Safety at Work Act 2015 (HSW Act) and related regulations apply to businesses and workers. A PCBU (Person Conducting a Business or Undertaking) has the primary duty to ensure the health and safety of their workers while at work so far as is

reasonably practicable. This ensures that they do not knowingly allow a member of staff to work when impaired by alcohol, after using illegal drugs, or even whilst using legal drugs, such as medicines, when undertaking certain tasks.

Employees must also follow any reasonable instructions given to them by the employer and cooperate with any reasonable health and safety policy or procedure, which can include a workplace drug and alcohol testing policy.

The responsibilities of a PCBU:

1. Provide a safe working environment and systems of work,
2. Provide appropriate information, training and supervision to protect people from risks to their health and safety,
3. Do what is reasonably practicable to eliminate risks that arise from work, and
4. Where the risk cannot be eliminated, it must be minimised so far as is reasonably practicable.

What are the risks?

Businesses need to understand that the risks they face by not implementing a robust drug and alcohol testing policy can be significant to the business, employees, and customers if it is not addressed.

Without good policies and procedures in place, you could face an increase of:

1. Accidents and injuries
2. Fatalities
3. Impaired performance and productivity
4. Poor work relations/morale
5. Lateness or absenteeism
6. Decreased performance / productivity

7. Higher employee turnover
8. Risk to the reputation and competitive strength of the company


Conclusion

Let's face it: workplace testing is a deterrent - much like roadside testing. But these days, best practice includes more than just a workplace testing regime, it also leverages pre- employment testing and regular random workplace testing or detection.

Safer workplaces don't just happen, they're the product of well-informed, educated and trained managers and supervisors. Getting buy-in from employees can be tough, but it has been shown time and again that a drug-free workplace makes for safer and happier employees. It is for such reasons that having a clear and implemented Drug & Alcohol policy in place is so important.

By ensuring that expectations are clearly communicate through a policy and reinforced with drug detection / testing, stops issues from arising and clearly indicate the company's commitment to a safe, productive and healthy workforce.

Book a Free Consultation with ScentTECH by contacting us on the links below.



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