

LEGAL BRIEFS

Employment Law and Training Series

Substance Abuse: The Manager's Role in Creating and Maintaining a Drug-Free Workplace

Facilitator's Guide

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Laws addressing issues covered in this video may vary from state to state. The video and support material are intended to provide a general overview of the law, but VisionPoint Productions does not represent that its contents are necessarily in accordance with every states' laws.

Content input and review provided by:

T. Hensley “Ted” Williams, J.D., Co-Principal, The Williams Group, Des Moines, IA

Terri S. Miller, Department of Mental Health/Substance Abuse Services – Oklahoma
Internationally Certified Alcohol & Drug Counselor (ICADC)

Ms. Patricia Lamb, Employee Relations Consultant, Wells Fargo Mortgage, Des Moines, IA

Legal Review Provided By: Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, IA.,
and Washington, D.C.

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Introduction

This program is designed to help your managers gain a clearer understanding of a manager's responsibility regarding enforcing and maintaining a drug-free workplace.

Substance Abuse: The Manager's Role in Creating and Maintaining a Drug-Free Workplace provides answers to several of the most common questions managers struggle with concerning, enforcing, and maintaining a drug-free workplace.

- Do you need to be absolutely sure a person is using drugs or alcohol before you confront them about their behavior?
- When addressing performance issues with someone you suspect is using drugs or alcohol on the job, do you communicate these suspicions directly to the individual?
- If you confront the employee and they start crying or get angry, what do you do?
- As a manager, is it my job to diagnose and counsel an employee with a suspected substance abuse problem?
- Can we just spring a drug test on an employee we suspect has a substance abuse problem?

In addition, the program provides managers with three specific actions they can take to help ensure they keep themselves and your organization in compliance with the law.

The program is designed to cut through the legal jargon to provide clear and concise information in terms that everyone can understand.

Uses

This program may be used in many ways:

- 60 minute training sessions
- Staff meetings
- Conferences
- New manager orientation
- Self-study/self-directed learning

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Key Learning Points

During the program, participants will learn:

- The importance of the manager's responsibility to understand and communicate the organization's policies on substance use or abuse in the workplace
- How to identify and access programs or systems that are in place to assist workers, should a substance problem arise
- Five main aspects of dealing with substance abuse in the workplace
- Three action steps that managers can take to help keep the organization drug-free and out of court

Training Materials

Video – The video, *Substance Abuse: The Manager's Role in Creating and Maintaining a Drug-Free Workplace* is divided into two segments. The first segment identifies five main areas managers need to pay attention to when dealing with substance issues in the workplace. Those areas are:

1. Detection
2. Intervention
3. Staying Focused on the Issue
4. Appropriate Action
5. Substance Abuse Testing

The second section focuses on the three actions managers can take to stay within the guidelines of the law. Those actions are:

1. Know your organization's policies and procedures
2. Communicate those policies clearly and completely
3. Pay attention to employee's behavior

Facilitation Guide – The facilitation guide contains, complete step-by-step directions for conducting this course. With the exception of the session evaluation, the facilitation guide is not reproducible. If additional guides are needed, please contact your vendor.

Participant's Desk Reference – The participant's desk reference contains a complete review of the key information covered in the course, along with supplemental information regarding substance abuse. In addition, it includes a pre-assessment and post-assessment. The post-assessment is removable and designed to be included in the employee's personnel file, if desired. The participant's desk reference is not reproducible. If additional copies are needed, please contact your vendor.

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A g e n d a

This program is designed as a one-hour training session.

60-Minute Agenda

Program Introduction5 minutes
Show and Review Video20 minutes
Optional Review of Supplemental Materials30 minutes
Program Debrief5 minutes

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Facilitator's Checklist

Before the Training

- Read through the entire facilitation manual
- Watch the video several times
- Determine the length of your session
- Send out a memo inviting participants to the training
- Locate audio/visual equipment and make sure it works
- Make copies of any exercises needed for the training
- Identify any personal stories that may make the session more meaningful to participants

Day of the Training

- Review your notes
- Check the TV/VCR
- Prepare flipcharts
- Check lighting of the room
- Set up room arrangements. Participants will need to get into small groups during the session

After the Training

- Review the post-assessment and session evaluation
- Document recommended changes to your presentation or materials
- Follow-up with participants on next steps, commitments, or action plans, as agreed

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Step-By-Step Facilitation Instructions

Step 1 – Introduce the program

Communicate the following to participants:

Did you know that each year drug and alcohol abuse accounts for 100 billion dollars in lost productivity for US companies? Substance use or abuse in the workplace is having an enormous impact on employees and organizations in the United States. As managers, we have a responsibility to understand and communicate the organization's policy on substance abuse or use in the workplace to employees.

We are going to spend a few minutes going over some of the things you need to be aware of regarding substance abuse. Let's face it; the last thing any manager, supervisor or organization wants to deal with is a lawsuit regarding substance use or abuse in the workplace.

By the time we are done today, you should know:

- The importance of the manager's responsibility to understand and communicate the organization's policies on substance use or abuse in the workplace
- How to identify and access programs or systems that are in place to assist workers, should a substance problem arise
- Five main aspects of dealing with substance abuse in the workplace
- Three action steps that managers can take to help keep the organization drug-free and out of court

Before we go any further, let's take a few minutes to introduce ourselves.

Step 2 – Introduce yourself and then have participants introduce themselves.

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Step 3 – Distribute a copy of the participant's desk reference to each participant.

Communicate the following:

Before we view the video, I'd like you to take a few minutes to complete the pre-assessment in your desk reference. This self-assessment is designed to give you a clearer picture of your present understanding of substance abuse in the workplace.

Give participants a few minutes to complete the assessment.

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Pre-Assessment - Facilitator's Copy

Instructions:

Please answer the following questions.

1. If you are not 100% sure that an employee is abusing drugs or alcohol, you should not approach them.

True or False

2. If you are at a party sponsored by the organization and you think an employee has had too much to drink, you should have them leave the party immediately.

True or False

3. As a manager, you have a responsibility to understand and communicate your organization's policies on substance use or abuse in the workplace.

True or False

4. Attendance or tardiness issues, increased accidents, lower productivity, and increased interpersonal problems are all potential signs of drug or alcohol related problems.

True or False

5. One of the most important jobs a manager has when dealing with substance abuse in the workplace is to accurately diagnose the employee's problem and communicate that problem to the employee directly.

True or False

6. If you feel someone is abusing alcohol, then you need to remember that they are covered under the Americans with Disabilities Act and there is nothing you can do to remove them from their job duties.

True or False

7. If you suspect an employee of substance abuse, then you have just cause for asking them to take a drug test.

True or False

8. Legally, a drug and alcohol test cannot be sprung on employees without fair notice and an explanation of what the consequences may be for failing the test.

True or False

9. When you are documenting a suspected substance abuse problem, make sure you limit documentation to the facts and the impact the behavior has on the workplace.

True or False

10. After you have met with an employee regarding a substance abuse issue, it is important to communicate the problem to other managers or employees that interact with this person so that you can help support and better manage the employee's workplace behavior.

True or False

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Step 4 – Show the video.

Communicate the following:

Now we are going to watch a video, which addresses some of the tough questions managers ask regarding issues of substance abuse in the workplace. When we're done, we'll take a few minutes to review the information the video covers and talk about how those ideas apply within our organization.

Play the video from start to finish.

Step 5 – Discuss the case study.

Communicate the following:

In order to gain some perspective on the information covered in the video, let's take a few minutes to discuss a hypothetical situation that you might face as a manager.

You just received a phone call regarding one of your best employees, Pat. Pat is a really good friend of yours and your kids play soccer on the same team. You often spend evenings and weekends with his family and you look forward to your kids' soccer games.

The phone call about Pat catches you off guard because one of your customers is claiming that he showed up to their office after lunch smelling of alcohol and slurring some words. You have never received anything but positive feedback regarding Pat in the past. Your customer is concerned that they are paying you a lot of money for Pat's time and talents and he is not able to accurately do the job in this state.

You have seen how much Pat drinks on evenings and weekends and have wondered if he had a drinking problem. It has never affected work before, so you just assumed that it was none of your business. It would have been too awkward for you to bring the issue of Pat's drinking up in the past because it could have had a negative impact on your entire family's relationship with Pat's family. Now, you are not sure what to do. You have to approach Pat regarding the customer's complaint, but you are concerned about what will happen to your relationship with this person outside of work.

What are some of the issues you would need to consider in this situation and why?

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We have included some questions and potential responses below to help you guide the discussion of this case study.

Q. Since the incident happened out of the office, do you technically have to report it?

A. *Yes, even if your employee is not on the organization's property, if they are working for the organization during regular business hours, the organization is still responsible for their behavior.*

Q. How should this situation be handled?

A. *First, the manager should review the organization's policy on substance abuse and then document the facts as the customer described them. Personal information known by the manager due to a relationship outside work should not be discussed during the meeting with Pat. Whether or not the manager suspects a substance abuse problem isn't the issue. The issue is that Pat showed up to a client's office smelling of alcohol and slurring some words. In the opinion of the client, Pat was unable to perform his job duties in this state.*

Q. How should the manager handle the face-to-face meeting?

A. *The manager should meet with the employee in a private meeting area keeping the conversation confidential. The manager should keep the tone formal and professional. The manager should state specific goals and expectations. The manager needs to make sure that the personal relationship with this employee outside of work doesn't affect this work situation. The manager should outline EAP or peer support services available and clearly communicate what behavior is expected in the future.*

Q. What should you do if the situation with Pat affects your relationship outside of work and the relationship between your families?

A. *Emotionally, this can be a very difficult situation. Obviously you should strive to keep what happens at work separate from your personal relationship. If you feel that a confrontation will be too difficult, or put too much of a strain on your personal relationship, consult with your human resource director or your immediate supervisor/manager, who may agree to take the lead role in the discussion with Pat. If you find that the confrontation has affected your relationship outside of work, and your family asks you about it, simply tell them that something arose at work that you are trying to resolve and you cannot discuss it with them. You do not want your spouse and/or children talking with others in the neighborhood about this confidential personnel issue.*

Q. What if Pat refuses to get help?

A. *You would need to take the same corrective action with Pat that you would any other employee in this situation. The fact that the manager is a friend with the employee outside of work can't affect the manager's decision of how to handle the situation.*

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Step 6 – Review the key points.

Communicate the following:

The three actions you can take as you deal with issues of substance use or abuse in the workplace:

1. Know your organization's policies and procedures from first detection and drug testing through referrals to support programs. Be aware of resources available to assist you in handling substance abuse situations and understand your role in helping the employee. Support and enforce the policy consistently and don't show favoritism.
2. Communicate these policies clearly with your employees so that they understand what's required of them. This communication can help you and your organization reduce costly lawsuits.
3. Know what's going on in your area. Take note of day-to-day employee behavior so you'll be the first to know if something is out of the norm.

Step 7 – Complete the post-assessment.

Ask participants to complete the post-assessment in their desk reference. Then take a few minutes to review the correct answers with the participants.

Ask the participants to sign and date the Certification of Training, then remove it from the desk reference and turn it into to you.

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Post-Assessment – Facilitator's Copy

Instructions:

Please answer the following questions. Once you have completed the assessment and reviewed your answers with your facilitator, please sign and date the Certificate of Training on the next page. Then remove this page and turn it in to your facilitator.

1. If you are not 100% sure that an employee is abusing drugs or alcohol, you should not approach them.

True or **False**

2. If you are at a party sponsored by the organization and you think an employee has had too much to drink, you should have them leave the party immediately.

True or **False**

3. As a manager, you have a responsibility to understand and communicate your organization's policies on substance use or abuse in the workplace.

True or False

4. Attendance or tardiness issues, increased accidents, lower productivity, and increased interpersonal problems are all potential signs of drug or alcohol related problems.

True or False

5. One of the most important jobs a manager has when dealing with substance abuse in the workplace is to accurately diagnose the employee's problem and communicate that problem to the employee directly.

True or **False**

6. If you feel someone is abusing alcohol, then you need to remember that they are covered under the Americans with Disabilities Act and there is nothing you can do to remove them from their job duties.

True or **False**

7. If you suspect an employee of substance abuse, then you have just cause for asking them to take a drug test.

True or **False**

8. Legally, a drug and alcohol test cannot be sprung on employees without fair notice and an explanation of what the consequences may be for failing the test.

True or False

9. When you are documenting a suspected substance abuse problem, make sure you limit documentation to the facts and the impact the behavior has on the workplace.

True or False

10. After you have met with an employee regarding a substance abuse issue, it is important to communicate the problem to other managers or employees that interact with this person so that you can help support and better manage the employee's workplace behavior.

True or **False**

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Step 8 – Wrap up the session.

Distribute the session evaluation and give the participants a few minutes to complete it.

Communicate the following:

I think by now we can all agree that ignoring substance abuse in the workplace is a bad idea. The situation will only get worse the longer it is allowed to continue. Although it may be a challenge to deal with, as managers we are ultimately responsible for our employees' behavior on the job. A drug-free workplace helps keep workers, vendors, and customers safe and keeps performance and productivity strong.

Your desk reference contains answers to more frequently asked questions regarding substance abuse in the workplace as well as a list of additional resources available to you.

I encourage each of you to take the time to review the information, and keep the booklet in a handy place for future reference.

Thank you for your time.

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Session Evaluation

Instructions:

Please answer the following questions. Your answers will help assess the effectiveness of this training and identify areas for improvement.

As a result of this training are you better able to:

1. Understand the importance of the manager's responsibility to understand and communicate the organization's policies on substance use or abuse in the workplace.

Yes No Not Sure

2. Identify the various programs or systems that are in place to assist workers, should a substance problem arise.

Yes No Not Sure

3. Identify the five main aspects of dealing with substance abuse in the workplace.

Yes No Not Sure

4. Identify the three actions steps that managers can take to keep the organization drug-free and out of court.

Yes No Not Sure

Comments for presenter:

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Supplemental Reference - Facilitator's Copy

The following supplemental reference information is contained in the participant's desk reference.

FAQ's about Substance Abuse in the Workplace

Q. What is a "Drug-Free Workplace?"

A. It is an employment setting where all employees adhere to a program of policies and activities designed to provide a safe workplace; discourage alcohol and drug abuse; and encourage treatment, recovery, and the return to work of those employees with such abuse problems.

Q. How long have "Drug-Free Workplaces" existed?

A. Efforts to address employee performance problems, including those related to alcohol and, later, to drugs have been ongoing for several decades. In one early and very ambitious effort of the Ford Motor Company, a 1914 profit sharing plan was supplemented by Sociological Department visits to workers' homes to evaluate their lives. Workers who failed to conform to the Ford idea of virtue, i.e., sobriety, fidelity, thrift, etc., had their profit sharing suspended. If workers did not redeem themselves in six months, they lost their jobs as well as their share of the profits. Despite the understandable resentment caused by such investigations of private and family life, Ford and hundreds of other employers had comprehended an important relationship between the worker and the worker's life, i.e., that family quarrels and alcohol problems had an immediate negative effect on work output.

Twenty-five years later, in the pre-war and wartime shipyards of California, Washington, and Oregon, high turnover, accidents, and absenteeism were epidemic in nature. At the Kaiser Yards, these problems were attributed to the generally poor health status of workers recruited from small communities throughout the country, where inadequate nutrition and medical attention were common. The solution was the creation of an in-house health care delivery system financed by payroll deductions. The Kaiser Plan, which exists today as one of the country's largest independent health maintenance organizations, comprehended another important relationship: that existing between worker health and productivity.

These early programs were followed by routine provisions within companies' policies and collective bargaining agreements, often acknowledged and supported by unions, that prohibited "drinking on the job." As employers began to understand that healthy, happy, and sober employees turn out the best products, these early efforts evolved into what are known today as employee assistance programs (EAPs) which, in addition to alcohol and drug abuse, address a variety of other employee problems that can affect performance on the job. Today, the concept of a "Drug-Free Workplace" has become the norm with large and medium size employers. Efforts are continually made by Federal, State, and

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civic and community organizations to bring the Drug-Free Workplace experience to a greater percentage of smaller employers.

Q. What are the characteristics of an effective, comprehensive Drug-Free Workplace Program?

- A. The characteristics of an effective, comprehensive Drug-Free Workplace Program are:
- Active, visible leadership and support of the program by the employer; clear, written Drug-Free Workplace policies and procedures that are applied uniformly
 - Employee and union involvement in program development
 - Management, supervisors, unions' representatives and employees who are knowledgeable about their roles, rights, and responsibilities under the Drug-Free Workplace policy
 - Access to treatment and follow-up for employees who are having abuse problems
 - Methods of identifying alcohol and drug abusers, including drug testing, for the purpose of providing the opportunity for treatment, recovery and the return to work

Q. What are the components of a comprehensive Drug-Free Workplace Program?

- A. The "Drug-Free Workplace" is a more recent term and concept introduced by the Federal government's policy for its employees in 1986 and promulgated in the private sector by the President's Drug Advisory Council. A comprehensive approach to having a Drug-Free Workplace would include:
- A written policy
 - Access to assistance
 - Employee education
 - Supervisor training
 - Drug testing

Supported by public opinion, legislation and regulation of safety-sensitive industries in the late 1980s and early 1990s, the Drug-Free Workplace concept was adopted and promoted by national, state and local organizations of employers and business executives. Some unions adopted it as well and undertook all hiring and drug testing of their members and provided "Drug-Free Worker" identification. Written policies assure that all employees have the same understanding of their rights and responsibilities under the program, and that employers administer the program uniformly among all employees.

Q. Why should an employer establish a comprehensive Drug-Free Workplace Program?

- A. Current research indicates that nearly 75% percent of illegal drug users are employed in full and part-time jobs. Consequently, when the effects of alcohol abuse are added, the result is a large impaired portion of the national workforce. For the typical employer, that means unhealthy employees, unsafe working conditions, loss of productivity, smaller profits, more accidents, higher medical claims expenses, and a host of other negative effects for the employer and the employees.

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Today, there are a number of reasons why employers and unions establish Drug-Free Workplace programs. Among the leading reasons are:

- Compliance with law or other regulations
- Qualification for insurance discounts, rebates, and other incentives
- Prevention of associated problems, e.g., absenteeism, accidents, injuries, productivity loss
- Response to an incident or pattern of substance abuse
- Expression of support for the majority of employees who do not abuse alcohol or drugs
- Investment in worker health, safety, and family stability - Marketing of Drug-Free workers and services

Q. What issues should be covered in a Drug-Free Workplace Policy?

A. It is beneficial to both the employer and the employees to have a program and policies designed to reduce and eliminate the negative effects of alcohol and drug abuse and provide a safe workplace. The employer should provide a written policy that:

- Explains why the product or service provided is inconsistent with employee alcohol and drug abuse
- Provides information about the dangers of alcohol and drug abuse
- Spells out what kind of assistance will be provided to substance abusers who voluntarily report their abuse problems or have been identified as a drug or alcohol abuser through other means
- Spells out the roles, rights and responsibilities for employees and supervisors under the program
- Describes the sanctions which will apply for violations of the policies
- Assures personal privacy and dignity in reaching the goal of a Drug-Free Workplace

In addition, the written policy should include provisions for training supervisors on their role in the program. And drug testing, if necessary, on a carefully controlled and monitored basis. If the policy will include testing, it should specify the nature, frequency, and type of testing that will be included. It should also include the identification of the drugs for which employees will be tested.

Q. Do most employers have Drug-Free Workplace Policy (DFWP) program in place?

A. Although about 80% of large companies have some form of a DFWP program in place, far fewer small work organizations perform drug testing or offer EAP services. Fortunately, more and more small businesses are joining or forming consortia to purchase DFWP services.

Q. Do employees have to reveal prior treatment for substance abuse to take advantage of the EAP?

A. EAP services are generally available to all employees regardless of treatment history and services are provided confidentially. Sharing personal details with a company-provided EAP is not the same as sharing this information with your employer. In some

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instances, workers with a history of substance abuse treatment may find it in their best interest to self-disclose to qualify for certain accommodations such as a schedule that will allow attendance at self-help recovery meetings and after-care treatment.

Q. What types of things should managers steer clear of regarding substance abuse in the workplace?

- A. The following is a list of things managers should not do regarding substance abuse in the workplace:
- Don't try to diagnose the problem
 - Don't discuss drinking unless it occurs on the job
 - Don't moralize. Restrict criticism to job performance or attendance
 - Don't be misled by sympathy-evoking tactics at which the alcoholic/addict becomes an expert
 - Don't "cover up" for a friend. Your misguided "kindness" can lead to a serious delay in real help reaching them
 - Don't put the person in the basement to file reports
 - Don't ignore the problem or the signs—they won't go away. You will have to deal with the problem sometime

Q. What should a manager focus on with regards to substance abuse in the workplace?

- A. The following is a list of things a manager should focus on regarding substance abuse in the workplace:
- Do remember that chemical dependency is a progressive disease; it always gets worse, never better, without treatment
 - Do point out that the company's employee assistance program or peer support program is available and can help. Do not suggest to the employee in any way, shape, or form that chemical dependency substantially limits him or her in any kind of major life function whether working, sexual activities, thinking, speaking or anything like that. If you do, you'll be slapped with a perceived disability claim faster than you know
 - Do make it clear that the organization is concerned only with job performance. Unless job performance improves, the job is in jeopardy
 - Do explain that the employee must decide for him or herself whether to seek assistance
 - Do emphasize that all aspects of the EAP and peer support program are completely confidential
 - Do promptly report to your superior all signs of potential unrest, including assaults, threats (including veiled threats), and marked changes in an employee's behavior, attitude, appearance, performance, attendance, and judgment

Q. What are the guidelines for implementing a drug-testing program?

- A. Drug testing programs have federal, state, and local restrictions and must be tailored to these laws and regulations. The guidelines for implementation are as follows:

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- Evaluate the need for testing. Is there a problem among your employees justifying the costs and risks (legal and moral) of implementing a testing program? Are you interested in testing current employees or job applicants only?
- Make sure you have a clear policy. You must devise a written drug testing policy that is clearly understood by employees and applicants alike. Employees should know the penalties in advance
- Compliance with the law. You must be in compliance with all applicable laws, regulations, and ordinances
- Testing. You must decide who will be tested (i.e. everyone, some) and the articulated rationale for the testing
- Trigger. You must determine upon what basis the testing of an employee will occur, i.e. will it be random, only after accidents, or based upon a reasonable suspicion
- Method of testing. What type of testing will be done (urine, blood, hair, other). Prior notification and written permission of applicants of testing. Privacy vs. same sex observation. Opportunity to contest positive findings. Urine testing is less expensive and less physically intrusive than blood testing
- Test confirmation. Must insure that initial positive tests are confirmed by follow-up tests
- Specimen retention. All positive samples must be retained to protect against later challenges to the test
- Chain of custody. Require the testing agency to verify in writing that it provides adequate chain of custody procedures, which comply with all applicable rules and regulations
- Confidentiality. The testing procedure's confidentiality must be protected. The results of a job applicant or employee's test should only be revealed to those management persons who have an absolute "need to know" the results
- Test results. Your testing policy and procedures must articulate how you will respond to a positive test (EAP referral, leave of absence, discipline, etc.) Know your federal, state, and local laws regarding this area
- Management Training. Management and supervisory staff must receive training on an on-going basis regarding the detection of symptoms of drug or alcohol use in the workplace and familiarize themselves with the content and intent of the testing program and attendant disciplinary procedures
- Prior Notice of Program. A drug/alcohol testing program cannot be sprung on employees without fair notice and an opportunity to "prepare" for testing

Q. When might an organization ask employees to submit to a drug test?

A. The following circumstances are possible drug testing opportunities:

- Pre-employment testing – Offering employment only after a negative drug test result. Goal: To decrease the chance of hiring someone who is currently using or abusing drugs
- Pre-promotion tests – Testing employees prior to promotion within the organization. Goal: to decrease the chance of promoting someone who is currently using or abusing drugs
- Annual physical tests – Testing employees for alcohol and other drug use as part of their annual physical. Goal: to identify current users and abusers so they can be referred for assistance and/or disciplinary action

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- Post-accident testing – Testing employees who are involved in an accident or unsafe practice incident to help determine whether alcohol or other drug use was a factor. Goal: To protect the safety of employees, and identify and refer to treatment those persons whose alcohol or other drug use threatens safety of the workplace
- Random testing – Testing a selected group of employees at random and unpredictable times. Most commonly used in safety and security sensitive positions. Goal: To discourage use and abuse by making testing unpredictable, and to identify current users and abusers so they can be referred for assistance and/or disciplinary action if needed
- Follow-up/Return to duty – Periodically testing employees who return to work after participating in an alcohol or other drug rehabilitation program. Goal: To encourage and ensure that employees remain drug-free after they have completed the first stages of treatment
- Reasonable Suspicion – Testing employees who show obvious signs of being unfit for duty (for cause) or have documented patterns of unsafe work behavior (reasonable suspicion). Goal: To protect the safety and well-being of the employee and other coworkers and to provide the opportunity for rehabilitation if the employee tests positive

Q. What effect does the ADA have on substance abuse?

A. The ADA allows employers to:

- Prohibit the illegal use of drugs and alcohol in the workplace
- Require that employees work without being under the influence of drugs or alcohol
- Require employees to comply with the Drug Free Workplace Act of 1988
- All employees can be held to the same performance and conduct standards, regardless of whether they abuse drugs or alcohol. The ADA also provides limited protection for recovering drug addicts or alcoholics to get rehabilitation services

Q. Does the ADA protect illegal drug use as a disability?

A. The ADA does not protect current drug users, including anyone who tests positive for illegal drug use. The ADA does protect past drug users from discrimination based on their former behavior. In its definition of a “qualified individual with a disability” the ADA does not exclude individuals who:

- Have successfully completed or are participating in a supervised drug rehabilitation program and are not using drugs
- Are erroneously regarded as using illegal drugs
- The act allows employers to adopt or administer policies or procedures, including testing, that are designed to ensure that workers with a past history of substance abuse are no longer engaging in such practices

Q. Does the ADA protect alcoholics?

A. The ADA definition of “qualified individual with a disability” offers some protection to alcoholics. It considers alcoholics to be disabled individuals, requiring employers to give them reasonable accommodation if they are qualified to perform the necessary job functions. The ADA allows employers to discipline, discharge, or deny employment to

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persons whose use of alcohol impairs their job performance, as long as the same action is taken against non-alcoholic employees who have similar performance problems.

Q. Does the ADA impact drug testing?

- A. The ADA allows, but does not encourage or authorize, drug testing. It does not consider drug testing to be medical examinations, so applicants can be required to submit to testing before a conditional employment offer is made. If a test reveals information about a medical condition other than illegal drug use, this information must be kept confidential and treated as a medical record.

Employers can refuse to hire, discipline, or discharge individuals who test positive for illegal drug use. The ADA does not override the Department of Transportation's regulations for drug-free workplaces.

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For Further Information

Here are some sources for additional information on substance abuse in the workplace.

Web Sites

U.S. Department of Labor – Working Partners for an Alcohol and Drug-Free Workplace
<http://www.dol.gov>

Drug-Free Workplace
<http://dfwp.utsa.edu/>

The American Council for Drug Education
<http://www.acde.org/>

FindLaw.com labor and employment law links
<http://www.guide.biz.findlaw.com>

Center of Substance Abuse Prevention – Department of Health and Human Services
<http://workplace.samhsa.gov/>

SAMHSA's National Clearinghouse for Alcohol and Drug Information
<http://www.health.org/>

The National Council on Alcohol and Drug Dependence
www.ncadd.org

National Institute on Alcohol Abuse and Alcoholism
www.niaaa.nih.gov

Alcoholics Anonymous
www.alcoholics-anonymous.org

Telephone Numbers

The U.S. Department of Health and Human Services
(202) 619-0257 Toll Free: 1-877-696-6775

U.S. Department of Labor
1-866-4-USA-DOL

National Clearinghouse for Alcohol & Drug Information
800-729-6686

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Addresses for Substance Abuse Information

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Alcoholics Anonymous
Street Address
475 Riverside Dr.
11th Floor
New York, NY 10115

Mailing Address
Grand Central Station
P.O. Box 459
New York, NY 10163

The U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Division of Workplace Programs
Center for Substance Abuse Prevention
Substance Abuse & Mental Health Services Administration
5600 Fishers Lane
Rockwall II Building, Room 815
Rockville, MD 20857

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