

Testing for alcohol and drugs – straightforward or not?

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Agenda

- > Beliefs v Evidence
- > Why companies decide to test
- > If you do test, there are difficult decisions to make
- > Rational testing?

Beliefs v Evidence - 1

- > Not disputed – drug or alcohol intoxication is a potential source of risk to safety in the workplace
- > BUT
 1. Evidence linking drug use and any impact on the workplace is inconclusive
 2. There is no conclusive evidence that workplace testing for alcohol and drugs
 - reduces accidents
 - reduces sickness absence
 - improves business performance

Beliefs v Evidence – 2

Drugs

- > Testing for drugs does NOT equate to testing for impairment
- > Urine testing cannot distinguish one-off from regular use
- > Pre-employment testing (for drugs) is an “intelligence test”
- > Periodic unannounced (“random”) testing, involving an appropriate percentage of the workforce can lead to a reduction in the rate of positive tests
 - BUT, does this matter?

Beliefs v Evidence – 3

Alcohol

- > For alcohol, a positive test equates to impairment
- > Impairment is seen well below UK drink drive limit (and lower EU limit)
- > With an appropriate limit, testing for alcohol can aid investigation of a change in behaviour/appearance or an accident/incident

So why test?

- > Ignore the evidence, it must make the Company safer
- > We don't want drug takers in our Company as they exhibit risky behaviour
- > Other companies do, so we must
- > If we test, it will deter our people from taking drugs and drinking excessively
- > It is good PR when we are in the public eye
- > We must do our bit to “clean up” Society
- > It will help us catch those known boozers whom we struggle to manage

Difficulties deciding whether to introduce testing and in what circumstances

- > Legal position unclear – unnecessary invasion of privacy?
- > Employee's non-work activities irrelevant provided no impact on acceptable performance (IIDTW)
- > Information Commissioner:
 - Testing unlikely to be justified unless for “H&S reasons”
 - Legitimate to test if safety critical work
 - Random testing rarely justified unless safety critical work
- > FOM
 - Testing programme should only be introduced in general for safety critical tasks
- > BUT no definition of “safety critical”
- > Expensive
- > Potentially divisive

- IIDTW: Independent Inquiry into Drug Testing at Work 2004
- Information Commissioner. Employment Practices Code 2011: Part 4 Information about Workers' Health
- FOM: Faculty of Occupational Medicine: Ethics Guidance for OH Practice December 2012

Practical difficulties after introducing testing

- > Assume Policy states forbidden to come to work if:
 - under the influence of alcohol
 - could test positive for drugs
- > Assume policy allows testing in three circumstances
 1. Testing for cause (call out)
 - **sudden, unexplained, out of character** change in behaviour or appearance
 - includes smelling of alcohol
 2. Testing post incident (call out)
 - **incident** did/could have caused **substantial damage** to people, plant, premises
 3. Testing to meet “3rd Party” requirements (planned)
 - negative test demanded by customers before work on their premises is allowed
- > Penalties under the Policy
 - if test positive → leads to an investigation under the Disciplinary Procedure → dismissal possible

- > A 55 year old employee with 30 years service, is a hard worker with no performance issues. He comes to work the morning after his daughter's engagement party smelling of alcohol and with red eyes. Otherwise, he seems normal. Would you:
1. Test him. If he tests positive, dismiss him under the Disciplinary Procedure?
 2. Test him. If he tests positive, send him home having warned him not to do this again or he will be dismissed next time?
 3. Warn him not to do this again because next time he would be tested. Then send him home?
 4. Do nothing as this is clearly a one-off, he seems unimpaired and his work is not safety critical?

- > A 45 year old craftsman, with no performance issues, has just finished a four week assignment in Holland. For contract reasons, he must be tested ahead of working on another company's premises in the UK. This takes place within two days of his return to the UK and he tests positive for cannabis. Would you:
1. Allow him to work on another contract (where no preliminary test is required) but warn him not to come to work in future if he could test positive?
 2. Remove him from all safety critical work and offer him treatment which will be followed by serial unannounced testing? He may only return to such work if all these tests are negative.
 3. Dismiss him under the Disciplinary Procedure?
 4. Re-test him in one week because he needs a negative certificate in order to work for this third party and the Company is anxious to retain the important contract?

- > Fred is a 55 year old coal plant scraper driver with 20 years experience driving these large heavy vehicles and has never had an accident at work. He has always claimed to be teetotal. One night shift, he drives too close to the edge of the coal tip and the vehicle turns on its side. Fortunately, there are no injuries. He does not smell of alcohol but he is not himself, appearing anxious, tearful and struggling to get his words out.

- > Would you
 1. Request a Post Incident test. It was a serious accident that could have killed someone?
 2. Request a For Cause test as his behaviour is clearly abnormal?
 3. Ask him questions about what happened as part of the formal accident investigation?
 4. Arrange for him to have plenty of support for the rest of the day and then be accompanied home. You agree to meet him at work the next day?

> A 23 year old craftsman is unpopular with his colleagues as he often comes in late. One day, his mood is different from normal and his focus on work poor. When asked by his manager for an explanation, he admits to using cannabis the night before, adding that he only uses it about once a month. He says he normally restricts usage to when he is not due at work the following day. He says he is relieved to be “found out” and would like help. You request a test, which comes back positive. Would you:

1. Dismiss him under the Disciplinary Procedure?
2. Remove him from safety critical work, direct him to treatment but on condition that he agrees to a series of tests on an unannounced basis which must all be negative before he would be allowed back to his normal work?
3. Take no sanctions but direct him to help on condition that he agrees to a series of unannounced tests when he has completed treatment?
4. Warn him he must not come to work again when impaired through using cannabis?

- > A 26 year old call centre adviser comes to work one Monday smelling of alcohol. Otherwise, he seems fine. He says he had 4 whiskies on Sunday evening but nothing after midnight. You arrange a test which is negative for alcohol but positive for cannabis. At the investigation, he admits to taking cannabis at a party on the Saturday night, not for the first time, but says he would not do so if working the next day.

- > Would you
 1. Dismiss him under the Disciplinary Procedure?
 2. Do nothing. He tested negative for the cause that prompted the test?
 3. Warn him not to attend for work again if he could test positive for cannabis?
 4. Offer him help on condition that he agrees to serial unannounced testing?

So why you might think twice before introducing testing?

- > No proven business benefit
- > It will not stop drug users joining the Company
- > If a person tests positive for a drug, this does not necessarily equate to being impaired. It simply means they have used that drug recently. Does that matter?
- > It is expensive
- > Several authorities argue only “safety critical” employees may be tested
- > It is fraught with legal and employee relations difficulties
- > It is important to be consistent – in deciding whom to test and how you deal with those who test positive

Why you might consider “for cause” and “post incident” testing for alcohol **only**

- > Testing positive for alcohol does equate to being impaired
- > Testing may make it easier to deal with someone who appears to be acutely alcohol impaired at work
- > Drinking before coming to work will be deterred
- > But, this approach could be perceived as being “soft on drugs”

And finally

“Good all round management is the most effective method for achieving higher productivity, enhanced safety, low absence rates, lower staff turnover and a reliable and responsible workforce.

For most businesses, investment in management training and systems will have more impact on safety, performance and productivity than drug testing at work.”

IIDTW