

AN ALCOHOL AND DRUG FREE WORKPLACE

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Drug and Alcohol Involvement in Safety Sensitive Work Occupations

This paper is written as a primer and a source for help to employer, employees, contractors, future employees, pre-hires and long term employees as a safety guide.

Drug and alcohol abuse in the workplace wherever that may be and the status of the employee-employer relationship is an on-going and evolving process of learning, teaching and monitoring within the workplace. It is demanded by laws, rules and regulations. The penalties for lack of a written and posted safety program for employees and its enforcement by the employer is punishable both in criminal and civil courts and by the OSHA oversight of such.

There is a constant problem in the workplace of drug and alcohol involvement in accidents, injuries and deaths. These may occur while a truck driver is hauling goods on the highways, an employee is driving a company vehicle, clerical, construction, electrical occupations and the operation within the gas and oil industries to name a few.

The problem was recognized by early OSHA oversight and investigations of workplace accidents. Over the road accidents involving heavy trucks and trailers, operation of buses, company supplied vehicles nationwide, are ruled over by the US Department of Transportation (US DOT), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Transportation Safety Administration (NHTSA), the National Transportation Safety Board (NTSB), the US Department of Labor through (FEDOSHA) and the individual state Occupational Safety and Health agencies. These are but a few of the oversight agencies not including the federal, local and state law enforcement agencies.

Now let us get to the gist of this paper to all concerned. Part 40 of the Code of Federal Regulations Title 49 is the dominant rule for drug and alcohol oversight and procedures for testing employees who are in a pre-hire state, random, suspicious and post- accident testing of individuals involved in an accident or injury incident while working. To clarify further an employee driving a company pickup truck going to or returning from the work environment while employed in a "Safety Sensitive" occupation has to have a drug and alcohol test performed within 3 hours of the time of an accident especially when it causes injuries or death to another person or the vehicle(s) have to be towed from the scene. Please refer to Part 40 for further clarification.

This paper is being written today for a California employer who asked me the question of what is involved when an employee is hired, has an accident and what about random, suspicious and drug testing in general. Alcohol is a drug and is included in the testing requirements provided

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to us by the Federal regulations including local rules for the state that the employee is in or working within.

I have been asked many times to write a primer for employers and employees for drug & alcohol testing parameters while investigating workplace accidents or over the road accidents that have happened in my tenure. Loading docks, forklifts, trucks, tractor-trailer rigs, construction activities, demolition sites, highway work and construction, electrical, slips and falls on a floor these are just a few of the incidents and accidents I get involved in. The impetus to these problems which are constantly occurring in life and work activities demands a constant presence of what laws, rules, practices, regulations that are provided to reduce these accidents. What is the definition of an accident, incident or its causation is governed by laws inherent to these industries. Common sense is not excluded and is demanded by employers for training of supervisors, employees, written workplace rules posted and placed within the work environment.

The National Safety Council has a handbook describing "Preventable" and "Non-Preventable" accident determination. A "Preventable" accident is described as any accident that could have been prevented by the employee that could have reduced the severity or avoided this accident from happening. Where do you stand? Did you know or have any signs that your employee has a drug or alcohol abuse? Did you take or demand tests? Did you offer this employee and drug and alcohol rehabilitation? This demanded of all employers. A "Non-Preventable" accident is that there is nothing that could have been done to avoid this accident. Contact the National Council for their handbook.

The National Safety Council determination of fault or cause of an accident has been accepted by reference into law by FEDOSHA, individual state OSHA's, the US DOT, the FMCSA, the US Labor Department, the FTA and all agencies that I have ever come across. It is also a rule that is law in the United States.

Do you have an "Accident Review Committee"? See the National Safety Council's" recommendations for setting one up, rules and guidelines and the requirements thereof. These rules and regulations have been accepted and incorporated in the above agencies including the American Trucking Association.

A reference for you in this matter would go to the CALOSHA regulations, entitled Title 8 of the California Code of Regulations entitled section 3203, Injury and Illness Prevention Program. This rule became law in the State of California effective July 1, 1991. Previous federal regulations were established in 1970. These require a written program in the workplace for the employer, supervisors, employees and contractors to abide by when in the workplace or out on jobs requiring service and repair. This includes all the persons or person with the authority and the responsibility for implementing the program.

There are sources to access these laws, rules, work practice, and safety rules to ensure that you are providing you, your employees and the general public from accident causation by following the guidelines long ago established for prevention of addictive behavior, or apparent intoxication or a yearly testing on a random basis among the other observation, safety history,

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accident and suspicious observations either by the employer, the supervisor, or other employee complaints:

- Title 8, California Code of Regulations, General Industry Safety Regulations, “Industrial Relations”.
- National Safety Council, Accident Preventability and various resources for you as an employer.
- 1910 OSHA Guide, Workplace Safety Regulations & Index.
- US Department of Labor pamphlet for Programming Planning and Philosophy of Drug and Alcohol Testing of Employees. <http://www.dol.gov/asp/programs/drugs/workingpartners/dfworkplace/planning.asp>
- Drug Test, http://en.wikipedia.org/w/index.php?title=Drug_test&printable=yes
- Pre Employment Drug Test-Workplace Drug Testing. <http://preemploymentdrugtest.com/index.htm>
- Safety and Health Training and Instruction Requirements, referenced in subchapter 4 & 7, Title 8 California Code of Regulations. See <http://dir.ca.gov/samples/search/query.html>
- California Department of Industrial Relations, Guide to Developing Your Workplace Injury and Illness Prevention Program with checklists for self-inspection. http://www.dir.ca.gov/dosh/dosh_publications/iipp.html
- See also a union presenting a grievance against the employer for wrongful termination of an employee while under the influence and not offering drug rehabilitation. “Professional Airways Systems Specialists, AFL-CIO and US Department of Transportation Federal Aviation Administration, Grievance No. (AF)WP-01-029- SRN-5 “RE. Discharge of John A. Doe” A summary of this union grievance “is that no rehab was offered by employer before firing”. Arbitrator Jill Klein, Pasadena, California.
- Supervisor’s Role and Responsibilities from the Office of U.S. Assistant Labor Secretary regarding “When it comes to drug-free workplace issues, it is important that your supervisors understand role and responsibilities. <http://www.gov/asp/programs/drugs/workingpartners/dfworkplace/supervisors/sf-respons>
- “Introduction to Drug Screening”, reprinted from Newsletter for the HR forum, written by attorney Les Rosen of “Employment Screening Resources. ESRcheck.com
- *California Department of Industrial relations web site for CS 1A, workplace and injury and illness program for high hazard employers, CS 1B, workplace injury and illness program for non-high hazard employers, CS 1C workplace injury and illness program for employers with intermittent workers.* www.dir.ca.gov/dosh

“Drug testing has become an important safety issue for Human Resources and safety Professionals. The majority of all the Fortune 500 companies do drug testing. The purpose is to lessen the impact from drug abuse in the workplace including tardiness, absenteeism, turnover, attitude problems, theft, decreased productivity, crime and violence”.

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“The US Department of Labor estimates that drug use in the workplace costs employers \$75 - \$100 Billion dollars annually in lost time, accidents, health care and workers compensation costs. 65% of all accidents on the job are related to drug or alcohol, and substance abusers utilize 16 times as many health care benefits and are 6 times more likely to file workers compensation claims than non-abusers”.

Studies done by drug testing laboratories have found out among those tested that 18.1% were tested positive for drugs, alcohol or a combination of both resulting in synergism. One drug amplifies the other when combined.

Please, before establishing a drug testing program for your workplace that you the employer first establish policies and procedures for pre-employment, random, suspicious and post accident testing. You will be carefully examined if you do not perform this task and discharge an employee for lack of and drug and alcohol testing for your workplace.

Part 40 of the Code of Federal Regulations under Subpart A – Administrative Provisions covers the activities of transportation employers, safety sensitive employers including self employed individuals, contractors and volunteers as covered by US DOT regulations and the US Department of Labor. See the specifics of these coverages and the demands upon the employee and employer in the regulations both state and federal.

There are drug evasive web sites on the internet that ensure to an individual that their product will make you test negative on a drug and alcohol test. Beware of their veracity in their claims.

I found in past cases that an individual who is under the influence of drugs and alcohol may carry a plastic bag that contains negative urine samples. This was after a fatal accident that occurred in Southern California.

There is so much more that can be written about this subject. Look at the job description of the employee and look at Part 40 of the Code of Federal Regulations in its entirety. Contact the local OSHA consultation service in your state and they will help you to conform to the current standards. There are store bought samples of a written in-house Safety Drug and Alcohol Safety Programs for the workplace. Just develop your own using Part 40, recommendations from other employers, network within your workplace and contact human resource individuals with a record of knowing what they are doing.

A drug and free workplace is subject to failure due to individuals within the work environment so watch, have you immediate supervisors watch, implement no-nonsense standards that are written and easily understood even though they have to be translated. Compose a Safety Handbook or buy one from FEDOSHA, CALOSHA or the local oversight unit for safety in the workplace, the National Safety Council. There are handbooks that I have in my library that are OSHA composed and have every employee and supervisor sign for it. Keep a copy of the signature card acknowledging receipt of the publication certifying that the employee has read and that he or she understands its contents and place it in the employee's personnel or driver qualification file with an accompanying signature and date reviewed from a supervisor.

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I recommend to you the following:

1. Identify and make specific all of the job descriptions for every employee classification within your company.
2. Contact other employers and HR employees on their job descriptions for people who are performing like tasks in their companies.
3. Contact CALOSHA Consulting arm and have them provide you with a job description profile.
4. Ask them if any of the job descriptions that you have involve "Safety Sensitive" activities in your work environment.
5. Emphasize to OSHA the driving requirements and compensation for the use of private and company owned vehicles being used for company projects, jobs, interviews, investigations and research.
6. Set up a model safety program and consult other firms, OSHA, US Department of Labor and California organizations that oversee the implementation of workplace safety rules and requirements.
7. There are store bought programs that will help you initiate a written safety program in the workplace, look at those also. It is a good start.
8. Do you have an HR department? Why not?
9. Contact local drug testing laboratories for help. They might have an in-house program with extensive research done on this subject.
10. Contact SAMSHA, the drug and alcohol agency established by the federal government for drug and alcohol testing. They are available online.
11. Develop a safety manual to be ordered signed by each and every employee and provide them with a legible copy for their use.
12. Contact local workers unions for ideas and safety items that they red-flag during employee wrong-full termination lawsuits.
13. Avoid all conflicts with laws, rules and regulations in order to avoid lawsuits, fines and workers compensation claims.

Please make sure you do all of the above to improve your company safety record, connect with the employees, insure your success and viability for the future.

Sincerely,

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