

WORKPLACE DRUG AND ALCOHOL POLICIES

The use of drugs and/or alcohol in the workplace poses a safety risk to the individual and other employees. It can also have a negative impact on productivity and company image. As such, drug and alcohol policies play a crucial role in maintaining a safe, healthy, and productive work environment. Implementing and enforcing these policies is essential for the success and sustainability of any workplace.

This bulletin offers risk management guidelines to assist employers in developing drug and alcohol policies. It includes a sample Drug and Alcohol Policy as an example of some critical items to consider when creating a policy for your specific organization. It is recommended that you have legal counsel review your policy to assure it meets the legal requirements in your state.

DRUG AND ALCOHOL POLICIES

Rules and regulations (policies) help maintain order and a healthy working environment. Drug and alcohol policies are necessary to:

- **Help maintain a safe and productive work environment.** Substance abuse can impair an individual's judgment, coordination, and decision-making abilities and pose risks to the safety of employees and the organization's overall operations.
- **Promote employee well-being and health.** Substance abuse can have severe physical and mental health consequences, leading to absenteeism, decreased productivity, and increased healthcare costs. By implementing policies that address these issues, employers can provide support and resources for employees struggling with substance abuse and encourage them to seek help.
- **Help protect the organization's reputation and brand image.** Incidents related to substance abuse in the workplace can lead to legal liabilities, damage the company's reputation, and negatively impact customer and investor confidence. Clear policies demonstrate

a commitment to maintaining a professional and safe work environment.

- **Ensure fairness and consistency in the workplace.** By establishing consistent standards and consequences for substance abuse, employers can ensure equitable treatment for all employees, helping to foster a sense of trust and fairness among personnel.

POLICY CONSIDERATIONS

Researching the laws in your state and appropriately tailoring your policy can help you avoid fines and potential litigation from employees because of statutory breaches. Having a drug and alcohol policy in place can also protect your company from related liabilities.

It is recommended that policies include guidelines related to substance abuse, including alcohol consumption, over-the-counter and prescription medications, and illegal controlled substances, as well as drug and alcohol testing. Consider the following areas when developing a policy for your organization.

ALCOHOL CONSUMPTION

An employee's decision to drink is that individual's personal choice. However, when the use or abuse of alcohol interferes with the employee's ability to perform his or her job duties, the employer does have legitimate concerns, including the proper performance of duties, health and safety issues, and employee conduct in the workplace.

It is essential to state the consequences of any infractions or violations in the policy. Consequences may include disciplinary action, termination, or facilitating an employee's enrollment in an alcohol rehabilitation program. Be aware that the Americans with Disabilities Act ([ADA](#)) provides some protection for employees with alcoholism. ADA rights do not prohibit these employees from being terminated if the situation warrants it; however, it does mean they cannot be treated more severely for the same conduct or infractions as their co-workers.



OVER-THE-COUNTER AND PRESCRIPTION MEDICATIONS

Not all drugs are necessarily illegal. An employee who is taking painkillers for an injury, for example, may become drowsy or present other impairment symptoms, which could affect their productivity and safety on the job. Organizations may address such situations by including a policy statement that requires/encourages members to notify management if they take such medication. According to the HIPAA Privacy Rule, employers “can ask [employees] for a doctor's note or other health information if they need the information for sick leave, workers' compensation, wellness programs, or health insurance” ([US Department of Health and Human Services](#), 2018).

CANNABIS¹

With the evolving landscape of legalization and commercialization of marijuana², organizations need to address its use by employees. Marijuana remains illegal under U.S. federal law as it continues to be classified as a Schedule I substance under the Federal Controlled Substance Act, meaning that it has “no accepted medical use and has a high potential for abuse” ([US Drug Enforcement Administration](#)). Even still, more states are allowing the medicinal and/or non-medical (recreational) adult use of cannabis products.³

Most state laws give businesses the ability to maintain a drug-free workplace and prohibit the consumption of cannabis products while at work. If employees are impaired at work and consumption poses a safety risk or impairs their ability to perform the required job functions, an employer can explore terminating the employees for violating the policies ([SHRM](#)).

It is important that the organization clearly explains the policy's intent and distinctly addresses marijuana use during hours of operation. These rules must fall within the legalities of individual states. Organizations must understand the laws in their state as they pertain to cannabis use. Specify whether the use of cannabis products is permitted, under what circumstances, and any restrictions or accommodations that may apply.

¹ “Cannabis” is the scientific name for the plant genus that includes marijuana and hemp. It is also used as a general term for the drug, especially in legal and medical contexts.

² The word “marijuana” refers to parts of or products from the plant Cannabis that contain substantial amounts of tetrahydrocannabinol (THC).

³ As of April 24, 2023, 38 states, three territories and the District of Columbia allow the medical use of cannabis products. As of November 8, 2023, 24 states, three territories and the District of Columbia have enacted measures to regulate cannabis for adult recreational use ([US Centers for Disease Control](#)).

ILLEGAL CONTROLLED SUBSTANCES

Organizations must not tolerate the possession, use, and/or sale of illegal controlled substances. If there is reasonable cause to believe an employee is involved with the possession, use, and/or sale of illegal controlled substances, consider suspension of duty until the completion of an internal and/or external investigation, which may include drug testing.



DRUG AND ALCOHOL TESTING

It is strongly recommended that policies address drug and alcohol testing, including provisions for pre-hire, random testing, testing for cause, and critical event testing resulting from any incident that causes measurable property damage, injury, or death.

The US Occupational Safety and Health Administration's ([OSHA](#)) Improve Tracking of Workplace Injuries and Illnesses regulation, also known as the electronic record-keeping rule, does not prohibit employers from establishing post-incident drug testing to promote workplace safety and health. However, OSHA officials clarified in a memo on October 11, 2018, that action taken under a post-incident drug testing policy would violate the rule's anti-retaliation provisions if the employer took the action to penalize an employee for reporting a work-related injury or illness.

Furthermore, organizations may consider follow-up testing for employees who have tested positive for drug or alcohol abuse in the past. It is essential to define the period and frequency of follow-up testing (e.g., every three months for one year after positive testing).

SAMPLE DRUG AND ALCOHOL POLICY

The following sample Drug and Alcohol Policy (McCalmon, 2018) provides one example of items a policy might address and may be adapted by the organization's counsel, in whole or in part. It is recommended that the organization carefully review the sample policy for consistency with their existing policies and procedures and that the organization's legal counsel review the policy, whether used in whole or adapted in part.

SAMPLE DRUG AND ALCOHOL POLICY

The [Organization] recognizes the problem of drug and alcohol abuse in society while also realizing that drug and alcohol dependency and abuse can be treated and controlled. We further recognize that drug and alcohol use by members of this organization would be a threat to the public welfare and the safety of all employees of [Organization].

SUBSTANCE ABUSE

The [Organization] is committed to safety. Therefore, the abuse of drugs or alcohol by employees and others who interact with the [Organization] 's workplace is prohibited.

[Organization] prohibits:

- The use, possession or selling of illegal drugs on [Organization]'s premises, in [Organization]'s vehicles, or while performing one's job duties or functions;
- The abuse or improper consumption of alcohol on [Organization]'s premises, in [Organization]'s vehicles, or while performing one's job duties;
- The improper use, possession or selling of any drug, including prescription or over-the-counter medication, on [Organization]'s premises, in [Organization]'s vehicles, or while performing one's job duties or functions; and
- Being under the negative influence of drugs (illegal or otherwise) or alcohol on [Organization]'s premises, in [Organization]'s vehicles, or while performing a job function.

ALCOHOL CONSUMPTION

Employees may not drink alcohol on workplace premises unless permitted by [Organization]. Employees who drink alcohol at work-related events or functions must do so responsibly. Intoxication, driving under the influence, and other acts that result from alcohol abuse while at a work-related event or performing a work-related function are strictly prohibited and can lead to discipline, including and up to termination.

PRESCRIPTION AND OVER-THE-COUNTER MEDICATIONS

Employees are permitted proper use of prescription or over-the-counter medications as directed by their physician. The use of prescribed and over the counter medication may not impair their work function or create a safety risk to the employee and others who interact with the employee. Employees [e.g., are encouraged, must] make the [e.g., Human Resources Department, Personnel Department, Safety Department] aware if they are taking medication that will impair their ability to work productively or safely.

CANNABIS

[Organization] encourages all employees to refrain from the use of controlled substances altogether.

[Organization] strictly prohibits the use, possession, transfer, distribution, manufacture, consumption, purchase, or sale of cannabis products (whether or not legally prescribed) at the following times:

- While on duty (whether or not on company premises);
- While on company premises (whether or not on duty); or
- While operating a vehicle or potentially dangerous equipment that is owned or leased by [Organization].

Furthermore, no employee may report to work, go/or remain on duty, while under the influence of or impaired by cannabis products, whether or not legally prescribed.

For the safety of all employees, it is essential that employees comply fully with this policy. Employees who violate this policy are subject to disciplinary action, up to and including involuntary separation.

SUBSTANCE ABUSE TESTING

To enhance workplace safety, [Organization] may test members for drugs or alcohol at the following times:

- Pre-employment: after acceptance of a new [e.g., position, title, job] but before work begins;
- To comply with state or federal laws, such as the U.S. Department of Transportation regulations, Drug-Free Workplace laws, or state workers' compensation laws;
- For cause and post work-related accidents, incidents, or illness in situations in which an employee's drug use may have contributed to the incident, and for which the drug test can accurately identify impairment caused by drug use; and
- If [Organization] [management] has reasonable cause to suspect that an employee is impaired because of drug or alcohol use in violation of [Organization]'s Drug and Alcohol Policy.

FOLLOW-UP TESTING

[Employees who test positive for alcohol or drug abuse may request a second test [at their own expense] if circumstances permit.] [If a second test proves that the first test was incorrect, [Organization] will reimburse the applicant/members the cost of the test.]

[Employees who have tested positive in the past [will, may] be retested every [e.g., three, six, twelve] months for the following [e.g., one, two, three] years after testing positive.]

REPORTING WRONGDOING

If you are aware of or suspect a violation of this policy by another employee or workplace participant, you are encouraged to report it within a reasonable time to [e.g., your manager, your supervisor, Human Resources Department, Personnel Department, Safety Department].

If you do not feel comfortable reporting as listed above or if you did report and are not satisfied with the response, then you may direct your report or dissatisfaction to [e.g., Human Resources Department, Personnel Department, Safety Department, or the President, C.E.O., owner].

Please note that you are not required to confront the person or persons who have given you reason to report; however, if you are aware of or suspect a violation of this policy by another employee or workplace participant, it is important that you make a reasonable effort to report the violation within a reasonable amount of time. Discussing or reporting violations of this policy to any person not listed above does not constitute a report.

RETALIATION PROHIBITED

Retaliation can include, but is not limited to, harassment, discrimination, or any other unfair treatment or abuse of power. If you believe you or another are being subjected to retaliation for reporting a violation of this policy or participating in an investigation of a violation of this policy, report the retaliation immediately in the manner provided above. Please note that you do not have to confront the person who is the source of the retaliation before reporting it, but to help prevent retaliation from continuing, you must report it.

Any employee or workplace participant who retaliates against another employee or workplace participant for making a good faith complaint of a violation of this policy or for assisting in an investigation of a complaint of a violation of this policy is subject to discipline or termination.

WORKPLACE INVESTIGATIONS

A report of retaliation for reporting a violation of this policy or a report of a violation of this policy that is made to those listed above will result in an appropriate investigation of the allegations. [Organization] may use third parties to investigate allegations. All employees and workplace participants have a responsibility to cooperate fully with any investigation. The interviews, allegations, statements, and identities will be kept confidential, on a need-to-know basis, consistent with the law and the investigation process and goals. Unreasonable refusal to participate in an investigation may lead to discipline, including termination.

Those found to have violated this policy or retaliated against another in violation of this policy are subject to discipline including, but not limited to, termination, consistent with the law, the results of the investigation, the severity of the conduct, and the policy violator's employment history, including any similar reports of prior violations and/or retaliation.

KNOWINGLY FALSE REPORTS PROHIBITED

Any employee or workplace participant who makes a knowingly false report of a violation of this policy or retaliation will be subject to discipline, including termination.

QUESTIONS ABOUT THIS POLICY

If you have questions, suggestions, or concerns about this policy, you can direct them to [e.g., your manager, your supervisor, Human Resources Department, Personnel Department, Compliance Department].

If you feel uncomfortable discussing your questions, suggestions, or concerns about this policy with those listed above, you can direct them to the [e.g., Human Resources Department, Personnel Department, Compliance Department, or the President, C.E.O., owner].

References

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