

# Handling Suspected Drug/Alcohol Use in the Workplace



To date, 29 states<sup>1</sup> (plus Washington DC) have legalized marijuana use for medicinal and 8 states<sup>2</sup> (plus Washington DC) have legalized marijuana use for recreational purposes. In light of this trend, employers are concerned about employees reporting to work under the influence of marijuana and looking for ways to handle this growing problem. Read ahead for best practices on handling suspected drugs and/or alcohol use in the workplace.

## The Scenario

Rumors have been circulating around the workplace that one of the warehouse workers, Harold, has been acting strangely. He has been showing up late, taking long breaks, and generally appears to be “out of it.” Employees have expressed concern that Harold might be creating an unsafe work environment.

This behavior is uncharacteristic of Harold, who is normally a great worker. However, Steven, Harold’s manager, is aware that Harold has had some recent health problems and attributes the change in behavior to these issues. He does not ask Harold about the observed changes and, instead, dismisses the rumors.

A week later, Steven hears Harold’s co-workers and the line supervisor voicing the same concerns about Harold. This time, Steven decides to take a closer look at Harold’s conduct and goes over to Harold’s work area to speak with him.

As Steven is speaking with Harold, he notices that Harold appears to be having difficulty holding a train of thought. Harold also looks disheveled and has bloodshot eyes. Steven also smells an odor that he believes is marijuana coming from Harold. Based on a training course Steven took, he knows these are common indicators of marijuana use.

Steven asks Harold to come into his office so they can meet privately. In the office, Steven asks Harold if he has been smoking pot. Initially, Harold dances around the question, but eventually Harold admits that he had been smoking pot before he came into work that day and had been working under the influence.

This is a violation of the company’s anti-drug policy and Harold’s employment with the company is terminated.

## Did Steven handle the situation with Harold appropriately?

Overall, Steven handled the situation well. However, there were a few things that Steven should have done differently.

<sup>1</sup>Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and West Virginia

<sup>2</sup>Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, and Washington

## Handling Rumors

While it is understandable that a manager might be inclined to give employees the benefit of the doubt, Steven should have handled the initial rumors about Harold differently. Harold was acting in an uncharacteristic manner, which suggested there was something wrong with Harold and that he could be creating unsafe working conditions.

Supervisors/managers need to verify that the described behaviors are accurate by observing the conduct themselves. It is important to act quickly since the questionable behaviors may diminish as the effects from the drug diminish. In addition, taking quick action can also help management more quickly address a potentially dangerous working condition.

## Meeting Privately

While addressing an employee's suspected drug use is a sensitive topic, Steven should not have met with Harold privately (i.e. one-on-one). Instead, Steven should have had another witness present for the meeting – like another member of management or a representative from Human Resources. That way, if anything went awry during the meeting, the witness would be able to give an unbiased view of what occurred in the meeting.

## **Other Considerations**

### Drug Testing

In this case, Harold admitted that he had been using drugs and reported to work under the influence of marijuana. As a result, there was no need to subject Harold to a drug test. However, what would the company be able to do if Harold had not admitted the drug use?

In most states, provided that the company (i.e. management) has a “reasonable suspicion” (smell of marijuana, blood shot eyes, etc.) that an employee is under the influence of drugs, the company will be able to require that the employee undergo reasonable suspicion drug testing.

As a best practice, this drug test should be performed by an independent third party (i.e. a company that specializes in drug testing) and the results should be reviewed by a medical review officer (MRO). Prior to sending an employee for a drug test, verify that the lab has an MRO and, if the lab does not, select a different lab that has one.

The MRO is a doctor who asks the employee if there is any reason why the employee might test positive for a drug test (i.e. taking prescription medication). The company should not be involved in that part of the process, since it involves obtaining the employee's medical information, which is protected. Let the MRO handle it. If the employee tests positive, he/she will be suspended from work pending the outcome of the test.

### Training Managers to Identify Potential Drug Use

In this scenario, Steven has completed training and learned how to recognize signs of potential drug use. Participation in such training programs can help a company establish that management truly had a reasonable suspicion that an employee was under the influence of drugs or alcohol.

Remember, not every erratic behavior is attributable to drug use. Sometimes it can be related to a medical condition.

As a best practice, it is recommended that all managers and supervisors undergo formal training to identify/recognize signs that an employee is under the influence of drugs. These trainings are offered by Department of Transportation and, typically, by you workers' compensation carrier.

### Drug Testing Policy

In order to conduct drug testing, your company should have a drug-free workplace policy in place. The policy should define the circumstances under which an employee will be tested and consequences for refusing to test or for getting a positive drug screen. The consequences will spell out the disciplinary action for a positive test, which can range from mandated rehabilitation to termination.

Some (but not all) states permit random drug testing, and it is mandated by certain industries – such as those governed by the U.S. Department of Transportation.

All states generally permit reasonable suspicion testing, if the company has a policy in place. However, exercise caution. Some states, like Maine or Iowa, have stringent requirements with respect to employee drug testing. There are notice requirements and restrictions on the circumstances under which a company can require an employee to undergo a drug test.

The bottom line -- employees should be on notice that they may be subject to reasonable suspicion drug testing and the circumstances under which such testing could take place. If you don't have a drug testing policy, think twice about conducting a drug test.

### **Conclusion**

Maintaining a drug-free workplace contributes to the safety of your workplace. Improper administration of a drug testing policy – or acting in the absence of one – can lead to problems. Supervisors should understand their company policy and their responsibilities. By doing so, you will contribute to the safety of employees and your workplace.