

## Substance Abuse Program

**Lines of Business:** Auto, Worker Compensation, Public Officials Liability, Educators Legal Liability, General Liability

**Risk Control Strategy/Key Issues:** Protect employee safety and health, decrease accidents and errors, increase productivity and reduce crime exposures.

### Suggested Policy Elements:

#### 1. Policy Statement:

- Assign program responsibilities
- Designate accountable personnel
- Reason for implementation

#### 2. Drug and Alcohol Testing:

- Choose outside testing agency and Laboratory
- Guidelines on testing
  - Job applicants
  - All employees
  - Selected employees
  - When will you test
    - After all accidents
    - Reasonable suspicion

(Only the five drugs are required by many federal government agencies -- marijuana, opiates, amphetamines, cocaine, and PCP. Marijuana and cocaine are the most commonly abused illegal substances. Alcohol is the number one abused substance in American workplaces.)

#### 3. Program:

- Reviewed by legal counsel
- Notifications posted
- Policy implementation notice (at least 30 days)
- Available drug counseling
  - Rehabilitation
  - Employee Assistance Programs
- Penalties for drug abuse violations including
  - Use
  - Possession
  - Transfer or sale of illegal drugs
- Abuse Policy given to all employees

#### 4. Train Supervisors:

- Implementation and maintenance
- Document unsatisfactory job performance;
- Confront workers according to company procedures
- Know how to refer an employee to offer assistance

#### 5. Train Employees:

- Basic components of program
- Policy applies to everyone
- Consequences for violations of the policy
- How to access the organization's EAP program

#### Calendar of Events:

- Annual training
  - Supervisors
  - Employees
- Review of drug testing policy
  - Annually
  - When law changes

#### Web Site Links:

- United States Department of Labor  
<http://www.dol.gov>

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## Sample Substance Abuse Program

### 1. POLICY STATEMENT

Our Organization is committed to providing a safe work environment and to fostering the well-being and health of its employees. That commitment is jeopardized when any employee illegally uses drugs on or off the job, comes to work under the influence, possesses, distributes or sells drugs in the workplace, or abuses alcohol on the job. Therefore, our Organization has established the following policy:

1. It is a violation of Organization policy for any employee to use, possess, sell, trade, offer for sale, or offer to buy illegal drugs or otherwise engage in the illegal use of drugs on or off the job.
2. It is a violation of Organization policy for any employee to report to work under the influence of or while possessing in his or her body, blood or urine, illegal drugs in any detectable amount.
3. It is a violation of Organization policy for any employee to report to work under the influence of or impaired by alcohol.
4. It is a violation of the Organization policy for any employee to use prescription drugs illegally, i.e., to use prescription drugs that have not been legally obtained or in a manner or for a purpose other than as prescribed (However, nothing in this policy precludes the appropriate use of legally prescribed medications.)
5. Violations of this policy are subject to disciplinary action up to and including termination.

### 2. EMPLOYEE ASSISTANCE PROGRAM

It is the responsibility of the Organization's supervisors to counsel employees whenever they see changes in performance or behavior that suggest an employee has a drug problem. Although it is not the supervisor's job to diagnose personal problems, the supervisor should encourage such employees to seek help and advise them about available resources for getting help. Everyone shares responsibility for maintaining a safe work environment, and co-workers should encourage anyone who has a drug problem to seek help.

The goal of this policy is to balance our respect for individuals with the need to maintain a safe, productive and drug-free environment. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that the illegal use of drugs and the abuse of alcohol are incompatible with employment at our Organization.

As a condition of employment, employees must abide by the terms of this policy and must notify the Organization in writing of any conviction of a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction. (per Drug-Free Workplace Act of 1988).

The Organization offers an Employee Assistance Program (EAP) benefit for employees and their dependents. The EAP provides confidential assessment, referral and short-term counseling for employees who need or request it. If an EAP referral to a treatment provider outside the EAP is necessary, costs may be covered by the employee's medical insurance, but the cost of such outside services are the employee's responsibility.

Confidentiality is assured. NO information regarding the nature of the personal problem will be made available to the supervisors, nor will it be included in the permanent personnel file.

Participation in the EAP will not affect an employee's career advancement or employment, nor will it protect an employee from disciplinary action if substandard job performance continues. The EAP is a process used in conjunction with discipline, not a substitute for discipline.

The EAP can be accessed by an employee through self-referral or through referral by a supervisor.

### **3. EMPLOYEE ASSISTANCE**

The Organization offers resource information on various means of employee assistance in our community, including but not limited to drug and alcohol abuse programs. Employees are encouraged to use this resource file, which is located (insert where). In addition, we will distribute this information to employees for their confidential use.

### **4. GENERAL PROCEDURES**

An employee reporting to work visibly impaired will be deemed unable to properly perform required duties and will not be allowed to work. If possible, the employee's supervisor will first seek another supervisor's opinion to confirm the employee's status. Next the supervisor will consult privately with the employee to determine the cause of the observation, including whether substance abuse has occurred. If, in the opinion of the supervisor, the employee is considered impaired, the employee will be sent home or to a medical facility by taxi or other safe transportation alternative - depending on the determination of the observed impairment - and accompanied by the supervisor or another employee if necessary. A drug test may be in order. An impaired employee will not be allowed to drive.

### **5. OPPORTUNITY TO CONTEST OR EXPLAIN TEST RESULTS**

Employees and job applicants who have a positive confirmed test result may explain or contest the result to the Organization within five (5) working days after the Organization contacts the employee or job applicant and shows him/her the positive test result as it was received from the laboratory in writing.

### **6. CONFIDENTIALITY**

The confidentiality of any information received by the employer through a substance abuse testing program shall be maintained, except as otherwise provided by law.

### **7. PRE-EMPLOYMENT DRUG TESTING**

All job applicants at this Organization will undergo testing for the presence of illegal drugs as a condition of employment. Any applicant with a confirmed positive test will be denied employment.

Applicants will be required to submit voluntarily to a urinalysis test at a laboratory chosen by this Organization, and by signing a consent agreement will release this Organization from liability.

If the physician, official, or lab personnel have reasonable suspicion to believe that the job-applicant has tampered with the specimen, the applicant will not be considered for employment.

This Organization will not discriminate against applicants for employment because of a past history of drug abuse. It is the current abuse of drugs, preventing employees from performing their job properly, that this Organization will not tolerate.

### **8. EMPLOYEE TESTING**

This Organization has adopted testing practices to identify employees who use illegal drugs on or off the job or who abuse alcohol on the job. It shall be a condition of employment for all employees to submit to substance abuse testing under the following circumstances:

A. When there is reasonable suspicion to believe that an employee is using illegal drugs or abusing alcohol. "Reasonable suspicion" is based on a belief that an employee is using or has used drugs or alcohol in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon, but not limited to, the following:

1. Observable phenomena while at work such as direct observation of substance abuse or of the physical symptoms or manifestations of being impaired due to substance abuse;

2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
3. report of substance abuse provided by a reliable and credible source;
4. Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer;
5. Information that an employee has caused or contributed to an accident while at work; or
6. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

B. When employees have caused or contributed to an on-the-job injury that resulted in a loss of worktime, which means any period of time during which an employee stops performing the normal duties of employment and leaves the place of employment to seek care from a licensed medical provider. The Organization may also send employees for a substance abuse test if they are involved in on-the-job accidents where personal injury or damage to Organization property occurs.

C. As part of a follow-up program to treatment for drug abuse when an employee has involuntarily entered a rehabilitation program because of a positive confirmed test result. The frequency of such testing shall be a minimum of at least once a year for a two year period after completion of the rehabilitation program. Advance notice of testing shall not be given to the employee.

D. When a substance abuse test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.

If your Organization chooses to implement random testing; insert the following paragraph and delete these instructions.

E. Random testing is conducted without individualized suspicion of a violation of the Organization's substance abuse policy. Selection is made by neutral criteria so that all employees eligible for testing have an equal opportunity of being tested.

Employees with a confirmed positive test result may, at their option and expense, have a second confirmation test made on the same specimen. An employee will not be allowed to submit another specimen for testing.

If the physician, official, or lab personnel have reasonable suspicion to believe that the employee has tampered with the specimen, the employee is subject to disciplinary action up to and including termination.

## **8. ALCOHOL ABUSE**

Two policy versions follow on alcohol abuse. The first policy is only one paragraph and immediately follows. The second policy consists of three paragraphs. Select either policy and delete the other. In both cases either "positive," ".05 or higher," or ".08 or higher" needs to be inserted where indicated. This instructional paragraph and the "or" separating the policies should also be deleted.

The consumption or possession of alcoholic beverages on this Organization's premises is prohibited. (Organization sponsored activities which may include the serving of alcoholic beverages are not included in this provision.) An employee whose normal faculties are impaired due to the consumption of alcoholic beverages, or whose blood alcohol level tests (insert level), while on duty/Organization business shall be guilty of misconduct, and shall be subject to discipline up to and including termination. Failure to submit to a required substance abuse test also is misconduct and also shall be subject to discipline up to and including termination.

**Or:**

An employee who is under the influence of alcoholic beverages at any time while on Organization business or at any time during the hours between the beginning and ending of the employee's work day, whether on duty or not and whether on (Organization Name) business or property or not, shall be guilty of misconduct and is subject to discipline up to and including termination.

An employee shall be determined to be under the influence of alcohol if the employee's normal faculties are impaired due to the consumption of alcohol, or if the employee has a blood alcohol level of (insert level) or higher.

Failure to submit to a substance abuse test also is misconduct and also shall be subject to discipline up to and including termination.

It is the responsibility of the Organization's supervisors to counsel employees whenever they see changes in performance or behavior that suggest an employee has a drug problem. Although it is not the supervisor's job to diagnose personal problems, the supervisor should encourage such employees to seek help and advise them about available resources for getting help. Everyone shares responsibility for maintaining a safe work environment, and co-workers should encourage anyone who has a drug problem to seek help.

The goal of this policy is to balance our respect for individuals with the need to maintain a safe, productive, and drug-free environment. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that the illegal use of drugs, and the abuse of alcohol are incompatible with employment at (Organization Name). The following letter is for employers offering an Employee Assistance Program.

It should be printed on Organization letterhead. Do not use the second letter that follows, it is for companies not offering an EAP.

The following letter is for employers offering an Employee Assistance Program. It should be printed on Organization letterhead. Do not use the second letter that follows, it is for companies not offering an EAP.

## **10. LETTER TO ALL EMPLOYEES**

The illegal use of drugs and the abuse of alcohol are problems that invade the workplace, endangering the health and safety of the abusers and those who work around them. This Organization is committed to creating and maintaining a workplace free of substance abuse without jeopardizing valued employees' job security.

To address this problem, our Organization has developed a policy regarding the illegal use of drugs and the abuse of alcohol that we believe best serves the interests of all employees. Our policy formally and clearly states that the illegal use of drugs or abuse of alcohol or prescription drugs will not be tolerated. As a means of maintaining our policy, we have implemented pre-employment and active employee drug testing. This policy was designed with two basic objectives in mind: (1) employees deserve a work environment that is free from the effects of illegal drug use or alcohol abuse and the problems associated with such, and (2) this Organization has a responsibility to maintain a healthy and safe workplace.

To assist us in maintaining a safe and healthful workplace, we have created an Employee Assistance Program (EAP). The EAP provides employees and their family's confidential assessment, referral, and follow-up for personal or health problems.

An employee whose conduct violates this Organization's Substance Abuse Policy and who does not accept the help we offer under the EAP will be disciplined up to and including termination.

I believe it is important that we all work together to make this Organization a drug-free workplace and a safe, rewarding place to work.

Sincerely,

Name of Person Sending Letter  
Title of Person Sending Letter

The following letter is for employers not offering an Employee Assistance Program but instead providing other means of employee assistance in the community. It should be printed on Organization letterhead.

### **11. LETTER TO ALL EMPLOYEES**

The illegal use of drugs and the abuse of alcohol are problems that invade the workplace, endangering the health and safety of the abusers and those who work around them. This Organization is committed to creating and maintaining a workplace free of substance abuse without jeopardizing valued employees' job security.

To address this problem, our Organization has developed a policy regarding the illegal use of drugs and the abuse of alcohol that we believe best serves the interests of all employees. Our policy formally and clearly states that the illegal use of drugs or abuse of alcohol or prescription drugs will not be tolerated. As a means of maintaining our policy, we have implemented pre-employment and active employee drug testing. This policy was designed with two basic objectives in mind: (1) employees deserve a work environment that is free from the effects of illegal drug use or alcohol abuse and the problems associated with such, and (2) this Organization has a responsibility to maintain a healthy and safe workplace.

To assist us in providing a safe and healthy workplace, we maintain a resources file of information of various means of employee assistance in our community, including but not limited to drug and alcohol abuse programs. Employees are encouraged to use this resource file, which is located (insert where list is located). In addition, we will distribute this information to employees for their confidential use.

An employee whose conduct violates this Organization's Substance Abuse Policy will be disciplined up to and including termination.

I believe it is important that we all work together to make this Organization a drug-free workplace and a safe, rewarding place to work.

Sincerely,

Name of Person Sending Letter  
Title of Person Sending Letter

### **12. PRE-EMPLOYMENT DRUG TESTING CONSENT AND RELEASE FORM**

I hereby consent to submit to urinalysis and/or other tests as shall be determined by (Organization Name) in the selection process of applicants for employment, for the purpose of determining the drug content thereof.

I agree that (insert the name of physician or lab) may collect these specimens for these tests and may test them or forward them to a testing laboratory designated by the Organization for analysis.

I further agree to and hereby authorize the release of the results of said tests to the Organization.

I understand that it is the current use of illegal drugs that would prohibit me from being employed at this Organization.



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I further agree to hold harmless the Organization and its agents (including the above named physician or clinic) from any liability arising in whole or part, out of the collection of specimens, testing, and use of the information from said testing in connection with the Organization's consideration of my application of employment.

I further agree that a reproduced copy of this pre-employment consent and release form shall have the same force and effect as the original.

I have carefully read the foregoing and fully understand its contents. I acknowledge that my signing of this consent and release form is a voluntary act on my part and that I have not been coerced into signing this document by anyone.

**APPLICANT:**

Print Name: \_\_\_\_\_ S.S.#: \_\_\_\_\_

Signature: \_\_\_\_\_ Date \_\_\_\_\_

**WITNESS:**

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

**13. ACTIVE EMPLOYEE CERTIFICATE OF AGREEMENT**

I do hereby certify that I have received and read the (Organization Name) Substance Abuse and Testing Policy and/or have had it explained to me. I understand that if my performance indicates it is necessary, or in the case of random testing, I will submit to a substance abuse test. I also understand that failure to comply with a substance abuse test request or a positive result may lead to termination of employment and denial of unemployment benefits. I understand that failure to submit to a substance abuse test or a positive test result may affect my right to obtain workers' compensation benefits. I further agree to and hereby authorize the release of the results of said tests to the Organization. Nothing in this consent form is to be construed as a contract between the parties.

Name (please print): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_