

Introduction

With increased use of alcohol and drugs in general, employers are facing the task of having to take hard hitting measures to clamp down on this type of behaviour in the workplace. The question an employer faces is what options there are available to them and how far can they go in their attempts to tackle this issue.

Policies and Rules

With various types of health and safety legislation being introduced, an employer must be more and more vigilant in ensuring that their workplace is a compliant environment.

The two main weapons against alcohol and drug issues are to require employees to be subject to alcohol and drug tests, or conducting staff searches.

The starting point is to have these options outlined clearly in your contract or handbook. An employee's consent must be obtained via these documents, because without it measures cannot be enforced. The contractual clause must also specify whether such steps would be taken at random, or only if necessary. However, an employer must be extremely cautious where using a general policy, ensuring that such a policy is based on sound reasoning, and also making sure that the policy is conducted in a way that does not single out particular individuals, which could be seen as discriminatory or harassment.

It must be noted however that even with the right clauses being present in documents, an employee can withdraw their consent at the time of a test or a search – and then they will not be in breach of their contract.

Importance of Consent

It is absolutely crucial that employers do not proceed to force employees to take tests, or subject employees to searches, where consent has been withdrawn.

Carrying out such action against a non-consenting employee could amount to a criminal act, leading to severe consequences for the person carrying out the search or test, and the employer.

Alternative Action

In both instances, it would seem that employers are powerless where an employee withdraws consent. Further, if an employer does not have a policy on this area, it would seem that they are limited in the action they can take.

However neither situation stops the employer from being able to take further action. Where an employee withdraws his consent for a test to be carried out, the employer can send the employee home if he feels that there is a health & safety risk, or that the employee's behaviour under influence of such intoxicants would be inappropriate. This course of action would be appropriate where the employee is not fit to carry out their duties and could pose a risk their colleagues or any 3rd parties by doing so. Disciplinary action can also be carried out against the employee for refusal to take the test. The same course of action can also be taken where there are no policies in place for conducting tests.

Other Issues

It must be kept in mind that the adverse effect of drugs is not only limited to the use of illegal substances. Employees may be on strong medication causing a range of side-effects, rendering them unable to carry out their job. In this regard, it is important that employers ensure employees disclose when they are taking such medication and the likely effects of it. It may be necessary to seek further medical advice on the matter, depending on the particular facts of the case.

Where an employee agrees to such a test, the information obtained from it is covered by the Data Protection Act. At the same time you will need something within any Data Protection policies setting out when tests take place and the extent to which employees will be monitored. Any information gathered in this way is sensitive data under the Data Protection Act.

Can we help?

If you would like to discuss any issues that is associated with the employment, performance or conduct of employees, please call us on 01708 758958. Alternatively visit our Website at www.hrinsight.co.uk. We look forward to hearing from you.

