

Essentials of an Alcohol and Drug Policy in the Workplace



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Under common law, *employers are obliged to provide their employees with reasonably safe working conditions, as required by section 2A of the Occupational Health and Safety Act 85 of 1993.* To create a safer working environment and to ensure the safety and welfare of employees and visitors to company, employers have implemented policies prohibiting the use of alcohol or any mood-altering substance in the workplace, prohibiting employees from reporting for work while they have alcohol or narcotics in their bloodstream or being under the influence of alcohol or any mood-altering substance.

Employers who have a zero-tolerance alcohol and substance abuse policy must ensure that employees are aware of such policy. Employees affected by the rule must be properly informed what the rule is and what sanction they may face for breach thereof.

These rules must also be clear and unambiguous, for example that no-one may be 'intoxicated'/'drunk' or 'under the influence' at work and that people in specific work categories (for instance, drivers) *may not have any alcohol or cannabis in their bloodstream while at work.*

A zero-tolerance policy should be worded in such a manner that it reflects the aim and prohibits any trace of alcohol or mood-altering substance in an employee's system when they report for duty or perform work. The employer's rules regarding alcohol or drug use while on duty, or off duty before coming to work, must be very specific and must warn employees that should the rule be contravened, disciplinary action will follow, which may result in dismissal.

To determine whether or not the employee is indeed 'intoxicated', 'under the influence' or had used forbidden substances, an employer could conduct a field sobriety, breathalyser and/or other drug tests.

What is the difference between a field sobriety and breathalyser test?

Field sobriety tests will be used in conjunction with the breathalyser/narcotic test. Importantly, the employees conducting the breathalyser or drug tests and field sobriety tests must also include the results of such tests and circumstantial evidence, as well as the employee's statements and the general appearance of the person being tested, as it must be shown that the relevant employee's faculties were impaired.

The employee's demeanor and the possibility that they might pose a danger to others should be considered.

When conducting a field sobriety test, the following key factors should be considered:

- Following an object with the eyes;
- Walking in a straight line, with arms horizontal to the shoulders;
- Touching finger to nose with eyes closed;
- Counting backwards from a specific number;
- Slurred speech;
- Bloodshot eyes;
- Uncoordinated body movements;
- Smell of alcohol on breath;
- Aggressive, confrontational, etc.

Please note:

- These tests must be conducted by a qualified employee in the presence of at least one other employee who can testify as to the correct procedure;
- The breathalyser or drug-testing equipment used must be calibrated, with a certificate attesting to this issued by an accredited body;
- Three tests are to be conducted at regular intervals, after the breathalyser tested negative with the first blow.

Employers face these problems on a regular basis, such as abuse of alcohol or drugs while on duty or using alcohol or drugs before coming on duty, with all sorts of excuses such as 'it is from the night before' or 'it is cough mixture'. The employer clearly has an interest in an employee's conduct outside the workplace to the extent that it may have affected his capacity to perform during working hours, ultimately disproving the premise that an employee's conduct outside working hours cannot be held against him/her.

In conclusion

Before taking disciplinary steps, the employer should investigate, collect evidence and formulate the correct charge, as there is a difference between being 'over the limit' and 'drunk' or 'under the influence', which will result in different factors that need to be proven for a fair dismissal. These terms must be clearly defined in the employer's policy and disciplinary codes.

We recommend that all employers assess their policies and amend them to reflect the intention of the policy and the employer's true needs. Our experienced labour relations consultants deal comprehensively, on your behalf, with the relevant labour legislation and will gladly assist employers with the drafting, amendment and implementation of their policies for example an 'Alcohol and Drug Policy'.

At *SERR Synergy our professional labour team guides and assists businesses in a practical and supportive way regarding the required processes and procedures to ensure labour legislation compliance* and to minimise the risk to which the business is exposed when employing staff.

About the Author: Johan Viljoen joined SERR Synergy in 2018 as a Gauteng Legal Advisor and is currently the Upington Branch Manager of the Northern Cape. He has 25+ years' experience in the Labour Law field and specialises in chairing Disciplinary Hearings and CCMA work.