How to Create a Legally Sound Substance Abuse & Fitness for Duty Policy



Use “fitness for duty,” not “zero tolerance” policy, to keep your workplace free of drugs and alcohol.

Although it sounds like the right idea, the traditional zero tolerance drug/alcohol policy is ill-suited to the legal complexities of the modern world. This is especially true now that Canada has legalized cannabis. Of course, you can and still must take a clear line on workplace drug and alcohol abuse for purposes of safety. But your policy requires finesse and sensitivity to legal subtleties. Rather than morality or even legality, the policy should be based on the one thing a about substance abuse that’s indisputably true: It renders workers unfit for duty, creates a safety danger and undermines productivity. Here are 14 things to include in your Substance Abuse and Fitness for Duty Policy.

1. Policy Statement

Set the tone by stating that workplace substance abuse creates a safety risk and won’t be tolerated. But while laying the legal groundwork for discipline, you should also acknowledge that substance abuse is a health issue and that getting workers help is your ultimate goal [Policy, Sec. 1].

2. Statement of Purpose

Clarify that the policy is all about ensuring workers are fit for duty at all times (as opposed to morality and obeying the law) [Policy, Sec. 2].

3. Policy Scope

Explain that the policy applies to all individuals working for your organization regardless of employment status or physical location of the work. But also indicate that the policy is subject to the terms of applicable collective agreements and employment contracts [Policy, Sec. 3].

4. Definition of “Fit for Duty”

Define exactly what you mean by being fit for duty. Also define Other key terms to define include “substance abuse,” “safety-sensitive job” and “drugs,” which you

should define as including:

- Narcotics and illegal drugs;
- Marijuana whether used or obtained legally or illegally; and
- Legal prescription and over-the-counter medications and drugs that cause or have the potential to cause impairment and render a worker not fit for duty [Policy, Sec. 4].

5. Employees' Duties

The heart of the policy is the list of worker requirements, including being fit for duty at all times, refraining from using, buying, selling or distributing drugs/alcohol, notifying supervisors of violations and submitting to testing [Policy, Sec. 5].

6. No Exemption for Legal Marijuana

Workers might assume that they're allowed to use or be high on pot now that cannabis has been legalized. Debunk this popular misconception by expressly saying that impairment at work is never justified regardless of whether the cannabis or other substance that causes it is legal [Policy, Sec. 6].

7. Statement of Support

Restate your commitment to helping workers with substance abuse issues and describe your organization's employee assistance program and other resources for providing s support, counseling, treatment, rehab, etc. [Policy, Sec. 7].

8. Encourage Self-Reporting

Encourage workers to step forward voluntarily if they have substance abuse issues; indicate that those who do self-report won't be subject to discipline as long as they were and are fit for duty when they do their job [Policy, Sec. 8].

9. Fitness for Duty Medical Assessments for Safety-Sensitive Jobs

Establish your right to perform proactive medical assessments before workers are assigned to safety-sensitive jobs. Indicate that assessments will be performed by qualified medical or substance abuse professionals and that you'll keep the results confidential as required by privacy laws [Policy, Sec. 9].

10. Investigation Procedures

Explain how you investigate suspected violations. List investigation triggers, which should include:

- Complaints, concerns or reports of substance abuse;
- Declining performance;
- Erratic behaviour;
- Involvement in safety incidents including near misses;
- Arrests for impaired driving, drug offences and similar violations; and
- Other indications of substance abuse issues or lack of fitness for duty

[Policy, Sec. 10].

11. Alcohol & Drug Testing Procedures

Explain your use of testing to enforce the policy. Testing is a complex issue that most organizations address in a separate policy. However you do it, be sure to address both the testing involved, i.e., alcohol and drugs, and the basis for each kind of testing, including:

- Pre-employment testing;
- Random testing; and
- For-cause testing, e.g., after safety infractions or incidents.

Be sure that your testing procedure aren’t overly privacy intrusive and that you limit the strictest testing to workers with safety-sensitive jobs [Policy, Sec. 11].

12. Privacy of Test Results

Acknowledge that testing results are privacy-protected information that you’ll keep them secure and confidential to the extent allowed by the law [Policy, Sec. 12].

13. Response to Violations

Make it clear that workers found to be unfit for duty will be subject to discipline up to and including termination. Describe your organization’s disciplinary procedures. Although zero tolerance is fine as a principle, you need to give yourself the flexibility to deal with each worker on an individual basis which typically includes entering into Last Chance agreements offering reemployment if the worker successfully completes treatment, rehab and other reinstatement conditions [Policy Secs. 13 and 14].

14. Acknowledgment of Workers’ Accommodation Rights

Last but not least, include a provision acknowledging that addiction and disabling conditions for which legally authorized medical cannabis are used are used are disabilities under human rights laws for which you’ll provide reasonable accommodations up to the point of undue hardship [Policy, Sec. 15].