

Substance Abuse Self-Disclosure Policy



Many companies require employees to self-disclose their alcohol/drug problems on a non-disciplinary basis. The idea: Recognize that substance abuse is a problem, not a form of misconduct, and get employees who come forward voluntarily the help they need. Then if employees don't take the offered amnesty and later get caught using impairing substances, you can discipline them.

Although a recent Canadian Supreme Court called *Stewart v. Elk Valley Coal Corp.*, 2017 SCC 30, [2017] 1 S.C.R. 591, recognizes the general legality of that approach, your policies must apply it very carefully. It comes down to a balance between your interest in workplace safety and the employee's privacy and right to accommodations.

- Rule 1: The policy must be not only necessary to ensure safety but carried out in the least privacy-intrusive way possible.
- Rule 2: The policy must accommodate employees' disabilities (remember that drug/alcohol dependency and addiction are "disabilities" under human rights laws) to the point of undue hardship.

Is Your Policy Up to Snuff?

How can you tell if your own self-disclosure policy is legal? To help you make that determination, we've looked at actual cases where courts and arbitrators applied the above rules to evaluate the legality of such policies. We then rolled the common problems that caused a policy to fail scrutiny into a fictional Model Substance Abuse Self-Disclosure Policy, a policy from hell demonstrating the pitfalls you need to avoid.

Your assignment: 1. Look at the policy and identify as many of the problems as you can. 2. Check out the analysis of these problems in HR Insider. 3. Consider the Model Policy Corrected Version below.

BEFORE: The Substance Abuse Self-Disclosure Policy from Hell

- 1. Scope:** This Policy applies to all ABC Company employees regardless of job, job title or employment-status.
- 2. Duty to Disclose:** Employees must notify their supervisors if they currently use or have used drugs, alcohol and other impairing substances in the past 6 years.
- 3. Independent Medical Exam (IME):** Upon disclosure, employees will be removed from duty, placed on leave and required to undergo an IME conducted by an addictions specialist selected by ABC Company. If the IME finds the use is related to an addiction or dependency, the employee will be offered reasonable accommodations, medical assistance and support designed to ensure his/her return to work as quickly as possible; if the IME finds the use to be recreational, the employee will be subject to discipline in accordance with the ABC Company Discipline Policy.
- 4. Return To Work:** Employees may return to work upon completing the following rehabilitation, treatment and monitoring conditions:
 - (a) Abstinence from drug and alcohol use during the return to work process;
 - (b) Completion of a prescribed treatment program consisting of: i. attending at least ____ Alcoholics/Narcotics Anonymous meetings per week over a _____ period; ii. maintaining regular and meaningful contact with an AA/NA sponsor; and iii. completing any 12-step program the sponsor recommends.
 - (c) Passing random drug/alcohol tests every 2 weeks during the return to work process.
 - (d) Undergoing second IME that determines the employee no longer has an addiction or dependency and is ready to return to work.
- 5. Last Chance Agreement:** After fulfilling the above return to work conditions, the employee will be reinstated after signing a Last Chance Agreement promising to adhere to his/her treatment program, submit to random testing and agree that any further alcohol/drug violations will result in termination.

[Click here for a breakdown of all the problems in the Model Policy.](#)

AFTER: Corrected Version of Substance Abuse Self-Disclosure Policy from Hell

- 1. Scope:** While all individuals who are employed by or carry out business on behalf of ABC Company are required to arrive at work fit for duty and perform their assigned duties safely and responsibly without any limitations due to inappropriate use or after-effects of use of alcohol, drugs, medications or other intoxicating substances, both legal and illegal, the provisions of this Policy apply to employees that perform safety-sensitive jobs.
- 2. Duty to Disclose:** Employees must notify their supervisors if they:
 - * Currently use drugs, alcohol and other impairing substances;
 - * Have a current addiction to or dependency on drugs, alcohol and other impairing substances; and/or
 - * Have had a previous addiction to or dependency on drugs, alcohol and other impairing substances in the previous 6 years.
- 3. Independent Medical Exam (IME):** Upon disclosure, employees will be temporarily removed from duty pending a medical examination to determine if they have an addiction or dependency. Where such a determination cannot be made quickly, employees will be placed on leave and required to provide medical information about their condition from their primary care doctor. Where such information is not sufficient to make a definitive determination, the employee will be asked to undergo an IME conducted by an addictions specialist that is mutually acceptable to both Company ABC and the employee. If the IME finds the use is related to an addiction or dependency, the employee will be offered reasonable accommodations, medical assistance and support designed to ensure his/her return to work as quickly as possible; if the IME finds the use to be recreational, the employee will be subject to discipline in accordance with the ABC Company Discipline Policy.
- 4. Return To Work:** Employees may return to work upon completing the following rehabilitation, treatment and monitoring conditions:
 - (a) Abstinence from drug and alcohol use during the return to work process;
 - (b) Completion of a treatment program to be created after an individualized assessment of the employee's condition, circumstances and needs, which may consisting of: i. attending at least a set number of Alcoholics/Narcotics Anonymous meetings per week over a stated period; ii. maintaining regular and meaningful contact with an AA/NA sponsor; and iii. completing any 12-step program the sponsor recommends.
 - (c) Passing random drug/alcohol tests every 2 weeks during the return to work process.
- 5. Last Chance Agreement:** After fulfilling the above return to work conditions, the employee will be reinstated. If the employee has a history of disciplinary, performance or other workplace problems, including problems related to his/her addiction or dependency, the employee will be required to sign a Last Chance Agreement promising to adhere to his/her treatment program, submit to random testing and agree that any further alcohol/drug violations will result in discipline up to and including termination.