

Employee Drug Abuse: Are You Legally Liable?

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An introduction to drug abuse prevention from Judy Swartley, Managing Partner of Red Planet Substance Abuse Testing:

Drug testing should be a critical part of every employer's safety program. The good news is that with advances in testing technology — such as saliva testing — employers can implement a quality drug testing program very efficiently in terms of time *and* money. In the area of safety, the rewards are considerable: you can protect your company against an OSHA fine, and your employees know that their co-workers do not have a substance abuse problem that could put them, customers, or the quality of work at risk.

As one of the area's leading substance abuse testing organizations, we know that the actual testing, though vital, is just one component of a total strategy for dealing with drug abuse. Since 2002, we have teamed with McLean Insurance to provide companies with comprehensive drug abuse prevention strategies that not only address safety, but also performance and the very serious legal liabilities employers can face over the work or behavior of substance-abusing employees.

Drug abuse can have a profound impact on your business' safety record and costs. In fact, data from the National Institute on Drug Abuse shows substance abusers are almost *four times* more likely to be involved in workplace accidents. That raises your workers' compensation costs. Plus, since abusers' medical costs typically run 300% more than those of other employees, drug abuse can raise health insurance costs, too. In terms of performance, drug abusers are also less productive on the job and far more likely to miss work. But there's another reason employers need to pay attention to the issue of drug use: legal liability.

Suppose, for instance, that drug use causes one of your employees to do poor work on a particular project that later causes a problem. What if a "high" employee causes an accident that injures others? What if a drug-addicted employee steals from co-workers to support his drug habit. Or,



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suppose an employee displays behavior or an attitude that coworkers or customers feel is threatening or offensive. Situations like these lead to costly lawsuits against your company and **the general business liability insurance most companies carry isn't enough**, on its own, to protect against legal costs that could drain cash flow and bankrupt the business.

Managing risks means putting multiple protections in place. Here is a checklist to help you improve safety and performance while cutting your costs ... and the potential for a lawsuit:

1. **Implement a solid drug testing program.** According to the Department of Labor, the largest group of substance abusers falls in the 18-to-25-year-old age range. In addition, a survey by the National Cocaine Helpline revealed that 75% of addicts used drugs on the job and 64% admitted that drugs had adversely affected job performance. Even if your employees don't fall into the 18-to-25-year-old age range, drug testing is essential: National Institutes of Health research shows that companies that *don't* test for drugs quickly become havens for both drug and alcohol abusers. As we've pointed out, that exposes to businesses to serious safety issues, costs and potential liability. A solid drug-testing program not only helps screen out drug users, it demonstrates your good-faith effort to eliminate drug use from the workplace.
2. **Establish and communicate strong substance abuse policies and programs.** To reduce your exposure to charges of negligence or other potential sources of liability, you want to be able to demonstrate that you did nothing to encourage a working environment where drug use was allowed or knowingly overlooked. Combining drug testing with solid policies and educating employees about those policies forms a strong front-line defense.
3. **Align your insurance policies with your specific vulnerabilities.** Of course you want an adequate business liability policy. But in today's increasingly lawsuit-crazy world you may want to think about insurance less as one policy than as a *risk management portfolio*. Depending on your own unique business, you may want to adjust your coverage, add "excess liability" protection, or even consider policies to protect yourself financially in the event employee crime or dishonesty causes losses to your business, employees or customers.

To sum up: while a good drug testing program will go a long way toward addressing safety, OSHA compliance, performance and workers' comp issues, having the right company policies, education programs and insurance coverage will go the extra step to protect you against potential lawsuits and financial liability.

Do you have specific questions about your own potential liability? As an independent advisory firm, McLean Insurance would be happy to take a look at your situation. At the same time, we can review your exposure to new areas of liability, including e-commerce, e-mail, data security, and more. **Please call Doug Megill at 703-637-4331**