



Drugs and Alcohol Policy: Negotiators' Guide

February 2004

Formulating a Drugs and Alcohol Policy: A Brief Guide

This guide is a product of research into what other organisations and employers are doing when it comes to formulating a Drugs and Alcohol Policy. It includes a summary of relevant legislation, a template policy based on a Health and Safety Executive model, a brief overview of current views and practices, information on Employee Assistance Programmes, a guide to testing and useful resources on the Internet.

There is no legislative requirement on employers to introduce a workplace Drugs and Alcohol Policy and the majority of employers still do not have one. In such organisations, drug and alcohol misdemeanours are more likely to be treated as a disciplinary issue. On the whole, most unions and health organisations would prefer to see drug and alcohol misuse treated as a medical issue but some also view it as a capability or social issue. As such, time off for treatment and rehabilitation are treated in the same way as any other illness.

The Health and Safety Executive has drawn up a guide to what should be found within any Drugs and Alcohol Policy, which should be drawn up in consultation with the relevant trade union. The GMB has produced guidelines on negotiating a policy with an employer and have identified six separate stages. The Drug Strategy Directorate in the Home Office have also set a Business Development Team to work with employers on drugs issues.

The London Underground Limited (LUL) policy has been seen as a pioneer in establishing a sound Drugs and Alcohol policy. LUL employs safety critical workers and as such has a clear legislative duty to protect employees and the public alike from workers unfit through drugs or alcohol. Random testing is in place for safety critical workers and any worker tested positive faces disciplinary action. However, employees who believe they have a problem with drug and alcohol misuse are encouraged to come forward so that they can receive help in the form of counselling, rehabilitation and detoxification programmes, without the threat of disciplinary action.

A number of employers, concerned about the impact of stress in the workplace, have introduced Employee Assistance Programmes (EAPs). Typically these provide round the clock telephone-counselling services for employees to get advice and talk about issues such as debt, bereavement and drug problems. This is spawning a growing industry of health and counselling providers and around 10% of employers are now believed to have introduced such a scheme. Union concerns tend to centre on the choice of provider, the qualifications of counsellors and employee confidentiality.

Finally, Drugs and Alcohol Policies and/or EAPs, can never be a substitute for proper risk assessments and employers must accept responsibility for working environments that cause unreasonable stress for employees. The Journal of Applied Psychology and the European Monitoring Centre for Drugs and Drug Addiction have made links between work pressure, unreasonable targets and undesirable working conditions with increased misuse of drugs and alcohol.

The Legal Position

The following legislation is applicable:

- **The Health and Safety at Work Act (etc) 1974** gives employers responsibility for the health, safety and welfare of their employees.
- **The Safety Representatives and Safety Committee Regulations Act 1977** obliges employers to consult with Trade Union Safety Representatives for changes affecting health and safety and "in good time".
- **The Road Traffic Act 1988** makes it an offence for anyone who drives whilst unfit through the drink or drugs.
- **The Misuse of Drugs Act 1971** makes it an offence to produce, supply or possess controlled drugs. Employers can be liable under this act if they knowingly allow the production, consumption or supply of controlled drugs on their premises.
- **The Transport and Works Act 1992** makes it an offence for "safety sensitive" workers, such as train drivers, to be unfit through drink or drugs. (Increasingly employers of safety critical workers are introducing testing as a result of this act.)
- **The Data Protection Act 1998** gives employers responsibilities for acquiring, managing and retaining information on workers health.

Drugs and Alcohol Policy: A Template

The following guidelines set out what should be contained in any workplace drugs and alcohol policy according to WorkSmart (www.worksmart.org.uk/health/viewquestion.php?eny=7) and the Health and Safety Executive:

- "A statement of the policy's aims, and to whom it applies
- An indication of who is responsible for carrying out the policy
- A definition of drug misuse
- Rules about how employees are expected to behave
- Safeguards making it clear that absence for treatment and rehabilitation is covered by normal sickness absence, and recognition that relapses may occur
- Assurance that employees with drug problems will be treated in confidence, subject to the law

- A description of support available to employees with drug problems, and a statement encouraging employees with drug problems to seek help voluntarily
- A commitment to providing all employees with general information about drugs and their impact on health and safety
- Details of the disciplinary procedures, for example stating that possession / dealing will be automatically reported to the police."

Current Views and Practices

The TUC (Trades Union Congress)

The TUC believes that drugs and alcohol misuse is a growing problem which affects not just individuals but society as well. In the workplace mis-users can be a danger to themselves and others around them. The TUC recognises that many jobs impose a lifestyle on employees that may be stressful and makes them more vulnerable to drugs and alcohol misuse.

A good Drugs and Alcohol policy can be used to reduce the negative effects of drugs and alcohol misuse in the workplace. These include: "adverse health consequences, increased absenteeism, deterioration in interpersonal relations, deterioration in job performance, lowered productivity, increased accidents, increased personnel turnover, training and recruitment costs and damage to the reputation of the enterprise or business." (page 2, Drunk or Disordered: A TUC Guide to Tackling Alcohol and Drugs at Work, TUC: December 2001)

Any Drugs and Alcohol policy must treat all employees the same regardless of status, sex, or race and it must clarify who has overall responsibility for introducing the policy. Training is essential for those responsible for implementation and for the employees it is designed to cover. The aim of the policy should be: "to recognise that alcohol/drug misuse is a health problem, to prevent drug/alcohol misuse by developing awareness programmes, to identify employees with a problem at an early stage and to provide assistance to employees with drug/alcohol related problems." (page 8, Drunk or Disordered: A TUC Guide to Tackling Alcohol and Drugs at Work, TUC: December 2001)

The GMB (Britain's General Union)

The GMB supports the introduction of drug and alcohol policies in the workplace but is concerned about the use of drug and alcohol testing, especially when it is used widely and indiscriminately. The best drugs and alcohol policies are those which are the result of negotiations between unions, management and the workforce.

The GMB is concerned about working conditions that might lead to employees misusing alcohol or drugs such as bullying or stress. The GMB believes that employers have a duty to introduce education programmes for managers and trade union representatives, so that they can recognise the signs of drug and alcohol misuse. Training and awareness should also target employees, pointing them in the direction of help and support should they require it. Disciplinary action should be a

last resort when attempts at assistance in the form of support or treatment have failed. Disciplinary action should also be consistent.

The GMB recommends the London Underground Limited (LUL) Drugs and Alcohol policy as a good example. For smaller organisations employers should seek out local service providers and make their details known to employees. The GMB recommends that employers treat absence for treatment, counselling and rehabilitation as any normal sickness.

Negotiating a D&A Policy should take place in six stages:

- 1) Consultation between trade union representatives and employers
- 2) The framework of the policy should contain information on aims, responsibility, definition, education, training, support, confidentiality, disciplinary action and monitoring and reviewing
- 3) Decision to be made on testing
- 4) Reaching agreement
- 5) Implementation of the policy
- 6) Monitoring and reviewing

National Union of Rail, Maritime and Transport Workers (RMT)

The RMT believes that education and awareness training, together with associated lifestyle and shift work issues, should form the main body of any drug and alcohol policy.

National Health Service (NHS)

The NHS concentrates on rehabilitation, occupational health support and self-referral for assistance. Poor work performance should be addressed as a capability not a disciplinary issue.

The Home Office

The Government is concerned about the social economic cost of drug abuse, which it claims is costing around £18 billion a year due to crime, absenteeism and sickness. The Drug Strategy Directorate at the Home Office has established a Business Development Team with responsibility for working with the business community on drugs issues.

London Underground Limited (LUL)

LUL has a Drugs and Alcohol team consisting of four staff members based within their occupational health department. LUL has a strict Drugs and Alcohol Policy due to its many safety critical employees. The policy states that employees will not drink

or take drugs at work, and will not turn up for work after having used drink and drugs in a way that could put their work at risk. Uniformed employees may not buy alcohol or go to a pub, and storing of alcohol in operational buildings is forbidden. LUL also uses random testing programmes for safety critical staff.

Employees who have tested positive for cannabis, cocaine, ecstasy or other Class A drugs will face disciplinary action. However, employees who come forward to seek help will be admitted for acute detoxification, which involves residential treatment, programmes or support sessions. Aftercare involves group sessions twice a week. Employees who return to work after completing such a programme must sign a formal agreement outlining the behaviour expected of them. For the following six months the employee will be tested a couple of times a week and then reviewed.

LUL has received some criticism in the media for sending staff, including safety critical staff, to private rehabilitation clinics for drug and alcohol addiction, which is ultimately funded by the tax payer. However an LUL spokesman commenting for a Times article on 7th May 2003, stated, "We are the only company in the UK which helps employees who come forward with a drug or alcohol problem, if it is safety critical work, they are tested several times a week for six months, their counselling is kept up and they are free to go back to work."

Employee Assistance Programmes

"Employee Assistance Schemes – the Workplace View"

Employee Assistance Programmes (EAP) have been introduced by many companies in the UK in response to Health and Safety Executive estimates that around half a million people in the UK experience work-related stress. These schemes are usually outsourced to a company that provides a 24-hour seven days a week counselling service covering issues such as stress, bullying, drug and alcohol misuse and bereavement.

Companies such as Barclays, Shell and Unilever have introduced EAPs. Today, about 10% of the workforce is covered by EAPs according to the association for EAP providers. In August 2003 Workplace Report magazine published a survey of 70 reps in workplaces with EAPs to discover what they thought of them.

Most were positive about the schemes and do not see them as a threat to union activities but viewed them as complementary. However they did have a number of concerns and these related to consultation with the union during the setting up stage, confidentiality and qualifications of counsellors. Unions were also concerned that EAPs should not take the place of risk assessments or other measures to tackle stress in the workplace. Furthermore, EAPs tend to treat alcohol misuse as an illness rather than a social issue.

(Source: Labour Research Department Workplace Report, December 2003)

Workplace Drugs and Alcohol Testing

A survey by Croner in October 2003 revealed that one in eight employers now tests for drugs and alcohol and another survey, carried out by the Chartered Management Institute, in March 2003 showed that 55% of managers supported random testing and 26% backed instant dismissal for staff who tested positive. However workplace testing remains a highly contentious issue and the effect of the Human Rights Act 1998 has yet to be tested.

The TUC point out that drug and alcohol tests cannot actually prove impairment or the effect of a particular substance on job performance. Employers seeking to test must make sure that they comply with a complex array of legislation governing issues such as employee consent, selection criteria, medical confidentiality and anti discrimination legislation including the Race Relations Act and the Disability Discrimination Act. Given the financial costs associated with such testing the TUC advises employers to work closer with trade unions and employees in order to cut the number of workplace accidents and work related sickness.

The GMB only supports drug and alcohol testing for employees carrying out safety critical jobs. Where random testing is introduced it must be truly random and employees should be given information about what is being tested, the thresholds for failure, action in the event of a failed test and information on support. Laboratories used for testing should be accredited by the United Kingdom Accreditation Service (UKAS) and "Chains of Custody" clearly established. Consideration should also be given to the possibility of false positives.

The International Labour Organisation (ILO) reports union concern that workplace drug testing can be a way of getting rid of employees. Drug and alcohol tests are being used as a disciplinary tool. Unions are also concerned about employer insensitivity, the "chain of custody" of samples and civil liberties. Employers would be more effective at reducing drug and alcohol misuse if they acted to reduce stress and long hours.

According to WorkSmart (www.worksmart.org.uk/health/viewquestion.php?eny=9) employers should carry out the following if introducing drug and alcohol testing:

- "Have incorporated your agreement to testing in your employment contract
- Have your written consent before each test
- Keep your medical records confidential
- Introduce a "chain of custody" to make sure samples are not tampered with, are analysed by an accredited laboratory, and that appropriate action is taken if you test positive."

Useful Resources and Further Information

WorkSmart

www.worksmart.org.uk

Health and Safety Executive (HSE)

www.hse.gov.uk

Britain's General Union (GMB)

<http://www.gmb.org.uk/index.asp>

National Union of Rail, Maritime and Transport Workers Union (RMT)

<http://www.rmt.org.uk/>

National Health Service

<http://www.nhs.uk/>

Home Office

www.homeoffice.gov.uk

London Underground Limited

<http://tube.tfl.gov.uk/>

Croners

www.humanresources-centre.net

International Labour Organisation (ILO)

www.ilo.org

Chartered Management Institute

<http://www.managers.org.uk>

Labour Research Department

www.lrd.org.uk

Business Forums International

www.bfi.co.uk

United Kingdom Accreditation Service (UKAS)

<http://www.ukas.com/>

Employee Assistance Programme Association

<http://www.eapa.org.uk/>

Employee Assistance Programme Advisor Service

<http://www.employeeassistanceprogramme.com/>

European Monitoring Centre for Drugs

<http://www.emcdda.eu.int/>

Building Trades Drugs and Alcohol Programme (Australia)
<http://www.btgda.org.au/>

Alcohol Concern
<http://www.alcoholconcern.org.uk/>

Alcoholics Anonymous
<http://www.alcoholics-anonymous.org.uk/>

Smithers Institute (USA)
<http://www.ilr.cornell.edu/smithers/>

Scottish Drugs Forum
<http://www.sdf.org.uk/>

Tackling drugs
<http://www.drugs.gov.uk/Home>

Drugscope
<http://www.drugscope.org.uk/>

Drugs and Alcohol Information
www.talktofrank.com

Further Information

“Drunk or Disordered: A TUC Guide to Tackling Alcohol and Drugs at Work” Trade Union Congress (2001)

Conference
“6th Annual Combating Drugs & Alcohol Workplace Seminar”
27th February 2004 at the Holiday Inn Regents Park, London W1
Contact: Business Forums International