The Employer's Resource
913-205-2705
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How to Guide: Reasonable Suspicion Determination and Actions

What do you do if you suspect an employee is under the influence of drugs or alcohol at work? Following are the steps management should take to properly address situations under a drug and alcohol testing policy. These steps were written with the assumption that your organization has a clearly written drug and alcohol policy that includes drug and alcohol testing for reasonable suspicion.

Step 1: Identifying employee

Concerns that an employee is under the influence often come from co-workers or even clients or vendors before it is noticed by a supervisor or manager. You do not want to send an employee for testing based on hearsay or gossip, but you should document the complaint or concerns of co-workers who bring this information forward. Take a few extra minutes to ask what the employee observed, when it was observed and if others witnessed this or commented on this situation. You also want to know if this is something that has happened in the past (a pattern of behavior) or new behavior.

Step 2: Observations by management

Firsthand observation should be made by two members of management. Immediately upon notice of this type of concern, the supervisor, another available manager, safety personnel, or HR personnel should go to this employee's work area for firsthand observation. They may be able to observe the employee from afar, but usually they will need to talk with the employee directly to observe any smell of alcohol, eye dilation, slurred speech or other behaviors. See page 7 for a checklist which may be used as a tool when identifying impairment.

Step 3: Removing from safety sensitive areas

If this employee is working around machinery or heavy equipment or is in any other type of safety-sensitive job, or is acting out in a way that appears to be a safety concern for the employee or others, you may need to remove the employee from the work area immediately and ask him or her to wait in a conference room or an office.

Step 4: Observations by another person

When possible, the manager or HR person who performed the initial observation should seek a second member of management or HR to confirm initial suspicions. This second observer should perform his or her own firsthand observation of the employee. However, with DOT testing, if a second manager/HR person is not available, the determination to test must be made by only one manager.

Step 5: Documenting observations

Both observers should clearly document their observations, including any abnormal behaviors. You want to be as specific as possible in your description, but do not attempt to diagnose the situation. Document objectively. Write what you see, hear, and smell. Not what you 'think' might be going on.

Step 6: Assessing situation

After the situation has been clearly documented, you need to assess what you know and observed to determine next steps. If both observers witnessed behaviors that create a suspicion and the documentation supports this, then proceed with step 7. If there is disagreement, you may need to bring in a third party to also observe and help make a determination. You may decide that you don't have anything that leads you to a reasonable suspicion of use of drugs or alcohol outside of an employee complaint. You do not want to send an employee for testing unless you have documented concerns that support a reasonable suspicion.

Step 7: Meeting with employee

You will want to meet with the employee and a witness; often the meeting includes the employee, supervisor and human resources or safety. During this meeting you should clearly explain what has been observed or documented by management. Then explain that in order to rule out the possibility that the employee is in violation of the company's drug and alcohol policy, you will be sending the employee for a drug and/or alcohol test. Explaining it in this manner shows the employee that you haven't jumped to any conclusions but are just following your procedures; and if the employee is not under the influence of drugs or alcohol at work, the test will prove this. It is not uncommon to encounter diversionary tactics during such a discussion. A tool for navigating diversionary tactics can be found on page 5.

Step 8: Preparing transportation

You do not want to allow someone you suspect of being under the influence behind the wheel of a car; therefore, you should ensure the employee does not have to drive to the testing center or back home afterward. Some employers have the supervisor transport the employee. Consider safety of all involved when making such a decision. A taxi service might also be a good option. If the employee is belligerent or appears unsafe, contact local law enforcement for assistance.

Step 9: Sending for testing

Contact your drug test facility to notify it that you have an employee on the way for reasonable suspicion testing. Be sure to let them know that this is a 'reasonable suspicion' testing situation.

Step 10: Waiting for results

The employee needs to know what to do and expect tomorrow. Your company policy should address this, but if not, you want to set a consistent practice. In most cases, the employer does not want an employee to return to work until the test results are available.

Step 11: Refusing the test

If the employee refuses to go for the test you should refer to your drug and alcohol policy. A policy may state that this will be treated as a positive drug test result OR will result in immediate termination of employment. If the employee refuses transportation and attempts to drive home, **never** attempt to physically restrain the employee. Take note of the employee's type of car and license plate and contact the authorities to report concern that the employee is driving under the influence.

Step 12: Results are negative

If the drug or alcohol test results are negative, contact the employee and return him or her to prior job and work shift as soon as possible. Many employers will pay the employee for all work shifts and hours he or she missed while waiting for the negative test results (even if it is not required to be paid). If applicable, address any performance concerns that were identified during the reasonable suspicion determination process.

Step 13: Results are positive

If results are positive, refer to your company policies and precedence. If you have an Employee Assistance Program, it is a good idea to provide contact information for this service regardless of whether you continue the individual's employment. Depending on your policy, you may offer a last-chance agreement allowing the employee to seek counseling and/or treatment and return to work with the understanding that he or she will be terminated if under the influence at work again. An employer does have the option to terminate immediately for positive test results if this is your common practice, policy or precedence. You may wish to seek legal counsel on how to proceed.

Six Step Process
Addressing Reasonable Suspicion of an Impaired Employee

1. Recognition

    - Focus on work performance only – no rumors or hearsay
    - Utilize checklists for assistance
    - Look at all aspects of functioning in the workplace

2. Documentation

    - Objective information only in documentation
    - Do not include impressions, opinions, or assumptions
    - Complete documentation before test results are known

3. Consultation

    - Have someone at your level or supervision (or higher) to corroborate your observations
    - Contact HR when you have reasonable suspicion before proceeding

4. Development of action plan

    - If test results are positive – will you terminate or refer to a SAP?
    - If test results are negative – how will you address the concerning behaviors?
    - Clearly document your concerns and action plan to share with employee

5. Meeting with employee

    - Present employee with the behaviors which concern you
    - Be prepared for evasion, anger, tears, and other diversionary tactics
    - Consider having HR or another supervisor included during this discussion

6. Support and supervise

    - Safely transport employee to collection site
    - Maintain confidentiality throughout this process
    - Be ready to answer team members' questions regarding the employee
    - If the employee returns to their position work with them fairly and objectively

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Work Performance Checklist

Use this checklist when you have concerns about an employee's declining performance. As an observational aid, you can track troubling behaviors that occur frequently or consistently over time.

Employee's Name					
Date	**Date**	**Date**	**Date**	**Date**	
					Appearance
					Poor grooming
					Inappropriate clothing
					Mood
					Withdrawn
					Sad
					Mood swing – high or euphoric
					Mood swing – low or depressed, angry, irritable
					Suspiciousness
					Preoccupied with illness or death
					Behavior
					Physical assault or threatening assault
					Extreme talkativeness
					Exaggerated self-importance
					Rigid – inability to change plans with reasonable ease
					Making incoherent or irrelevant statements at work
					Turning routines into "rituals"
					Argumentativeness
					Crying outbursts
					Excessive personal telephone time

Date	Date	Date	Date	Date	
					Absenteeism
					Improper report of time off
					Excessive sick leave or repeated absence on a particular day
					Excessive lateness in AM or after lunch
					Peculiar or improbable reasons for absences
					Frequent unscheduled vacation requests
					On the Job Absence — Presenteeism
					Continued unnecessary absence from job location
					Frequent trips to water fountain or rest room
					Long coffee breaks
					Day dreaming or preoccupied with issues other than work
					Accidents
					Physical complaints on the job
					Accidents on or off the job
					Frequent "near misses"
					Work Patterns and Productivity
					Current work assignments take more effort than previously
					Takes more time to produce work or is "careless" and inaccurate
					Difficulty in recalling instructions, understanding office procedures
					Increased difficulty in handling complex assignments
					Not recalling prior mistakes previously pointed out by supervisor
					General absentmindedness or forgetfulness
					Alternate periods of high and low productivity
					Coming to work intoxicated
					Missed deadlines
					Complaints from co-workers or customers
					Improbable excuses for poor productivity patterns

Date	Date	Date	Date	Date	
					Employee Relationships
					Overreaction to real or imagined criticism
					Wide swings in morale
					Borrowing money from co-workers
					Unreasonable resentments against co-workers
					Repeated, possibly compulsive criticism about the company
					Persistent requests for job transfer
					Unrealistic expectation for promotion
					Abrasive with others
					Increased isolation from co-workers
					Inappropriate behavior at company social functions
					Other

Supervisor's Comments or Observations

Common Diversionary Tactics and How to Handle Them

	TACTIC		RESPONSE
1.	**Sympathy** – Attempts to create sympathy, pity, remorse, guilt, and/or shame by focusing on how much hardship you are causing the individual.		Express concern, but do not probe. Refer individual to EAP. Remain focused on job performance issues.
2.	**Denial** – outright refusal of the action or behavior in question. May be done passively or overtly with hostility and/or indignation.		Use your documentation. Stand by the validity of the findings of your investigation. Do not debate, argue, or concede.
3.	**Minimizing** – lessening either the extent of, involvement in, and/or the seriousness of a situation		Use your documentation (see above). Use your policies and procedures to reinforce expected behavior and the seriousness of violations. Site consequences of the behavior in objective terms, e.g., dollar loss
4.	**Personal Attacks** – designed to put you on the defensive, personal attacks may impugn your position, employer, actions, intelligence, compassion, or friendship.		Remain calm. Do not retaliate nor defend yourself. Do not respond with anger. Acknowledge the individual's feelings without validating them (e.g. "I'm sorry you feel that way, but we need to discuss your performance").
5.	**Threats** – like personal attacks, threats are designed to put you on the defensive. These may be veiled or explicit, and vary from minor to life threatening.		Take all threats seriously. Immediately report the threat to the proper authorities within your company. Take appropriate additional disciplinary action.
6.	**Invoking others** – attempts to defuse responsibility for a severity of behavior by claiming it is common among others		Stay focused on the individual at hand. Acknowledge the person's perception without validating (e.g. "Perhaps we have other problems, but you and I need to focus on your situation…").
7.	**Bargaining** – promises that the employee offer in lieu of appropriate disciplinary action.		Do not accept promises. Hold the employee accountable for expected outcomes. Remain focused on the performance problem and your relevant policies.

Enabling

Any behavior which allows another to avoid or escape the natural and logical consequences of his or her behavior; functionally, it allows the individual to avoid responsibility for his or her behavior.

Examples in the Workplace

- Transferring the employee to another department.
- Sending the employee home "sick."
- Reducing the employee's workload or performance standards.
- Covering up for poor performance, etc.
- Failing to administer appropriate discipline.
- Arguing, demanding, criticizing, and other non-constructive behavior.
- Attempting to help the employee by being a "friend".
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Examples in the Home

- Taking responsibility for fixing what the other person causes.
- Calling in sick for the other person.
- Making excuses, lying, and covering up for the person.
- Searching for caches for alcohol or drug, pouring them out or flushing them down the toilet.
- Taking responsibility for monitoring and controlling another's drinking or using.
- Yelling, fighting, and participating in unhealthy interactions.
- Blaming yourself and attempting to figure out what you have done to cause this problem.