

Safety, Health & Welfare at Work Act 2005

The Safety Health & Welfare at Work Act 2005 took effect on 1st September 2005. Section 13(1)b of the Act contains a provision on workplace intoxicants (defined as drugs and alcohol and any combination of drugs or of drugs and alcohol) and states that an employee shall while at work:-

Section 13(1)b

- Ensure that he or she is not under the influence of an intoxicant to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person.

Section 13(1) b of the Act applies to legal drugs including alcohol, prescribed medication and over the counter drugs which could cause drowsiness and pose a risk to employees working at heights, operating machinery or driving a forklift truck. Illegal drugs which also constitute a safety risk include cannabis, cocaine, heroin and ecstasy.

From the 1st of Sept 2005 Employers may prevent an employee from working if he or she would be a danger to themselves or others due to being under the influence of an intoxicant (information on the HSA website) to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person.

Section 13(1)c

- If reasonably required by his or her employer, submit to any *appropriate, reasonable and proportionate* tests under the *supervision* of a registered medical practitioner who is a *competent person* as may be prescribed. (This section will not apply).

'For the purposes of the relevant statutory provisions, "reasonably practicable", in relation to the duties of an employer, means that an employer has exercised all due care by putting in place the necessary protective and preventive measures, having identified the hazards and assessed the risks to safety and health likely to result in accidents or injury to health at the place of work concerned and where the putting in place of any further measures is grossly disproportionate having regard to the unusual, unforeseeable and exceptional nature of any circumstance or occurrence that may result in an accident at work or injury to health at that place of work'.

- Details contained in the information sheet on intoxicants at work published by the Health and Safety Authority (HSA) in September 2011 confirmed that the HSA will not be introducing regulations on intoxicant testing.
- In June 2011 the requirement for motorists involved in serious road accidents to undergo mandatory drink driving tests came into force
- There are implications for those who drive to work or in the course of their employment, of Section 9 of the Road Traffic (No. 2) Act 2011 and the lower alcohol limits which commenced on 28th October 2011. The 80mg limit is reduced to 50mg and 20mg for professional (goods, bus, public service vehicles e.g taxi) or learner drivers.
- Random roadside testing for suspected drug drivers is due to commence in Spring 2012. Provisions for roadside drug testing are included in The Road Traffic Act 2011 and will have implications for all who drive to or from work in the course of their employment.

Any safety critical employee who tests positive for any intoxicant as a result of a random roadside test in the course of their journey to work will automatically render themselves unfit and should not report for work.

Checklist – Workplace intoxicants

1. Is your industry safety critical?

Where the employee is performing a key role in the operation of plant or machinery where impairment due to intoxicants could cause a catastrophic incident (transportation, air, sea, rail, road, construction, electrical, healthcare, mining and quarries).

Yes No

2. Are there safety critical work activities in your business?

The employee is engaged in a work activity where the presence of intoxicants could endanger their own or another person's safety (forklift driver, machinery operator, aircraft maintenance, health care, accident and emergency)

Yes No

3. If intoxicant testing is in place which of the following is carried out?

Pre-employment testing

Testing for reasonable suspicion and cause

Post-Accident – following a serious incident

Random Testing – unannounced

Health surveillance

4. Is testing carried out to European Workplace Drug Testing Society (EWDTS) Guidelines?

Yes No

5. Have Senior Management been advised of their responsibilities under Section 8(1) and Section 80(1) of the Safety, Health & Welfare at Work Act 2005?

Yes No

6. Has your company developed agreed policies and procedures with staff representatives to respond to a situation where an employee reports for or is on duty under the influence of an intoxicant (defined as drugs and alcohol)?

Yes No

7. Did your company conduct hazard identification and risk assessments to identify safety critical tasks where the consumption of intoxicants could endanger staff and others?

Yes No

8. Does your company conduct health surveillance appropriate to the risks of intoxicants that have been identified in a risk assessment which is made available to all employees?

Yes No

9. Is the company safety statement updated to reflect the identified hazards and control measures?

Yes No

10. Have Managers and Supervisors received information and training on managing workplace intoxicants?

Yes No

11. Have all employees been provided with information and education regarding workplace intoxicants and their personal responsibilities in relation to Section 13(1) b of the Safety, Health & Welfare at Work Act 2005?

Yes No

12. Are there Employee Support Services / Employee Assistance Programmes in place to provide reasonable accommodation for assessment, treatment and rehabilitation of identified employees?

Yes No

13. Is there a special provision in the EAP programme to provide assessment, treatment and rehabilitation for employees with drug and alcohol problems?

Yes No

14. Is employee performance (problematic behaviour and engagement) monitored to objectively assess poor performance which may indicate an underlying personal problem such as the abuse of drugs and alcohol?

Yes No

15. Is the use of intoxicants prohibited at work and included in contracts of employment?

Yes No

16. Is behaviour related to workplace intoxicants such as consumption on the job, reporting for or being on duty under the influence, subjected to disciplinary procedures?

Yes No

17. Have any of your staff members completed a course of treatment for workplace intoxicants (defined as drugs and alcohol)? Please indicate

Yes No