

Drugs and AI



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Drug abuse by celebrities or rock stars has always seemed different to drug abuse up close and personal, as in the person at the next desk. Until the *Prime Time Investigates* programme last November, many of us were in denial as to the extent of the problem of drugs in Irish society with no aspect of daily living untouched, including the workplace.

A report published on 25th January by the National Advisory Committee on Drugs (NACD): *Drug Use in Ireland and Northern Ireland: First Results from the 2006/2007 Drug Prevalence Survey*, shows that the number of people who report ever using any illegal drug (lifetime prevalence) in Ireland has increased from 18.5% of the population in 2002/3 to 24% in 2006/7. This increase was across a range of drugs, including:

- Cannabis, up from 17.4% in 2002/3 to 21.9% in 2006/7
- Ecstasy, up from 3.7% in 2002/3 to 5.4% in 2006/7
- Cocaine, up from 2.9% in 2002/3 to 5% in 2006/7.

The report also found that the use of any illegal drugs in the age group 25-34 to have increased from 6.6% in 2002/3 to 9.2% in 2006/7.

While alcohol and drug misuse are issues for society, from a safety perspective, how can you keep the

How well prepared is your organisation for a drugs and/or alcohol problem?

Maurice Quinlan outlines what needs to be in place to ensure compliance with Section 13 of the Safety, Health & Welfare at Work Act 2005

alcohol at Work

plying with the law

workplace safe and respond to a problem of intoxication?

Included in the Safety, Health & Welfare at Work Act 2005 is a new duty that employees while at work must not be under the influence of an intoxicant (defined as alcohol and drugs) to the extent that they endanger themselves and others and to submit to tests conducted by, or under the supervision of a doctor. The proposal on employee drug testing has already proved contentious with trade unions who point to the fact that there is no evidence to link accidents with employee drug and alcohol abuse. An independent enquiry into drug testing at work in the UK failed to establish a link between drug use and accidents. However, the report by Drugscope indicated that drug and alcohol induced intoxicants is a source of risk in safety critical industries.

Since the Irish legislation was introduced, the EAP Institute has recorded an increase in the number of drug and alcohol related incidents reported to the Institute by employers. The reports include a company with 600 employees reporting a failure rate of 50% on all pre employment drug tests which were mainly for cannabis, but due to staff shortages at the time, the company had to hire them anyway. Another logistics company reported

that an employee underwent a drug test and tested positive for cannabis and was dismissed. The company had in place an agreed drug and alcohol policy with the support of the trade union.

In another case an employee was dismissed for stealing 600 tablets from a drug distribution company and in another more serious case an employee working in a pharmaceutical plant stole a number of the tablets produced by the company and attempted to commit suicide. The most frequently reported incidents are where an employee reports for duty under the influence of alcohol or drugs for an evening or midnight shift. The current practice is that the employee is sent home by taxi with no follow-up. This behaviour is now in breach of the Safety Health and Welfare at Work Act 2005 and both the employee and the employer may be found liable for any accidents that occur as a result.

US beginnings

Employee drug testing commenced in the US in 1988 with the introduction of the Drug-Free Workplace Act and recent trends indicate that testing has stabilized. An American Management Association (AMA) survey found that 60% of companies testing job applicants reported a 7% decrease

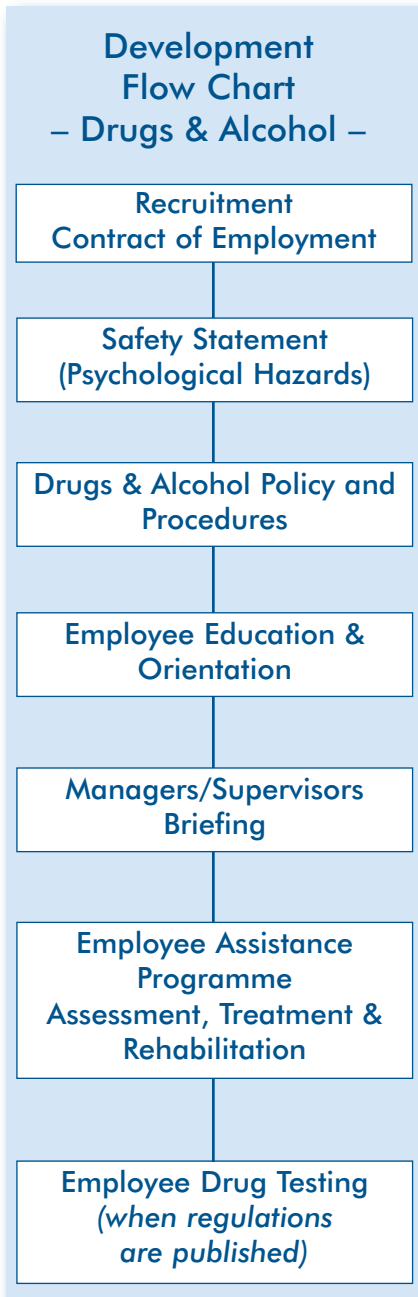
in testing from 1996. Reasons cited included: time, costs, and the impact on morale. The survey also suggested that the next generation of managers hold a view that casual off site drug use not causing poor work performance is not an issue.

The evolution of employee drug testing in Ireland was mainly driven by the Irish divisions of US multinationals and centered mainly on pre employment testing. Irish transport companies then followed with drug testing for reasonable suspicion or cause and this evolved to random drug testing. The Irish Army introduced random drug testing and service personnel who test positive for illicit drugs are dismissed. However, the same sanction is not applied to alcohol.

A structured approach will help to overcome some of the resistance to drug testing. This involves implementing a plan to ensure your organisation complies with the law on all fronts. This article outlines the five point EAP Institute plan for complying with the Safety, Health and Welfare at Work Act 2005.

Putting a plan in place

First take a look at Figure 1 over – the Development Flow Chart, Drugs & Alcohol – which shows the sequence of what needs to be in place for the organisation to be following best practice – in a sense



this is a road map from recruitment through to how to deal with real incidents.

Now let's look at the specifics of the law: Section 13 of the Safety Health & Welfare at Work Act 2005 (which took effect on 1st September 2005) contains a provision for drugs and alcohol and states that an employee shall while at work:

- Ensure that he or she is not under the influence of an intoxicant (defined as drugs and alcohol) 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

- 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 come into force when regulations are developed which will specify safety critical and high risk work activities).

'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.'

Under these regulations, 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 (defined as drugs or alcohol).

Directors Responsibilities

It is the Employer's responsibility under this legislation and others including the Employment Equality Act 1998/2004 and the EU Health and Safety Framework Directive, to identify psychological & behavioural workplace hazards within the workplace and to assist their employees through risk management assessments in finding and implementing the appropriate solutions.

Under the 2005 Act, responsibility

for safety and health is placed directly on those in charge in the workplace. In other words, directors and managers who control the work being done must take on this responsibility; must understand that responsibility and their roles in governing safety and health, upholding core safety and health values and setting good safety and health standards for their business. Employers must also have a Safety Statement which demonstrates how safety is secured and managed. There are also new provisions on safety consultation and dispute resolution.

Penalties for failure to comply with the Act carries penalties of up to six months imprisonment and/or a €3,000 fine on conviction in the District Court or up to two years imprisonment and/or a fine of €3 million on conviction of indictment in the Circuit Criminal Court. It is expected that the legislation will be amended later this year to include drug testing in the workplace. Meanwhile employers have the opportunity to review their current practice and develop appropriate guidelines.

Meeting Legal Obligations

To comply with section 13 of the Act, an organisation/employer, let's call it the Company, needs to have the following:

- Updated Safety Statement to include workplace intoxicants
- Introduced a drug and alcohol policy and procedures
- Advised employees of their obligations under the act and conducted educational sessions on drugs and alcohol.

Other preventative measures developed by the Company would be as follows:

- Training of managers and supervisors and team leaders in procedures for handling employees who report for, or are on duty,

under the influence of intoxicants, defined as drugs and alcohol

- The identification of local support services for treatment and rehabilitation of employees who may have developed drug or alcohol problems
- Review developing case law – see Panel 1.

Alcohol and Drug Policy

The Company policy is to provide a safe and drug free working environment for all its employees and those who may use its sites in line with the Safety, Health & Welfare at Work Act 2005. The policy covers all employees of the organisation, contractors and those who visit the site.

Employee Responsibility

It is the responsibility of all Company employees to report for duty in a fit manner free from all intoxicants (defined as drugs and alcohol) that may pose a threat to their own safety, that of their colleagues or those who visit the site. Where medication has been prescribed for legitimate use employees should ascertain from the prescribing doctor if there are any possible side effects which may interfere with the safe operation of plant or machinery and notify their supervisor or HR Manager before reporting for duty.

No consumption or handling of alcohol is allowed while working for the company, except for the handling of alcohol as part of on site process activities. The use, possession, sale, and distribution of illicit drugs are prohibited on company premises in accordance with the Misuse of Drugs Act 1984 /1997. Employees found in possession of illicit drugs will be reported to the official authorities.

Any employee who suspects that they are having personal difficulty with alcohol and drugs, are encouraged to seek assistance prior to detection. Full support will be offered including treatment and rehabilitation.

Employee Education and Orientation

The Company will provide training and information for all employees on their obligations under the Act and the adverse health implications of drug and alcohol use.

In terms of training, a module is developed for Managers, Supervisors, Shop Stewards and



Safety Reps which can be delivered as need arises. For example, training will be provided to people in those roles upon the early identification of poor work performance which may indicate a personal problem such as the abuse of alcohol or drugs. Training should focus on ensuring that supervisors understand the company's drug free policy; can identify and attempt to resolve employee performance problems and know how to refer employees to the available assistance.

Procedures for Handling Incidents

Supervisors, Safety or HR staffs, who have reasonable suspicion that an employee is under the influence of an intoxicant (alcohol or drugs),

would use the following procedures to manage the incident:

- The employee is requested to leave the site. Two people should be involved in the approach. No accusations regarding drugs or alcohol should be made. If the employee is driving, then a taxi should be ordered to transport the employee to a risk free environment
- The employee is advised to attend a meeting with the department and HR Manager on the following day. (Safety critical industries with drug testing policies may order a urine test)
- The Supervisor will request a performance profile of the employee with details of any previous poor performance such as poor time keeping, unauthorised absence on and off the job, decrease in output and quality, insubordination, relationship difficulties and any recent involvement in grievance or disciplinary procedures
- At the follow up meeting the department and HR manager will review the previous history, ask for an explanation from the employee and outline the employee's obligations under section 13 of The Safety Health and Welfare at Work Act 2005 and the company policy on drugs and alcohol
- An offer of support is extended to the employee. They are free to accept or reject this offer. In the event of acceptance, arrangements are made with the Employee Assistance Programme. Disciplinary procedures are suspended pending the rehabilitation process. This agreed process will form a contract between the individual and the company
- If the individual refuses to accept the support then disciplinary action should be applied in the form of a final written warning for gross misconduct.

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1: Examples of cases

Labour Court – Alcoholism classed as disability

In March 2006, the Labour Court upheld the principle that alcoholism is a disability under the Employment Equality Acts 1998–2004. The decision in *A Government Department v An Employee* crystallises the principle that alcoholics cannot be treated less favourably at work.

Section 16 (a) of the 1998 Equality Act provides that an employer shall do “all that is reasonable to accommodate the needs of a person who has a disability by providing special treatment or facilities and that a refusal or failure to provide special treatment or facilities shall not be deemed reasonable unless such provision would give rise to a cost, other than a nominal cost to the employer.

Employment Appeals Tribunal – Supervisor awarded €30,000

The Employment Appeals Tribunal (EAT) awarded a hotel supervisor €30,000 compensation after she was dismissed for drinking after she had finished her work shift. The supervisor told the tribunal that she felt very distressed when she was advised by the General Manager to leave the premises immediately after she had been caught on surveillance cameras drinking at the bar. The manager claimed that the supervisor consumed the drinks while on duty. In evidence to the tribunal the supervisor said she took the drinks at 11.36pm and another at midnight after she had finished her shift at 11.30pm and was not on duty.

The tribunal said it was satisfied that while hotel rules were vague about finishing times the supervisor consumed the first drink after the bar had closed and was therefore not on duty.

This decision highlights the importance of companies developing policies and procedures for handling alcohol related incidents in the workplace.



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Employee Assistance/ Support Programme

Employees identified with drug and alcohol problems will be referred to external support agencies for assessment, and where indicated treatment and rehabilitation. Full confidentiality will be maintained. All records will be retained by the Employee Assistance Programme (EAP). Disclosure will not take place without written consent or except where it is required by law. Employees will be required to complete a return to work agreement on completion of treatment.

Drug & Alcohol Programme

The EAP Institute Drug and Alcohol Programme is designed to assist organisations in complying with the Safety, Health and Welfare at Work Act 2005 Section 13 which refers to Workplace intoxicants (defined as drugs & alcohol). This is achieved by providing initial support to identify any employees who have endangered themselves or others in the workplace by reporting to or being on duty while under the influence of intoxicants (defined as drugs & alcohol).

This is achieved by meeting with the identified employees face to face and providing assessment to help them identify the nature of their drug and alcohol use and its impact on their lives, their work and to the safety of others.

Employees that are motivated will be referred and matched to the appropriate level of care including family support, attendance at meetings of alcoholics anonymous and narcotics anonymous, attending outpatient support services and where appropriate, attending 28 day residential programmes which follow the 12 step drug free approach.

Exceptions to this requirement will be where employees have a medical history which will require them to attend treatment centres which have ongoing medical supervision. Recognising that addictions are subject to relapse, the programme will include follow up for a minimum period of 12 months with the employee and their supervisor/ human resources department. Employees will be required to comply with the admission requirements of the programme and sign a return to work agreement.

The nominal costs to the company will be limited to six sessions at €85 per session and any additional costs including residential treatment will be covered by the employee personally or through a health care plan.

Managing the Risks of Intoxicants

Intoxicants should be considered as a potential hazard and assessed accordingly. Where there is a risk to health and safety appropriate safeguards must be put into place. The first step is to complete a

Safety Statement. To assist readers with putting all the above into place in their own workplaces, I have set out an Actions Checklist in Panel 2.

Included in the section, Domestic Legislation and Codes of Practice, of the Health and Safety Authority's Programme for Work 2008, are plans to develop proposals relating to workplace intoxicants (defined as drugs and alcohol) and medical fitness.

In advance of this development, the EAP Institute has researched international best practice and developed a definition of 'safety critical' for health and safety professionals, as follows: the employee performs a key role in the operation of plant and machinery where impairment due to intoxicants could cause a catastrophic incident (air, sea, rail, road and construction). The employee is engaged in work activities where the presence of intoxicants could endanger their own or another person's safety (forklift drivers, machinery operators, aircraft maintenance and, accident and emergency).

The EAP Institute recommends that drug and alcohol policies should be agreed between employers and staff. Risk assessments should then be carried out in every workplace and workers in safety critical situations and high risk work activities should be identified. Control measures should specify how those risks will be managed and employers should then put in place reasonable support for any employees who may be diagnosed with alcoholism.

The fact of the matter is that none of us can afford to stand still on the issue of drugs and alcohol in the workplace. The upside of implementing what I have suggested above means that your organisation will be ready and able to positively manage an incident to the benefit of everyone involved.

2: Action Checklist – Intoxicants

ACTION	DATE
Safety Statement – Drug and Alcohol Policy (1) []	
Hazard Identification - Risk Assessment []	
Control Measures []	
Employee Education (2) []	
Team Leader Training (3) []	
Employee Drug Testing (4) []	
Employee Assistance Programme (5) []	
Rehabilitation and Treatment []	
Disability Planning []	

References and web addresses

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2. Guidelines on Safety Statements (1990), Health & Safety Authority, www.hsa.ie Tel. 00353 (0)1 6147000
3. Drug Use in Ireland and Northern Ireland (January 2007), First results from the 2006/2007 Drug Prevalence Survey, National Advisory Committee on Drugs www.nacd.ie Tel: 00353 (0) 1 667 0760
4. Guidelines on Developing and Implementing Workplace Drugs and Alcohol Policies, available from HSENI, www.hseni.gov.uk
5. European Laboratory Guidelines for Legally Defensible Workplace Drug Testing; www.ewdts.org
6. Faculty of Occupational Medicine's Guidelines on Testing for Drugs of Abuse in the Workplace, United Kingdom, www.facocmed.ac.uk
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8. EAP Digest winter 2003; American Management Association Survey, contact Erin Bell, Editor Erin@PRPonline.net

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Maurice Quinlan is Director of the EAP Institute, which provides EAP services, training and consulting to a variety of companies, public and private. The Institute has provided training in Scotland, England, Switzerland, Italy and Greece and acted as consultants to the International Labour Organisation (ILO) on prevention and assistance training on alcohol and drug problems for the countries of India, Sri Lanka, Thailand and the Philippines. In November 2004 he received a special recognition award by the Employee Assistance Professional Association at the 33rd Annual Conference in San Francisco, California. He holds a diploma in Social Science from University College Cork and is a fully accredited member of the Employee Assistance Professional Association (EAPA) Irish Branch and is currently serving as Vice President.



Currently he is preparing the 29th Annual Conference and Training Institute which will take place in Dublin on the 17th September 2008.

EAP Institute, 143 Barrack Street, Waterford. Tel: 051 855 733, Email: maurice@eapinstitute.com Web: www.eapinstitute.com