

## TESTING TIMES AHEAD

Legally-binding regulations on workplace intoxicant testing will not be introduced by the Irish Government in the foreseeable future, but the onus is on employers to provide treatment and support services for their employees. Report by Niall Byrne.

Substance abuse that impacts on workplace performance has been an industry issue dating back to 1973, when the ESB introduced an alcoholism programme.

A wide range of legal and illegal substances are being used by employees to cope with the challenges of the current economic downturn. These substances include 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.

Prolonged use may lead to addiction and have an adverse effect on work performance including attendance, time-keeping, quality of work, conflicts with supervisors and co-workers, customer complaints and fitness for duty.

At the latter stages of addiction, employees may be disproportionately involved in grievance and disciplinary procedures which will lead to an intervention by the company to restore the employee to full productivity and health.

The Safety Health & Welfare at Work Act 2005 contains a provision on 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”*.

### LEGISLATION IS LACKING

The Health and Safety Authority (HSA) is currently preparing information on intoxicants, which is due to publish shortly. However, legally-binding regulations on workplace intoxicants (defined as drugs and alcohol) testing will not be introduced by the Government in the foreseeable future.

With no legally binding regulations, guidance or code of practice on intoxicants issued by the HSA, Irish companies who wish to manage the risk of workplace intoxicants may be guided by existing relevant sections contained in the Safety, Health & Welfare at Work Act 2005 and legal precedents from the Irish Labour



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Court, Employment Appeals Tribunal, Equality Legislation, and the European Courts of Justice.

The following sections of the Safety, Health & Welfare at Work Act apply: Sections 8(1), 80(1), 13(1)b, 19(1) and 20(1). All directors and managers should be aware that if an employee, in contravention of Section 13(1) b of the Act, causes a serious or fatal accident under the influence of an intoxicant and if it is found that directors or managers authorised, consented to or neglected to take action to prevent the offence then, under Section 80 (1) of the Act, directors and managers may have personal liability.

Companies that introduce intoxicant testing should develop policies and procedures with employee representatives. Any testing should be carried out to the European Laboratory Guidelines for Legally Defensible Workplace Drug Testing (EWDTS).

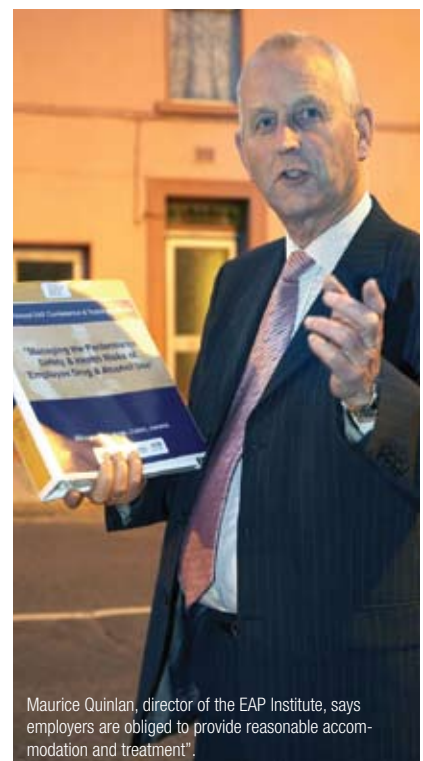
### IMPAIRMENT TESTING

In addition to alcohol testing, all Irish motorists, including those who drive in the course of their work, will be subject to roadside impairment testing for drugs and alcohol when regulations contained in the Road Traffic Act 2010 come into force.

Employers must also conduct risk assessments on workplace intoxicants under Section 19 (1) of the 2005 Act and prepare a safety statement under Section 20 (1) of the

2005 Act which demonstrates how safety is secured and managed.

Maurice Quinlan, director of the EAP Institute, points out that since alcoholism is classed as a disability “employers are obliged to provide reasonable accommodation and



Maurice Quinlan, director of the EAP Institute, says employers are obliged to provide reasonable accommodation and treatment”.

## ACTION CHECKLIST ON WORKPLACE INTOXICANTS

1. Draw up agreed drug and alcohol policies and procedures with employee representatives. (Labour Court, December 2007).
2. Conduct drug and alcohol risk assessment and identify control measures which are reflected in the safety statement. (SHWW Act Sections 19(1) & 20(1)).
3. Outline the responsibilities of directors and managers. (SHWW Act Sections 8(1) and 80 (1)).
4. Advise employees of their personal responsibilities in relation to the Safety, Health and Welfare at Work Act 2005. Train supervisors and managers. (SHWW Act Section 13(1)b).
5. Provide employee support services and reasonable accommodation for treatment and rehabilitation of identified employees. (Labour Court March 2006) (Section 16 (a) Employment Equality Act 1998/2004).
6. Provide employee drug testing to the European Workplace Drug Testing Society (EWDTs) standards. (Labour Court) December 2007.



treatment. If it's tested in court you'll probably find that applies to other drugs as well".

Employers who have support services in place for employees have been found to be less likely to be in breach of their duty of care.

In March 2006, the Labour Court upheld the principle that alcoholism is a disability under the Employment Equality Acts 1998–2004.

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".

According to Quinlan, this decision will have implications for employee assistance professionals who will be required to provide support to identified employees with alcoholism. "This support will include assessment, diagnosis and referral to treatment where appropriate," he added.

There are no barriers to employers introducing drug testing prior to or during employment. Testing can be done to help assess cause of an accident and randomly. Employers need to be mindful that it needs to be done to The European Workplace Drug Testing Society standards.



## Seminar and Conferences 2011 - 2012

LOCATION	EVENT	DATE
<b>WATERFORD</b> City Hall. (The Large Room) The Mall, Waterford.	<b>Managing the Performance, Safety &amp; Health Risks of Employee Drug and Alcohol Use</b>	<b>Thursday</b> 2 <sup>nd</sup> June 2011
<b>LIMERICK</b> Clarion Hotel, (Aquila Suite) Steamboat Quay, Limerick. <a href="http://www.clarionhotellimerick.com">www.clarionhotellimerick.com</a>	<b>Managing the Performance, Safety &amp; Health Risks of Employee Drug and Alcohol Use</b>	<b>Thursday</b> 6 <sup>th</sup> October 2011
<b>DUBLIN</b> National College of Ireland Mayor Square, IFSC, Dublin. <a href="http://www.ncirl.ie">www.ncirl.ie</a>	<b>Employee Health &amp; Well Being – Developing a Strategic Approach</b> Details available on 30 <sup>th</sup> April	<b>Wednesday</b> 16 <sup>th</sup> November 2011
<b>DUBLIN</b> National College of Ireland Mayor Square, IFSC, Dublin. <a href="http://www.ncirl.ie">www.ncirl.ie</a>	<b>Managing the Performance, Safety &amp; Health Risks of Employee Drug and Alcohol Use</b>	<b>Thursday</b> 17 <sup>th</sup> November 2011
<b>DUBLIN</b> The Convention Centre Spencer Dock, Dublin.	<b>30<sup>th</sup> Annual EAP Conference</b> <i>Drugs and Alcohol at Work – Risks, Controls, Resources</i>	<b>Wednesday</b> 10 <sup>th</sup> October 2012
<b>DUBLIN</b> National College of Ireland Mayor Square, IFSC, Dublin. <a href="http://www.ncirl.ie">www.ncirl.ie</a>	<b>Workplace Assessment and Referral to Treatment for individuals with Drug and Alcohol Problems.</b>	<b>Thursday</b> 11 <sup>th</sup> October 2012

For further details please contact Anita Furlong, Conference Administrator, EAP Institute, 143 Barrack Street, Waterford, Ireland.  
 Tel: 051 855733, Intl. +353 51 855733, Fax: 051 879626, Intl. +353 51 879626 or E-Mail: [anita@eapinstitute.com](mailto:anita@eapinstitute.com) | [www.eapinstitute.com](http://www.eapinstitute.com)