

Irish Legislation on intoxicants in the workplace - Complying with Section 13 (b) of the Safety, Health and Welfare Act 2015.

Much uncertainty about the law surrounding employee intoxicants (defined as drugs and alcohol) use still exists fifteen years since the Safety Health and Welfare at Work Act (SHWW) Act 2005 came into force. Proposals on employee drug testing requiring regulations were included in the 2005 Act. However, regulations on intoxicant testing did not come into force. What did come into effect in section 13.1(b) of the SHWW Act 2005 was the requirements on employers to prevent any employee from reporting or been on duty under the influence of intoxicants (defined as drugs and alcohol).

In September 2011, six years after the Act came into force; the HSA published an information sheet for employers and employees on requirements under Health and Safety legislation on intoxicants at work. There has been very little follow up information on this topic by the HSA since. What have developed are precedents in case law in the Workplace Relations Commission, Employment Appeals Tribunal (EAT) and the Labour Court. The Labour Court in March 2006 upheld the principle that alcoholism is a disability under the Employment Equality Act 1998-2015 and companies are required to provide reasonable accommodation for employees with disabilities.

For safety critical companies the Labour Court has consistently supported the use of drug and alcohol testing in safety critical employments, but there is strong resistance from trade unions and employee representatives on random drug and alcohol testing for non-safety critical workers. Where challenges have been brought by the unions on random drug and alcohol testing on non-safety critical workers, the Labour Court have found in favour of the Unions.

IOSH declares workplace mental health now a safety Issue.

The Institution of Occupational Safety and Health (IOSH) Magazine's March 2019 issue focused on evaluating employee assistance programmes and implementing structured wellbeing programmes. IOSH have taken the lead and are declaring that workplace mental health is now a safety issue and that its members are well placed to respond. IOSH is urging its members to think safety, compliance, risk assessments, and employee support therapy to address the mental health issues that are now impacting the workplace

Companies who wish to comply with Section 13.1(b) of the SHWW Act 2005 for to address the difficult issue of workplace drug and alcohol problems should implement the following steps;

- Develop an intoxicant policy and include driving for work
- Consult with employee representatives.
- Conduct an Intoxicant Risk Assessment; Identify Safety, Control Measures and Safety Statement.
- Communicate the identified risks to all staff.
- Develop procedures for managing employees who report for or are on duty under the influence of intoxicants.
- Reasonable suspicion training for designated persons. Train managers and supervisors.
- Employee intoxicant testing identified safety critical workers, employee support services assessment, treatment and Employee Support Therapy (EST).

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