



Irish Legislation on intoxicants in the workplace - Complying with Section 13 (b) of the Safety, Health and Welfare Act 2005.

The Safety, Health and Welfare at Work (SHWW) Act 2005 came into force in September 2005 and contained two provisions. Section 13 (1) b requires employers to remove an employee from their place of work, who reports for work under the influence of an intoxicant. Section 13 (1)c contained proposals for employee intoxicant testing which would require regulations before this section could be implemented. The Irish Government decided that no regulations would be developed. This resulted in a major anomaly in the legislation and resulted in much uncertainty and confusion amongst employers who wished to address workplace intoxicants. Commenting, Maurice Quinlan, Director of the EAP Institute said that “ten years after the SHWW Act 2005, provided for the introduction of regulations on drug testing no action has been taken by the Irish Government on employee drug testing”.

In the absence of guidelines this left some employers confused and uncertain on how to deal with employees who report for work under the influence of drugs and alcohol, Mr Quinlan suggested that the Health and Safety Authority (HSA) might adopt the European Workplace Drug Testing Society (EWDTS) guidelines as the basis for a code of practice for testing which was recommended for employers in the HSA’s Information Sheet on Intoxicants in 2011.

Driving for Work

In 2014 12% of drivers fatally injured from all causes, were driving for work and 8% commuting to and from work and in December 2015 the Road Traffic Bill was published. This Bill includes proposals to conduct random roadside drug testing for cannabis, cocaine and heroin for all drivers including those who drive in the course of their work. The proposals include a separate test for prescription drugs to see whether they impair driving.

Employee Drug Testing in Ireland

Pre-employment and employee drug testing was introduced in Ireland by US multi-nationals who followed their parent company’s policies on workplace drugs and alcohol. In the US a Drug Free Workplace Act was introduced and this led to a major expansion of employee drug testing. The main evolution of employee drug testing in Ireland was in the transportation sector, sea, rail, road and aviation, mainly safety critical companies. An Irish Shipping Company introduced employee drug testing and this was challenged by SIPTU (Irish Ferries v SIPTU CD/02/646). The Labour Court found in favour of the company.

In another Labour Court case (Alstrom v TEEU CD/07/413), the Labour Court, in backing the re-engagement of an employee who had tested positive for drugs said, it was imperative that the employer and the union agree guidelines on drug testing procedures. The Court issued its decision after hearing expert evidence for the employee, that if the employer had followed international best practice, as set out in the European Workplace Drug Testing Society’s (EWDTS) guidelines, the result of the drug test would have been negative.

In the absence of regulations on drug testing there are many challenges for unfair dismissals and failed drug tests being heard in the Labour Court, the Employee Appeals Tribunal and the Civil Courts. It would appear that case law will determine how companies should respond.

Random Drug Testing – Complying with Section 13(1)b of the Safety, Health and Welfare at Work Act 2005

Many companies and managers see random drug testing as the best option for tackling drugs and alcohol in the workplace, however, this action is the option that leads to a lot of resistance, especially by trade unions. Companies intending to tackle workplace drugs and alcohol should follow the international gold standard developed by the Substance Abuse and Mental Services Administration (SAMSA). To comply with Irish Health and Safety Legislation, the following steps should be taken;

1. Develop a workplace intoxicant policy.
2. Consult with employee representatives and trade unions, (Section 26(1) a of SHWW Act 2005)
3. Conduct a written intoxicant risk assessment, identify safety critical tasks and specify control measures for intoxicants, (Section 19 of SHWW Act 2005).
4. Update the safety statement (Section 20 of SHWW Act 2005)
5. All identified risks should be communicated to all staff and written procedures should then be developed for managing the situation where an employee reports for or is on duty under the influence of an intoxicant (Section 13(1) b SHWW Act 2005). Those performing safety critical tasks should be identified and a protocol for drug testing for cause/post-accident should be introduced for those who test positive following a major safety incident. By following those steps employers will comply with their legal obligations and have a sound basis for addressing workplace drugs and alcohol.

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