

## Article Information

Author: Tim Capelin

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## Implementing an Enforceable Drug and Alcohol

**Partner, Tim Capelin and Lawyer, Amrita Kumar look at some of the practical issues to consider when considering the implementation of an enforceable workplace drug and alcohol policy.**

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Recent developments suggest we may be moving towards a greater consensus in the views of employers, tribunals, unions and employees in regard to managing drugs and alcohol in the workplace. Indeed, in recent times, even the militant building union, the CFMEU, acknowledged the need for mandatory drug and alcohol testing on building sites.

So the resistance to implementing effective D&A policies is reducing. This still leaves the question as to how to implement an effective D&A policy, including one with penalties if it is breached?

In short, to achieve the best results, you need a well understood policy that is appropriate for your workplace and it needs to be consistently implemented.

Whilst each organisation should determine what is most effective for it, the elements of an appropriate policy should include:

- A clear statement prohibiting being affected by, using, consuming, possessing, manufacturing, selling, buying or transferring illegal drugs, prescription and pharmacy drugs or alcohol, while at work.
- An exception to the general prohibition where possession/use of prescription and pharmacy drugs are disclosed and managed as medically recommended.
- A process for workers to notify of personal drug issues and for an employer response once notified - usually to co-operate with the worker's recovery plan whilst avoiding the worker being impaired at work.
- Specifics of alcohol and other substances' blood content level that will amount to a policy breach.
- A mandatory testing regime compliant with Australian Standards and setting out the procedure for the regime's operation.
- The potential consequences if the policy is breached.
- A requirement that appropriate confidentiality is maintained in relation to information gained through the operation of the policy (to only those who need to know).

Your policy should prescribe a mandatory testing regime setting out the type of testing that will be used, for example urine, saliva, blood or breath testing. Saliva testing or oral swab testing seems to be the preferred approach in recent times. However, caution should be taken in ascribing broad principles from cases (such as *Endeavour Energy v CEPU*) where at first glance urine testing appears to be rejected as inappropriate by the tribunal. However, in that case the facts peculiar to that organisation were very important and therefore it has limited general relevance.

The recent decision of *Harbour City Ferries Pty Ltd v Mr Christopher Toms* upheld the use of urine testing in the workplace. In this case Mr Toms, a ferry captain, was dismissed for testing positive for Marijuana in a urine test after a ferry accident. Harbour City Ferries had a zero tolerance policy on drugs and alcohol in the workplace. The evidence before the court could not establish whether the presence of marijuana in Mr Toms' blood stream contributed to the accident. Nonetheless, the court on appeal found that that the termination was valid and impairment was not relevant to misconduct identified as non-compliance with the zero tolerance policy. This decision indicates that even though tribunals have acknowledged that urine testing is not always the best guide to the actual presence of drugs in an employee's system,

or any impairment, a properly implemented zero tolerance policy utilising urine testing can still be defensible. This is particularly the case in circumstances of high risk and high responsibility such as passenger transport.

A drug and alcohol policy will be ineffective unless well understood. Workers need to receive training and education on all elements of it, including the consequences of breach.

Training should also address the key underlying purpose of your organisation's policy. That is, ensuring your organisation is as safe as it possibly can be for the benefit of workers, their families and the public!

Training should occur at induction, but also should be ongoing to make it clear that management actively supports the policy and will consistently implement it.

When implementing a drug and alcohol policy, workers should be advised of the assistance that is available to them to address any substance abuse problems they may have. This could be through an Employee Assistance Program (EAP) or alternatively by highlighting generally available assistance that is provided through organisations such as Alcoholics Anonymous or Beyond Blue.

Reducing the impact on workplace safety of drugs and alcohol can be difficult. However, with a clear policy, clearly communicated, consistently implemented and backed up by employee support, you can reduce the risks substantially.

If you would like more information or advice on this issue, please contact our [Employment Relations team](#).