



# Supervisor Newsletter

## Substance Abuse, FMLA, and ADA

Supervisors have asked if firing a drug abuser would violate the federal Family Medical Leave Act (FMLA) or the Americans with Disabilities Act (ADA).

If an employee's work performance is unacceptable and he or she fails a reasonable suspicion drug test, there is no requirement under the FMLA or ADA to give the employee time off to undergo treatment instead of terminating his or her employment.

When drug use infects a department, supervisors may be tempted to ignore it or give in due to fear of violating employment laws like the ADA, FMLA, or other federal laws, rules, and regulations. But tolerating drug abuse at work is not a solution.

Employees have a right to be safe in their workplace. Drug using employees create a less safe work environment for everyone. Substance abuse and drug induced disruptive behavior will sabotage an organization's safety and morale, lower self-esteem, and reduce teamwork and productivity. If a company has a written policy in place that clearly states that an employee can be disciplined and terminated for illegal drug use at work, supervisors should not be afraid to enforce that policy.

## Importance of Company Policies

It is important to enforce company policies consistently, and all employees and supervisors should be trained to do so. Company policies and procedures are in place to protect the employer, the company and its employees, and the organization's bottom line.

There are a variety of direct costs and safety issues for companies associated with poorly managed, drug using problem employees, including—in the worst cases—the loss of customers and good workers. One that is visible to everyone is the time taken to successfully resolve issues.

If an employee refuses to adhere to the company substance abuse policy, it may be necessary to terminate his or her employment in order to protect the business. The company will be better off without one person who can compromise the safety and productivity of the whole team. Dealing with drug users quickly and decisively will help keep the organization's reputation intact as well as decreasing the risk of workplace violence and theft.

Important policies and programs that address how to deal with problem employees include comprehensive drug free workplace programs, employee assistance programs, and education and training targeted to supervisors and employees. But these programs only work if they are enforced and the appropriate action is taken when policies are violated.

When making the decision whether to fire a drug user, supervisors should be aware that drug abusing employees don't just pose a threat to the physical safety of other workers—they also negatively impact coworkers' psychological and emotional health. A safe and drug free workplace helps lead to satisfied and loyal employees. Not only will making sure the company's drug free workplace policies are enforced protect employees, it will also make them feel valued and more motivated to be productive at

work. Making sure that all employees are drug free and sober is a crucial part of keeping the workplace safe for everyone, preventing injuries and improving overall employee morale and productivity.

### **Zero Tolerance**

While there may be instances within some organizations where a drug using employee has tested positive and is allowed to get treatment rather than being fired, if a company has a zero-tolerance substance abuse policy (due to the safety-sensitive nature of the company's business), termination is the only option.

A zero-tolerance policy imposes strict punishment for infractions of a stated rule, with the intention of eliminating undesirable conduct. This type of policy underscores the commitment of managers to prevent such behavior. The main objective of these policies is to ensure the safety and welfare of employees, customers, clients, and visitors to the company. Zero-tolerance policies seek to convey the message that, unless the employees are able to show that the rule has not been violated, a single infraction will result in their summary dismissal.

If an employee endangers the physical safety of others—for example, by operating a forklift or driving a company vehicle while under the influence—termination would be permitted and justified. And of course—because using,

selling, or possessing illegal drugs is a crime—most employers immediately terminate employees who engage in this type of illegal behavior at work.

Although low unemployment and increasing use of illegal drugs are narrowing the pool of qualified workers in the U.S., and some employers are relaxing their zero-tolerance policies, there are no indications that companies are relaxing standards for safety-critical positions.

### **The Bottom Line**

As a supervisor, your best interest for the company should be to keep your employees safe and the company's brand healthy. Not only can a drug using employee taint the company's reputation and harm the business, he or she can also incur substantial unnecessary costs for your division. These costs occur as a result of diminished job performance, lower productivity rates, absenteeism, tardiness, higher turnover, and increased medical and workers' compensation bills. Employees who abuse drugs and alcohol make a workplace more volatile and more dangerous and expose employers to legal liability.

If an employee is under the influence of illegal drugs at work, disability rights laws do not limit your company's options. You may deal with that employee through the company's standard disciplinary procedures without fear of legal recrimination.

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