



Drugs and Alcohol

- Do you have the right to carry out testing?
- When is testing acceptable
- Safety sensitive areas
- Where is it justified
- Implementing testing
- The benefits of a drug and alcohol free workplace

4.9 Managing Drugs and Alcohol On-farm

Why this is important

Drug and alcohol use is an increasingly visible and controversial problem. Research indicates that the most effective method of eliminating the effect of drug and alcohol abuse in the workplace is to introduce a comprehensive Drug and Alcohol-Free Workplace Programme - often referred to as Workplace Drug Testing.

This fact sheet covers

- Do you have the right to carry out testing?
- When is it acceptable?
- Safety-sensitive areas
- When is it justified
- Implementing drug and alcohol testing

Do you have the right?

There are many conflicting rights when looking at drug testing on farm. On one hand, it is your obligation as an employer to provide a healthy and safe workplace. On the other, an individual has the right to be free from unreasonable search and the right to privacy. The law acknowledges the need for a balancing exercise between those rights and obligations.

An employer does not have the right to force an employee to submit to drug testing. However, where an employer has a proper and fair drug policy and testing regime in place, an employer can treat the employee's failure to cooperate with testing as a serious breach of the employment terms (sufficient to justify termination of employment) in certain circumstances.

When is it acceptable to do a drug test?

There are generally five occasions when an employer may be justified in testing:

1. As part of pre-employment testing (with the employee's consent - the employee has a choice, to submit, or not pursue the employment)
2. Where there is reasonable cause to suspect an employee's behaviour is an actual or potential cause or source of harm to themselves or others as a result of alcohol or drugs
3. In a post accident/incident, or where there has been a near miss (these are sometimes known as "with cause" tests, because employer has grounds to believe there is some drug involvement)
4. On a random basis in "safety-sensitive" areas
5. Where an employee applies to be transferred to a 'safety-sensitive' area.

Safety-sensitive areas

What equates to "safety-sensitive" area is a subject of much debate; people like pilots are obviously in that category. On farm safety-sensitive positions are those that are considered to be potentially hazardous safety situations. These include, but are not limited to, operations requiring the use of farm equipment or work vehicle (including using a private vehicle within work hours).

When is it justified?

Employees who come to work with alcohol and performance impairing drugs in their system have a high risk of causing an accident or injury to themselves or their co-workers. Their overall job performance is also adversely affected.

If random testing without cause is to be justified, an employer will need to show that the safety of others may be seriously at risk, if those employees were impaired.

It would be wrong to assume, however, that just because you meet one of the above criteria, you as an employer can now start testing your employees, particularly in the area of random testing. It is recommended that legal advice is sought if you wish to carry out random drug or alcohol testing.

The Health and Safety in Employment Act plays a key role in determining the reasonableness and lawfulness of testing. It is clear that employees in occupations that impinge on the safety of others must see to it that they come to work substantially (or completely) free from alcohol or drugs.

Employees are expected to cooperate with their employer's need to monitor the presence of drugs or alcohol. It is no different in principle to the need for employees to wear protective clothing and the employer's duty to ensure it is worn.

As an employer, if you believe that drug testing is warranted in your workforce you must ensure that the time and effort spent on carrying out the testing will not be undone by the lack of time and effort spent on preparation for the testing. Seeking legal advice is recommended.

Implementing drug and alcohol testing

Workplace drug and alcohol testing is legal as long as it follows certain procedures and complies with a number of obligations. Testing can only be carried out if:

- It is for the express purpose of protecting from harm in the workplace
- It does not discriminate
- Consent is obtained
- The collection is discreet and private
- The accuracy and validity can be assured.

In addition the company must provide an explanation of the process and possible action that will occur if tests are found to be positive, including any disciplinary procedures.

The testing that is carried out for drugs is different to testing for alcohol and it is important that the processes are carried out in line with a testing policy and in a structured and fair way. It is recommended that independent advice and help is sought when implementing testing.

What do I do next?

If you are worried about drugs and alcohol on your farm look at implementing a comprehensive drug and alcohol free workplace programme. This will:

- Reduce absenteeism (especially morning after 'sickies')
- Reduce errors and their associated costs
- Help employees play their part in creating a healthier and safer work environment
- Reduce the number, type and cost of accidents
- Reduce employee turnover
- Reduce the costs of recruiting and training new staff.

Federated Farmers has a drug and alcohol policy template which can be adopted directly or tailored to suit your business's needs.

Useful references

Federated Farmers – more information on policies phone 0800 327 646 (members only).

There are a number of independent organisations that offer the development of drug and alcohol testing programmes and implementation of testing.

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