

Intoxicants at Work

Information Sheet

Information Sheet for Employers and Employees on Requirements under Health and Safety Legislation

September 2011

Introduction

From time to time both employers and employees ask questions of the Health and Safety Authority (HSA) about intoxicants at work and specifically the duties that arise for the employer and for the employee. The HSA can answer only those questions that arise under our legislation – i.e. The Safety, Health and Welfare at Work Act 2005, which we will call “The Act”.



So, what follows below, in a “Frequently Asked Questions” format, attempts to provide responses which we hope will serve the purpose of guiding you on intoxicants in relation to health and safety at work. Depending on the structure and size of your company, you may be able to get assistance from whoever is accountable for human resource management or owner / manager or trade union in regard to other aspects of managing intoxicants at work.

The first thing that needs to be said is that there is no requirement for employees to undergo testing for intoxicants under health and safety legislation. There is also no requirement under health and safety legislation for employers to test employees for intoxicants. In the Act there is a clause 13 (1) (c) which allows regulations to be made for testing for intoxicants. However, until or unless such a regulation is introduced by the relevant Minister, this clause does not apply. So, there is no requirement for employers to test or for employees to be tested.

1. What is included in the definition of Intoxicants when considering the health and safety at work aspects?

Intoxicant is defined in the Act as including alcohol and drugs and any combination of drugs or of drugs and alcohol. It encompasses both legal and illegal substances. So, prescribed drugs and over the counter medications are included.

2. As an employer, what exactly are my duties in regard to intoxicants at work under health and safety legislation?

Your relevant duties are set out principally in Section 8 of the Act which requires you to ensure, so far as is reasonably practicable, the safety, health and welfare at work of all employees. This includes managing and conducting work activities to prevent improper conduct or behaviour likely to put employees at risk.



Sections 19 and 20 of the Act require employers to identify hazards in the workplace; to be in possession of a written assessment of the risk presented by those hazards and to draw up a safety statement. If Intoxicants could be a hazard at work, the safety statement should take account of this.

3. As an employee, what exactly are my obligations under health and safety legislation?

Any employee, while at work, must ensure that he or she is not under the influence of an intoxicant where the extent of the intoxication could endanger his or her own safety, health or welfare at work or that of any other person present. This is Section 13(1)(b) of the Act.

An employee is also required to cooperate with the employer to comply with health and safety law. So, for example, an employee should report to their employer if they are taking medication which might pose a risk to the safety of any person at work.

An employee is also required to report to his / her employer regarding certain workplace health and safety issues. These include; any work being carried on in a manner which may endanger the safety, health or welfare at work of themselves or any other person; any defect in the place of work, the system of work or any article or substance which also might endanger themselves or any other person.

4. What advice is there for a company which wants to prevent accidents that might arise as a result of the hazard of intoxicants?

Where intoxication at work is identified as a hazard it must be addressed within the company's safety statement.

5. As an employer, am I required to test an employee for the presence of an intoxicant before I take any action to remove them from the work activity on suspicion of intoxication?

No. Under the Act there is no requirement for testing of employees so you are not required to have test evidence. The question you must address is whether the employee's behaviour presents a risk of danger to him / herself or others. If it does, then the correct course of action would be to remove the employee from this situation.

6. As an employee, has my employer the right under health and safety law to send me for testing for intoxicants?

No. There is no such requirement under health and safety legislation.

7. Can an employer include testing in a policy on intoxicants?

The Act has no requirement for testing. This is a complex issue. Where testing is a part of company policy or otherwise contracted with employees, it is recommended that it is carried out in accordance with a recognised standard such as the European Laboratory Guidelines for Legally Defensible Workplace Drug Testing.

8. Will there be a Code of Practice on testing for intoxicants?

No, there is no plan to introduce a Code of Practice or any health and safety legislation on testing for intoxicants.



9. My boss told me that health and safety legislation states that I have to present myself for testing by a doctor if he / she asks for this. Is this so?

No. In the Act there is a clause 13 (1) (c) which allows regulations to be made for testing for intoxicants. However, until or unless such a regulation is introduced by the Minister, this clause does not apply. So, there is no requirement for employers to test or for employees to be tested.

10. In my employment contract or collective agreement it states that I may have to go for testing if requested by my employer. Can I refuse this as it is not part of health and safety legislation?

This aspect of your contract of employment is a matter of agreement between you and your employer and is outside of the remit of the HSA.

11. What can I, as an employer, do when a worker who has been ill, presents for work in a drowsy state which is probably as a result of the medication, but which could impact on the safe operation of a machine?

Again, from a health and safety perspective, the key question for you is whether there is a risk posed by the worker's intoxication. Clearly you have a reason to believe that this is the case and so you should act to remove him / her from the risk. It may be possible to allocate the worker to other duties for the duration of their medication.

12. If a worker seems “under the weather” from intoxicant use but is not doing a safety critical job, should I ignore this?

From a health and safety perspective, you need to be confident that the employee is not a risk to him / herself or others. If you perceive that there is a risk you should act to remove him or her from the risk.

13. As an employee, if I see a fellow worker clearly intoxicated, can I ask to be removed from the area because of a possible danger to me?

The right course of action in this situation is to report this to a manager or other person in charge. There is a requirement for the employer to assess whether there is a danger for other employees and to take action to remove this danger if it exists.

14. Should I, as an employee, report intoxication in any other employee when I observe it?

Yes. If you think that the employee, whatever their level in the organisation, may endanger the safety of himself / herself or others, then you should report it right away to a manager or other person in charge.

15. As a company which carries out testing as standard practice, are there any requirements for us to report outcomes to the HSA?

No. Your testing policy is outside of the remit of health and safety legislation.



16. As an employer, is it appropriate that I would act on the observation by just one person of an employee who is suspected of being intoxicated?

The safety circumstances are relevant here. It is wise to deal with the situation quickly but sensitively. A second opinion will assist in determining evidence and prevent you taking action based on minimal evidence. A manager or a person with human resource accountability would be an appropriate source for such a second opinion. You still need to address the question of whether there is a risk and the action you take will be based on this assessment.

17. If substance misuse affects peoples' health, what role does the HSA play in preventing this?

The HSA's primary role is the prevention of accidents and ill health in the workplace. Intoxicants misuse occurs outside of the workplace in the vast majority of cases. We encourage workplaces to have policies that promote good health including Employee Assistance Programmes.



Useful Reference Sources

- Safety, Health and Welfare at Work Act 2005 (No. 10 of 2005)
- Workplace Drug Testing, (Pharmaceutical Press, London, UK, 2011)
- Irish Civil Service Alcohol and Drugs Misuse Policy, Circular 08/2009, (Department of Finance, 2009)
- Dealing with Addiction, A Model Policy for Use in the Workplace, (SIPTU, 2009)
- Drug and Alcohol Testing Guideline, (IBEC, 2008)
- Guidelines on Intoxicants, (IBEC, 2007)
- Managing Drug and Alcohol Misuse at Work, Survey Report (CIPD, UK, 2007)
- Drug Testing in the Workplace: Summary Conclusions of the Independent Inquiry into Drug Testing at Work (IIDTW, UK, 2004)
- Drug Testing in the Workplace: The Report of the Independent Inquiry into Drug Testing at Work (IIDTW, UK, 2004UK)
- Drug Misuse at Work (HSE, UK, 2004)
- European Laboratory Guidelines for Legally Defensible Workplace Drug Testing, European Workplace Drug Testing Society (EWDTTS, 2002)
- Don't Mix it, A Guide for Employers on Alcohol at Work (HSE, UK, 1996)

Further information:

- The Health and Safety Authority's website **www.hsa.ie**.
- Contact the Health and Safety Authority at **wcu@hsa.ie** or LoCall **1890 289 389**.