

## **Alberta Alcohol and Drug Abuse Commission**

### **POSITION ON EMPLOYMENT-RELATED ALCOHOL AND DRUG TESTING**

**November 2006**

#### **POSITION**

The Alberta Alcohol and Drug Abuse Commission (AADAC) does not recommend alcohol and drug testing except in specific and justifiable situations where there is evidence that substance use is compromising workplace safety, public safety or is directly affecting job performance. If employment-related alcohol and drug testing is introduced, AADAC advises that it be one component of a broad company policy on substance use.

AADAC recognizes that the use of alcohol and other drugs by an employee can seriously jeopardize workplace operations. The Commission believes it is the joint responsibility of employers and employees to ensure the safety of their co-workers, customers and the worksite.

#### **CONTEXT**

Alcohol and other drug use in the workplace can contribute to industrial accidents, absenteeism, poor morale, increased utilization of disability benefits, and reduced productivity. In 2002, 11% of Alberta employees surveyed reported using alcohol and 1% reported using drugs while at work during the previous year.

To deal with this concern, workplace alcohol and drug testing has increased in Alberta. The number of employers who report having an alcohol or drug-testing program rose from 1% in 1992 to 8% in 2002.

Employment-related alcohol and drug testing is less common in Canada than in the United States where regulations require testing of workers in many safety-sensitive positions (e.g., pilots and truck drivers). These regulations affect Canadian companies that do business in the U.S., particularly those with cross-border truck, bus and rail operations that must comply with testing requirements, including random testing.

In Canada there are no federal or provincial regulations regarding employment-related alcohol and drug testing. Instead, guidelines have been developed based on recent court decisions. The Canadian Human Rights Commission Policy on Alcohol and Drug Testing and the Alberta Human Rights and Citizenship Commission information sheet on Drug and Alcohol Testing clarify circumstances for acceptable testing while emphasizing the need to protect employee rights. In general, alcohol and drug testing are allowed only in certain circumstances, any testing that is not reasonable and justifiable may be considered discriminatory, and employers have a duty to accommodate employees who are alcohol or drug dependent.

AADAC is often asked to comment on issues associated with employment-related alcohol and drug testing when delivering workplace prevention, education and training programs. The following is a list of related issues:

- The majority of workers do not use alcohol or drugs at work.
- There are many types of employment-related alcohol and drug testing such as pre-employment, pre-access (workers have to pass a test in order to access a particular site or job), random, reasonable cause, post-incident, follow-up and fitness-for-duty.
- Specific procedures and standards defining the margins for the presence of drugs in test specimens are well established and based on U.S. Department of Health and Human Services (DHHS) regulations. The defined margins for alcohol may be lower than the legal blood alcohol content (BAC) limit.
- Positive alcohol test results indicate the degree and timing of impairment, but do not differentiate casual use from alcohol dependence.
- Positive drug test results indicate that a drug is present in the specimen (blood or urine). They do not establish level of impairment at the time the sample was taken and therefore are a poor predictor of 'fitness for work'. These tests do not indicate how the drug was used and cannot distinguish between chronic and occasional use.
- Controversy exists about employment-related testing. To date there is limited research to determine whether alcohol and drug testing deters substance use, or whether supervisory skills and observation may be just as effective in detecting impairment.
- Alcohol and drug use as well as other factors such as stress, fatigue, prolonged exposure to toxins (e.g., solvents) and physical or mental health issues can cause impairment at work.
- Although the Canadian Human Rights Commission Policy on Alcohol and Drug Testing indicates that pre-employment and random drug testing should not be done, this remains a subject of debate in Alberta and elsewhere from a risk management perspective. Some Alberta employers have established testing programs as a condition of certification for or pre-access to safety-sensitive positions.

## **KEY CONSIDERATIONS**

### ***1. Workplace Policy***

If used, alcohol and drug testing should be part of a broad company policy on substance use that includes education, training, prevention, employee assistance and monitoring. The policy should

clearly state the organization's objectives, standards and expectations. It should guide the actions of management and staff and be reviewed regularly.

Employers must determine and clearly communicate to new and current employees the categories of employees or job classifications to be tested, conditions for testing, consequences of refusal to participate, and consequences of a positive test.

Employers have a responsibility to stay informed about relevant legislation and court decisions related to workplace testing, independent of, or as part of a company policy on substance abuse. Substance use policies that include alcohol and drug testing should be reviewed with the help of legal counsel experienced in this area to ensure they are comprehensive and not discriminatory.

## ***2. Individual Rights***

An employer's decision to implement alcohol or drug testing must consider the protection of individual rights and freedoms along with the potential benefits in terms of health and safety.

Existing human rights legislation (federal and provincial) defines alcohol and drug dependency as a disability and employers have a responsibility to accommodate employees who are disabled. That is, if an employee is found to have a substance dependency problem, the employer must provide options for assistance (i.e., referral to an employee assistance program).

Protection from disciplinary action (up to and including dismissal) is provided to employees who can show that disciplinary action resulted from the employer's presumption of alcohol or other drug dependence. In other words, an employer cannot discipline an employee solely on the basis of a presumed or actual addiction.

## ***3. Legal Concerns***

A decision to include testing in a workplace policy on substance use must be carefully considered in light of arbitration decisions and labour law precedent.

Canada does not have specific legislation governing when employment-related alcohol or drug testing is acceptable. Instead, human rights legislation, court decisions, and grievance arbitration have defined guidelines for testing. The Canadian Human Rights Commission Policy on Alcohol and Drug Testing states:

- Pre-employment alcohol and drug testing should not be done.
- Random alcohol testing may be done for safety-sensitive positions with limited or no supervision, provided that the test used will determine degree of impairment.
- Random drug testing should not be done because it does not measure impairment.
- Alcohol and drug testing may be used if there is reason to believe that substance use is affecting work fitness or was a factor in a near-miss incident or accident at the workplace. It may also be used when certifying employees for safety-sensitive positions or reinstating after

suspension for alcohol and drug problems. This testing should only be used as part of a broader assessment of substance use.

#### ***4. Process of Testing***

Alcohol and drug testing collection methods (blood, urine, saliva) are, to varying degrees, intrusive measures. Attention must be paid to individual privacy, confidentiality of information, and appropriate use and disclosure of results.

The technology of alcohol and drug testing is highly accurate provided that trained and qualified personnel perform the collection, analysis and medical review of results. The testing procedure must provide a secure chain of custody to ensure samples have not been tampered with or unintentionally contaminated. Given that there is no certifying body in Canada, testing laboratories are typically certified by a regulatory agency such as the U.S. Department of Health and Human Services.

Any alcohol or drug test that is positive on the initial screen must be confirmed. If the confirmation result is positive or identifies a tampered or substituted sample, the employee must have an opportunity to discuss the results with an independent and qualified Medical Review Officer (MRO). The MRO is a licensed physician with knowledge of substance abuse, and is responsible for receiving, reviewing and evaluating test results. Based on discussions with the employee, the MRO will verify the test result and provide a confidential report of that information to the employer.

#### ***5. Use of Results***

Test results should be used with other assessment information to guide an appropriate course of action. This action should be individualized, conform to human rights legislation and be consistent with the employer policy on substance use.

Continuity between testing, assessment and intervention for an identified substance use problem is important. While recognizing that a positive test result may require some form of corrective or disciplinary action, employers should use these results to assist employees in seeking appropriate treatment for alcohol or other drug problems.

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