

Signs and Symptoms of Drug and Alcohol Abuse

Introduction

A drug is a chemical substance that acts on the brain and the body, changing a person's mood, emotion or state of consciousness.

Drugs can be classified by the effects that they have:

- Stimulants (e.g. cocaine) make people full of energy.
- Depressants (e.g. heroin) make people feel relaxed.
- Hallucinogens (e.g. LSD) make people see, feel or hear things that are not real.

Under British law, most drugs are illegal. However, some are legal, for example alcohol.

Prescription medications, such as strong painkillers and antidepressants, have the ability to alter mood, cause sedation and the potential for misuse.

The symptoms and signs of drug or alcohol misuse

Physical signs and symptoms that you might look out for include:

- Sudden mood changes.
- Irritability or aggression.
- Abnormal fluctuations in concentration and energy.
- Confusion and disorientation.
- Depression and paranoia.
- Smell of alcohol on breath.
- Unkempt appearance.
- Hand tremor.

- For snorted drugs, chronic nosebleeds.
- Work-related signs that you might look for include:
- Poor time keeping.
 - Decreased productivity at work.
 - Increased absenteeism.
 - Poor decision-making.
 - Increased accidents in the work place.
 - Deterioration in relationships with colleagues, customers or management.
 - Dishonesty and theft (arising from the need to maintain an expensive habit).

No single pattern of signs exists to identify problems but the above signs, especially when occurring in combination, or as a pattern over a period of time, **may** indicate an alcohol or drug related problem.

It is important to remember that all of the above symptoms can be caused by other factors, including medical conditions. They should be regarded only as an indication that an employee may be misusing drugs or alcohol.

What to do

If you suspect an employee of misusing drugs or alcohol you should always take advice on how to proceed from your consultant at **The AP Partnership** before taking any action.

Referrals

Our business is growing thanks to the referrals we get from satisfied clients.

I should be grateful if you would pass our details to any of your contacts that might benefit from The AP Partnership's following services:

- Employment Law
- Contracts of Employment
- Employment Tribunals
- Psychometric Testing
- Health and Safety
- Human Resources
- Management Training
- Recruitment and Selection
- Employment Law Training



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HSE Death Figures Fall Again

The Health and Safety Executive (HSE) figures on the number of people killed at work in Britain fell last year to a record low. The HSE provisional data, which exclude work-related road, marine and air accident deaths and the entire occupational disease death toll, show that 151 workers were killed between 1 April 2009 and 31 March 2010 compared to 178 deaths in the previous year and an average number over the last five years of 220 deaths per year.

HSE Chair, Judith Hackitt said the reduction was "very encouraging", but added: "No doubt the recession has resulted in lower levels of activity in some sectors and a decrease in the numbers of new inexperienced recruits has also contributed to this fall in fatalities. We should also remember that 151 families are mourning the loss of someone who last year went out to work and never came home."

Commenting on the figures, TUC General Secretary Brendan Barber said the fall was "very welcome, although it is mainly the result of far fewer people entering the workplace during the recession." He added: "Every single one of these deaths is a tragedy for the family that has been left behind and we owe it to them to make sure that we stop these events happening to others. Politicians and the press should focus on preventing such deaths rather than talking about health and safety regulations being a burden. None of these deaths were a result of over-regulation or risk aversion. In most cases they were caused by basic health and safety precautions not being taken."

Newsletter

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What Constitutes Gross Misconduct or Gross Negligence?

We are all aware of the obvious examples of gross misconduct, e.g. physical violence, theft and fraud, but what of the less obvious areas such as misconduct – where there are degrees of failure on an employee's part. When does misconduct become gross misconduct?

A recent Tribunal decision highlighted some of the principles of which an employer must be aware. The case concerns Sandwell and West Birmingham Hospital NHS Trust v Westwood. Westwood, a staff nurse on nightshift at Birmingham A&E Dept, helped another nurse remove an intoxicated patient who had been discharged but refused to leave. The two nurses put the patient on a trolley and left him outside the A&E Department.

The Trust took the view that Westwood had breached the Nursing and Midwifery Council (NMC) Code. Its disciplinary code stipulated that failure to adhere to the professional code of conduct amounted to gross misconduct and therefore dismissal. Westwood claimed for unfair dismissal.

The Tribunal were of the view that the employee's failure of professional judgement had not amounted to gross misconduct and that the dismissal had been unfair. The Tribunal were also critical of the investigation and the disciplinary hearing. The Tribunal stated that gross misconduct must comprise either "deliberate wrongdoing or amount to gross negligence" and that no reasonable Panel could have characterised Westwood's actions as either.

The Trust appealed to the Employment Appeal Tribunal (EAT). The Trust argued it was entitled to regard failure to adhere to the NMC Code as gross misconduct. The EAT rejected this appeal and held that the question of what amounts to gross misconduct is a mixed question of law and fact.

The EAT found that the Tribunal had been correct to state that gross misconduct involves either deliberate wrong doing or gross negligence. The Tribunal had then to assess both the character of the conduct and whether it was reasonable for the employer to regard it as gross misconduct on the facts of the case. With regards to this case, the employee's breach of the NMC Code did not necessarily amount to gross misconduct simply because the employer's disciplinary code stipulated that it would. It was open for the Tribunal to consider the conduct that had breached the code and find that it could not reasonably be characterised as deliberate.

Lessons for Employers

Employers must take care when categorising certain types of behaviour as gross misconduct in their policies and procedures. The employer must carefully consider why certain actions are considered to be gross misconduct or negligent, as opposed to just misconduct. Therefore, in a disciplinary hearing, even when there is a clear breach of disciplinary policy, the employer must still ask itself whether the conduct involves either a deliberate wrongdoing or gross negligence.

In summary, employers need to treat their disciplinary policy as guidelines and consider each situation on its facts.

FACEBOOK

As the number of Facebook users continues to increase employers face the problem of staff accessing their accounts at work and during working hours. It is therefore important to have a policy covering the topic and as such it would be a worthwhile exercise to revisit your internet/IT policy to ensure it covers the following elements:

- Use of your business systems for personal use which can vary from none to use during break times or free use;
- Use of work email addresses for personal use;
- A list of barred sites;
- Identifying the Company on Facebook etc sites;
- The fact that email and computer use can be monitored.

As the number of social networking site users increase on a daily basis, it will only be a matter of time before an issue/problem arrives on your desk.

Ensuring you have a policy in place and all employees have been notified will combat the fact that staff may claim that they were unaware that any elements were unacceptable or against the company rules.

How to Recruit

This is the first in a series of articles on the best way to recruit

There are two reasons why a company may need to recruit new staff. The first is because the company is growing or changing and additional skills or additional numbers are required. The second is because someone decides to leave.

In the first case where you need additional skills or numbers you should firstly look internally. There may be existing staff who have the skills to take on the role or may only need a small amount of training for the role. Internal promotion is good for employees' career development, staff morale, filling skills gaps without any recruitment costs and encourages employees to stay with the Company in the longer term.

If the above is not possible then you could set up a staff referral scheme. This type of scheme encourages employees to recommend another person with the skills that you require and they in turn recommend the company. The incentive can be financial but does not have to be. It could be extra holiday or anything else that provides an incentive. The main point is you save the potentially huge recruitment costs.

In the second case where someone is leaving the company, you firstly need to establish their reasons for leaving as this sometimes highlights changes to the job or issues you are not aware of. You should then decide if the job needs to be replaced. You could ask their manager and colleagues if they have any alternative ideas. Sometimes colleagues can absorb the role to the benefit of all. A pay rise to compensate the colleagues for additional work is good for morale and is often much cheaper than replacing the full salary.

If this is not possible you should once again look internally for someone to fill the role as described above.

Once all these options are exhausted it's time to start recruiting externally. Before you start down this road you should establish the exact requirements for the job in question. The way to do this will be described in the next newsletter.

Next Time: The second in this series 'How to Recruit' is about Job and Person Analysis.

Please note: If any client would like to suggest a topic they are interested in then please e-mail Adam Wicks on adam@appartnership.co.uk.

Rise in Claims and Budget Cuts Hit Tribunals

The austere measures observed across all public sectors and services have left no stone unturned – and The Tribunal Service may be no exception. All this is in the face of recent data that shows a substantial increase in cases.

The recent data, published by The Tribunal Service, shows the total number of cases increased by 56% in the year up to March; an increase from 151,000 to 236,000. This huge jump is partly attributable to the recession; with claims for unfair dismissals up from 52,700 to 57,400; and redundancy claims up from 10,800 to 19,000.

However, there is also evidence that the number of claims is growing due to a more educated workforce – for example age discrimination cases are up from 3,800 to 5,200 and religious discrimination cases jumped from 486 to 1,000.

The overall increase in the number of cases going to Tribunal is also attributable to a 90% increase in 'multiple cases'; where a worker/ex-worker claims for several aspects of potentially unlawful action. This is strategy used to 'throw as much mud as possible and see what sticks'.

With The Tribunal Service under such strain, what's the impact on the quality of the service? A recent poll by the Employment Lawyers Association (ELA) – that covered 1,000 lawyers across England, Wales and Scotland - showed that 56% had experienced a decline in quality of service, 78% blamed funding problems and 68% believed that the large volume of work had "skewed the work of the Tribunals".

However, there are many efficiency improving ideas being banded around, such as increased e-mail communication, online access to case tracking and improved timetabling, a separate court scenario for equal pay claims, and Judge only hearings. Whilst many of these ideas are commonsense and practical, implementing structural changes in an industry that has traditionally shown resistance could be a slow process – at a time when procrastination may not be the order of the day.

Government Plan to Strip 'Gold Plated' Regulations

The coalition Government has called on the public to suggest which regulations 'should be removed or changed' to make running a business or organisation simpler.

The coalition's Programme for Government singled out Employment Law as an area to be 'reviewed'. Although there is little detail about which employment laws are likely targets for review, the Programme for Government did state that it would end the 'gold plating' of EU Directives. For example:

- The Transfer of Undertakings Protection of Employment Regulations 2006 (TUPE): TUPE 2006 extended the definition of a 'relevant transfer' to include 'service provision changes', i.e. where certain activities are contracted in or out (including second-generation contracting out). Lord Hunt has stated that a Conservative Government would seek to 'rein in' this aspect of TUPE 2006, suggesting a possible repeal of this provision or amendments to limit its application.
- The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002: Both sets of Regulations were referred to by Lord Hunt as those that would be stripped of their gold plating. Possible amendments include introducing a qualification period for part-time workers to achieve parity with full-time workers and excluding casual workers from the Part-Time Workers Regulations. Rights under the Fixed-Term Employees Regulations – for employees to request a written statement confirming they are now a permanent employee – may also be subject to review.
- The Agency Worker Regulations 2010: One aspect of the Regulations that proved contentious was their definition of pay. 'Pay' is not defined in the Agency Workers Directive and the inclusion of overtime payments, holiday pay and commission within the Regulations' definition was criticised as unnecessarily wide. It is possible, therefore, that this definition could be amended to limit 'pay' to basic pay.

The Equality Act 2010

From 1 October 2010, a significant number of provisions under The Equality Act 2010 are due to come into effect with the aim of bringing together nine different pieces of legislation into one single Act in order to simplify the law, hopefully reducing the burden on business by making it easier to comply with the law.

The provisions under the Act are as follows:

- To create a basic framework of protection against direct and indirect discrimination, harassment and victimisation.
- Changing the definition of gender reassignment, by removing the requirement for medical supervision.
- Protection for people discriminated against because they are perceived to have, or are associated with someone who has, a protected characteristic, so providing new protection for people like carers.
- Protection against discrimination for breastfeeding mothers;
- Extending protection from indirect discrimination to include disabled people.
- Introducing a new concept of "discrimination arising from disability".
- Extending protection from 3rd party harassment to all protected characteristics.
- Making it more difficult for disabled people to be unfairly screened out when applying for jobs, by restricting the circumstances in which employers can ask job applicants questions about disability or health.
- Allowing hypothetical comparators for direct gender pay discrimination.
- Making pay secrecy clauses unenforceable.
- Extending protection in private members clubs with 25 or more members to make discrimination against members, potential members or guests on any of the protected characteristics unlawful.
- Introducing new powers for employment tribunals to make recommendations which benefit the wider workforce.
- Harmonising provisions allowing positive action.

Of particular interest to the majority of employers will be that one of the main effects of the Act will be to reinforce the principles that employers and service providers are not allowed to discriminate on grounds of individuals' physical or mental disabilities, and that employers must make reasonable adjustments to help those suffering from disabilities.

The government has now issued The Equality Act 2010 (Disability) Regulations 2010 in order to set out conditions that are specifically excluded from constituting a disability as follows:

- Addiction to alcohol, nicotine or any other substance (except for addictions that were originally the result of administration of medically prescribed drugs or other medical treatment are included).
- A tendency to set fires, steal, or physically or sexually abuse other persons, or a compulsion toward exhibitionism or voyeurism
- Hay fever ('seasonal allergic rhinitis'), except where it aggravates the effect of another condition.
- Tattoos and body piercing

The Regulations do, however, deem that a person has a disability if they are certified as blind, severely sight impaired, sight impaired or partially sighted by a consultant ophthalmologist.

A Recent Case Highlights the Ever Present Issue of Age Discrimination

The case centred around a football referee who was forcibly retired at the age of 48 in accordance with the policy of the Referees' Professional Body. As the organisation was not relying on the default retirement age of 65, it needed to objectively justify its retirement policy.

The referee in question brought an age discrimination claim alleging that the policy of forcible retirement was discriminatory, which the Employment Tribunal agreed with.

The Tribunal questioned the selection of the age 48 as opposed to any other age and noted that in other countries the retirement age ranged between 45 and 50.

Whilst the Tribunal did not say that the age of 48 could not be justified, it did say that 48 needed to be justified rather than say 47 or 49 or any other age for that matter. Clearly the governing body were unable to provide this justification. Therefore, if an employer seeks to justify a retirement age what must they do?

The Employment Appeal Tribunal (EAT) has previously suggested employers should look at their own experience and analyse the age at which performance begins to deteriorate. However, this could be somewhat subjective and consequently leave matters open to being challenged.

When the Government abolishes the default retirement age employers will find that a dismissal due to retirement will become risky. They will therefore have to rely on performance management unless of course there is a long term sickness issue or a potential redundancy.

In the referee's case, the Tribunal thought that the aims the governing body were trying to achieve could have been attained by performance management.