

Model Policy: Substance Abuse and Fitness for Duty Policy

Workplace substance abuse remains a major challenge for law offices. Although sound in principle, the traditional zero tolerance policy is ill-suited to the legal complexities of the modern world. This is especially true in states that have legalized marijuana.

You can still take a clear and firm line on employee drug and alcohol abuse for the purpose of health and safety. But the policy also has to exhibit finesse and sensitivity to legal subtleties.

One of the best ways to create an enforceable policy is to base it not on the legality of substance abuse but the undisputable fact that it renders employees unfit for duty to the detriment of safety.

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1. POLICY STATEMENT

XYZ Law Office recognizes that employees who use or are impaired by drugs or alcohol while performing work endanger not only themselves but their co-workers and others affected by the work. XYZ Law Office' policy with regard to such conduct is one of zero tolerance and employees must be aware that any violations they commit may result in disciplinary action up to and including termination.

However, XYZ Law Office also recognizes that addiction to drugs or alcohol is a serious health problem. The intent of this Policy is to accomplish the health and safety goal in a manner that is fair, humane and consistent with employees' accommodation rights under discrimination laws. The ultimate goal is not to punish but to help employees identify and get help for their substance abuse issues so that they can return to work healthy, safe, happy and productive.

2. PURPOSE

The purpose of this substance abuse policy is to ensure that all employees report to work fit for duty as part of its duty to ensure the health and safety of persons at or near the workplace under the *Occupational Safety and Health Act* (OSHA) and other applicable laws.

3. SCOPE

This Policy applies to all individuals that work for XYZ Law Office including but not limited to full-time, part-time, temporary and contract employees, independent contractors, volunteers and employees of third-party contractors or subcontractors that XYZ Law Office engages to perform work at its facilities.

3.1 Union Employees

This Policy applies to both union and non-union employees but is not intended to supersede or circumvent the provisions of any current collective bargaining agreement that XYZ Law Office has negotiated with an employee's union. In the event of a conflict between this Policy and a collective bargaining agreement, the latter shall control.

3.2 Contractor Employees

This Policy applies to individuals employed by contractors and subcontractors that perform work at XYZ Law Office facilities but is not intended to supersede or circumvent the provisions of any current collective bargaining agreements that those contractors or subcontractors have negotiated with their own workers and their unions. In the event of a conflict between this Policy and a contractor employment agreement or collective bargaining agreement covering the worker, the latter shall control.

4. DEFINITIONS

For purposes of this Policy, **"Drugs"** includes:

- Narcotics and illegal drugs;
- Marijuana, whether used or obtained legally or illegally; and
- Legal prescription and over-the-counter medications and drugs that cause or have the potential to cause impairment and render an employee unfit for duty.

"Fit for duty" means a state of physical and mental that allows an individual to perform his or her job duties safely and effectively without impairment due to the use of or after-effects of alcohol, illegal drugs, legal medications or other health conditions.

"On duty" includes reporting for and performing work, including:

- Scheduled work;
- Unscheduled call-in work;
- Work performed at XYZ Law Office facilities;
- Work performed for XYZ Law Office away from XYZ facilities, including but not limited to business travel and driving or traveling to and from work.

"Safety-sensitive job" means positions that have a direct and substantial impact on the health and safety of the employee, other workers, customers, visitors, the public, property and/or the environment, including but not limited to those involving driving, operation of machinery or equipment, handling of toxic substances and others determined by XYZ Law Office.

"Substance abuse" means the use of alcohol, illegal drugs, legal marijuana and medications and other substances that can impair a person's judgment, clarity and functioning and render him/her unfit for duty.

5. EMPLOYEE RESPONSIBILITIES

All employees and workers covered by this Policy are required to:

- Come to work fit for duty;
- Take reasonable care to protect the health and safety of themselves and others at the workplace at all times while on duty as required by OSHA;
- Refrain from using or being impaired by alcohol or drugs while they are on duty;
- Refrain from possessing, purchasing, selling, distributing or engaging in any other conduct involving alcohol or illegal substances or paraphernalia while they are on duty;
- Refrain from misusing or being impaired by prescription or non-prescription drugs while they are on duty;
- Notify their supervisor if they suspect that a co-worker is unfit for duty; and
- Submit for drug and alcohol testing in accordance with the XYZ Law Office Testing Policy.

6. LEGAL MARIJUANA

6.1 No Exemption for Legal Marijuana Use

All employees must understand that marijuana is an impairing drug and that using it at work or coming to work high renders them unfit for duty in violation of this Policy.

Being impaired at work is NEVER legal regardless of the legality of the impairing substance used or how it was obtained!

6.2 Employee Duty to Notify

Employees must notify their supervisor if they are using legally prescribed medical marijuana or other legal prescription and non-prescription drugs that may cause impairment for the treatment of a medical condition. Off-duty and legal use of such drugs does not violate this Policy as long as employees are fit for duty at all times when they are on duty.

7. SUPPORT FOR EMPLOYEES WITH SUBSTANCE ABUSE ISSUES

Although XYZ Law Office reserves the right to discipline, it also recognizes that addiction and substance abuse is a health problem. XYZ Law Office is prepared to help employees get the counselling, treatment, rehabilitation and support they need to overcome those problems. *[Describe your office's Employee Assistance Program or other resources or programs for helping employees with substance abuse issues.]*

8. SELF-REPORTING

XYZ Law Office strongly encourages employees with substance abuse problems to step forward and request help voluntarily. *[Describe your office's procedures for responding to self-report requests for help.]* Employees who do self-report will not be subject to discipline as long as they have complied with their obligation to be fit for duty under this Policy.

9. FITNESS FOR DUTY MEDICAL ASSESSMENT

Employees must undergo medical assessments to ensure they are fit for duty before being placed in a safety-sensitive job. Assessments will address substance abuse and be performed:

- Prior to employment when individuals are applying for safety-sensitive jobs;
- Before current employees are transferred from non-safety-sensitive to safety-sensitive jobs; and

- Periodically for as long as the employee remains in a safety-sensitive job.

Medical assessments will be performed by qualified healthcare professionals following appropriate medical practices and results will be kept confidential to the extent required by HIPAA and other applicable personal privacy laws.

10. DISCIPLINARY INVESTIGATIONS

XYZ Law Office may open a disciplinary investigation to check whether an employee is engaged in substance abuse or otherwise in violation of his/her fitness for duty obligations under this Policy in response to:

- Complaints or concerns by co-workers, supervisors, etc.;
- Declining performance;
- Erratic behavior;
- Involvement in safety incidents including near misses;
- Arrests for impaired driving, drug offenses and similar violations; and
- Other indications that the employee has substance abuse issues or is otherwise unfit for duty.

Investigations will be carried out in accordance with XYZ Law Office' Disciplinary Investigation Procedures.

11. DRUGS & ALCOHOL TESTING

Employees may be tested for alcohol and drugs in accordance with XYZ Law Office' testing policies. *[List the conditions for testing under your office's own testing policies. Be sure to address: i. Alcohol and drug testing; ii. Safety-sensitive and non-safety-sensitive employees; and iii. Random and for-cause/post-incident testing.]* Supervisors will escort employees to the screening site for testing. Refusal to submit to testing will be grounds for immediate termination under this Policy.

12. EMPLOYEE PRIVACY RIGHTS

XYZ Law Office recognizes that test results and related information is protected personal information under privacy laws and will keep it confidential and secure and refrain from using or disclosing it except as permitted or required by law.

13. CONSEQUENCES OF VIOLATIONS

Violation of this Policy is grounds for discipline up to and including termination in accordance with the XYZ Law Office Progressive Discipline Policy. Employees with substance abuse issues on administrative leave may also be referred for counselling or assistance through the XYZ Law Office Employee Assistance Program or outside agencies.

14. ASSISTANCE & REINSTATEMENT

XYZ Law Office reserves the right to place employees with substance abuse issues on administrative leave and enter into Last Chance Agreements offering them the opportunity to return to work if they successfully complete the terms of their treatment and rehabilitation program, pass drug and alcohol tests and meet other conditions of reinstatement.

