

FACT SHEET THIRTEEN

ALCOHOL AT WORK AND THE LAW

Some points to consider;

The courts have made it clear that employers have certain obligations towards employees with drink problems. **To dismiss an employee as soon as a drinking problem comes to the employers attention will almost always be unfair.** Employers have both common law and statutory duties towards their other employees, members of the general public and other peoples employees who are working on their premises.

Managers or colleagues who cover up for an employee with an alcohol problem may be contributing to important breaches of their employers statutory and common law obligations. There is also the question of personal liability under sections 7, 8, 36 and 37 of the Health and Safety at Work Act 1974. If managers knowingly consent to or connive at any offence they could be prosecuted.

Further the ACAS advisory handbook on Discipline at work suggests to employers that **"consideration should be given to introducing measures to help employees, regardless of status or seniority, who are suffering from alcohol or drug problems. The aim should be to identify employees affected and encourage them to seek help and treatment"**.

The Department of Employment publication 'Alcohol in the Workplace - a guide for employers' does not have the force of law but would probably be taken into account by an Industrial Tribunal in deciding whether an employer acted reasonably in dismissing an employee with an alcohol problem.

- In the case of Spencer versus Paragon Wallpapers (1976) the court held that reasonable steps had to be taken to establish the true medical position and to discuss the problem and the prospects of rehabilitation with the employee before posing the questions 'can we (the employer) be expected to wait any longer and if so, how much longer?' Relevant factors are the likely length of treatment, the urgency of the need to get the employees work done by someone else and the ease with which it could be done by a temporary replacement. On the other hand, any employee who has a drinking problem is expected to take the help offered and is expected to make every effort to recover. An employer is not bound to make allowances forever. There is a point when an employer is entitled to say enough is enough;

apas can help you to develop a policy statement.

- Employers need to consider the possibility of offering alternative employment. In the case of P versus Nottinghamshire County Council (1992) the Court of Appeal said 'in an appropriate case and where the size of the administrative resources of the employers organisation permit, it may be unfair to dismiss an employee without the employer first considering whether the employee can be offered some other job, notwithstanding that it may be clear that he cannot be allowed to continue in his original job'. Employees who cannot be kept in their job because of the health and safety risk this might pose, or whose work environment is contributing to their drink problem, should be treated sympathetically;

apas can help you by assessing the risk posed by a drinking employee.

- An employer should be sure to investigate an employee's condition. In Forth Ports versus Lorimer (1991) the employers failure to get a thorough assessment of Lorimer's condition led to a finding of unfair dismissal. Returning late from lunch, his supervisor had smelled alcohol on his breath, Lorimer, who drove a crane, admitted he had been drinking but offered to undertake counselling and to put matters right. He was nevertheless summarily dismissed. Although the company had contacted Lorimer's GP, who had said that he did not have a drink problem but that he was depressed, this was regarded as **insufficient** by the tribunal, who ruled that the authority should have sort **further details** of his condition;

apas will provide written evidence to the employer.

- A comparative recent development concerns the closure of a loop-hole allowing workers to escape the kind of drink and drugs penalties faced by motorists. The Transport and Workers Act 1992 provides for railway workers to be convicted if their blood alcohol level exceeds the legal drink-drive limit. British Rail have now instigated a new alcohol policy, which allows them to dismiss any employee (not just drivers) whose breathalyser test records a blood-alcohol count of 30mg% or higher. **Safety is the main consideration**. The Health and Safety Executive issued revised advice, (January 1993), to employers not to permit forklift truck drivers to consume alcohol whilst at work, amongst other examples.

apas can help you to screen for the presence of alcohol.

POSSIBLE SIGNS OR SYMPTOMS OF ALCOHOL / DRUG PROBLEMS IN THE WORKPLACE

In An Individual Employee:

EARLY SIGNS

Occasionally late
Occasionally absent with no good excuse
Mistakes due to 'daydreaming' - being preoccupied
Sometimes has impaired co-ordination
Possible increase in time off due to feeling ill
Begins to have difficulty with co-workers due to
Begins to borrow money
Begins to isolate from co-workers
Becomes critical, easily offended
Begins to appear tired, sleepy on the job
Begins to appear highly agitated at times without known reason
Usual work habits/patterns change and/or become erratic

CRUCIAL SIGNS

Overall job performance very erratic
Marked increase in lateness and/or absences
Disappears from work station for unexplained reasons
Increase in time off due to illness, other physical complaints
Change in appearance
Drinking / taking drugs on the job
Taking
Marked deterioration in attitude towards colleagues
Calls from significant others giving excuses for absences / tardiness
Excuses to leave work early
Financial problems increase
Irritability, sudden personality changes
Sudden bursts of energy to lethargy
Complaints from colleagues

CHRONIC SIGNS

Misses work without notification
Drinking / drug taking on the job increases
Multiple health problems requiring time off or away from the workplace
Family problems or loss of family
Severe personality changes
Accidents, errors increase
Difficulty completing assignments

Hospitalisation(s)
Appearance deteriorates
Severe financial problems
Poor ability to concentrate
Poor co-ordination
Tremors / shaking
Taking Tranquillisers
Low Stress Tolerance
Rapid, unexplained mood swings
Frequent disappearances from workplace

For more information please visit the [ACAS website](#) or [contact](#) one of our advisors.