

Drug and Alcohol Policy



DISCLAIMER

This sample policy is not legal advice or a substitute for consultation with knowledgeable and qualified legal counsel.

Baker McKenzie assumes no responsibility or liability for the contents of this generic policy, the only purpose of which is to illustrate some of the issues pertaining to employee drug and alcohol policies in the U.S.

Employee drug and alcohol policy laws may vary based on jurisdiction. Federal, state, and/or local law may apply depending on the location of the company, its operations, and its employees. While these laws are often similar, their differences can be material. The following sample policy does not account for the differences in applicable federal, state, and/or local law. This sample policy also does not account for changes in legislation, judicial and administrative precedent, or other developments and/or interpretations of applicable law.

Several other matters also may affect a company's drug and alcohol policy. In general, many states have laws governing employee drug and alcohol policies and testing. The Americans with Disabilities Act, the Occupational Safety and Health Act, the Drug-Free Workplace Act, the United States Department of Transportation regulations, and various other laws and regulations may also affect employee drug and alcohol policies and testing.

Additionally, what are considered "best practices" for Company A may not be "best practices" for Company B. To be effective, an employee drug and alcohol policy should not be a "cookie cutter" or a "one size fits all" policy. It should be tailored to the organization, and account for the company's specific workforce, operations, and industry.

This sample policy should not be relied on or implemented as a legally-compliant policy without consultation from legal counsel.

Drug and Alcohol Policy

The Company is committed to providing a safe, healthy, and productive work environment for its employees and to taking effective measures to maintain a high degree of safety and efficiency among all employees. Employees who are under the influence of alcohol or drugs while on the job may pose serious safety and health risks to themselves and to those who work or come into contact with them. The distribution, possession, sale, or use of drugs or alcohol in the work place or during working time may also create unacceptable risks to the safety and efficiency of operations.

Consistent with the Company's obligations and commitment to employee welfare and the welfare of guests, the Company has established the following policy with regard to the distribution, possession, sale, or use of alcohol and drugs by employees. This policy applies to all employees while on Company working time or on Company property. Noncompliance with the policy set forth below will result in disciplinary action, up to and including termination of employment.

Work Rules

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, when:

1. Employees should report to work fit for duty and free of any adverse effects of illegal drugs or alcohol.
2. The use, purchase, sale, possession, distribution, transfer, or manufacture of illegal drugs during working time, while on Company property, while operating Company machinery or vehicles, or while conducting Company business is strictly prohibited.
3. Employees are prohibited from consuming alcohol or being under the influence of alcohol during working time and/or while operating Company machinery or vehicles.
4. Employees are prohibited from performing work duties while taking prescription drugs, over-the-counter drugs, or other substances that adversely affect the employee's ability to safely and effectively perform their job duties. However, it shall not be a violation of this policy for an employee with a current and valid prescription for a drug to use, possess, or be under the influence of such drug in the manner and for the purposes prescribed, if such use does not effect the employee's performance or create a risk to the safety of the employee or to others. Employees are responsible for learning the possible effects of prescription and non-prescription drugs they intend to use. Medicine shall be in its original container and shall be in the employee's name and shall have the doctor's name and prescription number on the label and should not be used in a manner other than prescribed.

Testing

The Company reserves the right to require and/or conduct the following drug or alcohol tests:

5. **Post-Offer Applicant / New Hire Testing:**

Job offers are conditioned upon the candidate's submitting to, and passing, a drug test. If the job candidate tests positive, the offer of employment will be withdrawn and the applicant will be notified.

6. Random Testing:

Random and unannounced testing shall be conducted periodically.

7. Post-Accident Testing:

When a workplace accident or injury occurs, employees may be tested if the employee caused or contributed to the accident or injury because of drug or alcohol use.

8. Reasonable Suspicion Testing:

Any employee whose objective behavior, performance or other facts suggests that he or she is in violation of this policy will be subject to testing based on "reasonable suspicion." Upon reasonable suspicion of illegal drug or alcohol use, an employee will be immediately suspended, pending test results.

9. Return to Work Testing:

Any employee who has been laid off or on medical leave for longer than three (3) months may be tested for illegal drugs upon their return to work.

10. Return from Rehabilitation Testing:

Any employee returning from drug or alcohol rehabilitation leave shall be tested for illegal drugs upon their return to work. Upon release to return to work, such employee shall be subject to random drug testing (apart from, and in addition to, other testing herein) for up to one year.

Testing Procedures

A Company-designated independent laboratory will perform all drug and alcohol testing pursuant to this policy. Employees and applicants will be required to sign consent forms and authorize the release of test results to the Company in accordance with applicable law.

For the purposes of this policy, the term "illegal drug" means a substance whose use or possession is controlled by federal law, including, without limitation: marijuana, cocaine, opiates, amphetamines, PCP, benzodiazepines, methadone, methaqualone and propoxyphene, and other legally controlled substances.

For the purposes of this policy, "under the influence of alcohol" means an alcohol blood level equal to or greater than 0.04%.

If an employee is asked to submit to a test for drugs and/or alcohol, and the employee tests "positive" for alcohol and/or illegal drugs, or if the employee refuses to submit to such a test, the employee will be subject to immediate termination of employment.