

The Occupational Health and Safety Act; General Regulations and the company policy

Section 2(a) of the above mentioned regulations state;

2A. Intoxication

1. 1.Subject to the provisions of sub regulation (3), an employer or a user, as the case may be, shall not permit any person who is or who appears to be under the influence of intoxicating liquor or drugs, to enter or remain at a workplace.
2. 2.Subject to the provisions of sub regulation (3), no person at a workplace shall be under the influence of or have in his or her possession or partake of or offer any other person intoxicating liquor or drugs.
3. 3.An employer or a user, as the case may be, shall, in the case where a person is taking medicines, only allow such person to perform duties at the workplace if the side effects of such medicine do not constitute a threat to the health or safety of the person concerned or other persons at such workplace.

From the general regulations above it is clear that there is a duty on employers to ensure that employees;

- who appears to be under the influence of intoxicating liquor or drugs are not allowed to work, enter or remain at the workplace;
- are not under the influence of intoxicating liquor or drugs at the workplace;
- do not have intoxicating liquor or drugs in their possession;
- do not offer intoxicating liquor or drugs to other employees.

In other words zero tolerance in that you may not even arrive at work smelling of alcohol that was consumed the night before. To be accused of “having presented for work after having consumed alcohol (or a substance having a narcotic producing affect), or with alcohol smelling on the breath”, the employee does not necessarily have to be plainly intoxicated. He need not

necessarily have had to have consumed a sufficient quantity of alcohol so as to have placed him “over the legal limit”.

Being an act of misconduct, it is obvious that dismissal may result if the employee is found guilty after the employer has followed a fair procedure. Thus it is a serious matter and should be dealt with as such but employers are reminded that schedule 8 of the Labour Relations Act prescribes progressive discipline in order to correct that behaviour of the employee. It would therefore be unfair to dismiss an employee the first time he arrives at work smelling of alcohol after a long weekend.

A dismissal may be contemplated in instances where the employee consumes alcohol at the workplace or makes it available to colleagues during working hours, as for the rest we recommend progressive discipline in order to correct the behaviour of the employee. For some strange reason Commissioners very often do not share the passion of employers to have sober employees at the workplace.

Incapacity or misconduct

Schedule 8 of the Labour Relations Act further recommends that employers should treat situations where it is suspected or known that an employee is the dependent on intoxicating liquor or drugs as incapacity and not misconduct.

The policy (in terms of assistance, counselling, rehabilitation, etc) will only be applied to those employees who have (or who demonstrate that they have) a genuine desire to be helped, and where it can be reasonably concluded that the rehabilitation program will result in success for this employee.

In other words, the employer is not expected to “flog a dead horse.” If an employee undergoes the rehabilitation program as stated in the Alcohol Policy, and later reverts to the old habits, then the end of the road has been reached. The employer does not offer the program again; rather procedures are then followed to secure the fair dismissal of the employee.

Remember, the employer is not in the business of re-habilitating alcoholics, problem drinkers and drug addicts. The employer is only trying to assist those in his employ who have such problems, to the ultimate benefit of both parties.

It is a fact that most persons with such problems will usually, when confronted, vehemently deny that it is a problem, they will be emphatic that they do not need assistance, and that they can stop any time they wish to. In such cases, the employer cannot force the employee to undergo rehabilitation but he can demand that, since the employee has affirmed that it is no problem and that he/she can stop the drinking (or drugging) immediately, the employee must then stop the habit immediately or undergo the rehabilitation program, or face dismissal.

It must be emphasized that there is no obligation the employer to offer assistance – the Code of Good Practice – Dismissal merely states that the employer should consider the matter.

Thus it is for the employer to decide – and generally, assistance will be offered only to those employees who demonstrate that there is a reasonable chance that rehabilitation will be successful, that the employee genuinely realizes that he has a problem and that he needs help.

Generally, if a person's drinking habits causes an adverse effect on his home life, his work life (or both), then that person can be said to have a drinking problem. We are more concerned with the problem affecting the workplace and if the employee's output in terms of quantity or quality is affected, or his attendance record in terms of frequent absenteeism deteriorates, or his use of sick leave (often one day at a time with no medical certificate produced) becomes more frequent, then there may be a problem.

There has been some argument on whether the problem is classed as misconduct in that the employee has broken a rule in the workplace or whether it is classed as incapacity in that the employee is incapable of performing his duties due to the alcohol problem. This is arguable and could be either.

The fact is that what the employer is faced with is a non-performing employee who has a problem that is seriously impacting adversely on the employer's business, and which is costing the employer money.

The person with a drinking problem is an expert at hiding the problem and will go out of his way to "act sober". He will be extremely co-operative, willing to undertake any task given to him, even if it is outside the general parameters of

his job description. There will also be frequent absences from the work-station, with dozens of different excuses to justify this, weak bladder or bladder infection, upset stomach, bad headache, and so on. These absences are of course “drink breaks” or symptoms of overindulge the night before. Very often the problem is compounded because the employee’s immediate supervisor, while suspecting that “something is going on”, very often ignores his suspicions, overlooks (condones?) the frequent absences from the workstation, or even ignores the increasing absences from the workplace for a day or even 2 days at a time.

He also ignores other warning signals, that the employee’s absence always occurs on a Monday, and that he is never available for Saturday overtime. Another problem is that co-workers often will cover up for the errant employee making excuses for him when his absence is questioned by the supervisor and not realizing that by covering up they are in fact making his problem worse.

Whatever the case, the problem must not be overlooked. Further, it is one of those problems that cannot be treated gently; “I will have a chat with him” does not work. The problem is serious, and must be seriously addressed. There are a number of options open to the employer on how to address the issue, some of which may be straight disciplinary action, a written (or even final written) warning, or the employer may choose to follow a procedure of counselling, offering assistance to the employee, and so on.

Another perplexing aspect is that the problem may be caused, not so much by the employees drinking on the job or intoxication at work, but rather by drinking and intoxication off premises and outside of working hours, with the employee being stone cold sober during working hours.

So what do you do when you find that you have an employee who may be an alcoholic, but who certainly has a drinking problem which is affecting his work or the workplace? Firstly, get as much information as possible from his supervisor, or line manager;

- how a long has the problem persisted?
- specifically in what way is it affecting the job processes?
- how frequently is he absent or late because of this problem?

- how frequently does he go off sick?

Build up all the information that you possibly can, and then write the employee a letter inviting him to attend a meeting to address issues regarding his performance. Remember this is not a disciplinary hearing; it is a case of incapacity (poor performance).

The meeting will be attended by the employee's line manager or supervisor, and a senior manager to act as Chairperson. At the meeting, present to the employee all the facts that you have at your disposal. Discuss each one in turn, and explain how this is affecting his performance and the job processes in general. Keep careful and detailed notes of the proceedings.

The employee must explain why he is failing to achieve the required work performance standards and he must justify his absenteeism, late-coming, and so on.

Eventually the discussion will turn to the drinking problem. Occasionally, the employee will admit straight out that he has a problem and that he needs help. Try to establish the reasons for the drinking. He may have financial problems, he may be involved in a messy divorce, children not doing well at school, illness of a loved one, anything like that or it may even be a work related problem.

Most often, the employee will deny that the drinking is a problem. The typical response is that "it is not a problem, sure I enjoy my odd drink or two after work, but I can stop any time I wish to". If you get that sort of response, then you reply by stating "we are very pleased to hear that it is not a problem for you and that you can stop any time you wish to. We now require that you stop drinking immediately, and we require an immediate improvement in your attendance and late-coming".

All of this must be carefully recorded, as well as details of what the employee has undertaken to do to fix the problem of his poor performance. This must be communicated to the employee in writing, together with a date by which he must comply with whatever has been agreed to, and a warning stating that should he fail to achieve the required work performance standard by (allow a reasonable time – say one month) then further procedures will follow which may lead to his dismissal.

Employers can seek the advice of organizations such as SANCA (The South African National Council on Alcoholism and Drug Addiction) or Alcoholics Anonymous or similar organizations, to gain advice and information on formulating a policy, the do's and don'ts of handling alcoholism in the workplace, and so on.

It must be remembered that the employee's family also plays a very big part in all this, and consultation (or counselling) with the employee's spouse could well form a very big part in the process.