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Drug and Alcohol Policy Resource Material

Preface

Impairment in the workplace caused by drug and alcohol use compromises safety and poses a grave risk to construction companies. Navigating the complexity of an ever-evolving legal landscape with respect to drug and alcohol policies and testing, in the context of human resources, human rights, privacy, labour law and employment law issues, is an ongoing challenge for companies that strive to balance competing imperatives. In an effort to assist companies in meeting their human resources objectives and effectively addressing drug and alcohol-related issues, the CCA has prepared a generic, customizable, Drug and Alcohol Policy, as well as a Fact Sheet on Employee Assistance Programs. These resources are intended to serve as guidelines for companies who want to develop a drug and alcohol program in their workplace. The CCA is not promoting any policy or program.

Background

On March 6, 2013, the CCA Board of Directors (“Board”) convened a ‘National Forum on Top Issues’, to invite discussion on industry issues of national importance. The topic of drug and alcohol use in the workplace was identified as a major and widespread issue affecting construction companies.

The magnitude of the challenge for employers was found to be exacerbated by competing imperatives, ranging from, foremost, ensuring safety on the jobsite, to workforce recruitment and retention, to human rights, privacy, and other legal issues. It was noted that employers who seek to assist impaired employees are often unsure of where to turn, and could benefit from the development of resources to guide their efforts. It was also noted that although the majority of firms represented at the Board table did have a drug and alcohol policy, the question of how the policy should be implemented was unclear.

At the conclusion of the discussion, the Board directed the CCA Business and Market Development Committee to appoint a Taskforce, and mandate it to investigate what role CCA should play vis-à-vis drug and alcohol issues, and review topical information, including the prospective development of a national standard. Taskforce Members were appointed from among members at the Board meeting that offered to participate.

Current Standard: *Canadian Model for Providing a Safe Workplace* (COAA, Oct. 2010)

From the outset of its deliberations, the Taskforce acknowledged the *Canadian Model for Providing a Safe Workplace* (“Canadian Model”), published by the Construction Owners Association of Alberta in October 2010, and endorsed by the CCA, which describes itself as “a best-practice alcohol and drug policy that all stakeholders within the construction industry across Canada can adopt and follow”.

However, as noted in the Independent Legal opinion published within the Canadian Model, “the law relating to human rights, alcohol and drug dependencies and alcohol and drug testing is in an ongoing period of development...the interaction among issues associated with safety, human rights, privacy, labour law and the law of employment generally continue to be developed”.

Indeed, this evolution was recently illustrated, on June 14, 2013, when the Supreme Court of Canada, in the case of *CEP Local 30 v. Irving*, struck down an employer’s random alcohol testing policy, but noted that the decision was made in the context of a unionized workplace. It did not, however, close the door on random alcohol testing. It noted that in a dangerous workplace, if the employer can demonstrate the existence of a drug or alcohol use problem among its workforce, it may be able to justify the imposition of a random testing policy.

Even more recently, on March 26, 2014, a court-ordered arbitration panel found that the random drug and alcohol testing policy of Suncor Energy was an unreasonable exercise of Suncor’s management’s rights. The

panel sided with the union, Unifor, which represents 3,600 workers in the Fort McMurray area that had filed a grievance against the policy, and ruled that there was no evidence of an out-of-control drinking or drug culture at Suncor. The award is currently proceeding through a judicial review.

Survey

Against the backdrop of the Canadian Model, and ongoing legal developments, the Taskforce undertook a literature review on the acceptable parameters of an employer's drug and alcohol policy, including what elements should be included in a policy, and the legal limits on testing and random testing. The Taskforce also compared and reviewed the drug and alcohol policies of various companies.

The Taskforce then developed a survey, designed to determine how well-equipped Canadian construction companies are to deal with drug and alcohol issues. This survey was sent to CCA members, and the information gathered was used to inform the action plan of the Taskforce. The survey included the following questions:

1. Does your company have a substantial and comprehensive Drug and Alcohol Policy in place?
2. Does your company run awareness and educational training programs for employees, educating them on how to notice behavioural issues due to drugs and alcohol, and also the dangers of drugs and alcohol?
3. Does your company offer an Employee Assistance Program (EAP), including support, within your benefits package?
4. Does your company require testing for drug and alcohol use prior to employment, (a) for staff; and (b) for field personnel?
5. In the event of an accident, does your company, with reasonable cause, ask for a drug and alcohol test?
6. Has your company ever had cause for concern due to employee misuse of drugs and alcohol?
7. What services within the construction industry does your company provide?
8. In your own experience, are you now more aware of drug and alcohol abuse than you were, (a) 5 years ago, or (b) 10 years ago?
9. Does your company track accident/incident statistics involving drug and alcohol use/abuse?
10. If your company tracks accident/incident statistics involving drug and alcohol use/abuse, what percentage of accidents are related to drug and alcohol use/abuse in your workplace?
11. Would you consider drug and alcohol testing to have a positive or negative impact on workplace attitude and performance?
12. Why does drug and alcohol testing have a positive or negative impact on workplace attitude and performance?
13. How many people work at your company?

Broadly, the survey analysis revealed that there is a need for resources in this area. It was found that many companies are increasingly aware and concerned with drug and alcohol issues, but do not have a drug and alcohol policy in place, nor require testing.

In terms of testing, it was found that most companies perceive drug and alcohol testing as having both a positive and negative impact on workplace attitude and performance. Survey respondents cited the following positive impacts of testing: safety, deterrence, better recruitment results, and offering assistance to employees with dependencies. Conversely, the negative impacts of testing was attributed to the following issues: privacy and human rights; union issues; employee retention; trust within the employer-employee relationship (especially with random testing); and expensive and unclear test results.

Generic Drug and Alcohol Policy and Information on Employee Assistance Programs

Based on the results of the survey, the Taskforce determined that the CCA membership would benefit from the development of a generic drug and alcohol policy, as well as information on employee assistance programs.

The following generic drug and alcohol policy has been drafted for the purpose of offering companies that do not currently have a policy the opportunity to adopt it as a minimum standard, and customize it according to their needs. It features many of the common elements found among the Canadian Model and other policies. Variations in policies may be warranted depending on the laws affecting a company, as well as its size, specialty, capacity, and general interests.

The purpose of the Fact Sheet on Employee Assistance Programs is to offer guidance to companies dealing with employees in need of support to overcome drug and alcohol issues.

The contents of these resources are for information purposes only, and to not constitute legal advice. Companies are advised to seek legal counsel prior to acting on any matters discussed in these resources.

GENERIC DRUG AND ALCOHOL POLICY

[Company Name]

DRUG AND ALCOHOL POLICY

[Date]

1. PURPOSE

[Company Name] has established this Drug and Alcohol Policy, hereafter referred to as “Policy”, to:

- (a) Provide a safe workplace for all employees and those whose safety may be affected by the conduct of employees, and
- (b) Ensure that all employees are treated fairly and with respect.

[Company Name] is committed to:

- (a) The safety and dignity of its employees,
- (b) The welfare of its employees and their families,
- (c) The best interests of the bargaining agent or labour provider to which employees belong, and
- (d) The best interests of the company, the owner, the construction industry and the public.

2. SCOPE

This Policy applies to all employees of [Company Name] that are deemed to be in safety-sensitive positions. Subcontractor companies must be accessible to [Company Name] for the purpose of implementing this Policy, and are responsible for enforcing this Policy, or another Policy accepted by [Company Name] as an equivalent standard, among their own personnel.

3. POLICY STANDARDS

3.1 [Company Name] employees are prohibited from working while impaired. The risk of impairment, due to intoxication by alcohol or any type of drug, threatens safety on the jobsite, undermines operations, and is a trigger for liability.

An Employee shall not:

- (a) use, possess or offer for sale alcohol and drugs or any product or device that may be used to attempt to tamper with any sample for a drug and alcohol test while on company property or at a company workplace,
- (b) report to work or work
 - (i) with an alcohol level equal to or in excess of 0.040 grams per 210 litres of breath,

- (ii) with a drug level for the drugs set out below equal to or in excess of the concentrations set out below:

Urine Drug Concentration Limits:

Drugs or Classes of Drugs	Screening concentration equal to or in excess of ng/mL	Confirmation concentration equal to or in excess of ng/mL
Marijuana metabolite	50	15
Cocaine metabolite	150	100
Opiates	2000	-
– Codeine	-	2000
– Morphine	-	2000
6-Acetylmorphine	10	10
Phencyclidine	25	25
Amphetamines	500	-
– Amphetamine	-	250
– Methamphetamine	-	250
MDMA ¹	500	-
– MDMA	-	250
– MDA ²	-	250
– MDEA ³	-	250

¹ Methylenedioxymethamphetamine

² Methylenedioxyamphetamine

³ Methylenedioxyethylamphetamine

Oral Fluid Drug Concentration Limits:

Drugs or Classes of Drugs	Screening concentration equal to or in excess of ng/mL	Confirmation concentration equal to or in excess of ng/mL
Marijuana (THC)	4	2
Cocaine metabolite	20	-
– Cocaine or Benzoyllecgonine	-	8
Opiates	40	-
– Codeine	-	40
– Morphine	-	40
– 6-Acetylmorphine	-	4
Phencyclidine	10	10
Amphetamines	50	-
– Amphetamine	-	50
– Methamphetamine	-	50
– MDMA ¹	-	50
– MDA ²	-	50
– MDEA ³	-	50

¹ Methylenedioxymethamphetamine

² Methylenedioxyamphetamine

³ Methylenedioxyethylamphetamine

or

- (iii) while unfit for work on account of the use of a prescription or nonprescription drug,
- (c) refuse to
 - (i) comply with a request made by a representative of the company under 4.3, or
 - (ii) comply with a request to submit to an alcohol and drug test made under 4.4, 4.5, or
 - (iii) provide a sample for an alcohol and drug test pursuant to this policy,
- (d) tamper with a sample for an alcohol and drug test given pursuant to this policy.

3.2 An employee complies with 3.1(a) or 3.1(b)(iii) of the alcohol and drug work rule if he or she is in possession while at a company workplace of a prescription drug prescribed for him or her or a nonprescription drug and

- (a) the employee is using the prescription or nonprescription drug for its intended purpose and in the manner directed by the employee's physician or pharmacist or the manufacturer of the drug, and
- (b) the use of the prescription or nonprescription drug does not adversely affect the employee's ability to safely perform his or her duties, and
- (c) the employee has notified his or her supervisor or manager before starting work of any potentially unsafe side effects associated with the use of the prescription or nonprescription drug.

3.3 The supervisor or manager who has received a notification under 3.2 may not disclose any information provided under 3.2 to any person other than a person who needs to know, to discharge a statutory or common-law obligation.

4. POLICY IMPLEMENTATION

4.1 Education

The company is committed to informing employees of the existence of this Policy and the support available through the Employee Assistance Program.

4.2 Self-help

Employees are encouraged to take a proactive approach to their health, and enlist the assistance of help available through the Employee Assistance Program. An employee requesting help will not be disciplined unless he or she has failed to comply with the Policy Standards and treatment program, or the employer has reasonable grounds to suspect that an incident was caused by the employee's non-compliance.

4.3 Possession of drugs and alcohol

In the event that a representative of the company or the owner has reasonable grounds to believe an employee may not be in compliance with the Policy, he or she must notify the employee of such reasonable grounds and request that the employee confirm that he or she is in compliance or request the assistance of appropriate authorities to confirm that employee's compliance.

4.4 Observation of employee conduct

In the event that a supervisor or manager has reasonable grounds to believe that an employee is or may be unable to work in a safe manner because of drugs or alcohol, he or she must request an employee to submit to an alcohol or drug test and provide the employee with the reasons for such request.

4.5 Incidents and near misses

Unless there is objective evidence to believe that the use of alcohol and drugs did not contribute to the cause of an incident or near miss, a supervisor or manager of an employee must request an employee to submit to an alcohol and drug test if reasonable grounds exist to believe that an employee was involved in an incident or near miss. This request must be made immediately following an incident or near miss unless it is not practicable or reasonable to do so until a later time.

5. POLICY VIOLATION

[The Company] may discipline, or terminate for cause, the employment of an employee or subcontractor who fails to comply with the Policy Standards stated in this Policy. The appropriate consequence depends on the facts of the case, including the nature of the violation, the existence of prior violations, the response to prior corrective programs and the seriousness of the violation, and the results of a substance abuse Expert Assessment. In the event of a violation, this Assessment may be used to consider pathways for an employee to return to work.

6. DEFINITIONS

In this Policy, the following definitions apply:

- (a) **Alcohol:** Any substance that may be consumed and that has an alcohol content in excess of 0.5 per cent by volume.
- (b) **Alcohol and drugs:** Alcohol or drugs or both.
- (c) **Alcohol and drug test:** A test administered by the Company in accordance with this Policy.
- (d) **Company:** A corporation, partnership, association, joint venture, trust or organizational group of persons whether incorporated or not.
- (e) **Company Workplace:** includes all real or personal property, facilities, land, buildings, equipment, containers, vehicles, vessels, boats and aircraft whether owned, leased or used by the company and wherever it may be located.
- (f) **Drug paraphernalia:** includes any personal property which is associated with the use of any drug, substances, chemical or agent the possession of which is unlawful in Canada.
- (g) **Drugs:** includes any drug, substances, chemical or agent the use or possession of which is unlawful in Canada or requires a personal prescription from a licensed treating physician, any non-prescription medication lawfully sold in Canada and drug paraphernalia.
- (h) **Employee:** Any person engaged in work on a work site where this policy applies.
- (i) **Employee assistance services program:** Services that are designed to help employees who are experiencing personal problems such as alcohol and drug abuse.

- (j) **Employer:** A person who controls and directs the activities of an employee under an express or implied contract of employment.
- (k) **Incident:** An occurrence, circumstances or condition that caused or had the potential to cause damage to person, property, reputation, security or the environment.
- (l) **Owner:** The person in legal possession of a site.
- (m) **Reasonable Grounds:** Includes information established by the direct observation of the employee's conduct or other indicators, such as the physical appearance of the employee, the smell associated with the use of alcohol or drugs on his or her person or in the vicinity of his or her person, his or her attendance record, circumstances surrounding an incident or near miss and the presence of alcohol, drug or drug paraphernalia in the vicinity of the employee or the area where the employee worked.
- (n) **Work:** Includes training and any other breaks from work while at a company workplace.
- (o) **Work site:** A place at which a person performs work for an owner or employer.

7. EMPLOYEE ASSISTANCE PROGRAM

[The Company] encourages employees to adopt a proactive approach to health and safety, and will provide confidential direction to any employee who voluntarily seeks help for an alcohol or drug problem, or tests positive in an Alcohol and Drug Test.

EMPLOYEE ASSISTANCE PROGRAMS – FACT SHEET

Employee Assistance Programs – Fact Sheet

1. What is an Employee Assistance Program (EAP)?

The Employee Assistance Trade Association (EASNA, <http://www.easna.org/>) offers the following definition:

- EAPs are employer- or group-supported programs designed to alleviate workplace issues due to mental health, substance abuse, personal and workplace issues. The goal of these programs is to have a positive effect on employee productivity and organizational performance. They are sometimes called employee and family assistance programs (EFAPs) or member assistance programs (MAPs).

2. Why Are EAPs Important?

History: EAP originated with a primary drug and alcohol focus, with an emphasis on rehabilitating valued employees rather than terminating them for their substance problems.

Implementation: EAP is sometimes implemented with a disciplinary program that requires or strongly encourages that the impaired employee participate in EAP. Over the years, EAP has expanded to also incorporate not only mental health and substance abuse issues but also health and wellness and work/life types of concerns. Although one facet of EAP services is focused on the individual employee and their family members, another component is the services offered to the organization. This may include prevention, training, consultation, organizational development and crisis response services.

3. What are the Benefits of an EAP?

Prevents Problems: Prevents organizational and employee problems from escalating through early identification of the issue.

Proactive and Confidential: Offers employees a safe, non-judgmental recourse to resolve problems.

Increased Productivity: Effective use can increase employee productivity, and decrease absenteeism.

Reduced Costs: Reduces prospective health care costs associated with accidents in the workplace and mental health concerns including stress related disability.

Improvements in Workplace Morale: Improves retention and recruitment, and strengthens employee loyalty based on employer's demonstrable commitment to overall health and well-being.

Enhances Human Resources: Provides additional support and resources to a company's Human Resources department.

4. How Should an Employer Choose an EAP Service-Provider?

Company Requirements: an EAP can be as broad or as narrow as necessary, depending on the size of the workforce, and specific issues facing employees. The range of EAP services include:

- consultation to management on behavioral aspects of the workplace;
- behavioral risk management;

- educational information on emotional, work-life, and workplace issues;
- assessment, support, short term counseling, referral, and follow-up for employee and/or family member issues;
- support for preventive health and wellness presentations;
- awareness training and critical incident interventions; and
- website and online kinds of assessments and information

Purchaser's Guide: EASNA has published *Selecting and Strengthening Employee Assistance Programs: A Purchaser's Guide* (2009) with further information. (<http://www.easna.org/research-and-best-practices/what-is-eap/choosing-eap-providers/>)

Accreditation/Certification: In Canada, accreditation and certification of EAP service-providers is NOT required. However EASNA does offer accreditation of firms and certification of individuals.

5. Where can Employers Access Further Information?

- I. **The Employee Assistance Trade Association (EASNA)**, which “advances the competitive excellence of its members by fostering best practices, research, education, and advocacy in behavioral health and wellness that impacts workplace performance”. (<http://www.easna.org/>)

EASNA Members in Canada are included in the EASNA Membership Directory (<http://www.easna.org/about/member-directory/>)

- II. **The Canadian Centre for Occupational Health and Safety (CCOHS)**, which “promotes the total well-being—physical, psychosocial and mental health—of working Canadians by providing information, training, education, management systems and solutions that support health, safety and wellness programs. A not-for-profit federal department corporation, CCOHS is governed by a tripartite Council—representing government, employers and labour—to ensure a balanced, approach to workplace health and safety issues. [It] offers a range of workplace health and safety services to help your organization raise awareness, assess risks, implement prevention programs, and improve health, safety and well-being”.
<http://www.ccohs.ca/oshanswers/psychosocial/substance.html>

- III. **Association of Workers' Compensation Boards of Canada (AWCBC)**, which seeks to “drive a strong Canadian leadership role in providing the safest and healthiest workplaces in the world and a fair, affordable workers' compensation insurance system”, and achieve “excellence through data analysis, shared knowledge, education and networking”.
www.awcbc.org/en/emergingissues.asp