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Alcohol and Drugs in the Workplace

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Principal

Thursday, 22nd October
2019

Question

WHAT ARE YOUR OBLIGATIONS OVER ALCOHOL OR DRUG ADDICTION AS PART OF A CAPABILITY OR DISCIPLINARY PROCESS, WHEN THE ADDICTION MAY BE MASKING AN UNDERLYING DISABILITY?

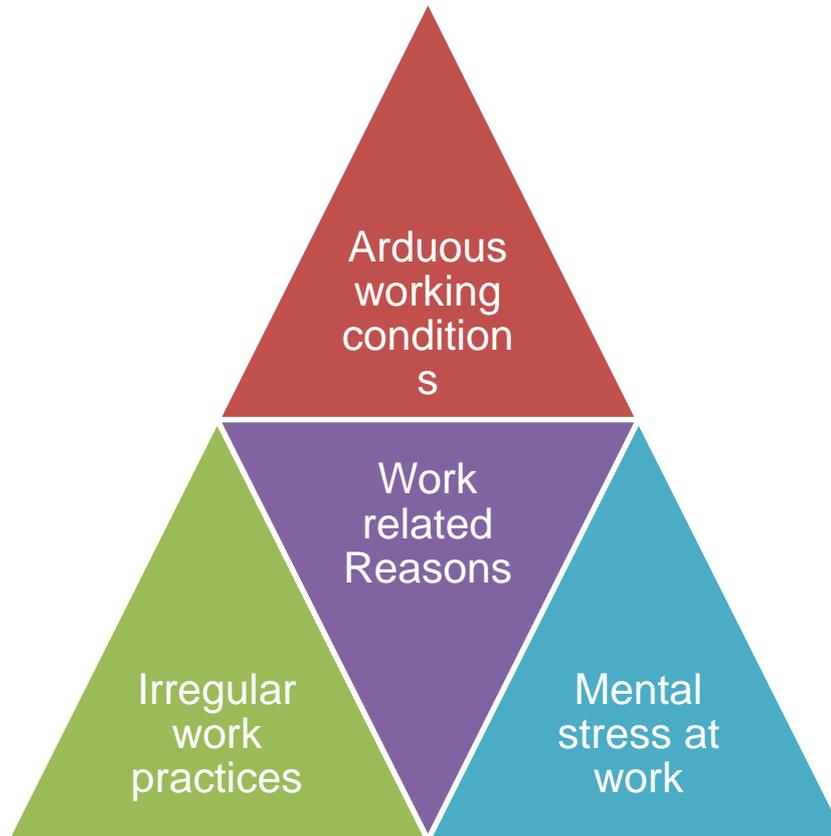


Disability

- Not apparent
- Self-medicating
- Social Distance
- Fear, Self-Esteem, Doubt, Insecurity
- Depression, Acquired Brain Injury, Autism, Diabetes, Unhealed Trauma, Anxiety, Bi-polar Disorder, ADHD



Work Related Reasons for Addiction



Statistics

- EU average estimate –

5-20% of workers = addicted to alcohol/at risk

- Irish Attitudes and Behaviours to Mental Health 2012

- 57% - talking about mental health problem has a negative impact on job and career prospects
- 47% said being open about mental health problem at work would have a negative effect on the person's relationship with colleagues.



Impact of Alcohol & Drugs on Employers

Staff Issues:

Low productivity
Increased absenteeism
Poor discipline

Security Issues:

Workplace bullying
Health and Safety Breaches

Business Issues:

Loss of clients
Impaired decision making

Financial burden:

Recruitment costs
Lower profit margins
Liabilities

Damage to reputation

Criminal Liability

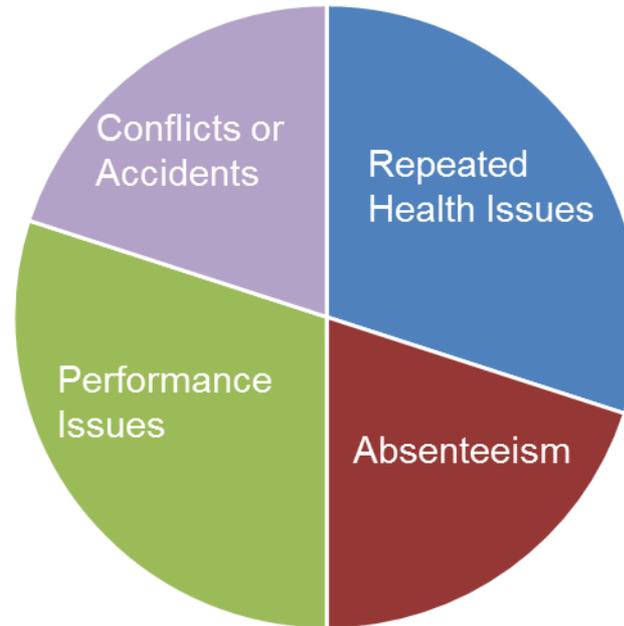


Behaviours to watch out for



Key Issues:

- Health Issues
- Sick Leave/ short term Absenteeism
- Reduced Performance
- Conflicts and accidents



Applicable laws

- Health and Safety at Work Act, 2005
- Employment Equalities Act 1998-2015
- Unfair Dismissal Acts 1977-2015
- Road Traffic Act, 1961 – 2018
- Misuse of Drugs Acts 1977 to 2016
- Common Law



Employer's Obligation

- Safe place of Work – Risk Assessments & Health Surveillance
- No diagnosis
- Discrimination v. Health and Safety
- Reasonable accommodation – Flexibility & Job Security
- Confidentiality
- Fair procedures in relation to investigations and disciplinary process
- Proportionate Sanctions



Employee's Obligation

- Protect their own safety and that of others
- Comply with Safety Statement
- Comply with Policies & Contract of Employment
- No discrimination
- Confidentiality



Safety Critical Role

- Health & Safety outweighs Employment Equality Act.
- Drug and alcohol 'testing' acceptable if in policy
- Removal from workplace
- Serious sanction



Alcohol & Drug Policy

- Zero Tolerance?
- Define Intoxicant, personal obligations & employer's obligations
- Set out Testing Policy
 - Legitimate health & safety risk
 - Independent Testing procedure – European Workplace Drug Testing Society Guidelines
 - Include Clause in contract for testing
- Removal from workplace & Follow up steps
- Support available
- Confidentiality
- Link to Disciplinary Policy



Employer's Best Practices

- Policies
- Training and assistance
- Disciplinary Procedure



Summary Answer

- Fair procedures & Comply with policy
- Is employee an addict?
 - Do not make diagnosis
 - Disability itself
 - Reasonable Accommodation
 - Employee also has a duty
- If not informed of addiction = disciplinary process
- Before implementation of sanction -
 - Underlying disability?
 - Employee seeking help and treatment?
 - Do not make diagnosis



Case Law:



- **A COMPLAINANT V A MEAT PROCESSING PLANT (ADJ-00003564)**
 - *Fair procedures followed; balanced sanction – no unfair dismissal.*
- **ALSTOM IRELAND LIMITED V A WORKER (Labour Court 2007)**
 - *Dispute as to outcome of test – ordered reinstatement.*
- **TREVOR KENNEDY V VEOLIA TRANSPORT IRELAND (EAT 2006)**
 - *Refusal by employee for Urine test – not unfair dismissal.*
- **IRISH RAIL DECISION (8TH OCTOBER 2019)**
 - *Safety and welfare of thousands of commuters and train users were at risk - not unfair dismissal.*





Questions?





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THANK YOU