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HAZARDOUS INDUSTRIES

Drug Testing and Managing Return To Work

Society's view of recreational drug use has been changing slowly since the 1960's, and selective decriminalisation in some countries has arguably led to a "normalisation" of recreational drug use in some quarters.

Indeed, when commenting on the 2018 Global Drug Survey, the Lancet said "It is time to accept that for many people the use of drugs plays an important and functional part in their lives." With 1 in 5 adults under 25 years old in the UK admitting to some drug use in the preceding 12 months¹, it's a significant exposure for businesses where their vehicles are being driven by employees.

Notwithstanding the shift in society's outlook, driving whilst unfit through drugs is an offence. The Crime and Courts Act 2013 inserted a new section, 5A, into the Road Traffic Act 1988 (RTA), which makes it an offence to drive, attempt to drive, or be in charge of a motor vehicle with a concentration of a specified controlled drug in the body above the specified limit.

The specified limits for the eight illegal drugs (listed below)² are such that “accidental exposure” can be ruled out, and therefore strict liability is imposed on anyone with test results above the limits.

ILLEGAL DRUG	THRESHOLD LIMIT microgrammes per litre of blood (×g/L)
benzoylecgonine	50×g/L
cocaine	10×g/L
delta-9-tetrahydrocannabinol (cannabis)	2×g/L
ketamine	20×g/L
lysergic acid diethylamide	1×g/L
methylamphetamine	10×g/L
Methylenedioxyamphetamine (MDMA)	10×g/L
6-monoacetylmorphine (heroin)	5×g/L

Illegal drugs are not the only substances that are included in the changes to the Act. A recent Public Health England report³ stated that in England, almost 12 million adults a year are being prescribed drugs on which they may become dependent. It’s therefore important that employers and employees alike are aware of the threshold limits for these substances too (listed below)²

MEDICINAL DRUG	THRESHOLD LIMIT microgrammes per litre of blood (×g/L)
clonazepam	50×g/L
diazepam	550×g/L
flunitrazepam	300×g/L
lorazepam	100×g/L
methadone	500×g/L
morphine	80×g/L
oxazepam	300×g/L
temazepam	1,000×g/L

Drug & alcohol policy – what should it include?

Given the increasing propensity for drug use (both illegal and medicinal) and the obligations that employers have under the Health & Safety at Work Act, ensuring that your employees are fit to drive your company vehicles needs to form an integral part of your fleet risk management strategy, and a drug & alcohol policy is an important tool in evidencing that.

The policy needs to explain why monitoring is taking place, the length of time that results will be held and to be clear on the potential consequences of failing a drugs test to ensure that you don’t become embroiled in employment tribunal claims if you dismiss an employee who fails a test.

Individuals cannot be forced to provide a sample of urine, hair, saliva or blood for any purpose, but if a person has a contractual obligation to provide a sample, and refuses to do it, courts have ruled that, in certain circumstances, this can be grounds for dismissal. It’s therefore important that your Employment contracts clearly reference this, along with any driver handbooks.

Isn’t it the employee’s responsibility to comply?

Although responsibility for compliance with these criminal thresholds whilst driving will rest with the individual employees, employers do have potential exposure if they do not effectively assess an employee’s ability to operate company vehicles safely if they have reasonable doubts about their capability to do so, or when they return to work after illness or injury.

In the current climate it is certainly possible that a Corporate Manslaughter prosecution could arise following a fatal accident involving a driver who had returned to work after an illness or injury and was simply allowed to drive again without any assessment of their ability to drive or checks on any medication they had been prescribed.

Conclusion

It's therefore important on a number of levels to ensure that employment contracts are clear on the expectations of employees, that the employees fully understand the consequences of non-compliance with these requirements, and the business has a robust and effective strategy in place to manage driver safety.

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1 Home Office Crime Survey for England and Wales 2018/19

2 <https://www.gov.uk/government/collections/drug-driving>

3 Dependence and withdrawal associated with some prescribed medicines, Evidence Review, September 2019

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