



## WORSE THAN A HANGOVER: THE IMPORTANCE OF AN EFFECTIVE DRUG AND ALCOHOL POLICY

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Over \$6 **billion** dollars per year... This is the cost to Australian employers for lost productivity and sick days attributable to drug and alcohol use. It is little wonder why safety-critical industries are increasingly committing resources to introduce or improve existing measures to combat the impact of drugs and alcohol in their workplaces.

Implementing policies and procedures for effective management of drugs and alcohol in the workplace is one important step, as it assists employers with:

1. Reducing the overall risk profile of their business;
2. Complying with their obligations under work health and safety laws; and
3. Ensuring there is a strong safety culture in place.

However, inadequately drafted or incorrectly implemented policies may cause an employer to experience something worse than a hangover. In *Shannon Green v Lincon Logistics Pty Ltd T/A Lincon Hire & Sales*<sup>1</sup> (“**Shannon**”), an inadequate drug and alcohol policy and its incorrect implementation allowed an employee to succeed in their claim for unfair dismissal.

In *Shannon*, the employer (“**Lincon**”) had a drugs and alcohol policy incorporating the use of random drug tests, which provided that refusal to participate will be regarded

<sup>1</sup> [2017] FWC 4916.

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as a positive test resulting in disciplinary action up to and including dismissal.

A Lincon employee was initially requested, as part of a workforce wide initiative, to submit to a random drug screening by way of urine sample. It was alleged some time after that the urine samples of the workforce had been diluted, so a further drug screening was required. The employee initially consented to a further urine test, but when he was told the second screening would be via a blood test, he failed to attend the clinic and otherwise refused. Lincon’s response was to dismiss the employee for failing to comply with a direction to attend the clinic for the drug test. Relevantly however, Lincon’s drug and alcohol policy did not specifically mention drug screening via blood tests.

In arriving at its decision, the Fair Work Commission considered Lincon’s drug and alcohol policy, and its implementation, and observed:

1. the policy did not specify what method of drug and alcohol testing could be used;
2. terms within the policy such as ‘laboratory testing’ were not expressly defined; and
3. Lincon had departed from the usual process of testing for drugs via urine testing by directing their employee to undergo a blood test for drug screening.

The FWC found Lincon's direction to its employee to undergo a blood test was not expressly permitted by the drug and alcohol policy and was therefore not a reasonable direction. The employee was awarded compensation of ten weeks pay (reduced by other amounts such as those earned in subsequent employment).

#### HOW EFFECTIVE IS YOUR DRUG AND ALCOHOL POLICY?

With the holiday season well underway, the time is ripe for employers to review the effectiveness of their drug and alcohol policies.

Regardless of the business size or type, most effective drug and alcohol policies are founded on how well an employer has considered the following:

- Risk profile (a drug and alcohol policy should be relative to the risks present in your workplace);
- Workplace consultation (have employees or where relevant, their unions, been consulted); and
- Whether there is a clear and defined process with objectives grounded in health and safety (what is sought to be achieved, and how does the policy increase the health and safety of the workplace?)

The following provides some useful tips and tricks for employers in either instituting or reviewing a drug and alcohol policy.

#### DRUG AND ALCOHOL POLICIES – TIPS AND TRICKS

##### **Employers reviewing an existing policy:**

- Consider conducting a drug and alcohol policy refresher session with those responsible for administering the policy. Conducting a refresher session is an inexpensive method to ensure a uniform implementation of the policy.
- Develop supplementary materials for employees to assist their understanding of the policy. For example, consider providing employees with leaflets or email updates that explain how a policy applies in different settings.
- Consider conducting an external legal review of your policy against laws and industry standards.

##### **Employers introducing a policy:**

- If you haven't already, consider completing a risk assessment for your business to determine whether a drug and alcohol policy is necessary.
- Consider contacting other employers in your industry to understand how they are managing drug and alcohol use in their workplace. Many employers have well established drug and alcohol management processes in place and there is a lot to be learnt from others when considering introducing a policy into your workplace.
- Describe the testing protocols and procedures with sufficient detail and ensure that what you provide in the policy can be readily implemented on the ground.
- A policy is no good unless it is understood - ensure the policy is clearly communicated to all members of the workforce.

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