

How to Guide: How to Document for Reasonable Suspicion

What do you do if you suspect an employee is under the influence of drugs and/or alcohol at work? This guide will walk you through the steps supervisory personnel should take to properly execute and document situations under our Substance Abuse Policy.

Please note: Any department head, supervisor, or any employee designated as a supervisor who does not relieve an employee suspected of being under the influence of alcohol, drugs or chemicals shall be subject to disciplinary action.

Step 1: Identifying employee

Concerns that an employee is under the influence often come from co-workers or citizens or even vendors before it is noticed by a supervisor or department head. You do not want to send an employee for testing based on hearsay or gossip, but you should document the complaint or concerns of individuals who bring this information forward. Take a few extra minutes to ask what was observed, when it was observed and if others witnessed this or commented on this situation. You also want to know if this is something that has happened in the past (a pattern of behavior) or new behavior.

Step 2: Observations by supervisory personnel

Firsthand observation should be made by two supervisory personnel. Immediately upon notice of this type of concern, the department head, supervisor or HR supervisor should go to this employee's work area for firsthand observation. They may be able to observe the employee from afar, but usually they will need to talk with the employee directly to observe any smell of alcohol, eye dilation, slurred speech or other behaviors.

Step 3: Removing from safety sensitive areas

If this employee is working around machinery or heavy equipment or is in any other type of safety-sensitive job, or is acting out in a way that appears to be a safety concern for the employee or others, you shall remove the employee from the work area immediately and ask him or her to wait in a conference room or an office.

Step 4: Observations by another person

The department head, supervisor or HR supervisor who performed the initial observation should seek a second supervisor to confirm initial suspicions. This second observer should perform his or her own firsthand observation of the employee. There may be a rare occasion when a second supervisor is not available (i.e.: midnight shift), proceed to Step 5.

Step 5: Documenting observations

Both observers should clearly **document their observations**, including any abnormal behaviors. You want to be as specific as possible in your description, but do not attempt to diagnose the situation. Please use the attached form, Reasonable Suspicion Observation Form, as a guide to assist you with the documentation.

Step 6: Assessing situation

After the situation has been clearly documented, you need to assess what you know and observed to determine next steps. If both observers witnessed behaviors that create a suspicion and the documentation supports this, then proceed with step 7. If there is disagreement, you may need to bring in a third party to also observe and help make a determination. You may decide you don't have anything that leads you to a reasonable suspicion of use of drugs and/or alcohol outside of an employee complaint. You do not want to send an employee for testing unless you have documented concerns that support a reasonable suspicion.

Step 7: Meeting with employee

If the employee is covered by a union, a union officer/representative shall be notified. You will want to meet with the employee and a witness; the meeting should include the employee, the supervisor(s), human resources, and a union representative if possible. During this meeting you should clearly explain what has been observed or documented by supervisory personnel. Then explain that **in order to rule out the possibility the employee is in violation of the City's Substance Abuse Policy, you will be sending the employee for a drug and/or alcohol test.** Explaining it in this manner shows the employee you haven't jumped to any conclusions, but are just following your procedures; and if the employee is not under the influence of drugs and/or alcohol at work, the test will prove this. The attached REASONABLE SUSPICION / POST-ACCIDENT ALCOHOL / DRUG TEST CONSENT FORM is to be completed by the Supervisor and signed by the employee. The original is to be sent along with the employee to the test, a copy for the employee, and a copy sent to HR with the completed and signed Reasonable Suspicion Observation Form.

Step 8: Preparing transportation

You do not want to allow someone you suspect of being under the influence behind the wheel of a car; therefore, you must ensure the employee does not drive to the testing center or back home afterward.

Step 9: Sending for testing

If during normal City Hall hours, contact HR and they will notify the drug test facility that an employee is on the way for reasonable suspicion testing. If outside normal City Hall hours the employee will need to be transported to Backus Hospital for testing.

Step 10: Waiting for results

The test results should be available immediately and the person transporting the employee for the test should remain to either transport the employee home, arrange for transportation home or return the employee to work if negative.

Step 11: Refusing the test

If the employee refuses to go for the test, this will be treated as a positive test result. If the employee attempts to drive home, **never** attempt to physically restrain the employee. Take note of the employee's type of car and license plate and contact the authorities to report concern that the employee is driving under the influence.

Step 12: Results are negative

If the drug and/or alcohol test results are negative, return him or her to work

Step 13: Results are positive

If the results are positive, the employee must be relieved of duty and transportation home must be arranged.

Examples

Scenario One:

The supervisor of a two-person department receives an e-mail from Mike (one employee) stating that he thinks Dave, the other employee in the department, is coming to work drunk. The e-mail states, "On Monday Dave smelled like a brewery." It is now Thursday. The supervisor talks with Mike to get more information, but there are no other witnesses due to the small department. The supervisor thanks Mike for coming forward with his concerns and asks Mike to let him know immediately if it happens again, and if he is not in the office, Mike should contact HR or the department head. The supervisor meets with Dave but observes no signs of Dave being under the influence at work. The supervisor talks with HR and the department head, and they agree that they cannot move forward with any testing based on one employee's complaint about a concern a few days old. The supervisor is asked to document the situation and provide it to HR so that they can maintain this in a separate investigation file for future reference. The supervisor will keep his eyes open, and decides to make a point to check in on Mike and Dave each morning and after lunch for the next week or so.

Scenario Two:

The shipping supervisor, Tim, was walking past Sandy in the packing department. Sandy stumbled into him. When Tim helped her up, he noticed her eyes were making some unusual movements, and she seemed confused and acted as if she didn't recognize Tim. Tim went back to his office and called in Sandy's supervisor, John. Tim asked if John had noticed anything odd about Sandy lately. John stated that Sandy had been very erratic; she was coming in late and she never seemed to be at her workstation when John walked through. He had written her up just last week for both issues, but admitted he hadn't talked to Sandy yet today. Tim relayed what he had observed. John asked Tim to report this to HR while he went looking for Sandy. When John found her, she was standing at her workstation but was not working – she was staring off in a daydream. When John asked her what she was working on, she didn't hear him at first, and then had a hard time focusing on him. Her eyes wouldn't hold steady, her pupils were dilated, and finally she started rambling on and on. John asked Sandy to walk with him to the conference room and remain there for a few minutes, he wanted to talk with her some more.

HR's office was across the hall and Tim was already reporting what he had observed. John filled HR in on his additional observations. HR asked John to document what he observed, and after review of all the information they agree to send Sandy for reasonable suspicion drug and alcohol testing. The HR person called to arrange transportation to the facility and printed out the drug testing consent form.

John and the HR representative returned to the conference room to meet with Sandy. HR explained what had been observed today and stated that in order to rule out the possibility that Sandy had violated the company's drug and alcohol policy, they were going to send her for drug and alcohol testing. Sandy started crying and shaking her head. She balled up the drug test consent form and threw it in the trash and stood up to leave. The HR representative explained this was the only way to rule out the possibility of policy violation, but if Sandy refused to sign the consent form or go for testing it would be treated as a positive test and subject to immediate termination of employment. Sandy pushed past her supervisor and ran out the door. John followed Sandy into the parking lot, pleading, "Sandy, I don't want you to drive so upset. Listen, a cab should be here any minute. If you still don't want to go for testing when it arrives, then I will pay for the cab to take you home." Sandy drove away. HR had written down the license plate and called the police. Sandy was sent a termination letter in accordance with their drug testing policy.

Scenario Three:

Jane tells her department head that she suspects Joe (an accountant) had a few drinks at lunch. She had suspected Joe was drinking at lunch in the past, but this is the first time she smelled the alcohol on his breath. The department head asks Jane when she observed this and how, why she had suspected it before, if she observed any other concerning behaviors, and whether anyone else commented on this or witnessed this. The department head then approaches Joe's workstation and asks him a few questions about the project he is working on today. During this exchange, the department head observes the smell of alcohol when Joe speaks; also, his speech was slurred and he seemed distracted and flushed. The department head asks his lead to stop by Joe's desk to drop off some papers and chat with him. The department head asks the lead to let him know if he notices anything odd. The lead returns 10 minutes later and says that something was definitely off with Joe; he was talking slower and sounded like his words were slurred. His desk was a mess (very unusual for this accountant) and he was dropping papers and folders, and even bumped into his coffee cup (which thankfully was empty). They both document what they observed and call HR. HR reviews their observations, prints off a drug test consent form and a copy of the drug and alcohol policy, and agrees they should send Joe for reasonable suspicion testing according to their policy. The HR representative contacts the cab company and asks them to arrive in half an hour. Then they call Joe into a meeting with the department head and the HR representative.

In the meeting, the department head explains what he had observed and the HR representative confirms that he can smell beverage alcohol on Joe's breath right now. The HR representative explains that in order to rule out the possibility that Joe violated the drug and alcohol policy, they were going to send him for testing.

After Joe signs the consent form, the HR representative explains that he would take a cab to the testing facility and then the cab would take him home. It usually takes up to 48 hours to get the test results, and according to procedure Joe would be called back to work after the results come back. An employee with negative test results will be paid for the days missed waiting for the results.

Joe has a positive test result. The company procedure is to offer a last chance agreement to the employee, and Joe accepted this. The company mandatorily referred Joe to their EAP, and he signed the last chance agreement and will be putting in a request for FMLA leave for treatment.

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