

Employee Confessions of Drug and Alcohol Use



An employer has a right to establish an alcohol policy that prohibits reporting to work under the influence of alcohol, possession or consumption of alcohol during work time and on the organization's property, and to fully enforce that policy. Similarly, employers have the right to enforce a drug-free workplace policy. An employer can (and should) hold an employee who is dealing with substance abuse to the same job performance standards and rules of conduct as any other employee, even if the unsatisfactory performance or rule violation is related to the employee's addiction. So what does this mean to an employer? Consider the following scenarios:

Confessing During Progressive Discipline

If, during the progressive discipline process for excessive absenteeism or performance issues, an employee discloses that he/she is struggling with substance abuse, the employer may have an obligation to provide reasonable accommodations under the ADA for treatment, but is not required to change attendance or performance standards. In addition, if treatment involves inpatient care in a hospital or continuing treatment by a health care provider and the employee is eligible for FMLA, then the employer may need to grant FMLA. The employer may continue to count non-FMLA/ADA absences in the attendance process and discipline per the employer policy. As noted earlier, remind the employee about available benefits, such as EAP and time off.

The Last Minute Confession

The employer has a consistently enforced discipline or attendance policy with standards and progressive discipline for violations. An employee has progressed to the final step, but prior to the termination interview confesses to "substance abuse" and plans to enter rehabilitation (this rehabilitation may be covered under FMLA or ADA). Should the employer proceed with the termination? If the employer can clearly demonstrate that the termination is a result of the employee's repeated and progressive violations of the organization's standards and that termination was the next step, then the employer's position should be defensible. A more conservative approach would be to proceed with FMLA (if eligible) or leave as a form of accommodation under the ADA and, when the employee is able to return to the job, enter into a last chance agreement where the employee chooses between termination or following the specified organization rules and rehabilitation requirements.

Confessing During Coaching

If early on in the process of providing an employee with feedback about performance or attendance issues, the employee shares he/she is dealing with substance abuse issues, consider implications under the Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), your policies and procedures, and the benefits available to help the employee. If FMLA eligible, and the employee is seeking treatment for this serious health condition, the employee may be able to take a job-protected leave under FMLA. If the employee is not eligible for FMLA, and ADA is applicable, the employee may be allowed to take a leave of absence to seek treatment as a form of reasonable accommodation. Lastly, consider other benefits your employer may offer such as an Employee Assistance Provider (EAP), mental health benefits under the employer sponsored group health plan and other leave or paid time off benefits. The employer should advise the employee of these options, yet let the employee know that improvements to his/her performance or attendance are expected.

Rehabilitated Employee Who “Falls Off the Wagon”

Rehabilitated employees do not always stay rehabilitated. If an employee begins to repeat past behaviors, then the employer is best advised to deal with the performance or attendance issues and not make assumptions as to the root cause—that is the employee’s responsibility.


When handling performance problems related to addiction, it is wise to remember that discriminating against an employee because that individual is an alcoholic or addict violates the law. Holding all employees to the same policies and standards of performance does not.

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Confessing After the Fact

Suppose the employer had terminated an employee for three days of no call, no show. Following receipt of the termination letter, the former employee contacts the employer and confesses to “substance abuse” and plans to enter rehabilitation. In this instance, the employer is not under any obligation to reinstate the employee. Even an employee with a disability may be held to established standards of conduct such as reporting absences.

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