

CHECKLIST FOR HANDLING AND DOCUMENTING **ALCOHOL/DRUG PROBLEMS**

The following points should be investigated or considered in dealing with alcohol/drug-related misconduct prior to disciplinary action.

- Are there specific job performance effects or is there a "reasonable belief or suspicion" which can be proven or supported by sensory facts in areas of:
 - safety,
 - unfit condition, or
 - inability to perform job or interference with others on job?
- Write down the exact time of events as they happen and as many sensory facts concerning these events as possible. (Use "chronological time-sequence" note taking.)
- What is the status of the employee's work assignments, assignment sheets, log books, etc?
- Were there witnesses, evidence, or admissions to the act of consumption or injection of alcohol/drugs?
- Were alcohol/drugs actually seen in the possession of the employee? Is there documented evidence available?
- Has there been previous discipline of this employee for alcohol/drug-related problems?
- The supervisor is often made aware of a problem and of the need to investigate because of the following two areas of behavior which should be closely documented by the supervisor or supervisory witnesses:
 - 1) How the employee acts compared to his/her usual behavior.
 - 2) How the employee talks, compared to his/her usual way of talking.
- What is the employee's physical appearance and dress compared to his/her usual physical appearance and dress?
- Does the employee's unusual behavior or speech attract the attention of others?
- Is there evidence of breath "cover-up"? (mints, etc.)
- Is there an outward health or bodily function problem (unusual perspiration, discoloration, vomiting, dizziness), as compared to the employee's normal behavior? What is the frequency of visits to the rest room, locker, infirmary, lunchroom, water fountain, parking lot, etc., as compared to normal frequency by the same employee?
- Has something changed to cause this unusual behavior? (Ask the employee.)
- Always ask the employee during the fact-finding interview following unusual and unacceptable behavior or performance, before temporary relief of duties pending investigation, before formally disciplining, "Is there any reason for your behavior/action?" or "Why are you doing this?", and ask this question as part of the fact-finding interview in private and in the presence of the steward.
- Does the employee remain in the work area, or does he/she attempt to stay in isolated or more private areas (corners, booths, offices, behind panels, dark areas, rest rooms, infirmary areas, lunch or break areas, storerooms), as compared to usual?
- What is the employee's absence/lateness status or performance compared to the same employee's usual status or performance?
- Is the employee at his/her usual work area? (Where is he/she required to be at the start or end of the work period?)
- Did the employee "punch in" or "check in" on time on the time clock?
- Did someone else "punch in" for the employee?
- Did the employee change into the customary work uniform?
- Did the employee park in the proper place or ride with another employee? How does that compare to the usual pattern for that employee?
- Did the employee have any problem on the way to work that could have upset the employee or which could be the cause of the observed unusual behavior?
- Is the employee taking medication for any physical problem? Ask the employee if he/she feels he/she is able to perform the required work.
- Is the employee slamming doors, breaking equipment, spilling liquids, damaging records, neglecting parts of the job? Is this normally part of his/her behavior?
- Do not ask another employee to correct the situation for you.
- Do not ask for another employee's opinion. However, it is appropriate to consult another supervisor in order to make sure the employee is being treated properly and fairly.

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RATIONALE AND APPROACHES TO ARBITRATION OF DISPUTES FOR ALCOHOL- AND DRUG-RELATED EMPLOYEE MISCONDUCT OR VIOLATIONS

An increasing number of companies are relying upon leaves of absence, some for periods of up to one year, to allow employees with alcohol- or drug-related disease or disorder to achieve rehabilitation; but only with an understanding between the company and the employee that improvement is expected, and that upon return to work the employee will be periodically randomly tested, and that there shall be no negative tests, and that the employee shall satisfactorily perform all of the duties required.

Companies dealing with alcohol/drug-related problems should be careful to draw a distinction between the employee who has been diagnosed as having an alcohol or drug dependency and the employee whose misconduct or unacceptable performance is brought about simply as a result of irresponsible use of alcohol or drugs. Single, irresponsible non-dependent incidents are generally treated differently from those caused by dependency.

In cases where single incidents are the issue rather than dependency employers are encouraged to stress the absence of the "uncontrollable" or "compulsive" nature of dependency and to stress that single incidents are the result of "irresponsibility" or "neglect of job performance responsibility" on the part of the employee, since the employee's job performance is the issue. In such irresponsibility circumstances, many employers do not give any mitigation consideration to the employee's appeal for use of employee assistance or professional addictive services counseling programs; and very often severe disciplinary action is imposed for the initial act of irresponsible conduct.

Some of the circumstances most likely to win arbitrator support of discipline for the non-dependency or irresponsible-use employee are:

- ... drug or alcohol possession on the job,
- ... drinking alcohol or consuming drugs on the job (with proof of job performance effects supported by sensory facts or by positive chemical tests)
- ... absenteeism,
- ... insubordination by refusal to leave premises when instructed by supervisor,
- ... refusal to submit to medical examination when there are job performance/sensory facts indicating the employee is intoxicated,
- ... thorough consideration of surrounding circumstances, including discussion with the employee before formally disciplining,
- ... presence of the employee's representative during investigations
- ... the use of proper stepwise discipline procedures prior to termination of employment.

In cases where dependency is the issue, arbitration rationale appears to favor a lengthy period for rehabilitative treatment before employers resort to the just-cause disciplinary process. Some arbitrators are also likely to consider post-discharge conduct, which is explained in the following pages.

ARBITRATION RATIONALE "POST-DISCHARGE CONDUCT"
CHECKLIST OF ADDITIONAL CONSIDERATIONS BEFORE DECIDING UPON
DISCIPLINARY ACTION FOR ALCOHOL/DRUG RELATED MISCONDUCT

For employees whose job performance has been complicated by alcohol or drug abuse/misuse, supervisors may want to consider the following items before deciding on termination of employment. Many arbitrators support the belief that an employee properly discharged for "just cause" may at some later date warrant reinstatement due to the employee's post-discharge admission of an alcohol/drug dependency problem and due to other positive steps or "post-discharge conduct" which the employee may have taken toward rehabilitation and improvement.

Post-discharge conduct/one last chance agreements. Because many arbitrators are prone to accept a discharged employee's plea for "one last chance" based upon the pre-discharge "denial" consideration which characterizes behavior of alcoholics, employers may choose to consider so called "one-last-chance" agreements before terminating the employee. Such agreements should be entered into only with extreme caution and with full support of the employer's legal and labor relations departments and only when such agreements are signed by both the employee and an Executive Committee level union representative. Do not make such agreements solely based upon the concurrence or even the signature of local union stewards. In such cases, some unions have been successful following recidivism, arguing that one last chance agreements should be overlooked because local stewards do not have authority to enter into such agreements. Following recidivism and subsequent termination of employment according to such "local" last chance agreements the union may request of the arbitrator yet another "last chance" for the same employee.

- ___ Before entering into such an agreement, inform the employee, in the presence of the union officer, that the employer believes there is just cause for termination of employment.
- ___ Offer the employee the opportunity for professional diagnosis as to whether or not the employee has an alcohol/drug dependency problem (if there is reasonable belief that such a problem may exist, based upon circumstances present in the case, as may be indicated by the CHECKLIST OF ALCOHOL/DRUG WARNING SIGNS).
- ___ Inform the employee that the decision whether or not to terminate employment, or for other appropriate action, would be made by the employer following such diagnosis.
- ___ If the employee refuses the diagnosis, the employer may choose to terminate the employment based upon the just cause standard for the specific misconduct involved and for failure to meet the basic job performance requirements.
- ___ If the employee accepts the diagnosis offer and is found not to be alcohol/drug dependent, the employer may terminate employment for the specific misconduct involved and for failure to meet the basic job performance requirement, and possible irresponsible use of alcohol/drugs, for in such cases, there is no "illness" or "dependency" to treat.
- ___ If the employee accepts the diagnosis offer and is found to be alcohol/drug dependent, the employer may suggest voluntarily a one-last-chance offer based upon routine employer monitoring of the employee's progress in an EAP program, the employee's satisfactory completion of the EAP program with subsequent job performance improvement to required level, and the employee's agreement to be tested periodically at the employer's discretion for one to two years beyond completion of the EAP program. Under this one-last-chance approach, the employer should formally notify the employee and the union that failure to satisfy any of the employer's one-last-chance requirements or any future positive test would result in termination of employment. DO NOT FAIL TO CLEARLY IDENTIFY THE CONSEQUENCES OF FAILURE TO FULFILL ANY OF THE REQUIREMENTS. DO THIS IN CLEAR, FIRM LANGUAGE IN THE LAST CHANCE AGREEMENT.
- ___ If the employee refuses such offer following the positive diagnosis, the employer should terminate the employment based upon the just cause standard for the specific misconduct involved and for failure to meet the basic job performance requirements. In the termination of employment letter the employer should also state that the decision was also made in part due to the failure of the employee to accept corrective treatment, including the employer's follow up safeguard requirements, since such failure would result in an unreasonable risk to the employee, other employees, and the employer.

NOTE: Fitness-for-duty policies should contain proper notification of the consequences for testing positive; otherwise, some arbitrators will not support disciplinary action for positive tests.