

**CHECKLIST FOR DEALING WITH THE EMPLOYEE  
WHO IS REPEATEDLY UNAVAILABLE FOR OVERTIME CALL-OUT  
FOR THE REASON: "I HAVE BEEN DRINKING"**

- \_\_\_ When hiring employees (and in reaffirmation tailgate sessions with current employees) supervisors should explain overtime call-out policy consistent with company's philosophy, policy, and the Agreement, and the supervisor should cover the Company's Position Statement in the box below.
- \_\_\_ When a supervisor calls an employee for overtime call-out, if the employee says, "I've been drinking," the supervisor should not have the employee come in:
  - \_\_\_ If such a response is repeated the supervisor should keep a record of the unavailabilities.
  - \_\_\_ Such records should be kept in the "currently using" file for all such instances.
  - \_\_\_ If repeated, the supervisor should discuss the instances with the employee and review company policy/procedure/Agreement and the employee's overtime obligation.
  - \_\_\_ during discussions the supervisor should make employees aware of Fitness-for-Duty Policy, EAP, and offer assistance if ever necessary, for any reason.
  - \_\_\_ No warning is necessary until there is a repetition (third or fourth time), unless specific employer policy defines otherwise.
- \_\_\_ Supervisors should require all employees called in for emergency overtime to report in person to a supervisor to allow the supervisor to closely observe the employee before allowing the employee to start to work.
- \_\_\_ The supervisor should make known the employer's objection to the employee being unavailable because the employee alleged to have been drinking, with the following explanation of the employer's "Position Statement":

**While we are not trying to interfere with your personal life, your choice of life style, or your privacy, it is the position of the Company that employees do have the obligation to maintain themselves in a condition fit to perform their jobs, and part of each employee's obligation is the obligation to be available for and to work a reasonable amount of overtime.**

**The Company provides wages and other benefits and consideration partially in exchange for the employees being available and in a condition fit and able to perform their jobs, which includes working a reasonable amount of overtime.**

**The unavailability for a reasonable amount of overtime for reasons which are under the control of the employee performs a disservice, not only to the Company but also to other employees who are repeatedly inconvenienced by having to work a disproportionate share of overtime.**

**Furthermore, the loss of productivity and service which occurs by additional delays in reaching others and as a result of unsuccessful efforts to obtain your services is both unnecessary and unacceptable.**

**Employees may be disciplined, including termination of employment, for failure to work reasonable amounts of overtime or for failure to maintain themselves in a condition fit to perform all aspects of their jobs.**

- \_\_\_ If the employee continues to use the "I've been drinking" excuse to avoid overtime following the supervisor's discussions utilizing the Position Statement, the supervisor should consider use of an "Instruction Letter" which contains the Position Statement before formally disciplining the employee. (See sample following this checklist.)
- \_\_\_ THE SUPERVISOR SHOULD NOT LABEL OR IDENTIFY SUCH UNAVAILABILITY AS "INSUBORDINATION" OR AS "ABSENCE" UNLESS COMPANY POLICY CLEARLY AND EXPLICITLY DEFINES IT AS SUCH. It should be identified as "unavailable for overtime" and the employee's reason should be documented using words as close as possible to those used by the employee.
- \_\_\_ The supervisor should make sure that any employee warned or disciplined for unavailability under this procedure is the "worst offender" and that any other employees who have been similarly unavailable are also receiving job performance counseling or are being warned or disciplined.

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- \_\_\_ If an employee shows up unfit and states that he/she has been drinking (or if the supervisor's sensory facts indicate a "reasonable belief or suspicion" that the employee is impaired), and has not told the supervisor of his/her condition beforehand on the phone during call-out, the supervisor should follow the Fitness-for-Duty provisions regarding possible testing and relief of duties and the provision of a proper "safe ride" home. The supervisor in such cases, with approval of the Labor Relations Department, may require a return-to-work physical/medical examination/test before allowing such an employee to return to the employee's regular scheduled shift.
- \_\_\_ If an employee who is called-out for overtime shows up unfit and states, "I've been drinking," the supervisor may choose, after coordination with Labor Relations Department, to deny the employee the Agreement "overtime call-out pay," as such pay is awarded only when there is the condition of the employee being able and fit to perform the work for which he/she was called.
- \_\_\_ If the supervisor determines in such cases to allow the employee to come in to work and to start work (although such is not recommended), the supervisor should personally meet the employee in the presence of another supervisor when the employee arrives and should closely observe the employee to determine if the employee appears to be able to work in a safe manner. If the supervisor believes the employee can safely work, the supervisor should ask the employee: "Do you believe you can do the job safely?" The supervisor should closely observe such employees when they do start to work.
- \_\_\_ When performing job performance counseling or when administering corrective action to employees who are repeatedly unavailable for the "I've been drinking" reason, the supervisor should inform employees that while they are not being accused of any impropriety or of any misconduct, the company does provide an Employee Assistance Program which may be helpful in understanding and solving any personal problems employees may have that may be interfering with job performance.
- \_\_\_ The supervisor should not be hasty in getting into formal warning or disciplinary action. At least two to three instances of accommodating the employee should be permitted (unless company policy explicitly states to the contrary) before getting into formal corrective action. The use of an "instruction letter" is highly recommended before issuing a formal warning or formal disciplinary action.
- \_\_\_ In job performance counseling sessions, in disciplinary letters and in instruction letters supervisors should stress that being available for and working a reasonable amount of overtime is a basic job performance obligation, and continued failure by the employee to be available and fit for overtime may result in denial of advancement opportunity since, "In order to be available for promotion or advancement, an employee should first of all be doing an acceptable job in the job they are presently in, and doing an acceptable job includes being available for and being fit and able to work a reasonable amount of overtime." Supervisors should stress also in the sessions or letters: "Your present performance in this regard is unacceptable."
- \_\_\_ Before deciding upon disciplinary action, the supervisor should review the following MARC Checklist:
  - 1) JUST CAUSE +/-/? ANALYSIS CHECKLIST
  - 2) HANDLING AND DOCUMENTING ALCOHOL/DRUGS PROBLEMS
  - 3) ADDITIONAL CONSIDERATIONS BEFORE DECIDING UPON DISCIPLINARY ACTION FOR ALCOHOL/DRUG RELATED MISCONDUCT
  - 4) JOB PERFORMANCE WARNING SIGNS DUE TO ALCOHOL/DRUGS
- \_\_\_ If a substantial number of employees are involved in this problem area (especially if there have been instances where supervisors had to do the work or where the work had to be left undone due to unavailability of manpower), the company's Labor Relations Manager may choose to formally approach the union and inform the union that the company believes the union is negligent in fulfilling its obligation, under the terms of the Agreement, to provide available manpower which is required to satisfy the job performance obligations, including overtime work, inherent under the Agreement.

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\_\_\_ For extreme cases of chronic unavailability of manpower for overtime, the company can consider the use of forms of "employer-self-help" such as use of subcontractors, transfer of work, etc., with proper notification to the union, and the company may institute arbitration (if appropriate) or legal action as may be necessary and appropriate.

**NOTE:** Supervisors should prudently set a good example in making absolutely certain they do not show up for call-out overtime or emergencies in a condition unfit to work, smelling of alcohol, etc. Supervisors should prudently call their back-up supervisors or their own supervisors to respond to such calls for them if they are unable to respond, for any reason, in order to avoid any possible accusation or perception that a supervisor reported in an impaired or unfit condition. Similarly, supervisors who repeatedly have to make alternate arrangements for themselves in such cases should be encouraged to seek assistance if appropriate.

\_\_\_ Supervisors who are normally "on call" should make formal arrangements for a fellow supervisor to be available if needed whenever the "on call" supervisor knows he/she will be in a position where social drinking may be involved (parties, weddings, reunions, receptions). There is a likelihood of challenge and increased liability even in the event a supervisor merely gives advice over the telephone in response to a call-in request for that supervisor's services in those instances where the supervisor has been socially drinking alcoholic beverages. The challenge or increased liability may arise out of an allegation or claim that the supervisor's judgment was "impaired" or that the supervisor was "negligent" in failing to make alternate arrangements to cover his/her "off-duty" call-in responsibility. Supervisors should demonstrate by their own behavior the standards of conduct required of employees.

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**SAMPLE REAFFIRMATION LETTER TO UNION**  
**EMPLOYEE UNAVAILABILITY FOR OVERTIME CALL-OUT**  
**FOR THE REASON: "I HAVE BEEN DRINKING"**

President  
Local Union 1234

Dear Mr. President:

The purpose of this letter is to reaffirm to the Union the Company's Fitness-for-Duty Policy and to reaffirm the applicability of that policy to overtime call-out work, as well as to regularly scheduled work of all employees. There have been several instances in the past few months where employees have repeatedly been unavailable for overtime call-out due to failure on the part of those employees to be in a condition fit to work their overtime assignments.

Supervisors of those employees who have repeatedly been unavailable for overtime for the above reason have met with those employees individually, and letters of instruction have been utilized to clarify the Fitness-For-Duty Policy with those employees. Additionally, all supervisors have reviewed the Company Fitness-For-Duty Policy with all employees during work period tailgate sessions.

While it is not the purpose of the policy to interfere with the personal lives of employees or their choices of life style or their privacy, it is the position of the Company that employees do have the obligation to maintain themselves in a condition fit to perform their jobs, and part of each employee's obligation is the obligation to be available for and to work a reasonable amount of overtime. The Company provides wages and other benefits and considerations partially in exchange for the employees being available and in a condition fit and able to perform their jobs, which includes working a reasonable amount of overtime. The unavailability for a reasonable amount of overtime for reasons, which are under the control of the employee performs a disservice, not only to the Company but also to other employees who are repeatedly inconvenienced by having to work a disproportionate share of overtime. Furthermore, the loss of productivity and service which occurs by additional delays in reaching others and as a result of unsuccessful efforts to obtain services is both unnecessary and unacceptable.

Employees may be disciplined, including termination of employment, for failure to work reasonable amounts of overtime or for failure to maintain themselves in a condition fit to perform all aspects of their jobs, including overtime.

Supervisors may have in the past, for the first few instances with several employees, allowed the employee to be excused from overtime for reasons such as the employees' statements that the employees had been drinking. The repetition of such explanation by employees, despite supervisory instruction that such repetition may result in disciplinary action, including termination of employment, has made it necessary for me to send you this reaffirmation letter. I wish to advise the Union and its membership that when, in the judgment of Management, an employee's unavailability for overtime, for any reason, including failure to be fit for overtime duty, becomes unreasonable, the Company will take appropriate action, including but not limited to, medical examinations, substance abuse tests, and denial of benefits; and in addition those employees will be subject to disciplinary action which could include termination of employment.

If you have any questions regarding our intentions in this matter feel free to contact me and I will discuss your concerns. It is the obligation of the Company to enforce all of the provisions of the Agreement in a reasonable manner, and no employee who establishes and maintains a reasonable legitimate attendance and overtime work record would have reason to be concerned.

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(signature)

Labor Relations Manager  
MANAGEMENT ASSOCIATED RESULTS COMPANY, INC.

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**SAMPLE INSTRUCTION LETTER**  
**FOR EMPLOYEE WHO IS REPEATEDLY UNAVAILABLE**  
**FOR OVERTIME CALL OUT**  
**FOR THE REASON: "I HAVE BEEN DRINKING"**

To: Jim Dotsiero

From: Mac Partland

Re: Instruction Letter  
Availability for Overtime  
Fitness-for-Duty

By virtue of this letter the Company is making you aware of its Fitness-For-Duty Policy, which is attached. This Instruction Letter is also for the purpose of clarifying for you that the Fitness-For-Duty Policy requirements are applicable to all employees regarding overtime work, as well as to regularly scheduled work.

While we are not trying to interfere with your personal life, or your privacy, it is the position of the Company that employees do have the obligation to maintain themselves in a condition fit to perform their jobs, and part of each employee's obligation is the obligation to be available for and to work a reasonable amount of overtime. The Company provides wages and other benefits and considerations partially in exchange for the employees being available and in a condition fit and able to perform their jobs, which includes working a reasonable amount of overtime. The unavailability for a reasonable amount of overtime for reasons which are under the control of the employee, performs a disservice not only to the Company but also to other employees who are repeatedly inconvenienced by having to work a disproportionate share of overtime. Furthermore, the loss of productivity and service which occurs by additional delays in reaching others and as a result of unsuccessful efforts to obtain your services is both unnecessary and unacceptable.

Employees may be disciplined, including termination of employment, for failure to work reasonable amounts of overtime or for failure to maintain themselves in a condition fit to perform all aspects of their jobs.

On several occasions, which have been reviewed with you, you have stated that you ... "had been drinking", when supervisors attempted to reach you for overtime call-out. No objection was raised the first few times you gave this response, and the supervisor excused you from the call-out obligation. However, the repetition of the use of the above reason, despite supervisory instruction to you regarding your obligation to be available for overtime and in a condition fit to perform overtime work, has prompted me to provide you with this Letter of Instruction. It is hoped that this letter will clarify for you any question you may have regarding the Company policy so that you may take whatever steps are necessary to avoid disciplinary action in the future.

If you have any personal problems of any nature which prevent your compliance with this policy, please discuss it with your supervisor or you may want to, in confidence, contact the Employee Assistance Program at 800-555-4567. I urge you to protect your employment and seek assistance to correct any problems you may have. A descriptive brochure of the EAP is attached for your review.

In future instances whenever you report for overtime you should report in person to the supervisor in charge of the overtime work for which you were called. It is important, however, that you do make your supervisor aware, at the time of the call-out, if for any reason you believe you are unfit to work. Your failure to do so and your subsequent report to work in an unfit condition would be considered misconduct for which you may be disciplined, including termination of employment.

If there is anything that I can do to assist you in improving your overtime availability, please feel free to contact me, as it is my sincere desire to see you be successful.

Sincerely,

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