

NORTH RISK PARTNERS
 WAGNER, FALCONER & JUDD, LTD.
GUIDELINES FOR REASONABLE SUSPICION DRUG & ALCOHOL TESTING
 GEORGE A. HILLER ESQ.
 WAGNER, FALCONER & JUDD
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PRESENTER

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REASONABLE SUSPICION IS:

One component of a comprehensive workplace drug and alcohol testing program.

A tool to deter employees from engaging in prohibited drug and alcohol use and to identify those who do use illegal drugs or misuse alcohol.

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REASONABLE SUSPICION


The overall goal of reasonable suspicion testing is to protect public and workplace safety by ensure that employees whose behavior and appearance indicate possible illegal drug use or alcohol misuse are removed from safety sensitive duties.



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OBSERVABLE BEHAVIOR



Observations must be made and documented by:

- A supervisor who is familiar with the signs and symptoms of alcohol misuse and drug abuse; and
- Familiar with the requirements for reasonable suspicion testing




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OBSERVABLE BEHAVIOR


Reasonable suspicion testing must be based on specific "contemporaneous", "articulable" observations of **employee conduct, behavior, appearance, speech or body odors associated with alcohol or controlled substance abuse.**



Contemporaneous

The suspicious behavior is observed by the supervisor **NOW**


The decision to test cannot be based on observations during off duty hours or times not proximate to the employee's duty period



Articulable

The observations are specific, grounded in objective criteria, and capable of being documented by verbal or written expression.

What the supervisor sees, hears, or smells.



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OBSERVABLE BEHAVIOR

Alcohol Misuse

The observations of the employee behavior, conduct, or appearance must be made just before, during, or after performing job duties.

Drug Use

Drug test determination may be made at any time the supervisor observes employee behavior or appearance indicating possible use of controlled substances.



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THE SUPERVISOR'S ROLE

May of the signs and symptoms associated with drug & alcohol use may be explained by other factors such as fatigue, family problems, physical illness, emotional problems, or other personal stressors.





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THE SUPERVISOR'S ROLE

It is not necessary or expected that supervisors be able to establish "probable cause" or provide evidence that the employee is impaired by alcohol and/or drugs.

The supervisor's responsibility is to be alert to changes in the employee's behavior and/or appearance, not to a specific set of symptoms associated with each drug or drug class.





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CONFRONTING THE EMPLOYEE

The key to successful confrontation about an employee's suspected drug/alcohol-related misconduct is to focus on the specific observations of employee behavior and appearance.

If reasonable suspicion testing is warranted, the supervisor should consult with Human Resources or another member of management to confirm that confronting the employee is the next best step.

- The supervisor should not accuse the employee of substance use, misuse, or abuse.
- The supervisor should clearly and objectively articulate their observations and inform the employee that drug and/or alcohol testing will be conducted.
- If the employee declares the signs are due to other causes, the supervisor should listen, empathize and explain that the test will rule out the use of alcohol or drugs
- The supervisor should remain firm in their resolve to carry through with the decision to conduct reasonable suspicion testing.

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CONFRONTING THE EMPLOYEE

If the employee states that they will not take the test, the supervisor must clearly state the consequences of the employee's refusal to submit to the test.

Even if the employee admits that they have violated the company's substance abuse policy, the employee must go for the test, or else it is deemed a refusal to test.

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TESTING PROCEDURE


<p>Supervisor</p> <ul style="list-style-type: none"> • Be prepared to explain the procedures for completing the testing, including transportation to and from the testing location, any documentation being made, and the employee's responsibility • Be knowledgeable of the company's policy and procedures • Should stay focused on the observations that have led to the determination to test and follow through with arrangements ASAP. 	<p>Employees</p> <ul style="list-style-type: none"> • Should be well educated on the company's policies • May ask about the consequences of a "positive" test • May become defensive or hostile
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GETTING HELP FOR EMPLOYEES

Workplace patterns commonly associated with the chemically dependent or substance abusing employee include chronic lateness, excessive absences, decreased productivity, poor work performance, and problems in interactions with co-workers, subordinates, or supervisors. **While these changes or workplace patterns often are indicators of substance abuse or chemical dependency, they are not specific observations of the employee that can be used to require reasonable suspicion testing.**



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PROHIBITED DRUG USE





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BEHAVIORAL SIGNS & SYMPTOMS

Behavioral signs or symptoms associated with controlled substance use fall into four categories:



Psychomotor Changes



Social Interaction Changes



Speech Pattern



Personality Changes



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BEHAVIORAL SIGNS & SYMPTOMS

PsychoMotor Changes

- **Stimulants tend to speed up motor activity**
 - Cocaine or amphetamine user feels energized
 - Often restless, hyperactive, can't sit or stand still, fidget, movements may appear jerky or misdirected
- **Sedatives or narcotics slow down motor functions**
 - Opiate or heroin use movements appear slow and methodical
 - May nod off or seem stuporous, stumble when they walk, seem to be unsteady, having trouble with balance
- **Hallucinogenics produce bizarre behavior**
 - PCP or LSD movements are out of sync with the environment, respond to things no one can see or hear, movements may be exaggerated and dramatic.

Social Interaction Changes

- Controlled substances may produce irritability, hostility, withdrawal from social interaction
- Or talkative, boisterous, or silly behavior
- Or paranoid, suspicious or hyper-sensitive reactions
- Be alert to changes in usual patterns
 - Typically low-key, "easy to get along with" employee becomes irritable or hostile in interactions with others



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BEHAVIORAL SIGNS & SYMPTOMS

Speech Patterns

- Stimulants tend to speed up speech patterns
 - Stimulant users frequently have rapid, pressured, speech patterns
 - Talkative to the point of sounding breathless or manic
- Narcotics users may have slurred, thick, or incoherent speech
- Hallucinogenics often produce nonsensical, dreamlike speech patterns that don't fit the situation
- In the extreme psychoactive drugs may produce incoherent speech, slurred pronunciation

Personality Changes

- A quiet, introverted, passive person may become outgoing, aggressive and obnoxious after using drugs
- Out-going, assertive, loud employee may appear withdrawn, isolated, or out-of-touch after using drugs
- Supervisors should be aware of changes in usual behaviors and exaggerations or dramatic increases or decreases in traits or patterns




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APPEARANCE SIGNS & SYMPTOMS


Like behavior changes, appearance changes range from subtle to extreme. When dealing with chronic drug use, these changes may occur gradually over time, often in subtle increments.




Personal Grooming




The Eyes



Body Odor



Physical Symptoms



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APPEARANCE SIGNS & SYMPTOMS

Personal Grooming

- Dramatic, often inappropriate, changes in grooming style may signal drug involvement. (extreme hairstyles, makeup or clothing)
- The usually well-groomed, appropriately dressed employee who is now unkempt warrants a supervisor's increased attention.
- Needs to be viewed in the broader context of changes in the employee's overall performance and behavior

The Eyes

- Most susceptible to the physical effects of controlled substance use
- Many controlled substances effect pupil size by either constricting or dilating the pupil
- Other conditions include:
 - Red or bloodshot eyes
 - Excessive tearing or watery eyes
 - Eyes that appear unfocused or unresponsive

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APPEARANCE SIGNS & SYMPTOMS

Body Odor

- When marijuana is smoked, it gives off a distinct, recognizable odor
 - Pungent, sweet, acrid, etc.
 - Detectable on a user's breath and clothing

Other Physical Symptoms

- Profuse sweating
- Shivering or shakes
- Dramatic changes in skin color
 - Flushed or pallid complexion
- These symptoms are not unique to controlled substances, however, when observed in combination with other signs of behavior or appearance may suggest controlled substance use or withdrawal syndromes associate with drug use

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EFFECTS OF ALCOHOL

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THE EFFECTS OF ALCOHOL

Alcohol is a drug- a chemical substance that alters the way the human body functions.

- Low doses of alcohol are mildly stimulating, but alcohol is a sedative or depressant drug.
- As a person's blood alcohol concentration (BAC) rises, the person's judgment, cognitive and psychomotor skills are increasingly impaired.

The effects of alcohol vary tremendously from person to person, depending on a number of factors:



- Weight
- Sex
- Age
- Metabolism
- Liver function

- What food was eating
- Interaction with other drugs
- User's emotional state
- High tolerance
- How rapidly the person drinks



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APPEARANCE SIGNS & SYMPTOMS

The physical, behavioral and appearance signs of alcohol intoxication are commonly recognized. However, most of the signs and symptoms we associate with intoxication or drunkenness, generally are not apparent until the person's BCA reaches 0.1 or greater.




Mental Functions



Sensory Functions



Psychomotor Functions



Odor



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APPEARANCE SIGN & SYMPTOMS

Mental Functions:

- Judgment and decision-making skills are two of the first mental functions affected by alcohol
- Alcohol is a nervous system depressant
 - Slows down nervous system processes
 - Lowered inhibitions and faulty judgment
- Cognitive process is also affected
 - Memory, computation, and stimulus responses are less efficient

Sensory Functions:

- Visual, auditory, olfactory, and taste acuity are diminished
 - Vision: decreased object tracking ability and diminished night and peripheral vision
 - Hearing: trouble sorting background noise and diminished hearing acuity
 - Because hearing is impacted, the person tends to speak more loudly
 - Olfactory: sense of taste and smell are dulled as alcohol concentration increases



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APPEARANCE SIGN & SYMPTOMS

Psychomotor Functions:

- Speech is one of the first motor skills to be affected by alcohol
 - Over-enunciation, slurring, garbled speech patterns
 - Overcompensate by concentrating on articulation, resulting in slurred, exaggerated enunciation of words and phrases
- Eye-hand coordination, reflex reactions + other dexterity functions are affected
 - Drops things
 - Difficulty picking things up
 - Reactions times are slower, movements appear delayed
- Eventually gross motor skills are affected. A person's balance, gain and muscle coordination may be affected

Odor of Alcohol:

- One of the easiest, most familiar signs of recent alcohol use is the odor of alcohol on the person's breath
 - Many drinkers use breath sprays, mints, mouthwashes, or other breath fresheners to mask the odor
 - Supervisors should be alert to when employees frequently use these fresheners, especially when first arriving to their shift, before or after lunch, or when approached by management
- Supervisors who do not drink alcohol should familiarize themselves with the smell of alcohol on someone's breath



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MULTIPLE SIGNS & SYMPTOMS

All the signs and symptoms of alcohol use may be caused by other things.

- Physical illness
- Stress
- Fatigue
- Emotional problems

An alcohol breath test is a quick, non-invasive tool for ruling out or eliminating alcohol use as the possible cause of the presenting symptoms. **It is a far greater potential tragedy to allow someone who may not be fit for duty to continue to perform their job duties, than to be incorrect in identifying the cause of their behavior or appearance.**

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A good rule of thumb is to document at least two observations of behavioral or physical signs in making a reasonable suspicion alcohol test determination.

A possible exception to this rule of thumb is the odor of alcohol. This symptom is more indicative indicator of recent use, warranting reasonable suspicion determination.




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TESTING TIMELINE

Once a supervisor decides that a reasonable suspicion test is required, the test should be conducted as soon as possible.



The supervisor should complete signed, written documentation of the observations leading to a reasonable suspicion test within 24 hours of the observations.

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THE SUPERVISOR'S ROLE

The supervisor should not accuse an employee of drug or alcohol use or offer a diagnosis of substance abuse, addition, or alcoholism.

The supervisor's role is to:

- identify the specific observations of employee behavior or appearance
- confront the employee concerning the requirement to undergo reasonable suspicion testing
- Fully explain the consequences of the employee's refusal to comply

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POLICIES & PROCEDURES

- Company policy needs to establish the procedures for transporting an employee to and from the collection site (whether on or off the worksite).
- When an employee is exhibiting signs and symptoms of possible drug or alcohol use, and may be unfit for duty, it is inappropriate for the employee to go unaccompanied to the collection site.

Another issue that should be determined by company policy concerns the employee's duty status after the testing has been completed. Unlike breath alcohol tests, urine drug test results are not immediately available. **It will be 2-3 days before anyone knows the results.**



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POLICIES & PROCEDURES

Any disciplinary actions such as suspension, fines, termination, etc. are determined by company policy in consultation with human resources or other management members.



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POLICY & PROCEDURE

The company policy should address such issues as:

- How will the employee be transported to the alcohol test location, particularly if it is off-site?
- Who will accompany the employee to the test location?
- What are the procedures when an employee refuses a test?
- How will the employee be transported to the employee's home or other location if an alcohol test result is .02 or greater?
- Will an employee be permitted to return to duty before the drug test results are received?

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POLICY & PROCEDURE-TRANSPORT

In a situation where a reasonable suspicion test is necessary the issues concerning transportation to and from the testing site are critical.

Requiring, permitting, or allowing such an employee to operate a vehicle, for example, could affect the company's potential liability.



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POLICY & PROCEDURE-TRANSPORT


Any employee whose alcohol concentration is 0.02 or above should not be allowed to drive a vehicle.

If the employee is being sent home after a reasonable suspicion alcohol test with a result of 0.02 or greater, transportation should be provided.

If the employee insists on driving, the employee should be informed that the company may contact local law enforcement authorities.



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TESTING FOR ALCOHOL & DRUGS


If the observed signs and symptoms are consistent with both possible alcohol misuse and controlled substance use, a drug and an alcohol test should be conducted.

If the odor of alcohol on the employee's breath is the documented observation, doing the drug test in addition to the alcohol test is not appropriate.

If the observations could be associated with either alcohol or drugs, both tests are appropriate.

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SUPERVISOR TRAINING

A well-trained supervisor team enhances the effectiveness of a reasonable suspicion drug testing program.



promotes employee well-being



fosters a culture of safety and accountability within the organization.

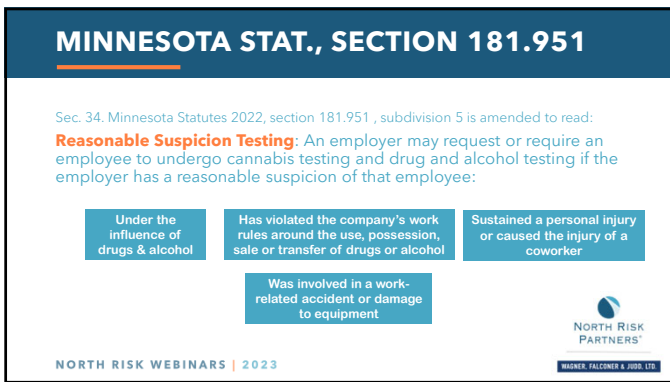
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