



“ELSSI: Addressing the Issue of Employers Concerns About Workplace Substance Abuse”



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We are proponents of workplace drug/alcohol policies as a deterrent for controlling substance abuse. This is our business. We believe that drug/alcohol policies when carefully designed to the needs of each company, applied properly, respecting and protecting the dignity of employees and using standardized and accredited forensic methods of analysis, are necessary and successful in reducing drug use. It is hoped, that this article will perhaps provoke the EU legislators to consider taking action on a priority basis on the problems discussed herewith. The EU does have a precedent on which to build on, the many years of experience of drug/alcohol policies administered in the United States.

Our article tries to provide answers to employers concerns regarding basic current issues involved in workplace drug testing. With arguments and examples we attempt to answer a primary question :

Should employers test ?

Issues discussed

- *Definition of substance abuse .*
- *Legislation : A safe and healthy working environment.*
- *Drug testing in the EU is still a sensitive subject*
- *Companies incentives to test*
- *Existing Difficulties (Legal and ethical issues involved and employees personal data protection.)*
- *The need for standardization and accreditation of testing methods in the EU.*
- *Drug testing demand in EU. is increasing .*

- *The political cost involved, results in “do nothing” decisions .*

Substance Abuse

What is substance abuse? Let’s begin by defining the term “Substance Abuse”. This appears seemingly an easy thing to do, but it is a rather difficult task, because in essence it involves several things or practices:

The use of legal drugs

- Prescribed for medicinal purposes by a physician or and misused by others for other purposes, i.e. to satisfy their “craving”. This also involves and includes over the counter medications, i.e., cough syrups, dietary pills ,etc .
- The over consumption of Alcohol, in quantities that impair ones ability and judgment. Alcohol in our society is legal and “socially accepted”. For this reason people do not realize that alcohol is a drug. As a matter of fact it is the most abused drug.

The use of illegal narcotics, prohibited by law such as, heroin cocaine, marihuana, etc.

Legislation : A safe and healthy working environment .

If we accept the evident fact, that an employee under the influence of drug addiction or of alcohol is not a medically fit person, the employer has a legal and consequently also an ethical responsibility to implement a drug/alcohol policy in his workplace.

The Shipping Industry

In the Shipping Industry, sea disasters have forced a series of actions to be taken by National-International Organizations and Governments to reduce the incidence of marine accidents:

- OPA 90, Oil Pollution Act , requires D/A testing .
 - IMO, addresses the issue of drug use and alcohol abuse.
 - OCIMF, guidelines.
 - ICS, guidelines for trafficking and drug abuse.
 - Shipping organizations, INTERTANKO, BIMCO are implementing D&A policies.
 - The U.S. Coast guard 46 CFR-PART 4 (Chemical Testing Requirements following a SMI –Serious Marine Accident) ruling 20 June 2006 :
1. Alcohol testing is required within 2 hours of a SMI.

2. Collection of samples for drug testing within 36 hours of a SMI.

- The ISM code, article 6.2 requires that each ship is manned with qualified, certificated, and medically fit seafarers, in accordance with national and international requirements. It is evident that an employee (a seafarer) under the influence of a substance is not medically fit.
- The OCIMF guidelines (Oil Companies International Marine Forum)

The OCIMF organization, recognized and respected internationally for its, dedication and responsibility in safeguarding of seafarers has issued the following guidelines concerning drug use on board ships : “no seafarer will navigate a ship or operate its onboard equipment whilst impaired by drugs or alcohol. It is recommended that seafarers be subject to testing and screening for drugs and alcohol abuse by means of a combined program of un-announced testing and routine medical examinations....”. Through the years the international shipping community has realized the benefits of a drug/alcohol policy as a deterrent to substance abuse. Drug testing does work ,it prevents use.

Drug testing in the EU is still a sensitive subject.

Companies in the EU are required by law, to maintain a healthy and safe working environment .

In most EU countries, the employer is solely legally responsible to provide a safe and healthy working environment for all his employees. It is the employers responsibility to ensure and practice “due diligence” to make the workplace safer. The employer however, should not have a police enforcing, suppression duty. His emphasis must be directed to assist our society in prevention.

If however, he witnesses in his premises an illegal transaction, the use or sale of drugs, he has the right and the legal responsibility to intervene by informing the responsible authorities and/or to act as provided by the legal system of his country.

Drug testing in the EU for the prevention of use and sale of drugs in the workplace still remains a sensitive subject. The conflicting interests involved are the rights of the individual and his dignity vs. the social and ethical responsibility of employers to support the prevention of drug use, make the workplace

safer, more productive and to produce a quality product or service.

The companies incentives to test.

EU employers must realize, that we all have something much more valuable than our business, our family and the society in which we live in. Fighting drug abuse is every ones responsibility. The national governments of the EU member countries, do try to fight drugs but they are unable to stop their spread. Drugs are a very well organized business with astronomical profits. It is time for the entrepreneurs to seriously consider entering the fight against drugs and take positive action by preventing their use in the workplace. According to the EMCDDA (European Monitoring Centre for Drugs and Drug Addiction) an agency providing the EU member states with relevant and accurate facts about drugs in Europe : "The workplace is a setting which seems to be ripe for further development of drug demand reduction activities."

- A drug/alcohol policy at work will certainly be discussed at home and can have a domino effect, preventing use in the family.
- Drug abusers are excellent in camouflaging their use. When they are exposed by testing, they are forced to seek medical assistance.
- A suitable drug/alcohol policy will protect the interests of the company and its employees.
- One of the keys to success in the increasingly globalized competitive business environment is the realization of the critical role that quality plays. Employers must therefore strive to protect this quality. It is the indirect losses that can cause incalculable damage to a company's image. Inferior products or services, employee turnover, diverted supervisory time, low morale, increased insurance /compensation costs, high turnover rate for employees etc.

The companies' human resources investment.

One of the responsibilities of the human resources managers is the constant effort for improvement with a scope to contribute successfully in choosing, training and developing high caliber employees. These employees represent a very large investment and every company has an obligation to protect its employees, by making the workplace safer.

- Testing can be used as a deterrent to further drug use and alcohol misuse of employees and to help those that need help. Experts tell us that it is cheaper to rehabilitate an abuser vs. hiring and training a new employee.
- Drug testing can be a company requirement and used to screen new employee applicants for sensitive job positions.
- Determine if an accident involved substance abuse.

An employer's view concerning substance abuse.

As members of our society and directly involved citizens, we all have an ethical responsibility to participate and contribute towards reducing the risks of drug abuse. As business men, we must accept that the economic costs involved as a result of ignoring substance abuse and permitting it to continue are unbearable. To ignore this existing problem, represents not only a bad business decision but also a neglect of managerial duties.

The existing difficulties of drug testing in the EU.

Are the employers demands for workplace safety, legality and quality products strong enough arguments, to override the basic rights of employees claiming biased actions (referring to un-announced and to random testing) against them by the employers and the feeling as employees that their legal rights of privacy are being invaded and even denied. Based on our many years experience in drug testing, the tests that most provoke employees objections are random testing an un-announced testing.

Is it a reasonable request for employers to demand that the working environment be free of drug use and a safe place to work? The only objective means of identifying substance abuse is to implement in the workplace a drug/alcohol policy. Testing positively identifies drug/alcohol abuse .

Employers further claim that substance abuse in "sensitive working positions" can create critical conditions in the workplace (factory, worksite, shipping, an airplane, refineries, etc.) whereby a bad decision can cause accidents ,increase production costs and even be fatal to the employee and to others in the vicinity.

The sensitive working positions.

Which are the sensitive positions in a company? These are not defined by E.U. law. This fact gives companies a leeway to define the sensitive jobs in their organization.

A very sensitive workplace is the Transportation Industry. In this industry, EU legislation is needed and necessary for safety reasons. Currently each member country acts on its own. It is imperative that E.U. should act on this matter and pass a law defining clearly the responsibility and duties regarding drug/alcohol testing in the transportation industries, binding all member countries.

The involved ethical values

Does the employer have the right to be involved and intervene in the employees life away from the workplace?

As an example lets consider entertainment: an employee over the weekend at his home or at a bar, over consumes alcohol and also uses drugs. On Monday morning the employer schedules and performs an announced test with a positive result. The employees appearance, behavior and *even his performance can appear seemingly normal.*

In this situation, there are definitely ethical values involved. The use of alcohol and drugs were on his own time and away from work. Although we do have a case of substance abuse, is it directly connected with the violation of the employers drug/alcohol policy. Perhaps the key premises in this involvement is the companies written drug/alcohol policy and what does it encompass. It must contain a phrase that prohibits an employee showing up for work drunk or under the influence of a drug. Regardless if it does involve personal and ethical values, if the testing was conducted after a work accident, it is fully justified.

Note: The discipline of positive tested employees.

Taking into consideration the ethical issues involved and the fact that substance abusers are sick people and should be treated as such, a positive test should not automatically mean discipline or dismissal. The drug/alcohol policy must clearly

state the employers intentions and have alternative actions and solutions available. Alternative considerations can include : work history, mandatory treatment ,removal from sensitive working positions, leave without pay, .etc. It is suggested to employers to be lenient when the circumstances require it : is this abuse a repeating use consequently leading to addiction, or a temporary condition .

The seemingly normal performance.

In a U.S. study, some years ago (1985), 10 experienced pilots smoked one marijuana cigarette. Their performance was tested in a flight simulator before and 24 hours after smoking the marihuana cigarette:
The groups overall performance indicated "trends towards impairment on all variables , with significant impairment ..." Of significance was also the fact that none of the pilots considered themselves as impaired .

What is the EU policy on testing of airline flight personnel (?)

The EU does not have legislation or directives on testing of air line pilots to which the member countries are obligated to conform to . *As an example in Greece ,the union regards drug testing as a violation of personnel rights.*

Employees Personal Data Protection.

In regards to personal data, we believe that there is sufficient and valid E.U legislation for the purpose of protecting employees from employers unnecessary demands and actions. The problem is that in many E.U. countries, these laws are being misused.

What is needed is for all E.U. countries to adopt these laws within their legal systems and a standard unified application by all countries (see):

- European Union Guidelines 95/46 Data Protection.
- ILO Code of Practice, for Protection of Workers Personal Data 1996.
- The Human Rights Act 1998.

Drug testing requires necessary and sensitive information.

To safeguard the interests and the dignity of an employee from a positive drug test result, the procedures must include the obtaining of necessary, personal and very sensitive information, i.e., if he is using drug medication as a treatment prescribed by a doctor.

This medication, will be scanned and reported as positive. The employee by willfully disclosing this information, it is taken into consideration by the diagnosing MRO physician and the drug use is justified. It is therefore necessary that this personal data, be safeguarded and protected by the law, permitting only very limited access to it "or need to know" basis. Drug test results are confidential and should not be widely revealed through out the company.

In the U.S., it is prohibited by law to obtain this information prior to the test result. It is permitted only if the test result is positive.

The misuse of personal data protection laws.

In general, a very serious matter that should concern all of us that are in this business is that in some EU. Countries the personal data protection laws are being misused to protect the personal interests of a few, disregarding the interests of our family and our society. We believe that our society, in matters of health, safety and the well being, should take precedence, even at the cost of violating a persons privacy.

Perhaps it is relevant to give an example. In our politically troubled world, aren't the searches at the airports justified?

Drug testing demand in the EU. is increasing

Regardless of the problems and the objections proposed by various organizations and interests, the problem of substance abuse in the EU. exists and it is getting worse. It does have an impact on the workplace affecting the safety of everyone, users and non users.

An increasing number of employees are implementing workplace drug/alcohol policies. This increased test demand is

attested to by the various laboratories that conduct drug testing, i.e. in Ireland, Holland, Denmark Norway, France, Germany and the UK. Most certainly there is definite increased demand in the shipping industry.

The quality of the analysis

The quality of the analysis has become a very serious problem. For an employee to be falsely accused that he is a substance abuser has serious legal, social and ethical confrontations. In the E.U. countries (and in Greece) there are well founded indications that the quality of drug/alcohol testing is at a level forensically un-acceptable.

There are laboratories that are issuing certificates based on screening tests only. A few are not testing at all, but are issuing certificates. Labs are doing in-house testing for screening and for confirmation the samples are taken elsewhere without (COC)- Chain of Custody Procedures. (Chain of Custody: is a set of procedures that safeguard the integrity of each urine specimen by tracking its entire destination, handling and storage from specimen collection to the final disposition of the specimen at the laboratory, including the final diagnosis of an MRO. This requires the use of an appropriate drug testing custody and control form.)

Analysts do not have the necessary instrumental experience for forensic analysis. There are analysts trained on the use of GC/MS for analyzing metals in fuels and lubricants doing forensic analysis. A forensic analyst in the U.S., must have at least 10 years experience .

The gold standard analysis

There are two stages involved in drug/alcohol analysis:

- The initial screening process which is based on a sensitive drug –class selective method (EMIT)- Enzyme Multiplied Immunoassay technique .
- And a highly specific technique for" fingerprinting" the drug, GC/MS for confirmation. This is known as the "Gold Standard ". In our opinion, both tests screening and verification should be done in-house.

The laboratory guidelines must include certain key parameters :

- 1) The detailed description of methods and procedures of analysis that a forensic laboratory must use for screening and verification, referred to above, i.e. EMIT and the Gold Standard (GC/MS).
- (2) The detailed procedures for urine sampling and a suitable form for the Chain of Custody to safeguard the integrity of the sample and the donor.
- (3) A governmental agency that checks and controls the laboratories and their performance for accreditation. To retain this accreditation the labs must be submitted to frequent inspections.
- (4) The qualifications (level of scientific training) for the labs personnel and the various positions for forensic analysis.
- (5) Positive test results must be reported only by an MRO- (Medical Review Officer), specially trained and licensed medical doctor on substance abuse.
- (6) Cut off levels for each drug for screening and verification.
- (7) The analysis must be legally defensible.
- (8) The lab itself must have a quality control procedure, attesting to its performance.

If all the stages of the guidelines and the procedures are strictly adhered to, the possibility of an error (a false positive result) is drastically reduced to a minimal. (A false positive result is a negative result that for some reason tested positive).

The Need for EU Control

A system of accreditation for the EU countries for laboratories of drug testing services is necessary. A "dateline" should be set for laboratories that are not currently accredited to international forensic standards forcing them to receive accreditation.

- For this reason it is imperative and there is a definite need for a EU. directive stating a general policy of E.U. in regards to drug/alcohol policies and testing in the workplace and the legal issues involved.
- Standardized guidelines are needed for use by laboratories providing workplace drug testing services within the EU. They should be based on guidelines that have been established internationally, accepted by forensic experts, legally defensible and successfully used for many years. These guidelines are used in the U.S., conforming to and certified by SAMHSA

(Substance Abuse and Mental Health Services Association) requirements. They are also available from European Workplace Drug Testing Society (EWDTS) based in the UK . They are also available from ELSSI ,in the Greek language, based on SAMHSA .

Testing in Greece.

Greece represents an excellent case study, for the need of the referred to guidelines and a E.U. unified application of the data protection regulation.

Drug/alcohol testing in Greece for workplace safety was started in 1993 by ELSSI (Euro Laboratory Services for the Shipping Industry) , catering primarily to the international and local shipping industry and using SAMHSA certified labs in the US. Greece does not have a law regulating drug/alcohol testing or stipulating test guidelines. The only mention made is that drug testing for use as evidence in courts must be done by the universities or medical (forensic) examiners.

The political cost involved

Unfortunately before any decision for legislative action is taken, politicians must always consider the political cost involved. If a law is for the benefit of society, but it may result in a political "turmoil" politicians usually choose the alternative course of action, "do nothing".

This is a phenomena for all E.U. countries and in Greece. In regards to Drug/Alcohol testing legislation and the interpretation of the personal data acts, the decisions are left to various organizations, parties that have interests, to the courts, labor unions, etc. Experts are called on to give their opinions and each expert "blesses his beard", based on his circle of interests, political beliefs, etc.

Acknowledgements

Using the information referred to in our bibliography and the knowledge and experience that we have obtained during the past 16 years as service providers for drug/alcohol policies and substance abuse we were able to syntax this article.

We acknowledge the use of their very informative articles and congratulate each and every one of the authors on their work and offer our sincere thank you.

Source: ELSSI Ltd. – (Euro Laboratory Services to the Shipping Industry) Worldwide Drug & Alcohol Analytical Services (Workplace Substance Abuse Management)

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