Drug Tests and Employees
Recommendations and Best Practice

Your school secretary approached you this morning after a school-wide assembly. He was sitting next to Mrs. Smith, and claims to have smelled alcohol on her breath. Later, on her way back from lunch, you see Mrs. Smith stumble and almost fall before she grabs the door handle to her classroom. You’re not sure, but you think she might be drinking on the job.

What can you do about Mrs. Smith? You know your district has a drug-free workplace policy, but you never thought you’d have to confront an employee for violating it. Do you ask Mrs. Smith to take a breathalyzer test? Do you take away her keys? Do you allow her to return to the classroom? Do you shrug it off and wait until you can catch her with a bottle at her desk? This paper will walk you through the steps you should take if you find yourself in the situation where you suspect an employee is using drugs or alcohol at work.

Make sure staff are aware of your drug free workplace policy. OSBA’s recommended drug-free workplace policy (GBEC) prohibits employees from engaging in the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance or alcohol. This policy provides your employees notice that they may be terminated if they are impaired at work, and it warns them that they may be drug tested “for cause.” A controlled substance includes any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana\(^1\) or other as defined under state or federal law. Alcohol includes any form of alcohol for consumption, including beer, wine, wine coolers or liquor.

Before taking any action, you need to establish “reasonable suspicion.” Even if an employee reeks of marijuana or you think it’s obvious they are “on something,” you cannot just go with your gut. A Superintendent, Administrator or Supervisor who has been trained to recognize indicators of impairment,\(^2\) must establish “reasonable suspicion” before you can act. It is best if you have two staff members make independent observations of the suspected employee.

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\(^1\)While Oregon removed the state prohibition of marijuana in 2014, in order to continue receiving federal funds, school districts must ban use and possession of marijuana on school grounds.

\(^2\)Some budget-friendly training resources for staff:


Certified Training Solutions: [http://www.certifiedtrainingsolutions.com/reasonable-suspicion-training.html?gclid=CJX3rsPH0M8CFYGufgodavMAMQ](http://www.certifiedtrainingsolutions.com/reasonable-suspicion-training.html?gclid=CJX3rsPH0M8CFYGufgodavMAMQ)
Reasonable suspicion means that you can articulate facts and circumstances that explain why you think an employee is impaired. It is a tool for you to identify employees who may pose a threat to themselves or others. You cannot base reasonable suspicion on rumors or gossip, but you can use any reliable source of information you have. For example, in Mrs. Smith’s case, you have a few bases for suspicion: the school secretary, a long-time trustworthy employee, can describe the odor on the teacher’s breath; you can describe her stumbling down the hall. Other examples that could lead to reasonable suspicion include deteriorations in work performance, slurred speech, a change in appearance (like unusually disheveled clothing), or physical symptoms of drug use. Reasonable suspicion can also be based on the opinion of a medical professional. A work-related accident can only be a basis for reasonable suspicion if it is combined with some other basis.

Before approaching your employee, make a record (written notes) of the two independent observations explaining why you have reasonable suspicion that the employee is impaired.

**The decision to subject an employee to testing should only be made by the Superintendent** (or their designee) and the employee’s direct supervisor. Once a record of grounds for reasonable suspicion is made, the employee can be subjected to drug testing. If an employee refuses to submit to drug testing, you may remind them that the district has a drug-free workplace policy, and that employees may be disciplined if they refuse to undergo the testing.

Prior to subjecting the employee to testing, the district may be required to give notice to the union representative. Consult your collective bargaining agreement to determine whether notice is required.

**You are responsible for getting the employee to the drug test site.** A breathalyzer test may be given by a trained employee, or a third party may administer a blood alcohol test. For other drugs, an Oregon state licensed laboratory facility shall be used.

**At least one district representative must accompany the employee to the testing facility.** The district is responsible for arranging and paying for transportation to and from testing, as well as paying for the testing itself. You should not allow the allegedly impaired employee to drive. If the employee refuses to comply and operates a vehicle, call 911 and report the incident.

**Act quickly.** For controlled substances, the drug test must be administered within 32 hours of reasonable suspicion being established. For alcohol, the test must be administered no later than 8 hours from the establishment of reasonable suspicion, and within 2 hours if possible.

**While the employee is being tested, put the employee on leave.** Pending the results of the test and/or during the district’s investigation of the employee’s alleged violation of the Drug Free Workplace policy, the employee should be placed on administrative leave. If a screening test comes back positive, a second test should be done to confirm the results before any action is taken.
If an employee is in treatment or requests treatment, you may not be able to discipline. Certain employees who are participating in or have completed a supervised rehabilitation program may be protected against adverse employment actions taken because of a drug test failure. You can still subject these employees to testing. Your policy may also provide employees an opportunity to take unpaid leave to participate in an abuse assistance or rehabilitation program.

Legal references

ORS 438.435
ORS 659.840
ORS 659A.124
ORS 659A.300