

## CASE STUDY: Agriyork 400 Limited



### Why test

Many companies have Drug and Alcohol testing programmes. A far larger number of companies have a D&A policy but have not implemented a testing programme. Traditionally, these companies have company policies which describe the testing programmes and the possible consequences to an employee if drugs or alcohol are detected. For a company which is considering developing a policy, or implementing a test regime based on a historical policy, there is usually a series of simple but difficult questions to consider:

- What information would the test result indicate?
- How are you going to determine who to test and when?
- What are you going to test for?
- What will you do with the results?

### The Policy

If a properly written, unambiguous policy is written and a testing programme is initiated then the most obvious set of circumstances would result in a donor (employee) submitting a non-negative sample. This sample would then result in a positive test report generated by an accredited laboratory. The laboratory result is simply a chemical analysis of the hair, urine, oral fluid or blood submitted to a collector under a controlled set of parameters.

Most companies would refer this result to a medical or toxicological expert (frequently called a Medical Review Officer or MRO) to help rationalise the donor information given at the time of testing with the subsequent laboratory analysis. For example, did a declared prescription medicine result in the laboratory finding a positive oral fluid cocaine concentration?

These policies and procedures must comply with the relevant laws in the countries where the programmes are undertaken. In the EU for example, *Charter of Fundamental Rights of the European Union of December 2000*, would have pre-eminence over the UK Health & Safety Act of 1974. In addition, the UK Equalities Act of 2010 impacts the area of workplace drug testing.

### What information would the test result indicate?

A simple question with a somewhat complex answer;

If an employee was apparently intoxicated, then most employers would want a simple test to show that the “intoxicating” behaviour was due to chemicals and not the employee having a seizure or a stroke. If an employee was tested, either at random or in a “for cause” situation, then the ultimate laboratory confirmation would indicate the presence of an intoxicating and/or illicit concentration of a drug or alcohol. However, would the procedure be if a random test found a positive indication that an employee took this illegal substance 3 days earlier? Should the policy refer to an impaired state or simply declare that if a scheduled drug is found, e.g. Heroin, Cocaine, Cannabis then irrespective of the concentration or level of impairment, then that employee is in breach of company regulations and disciplinary action will be taken?

### **Matrices**

Hair, urine, blood and oral fluid are all common sample types. Hair does not by its nature indicate recent drug use. Each quarter inch of hair typically represents one month in time. Chopped hair samples can show drug use or abstinence but would not detect what the donor did yesterday or two weeks ago. In an industry where a drug free environment is expected e.g. aviation, military, prisons etc. A hair testing programme offers benefit and is cost effective.

Urine, historically considered the “gold standard” in drug testing attained that label because:

In the United States after a long and bitter struggle, a Federally Mandated Testing programme was promulgated. This resulted in a huge urine testing regime for what is now more commonly known as DOT Testing. A very limited drug panel, which was based on the influx of drugs to the USA from the post-Vietnam war era.

Truck drivers, railroad, aviation and coastguard workers are all mandated to be tested, and urine is the specified matrix. People can be instructed to generate a sample. So DOT, prison and military donors were simply ordered to donate a sample. There is usually excess sample generated, so many laboratory tests can be performed. Samples can be shared between labs and this generated many scientific papers on drug concentrations and their metabolites.

Human liver when functioning properly tries to break down drugs and other exogenous material in to soluble metabolites so they can be passed out via the bladder. With many drugs, the urine contains no or very little parent drug. The metabolic pathways of the traditional drugs are well known, but as urine volumes vary it is impossible to back calculate metabolite concentrations versus time and historical human behaviour. All scientists agree however, that urine concentrations cannot be used to indicate current cognitive state. The bladder is a waste container, and drugs present in the bladder are not participating in present psychoactive behaviour. These urine concentrations do of course indicate recent drug use.

Blood is better for the scientists. Drug concentrations in donor blood are a current indication of what is physiologically happening at that point in time. Clinical establishments will also take blood samples, especially if a course of medication or treatment is being prescribed or considered. Blood sampling does of course need a phlebotomist or similarly trained medical professional. For this reason, blood drug testing is not popular in the workplace.

Oral fluid sampling is gaining in popularity; indeed, it has led to large increases in workplace drug testing:

- Easy to sample
- Difficult to adulterate as sampling is observed
- Drug concentrations are indication of recent use due to the short detection window.

#### **The law**

There are various aspects of any country's legislation when the questions around drug testing are concerned:

- Employers have the duty to provide safe work environments.
- Drug use is now commonly considered a medical condition, and an employer may be expected to make accommodations for assessment and treatment.
- Drug possession in the workplace may also trigger further legal thresholds if there is an intent to supply or sell in an employer's premises. e.g. company vehicle.
- Drug testing also results in what is called "informed consent" which means that the employee declares current medication to the collector and testing laboratory. This is required so that current "declared" prescription and non- prescription medicines are known as part of the laboratory analysis.

#### **More law**

The UK Equalities Act of 2010 made questions related to medical conditions illegal in the candidate selection process. A pre-employment medical, and/or drug test was viewed to be discriminatory. An employer, after a job offer is made can ask the soon to be employed candidate to take part in a "pre-placement" medical which can include a drug test. If the candidate is found to have a drug "issue" or medical condition, then there is an expectation for the new employer to make an accommodation. If this is not possible then the job offer may be withdrawn. The reality is that these candidates are turned down at a later stage of the hiring process. This might be less efficient but prevents discrimination per se by the hiring company.

In the UK there was new statute added to the Road Traffic Act in March 2015. It is now an offence to have a blood concentration above a fixed amount for 17 drugs. Ireland will be following this statute in 2016. Roadside tests which screen positive will result in blood samples. Impairment is not required or in fact tested.

This new law made roadside drug testing possible and provided employers with a de facto workplace drug testing programme for their employees using company vehicles. Lorry drivers can hardly object to being drug tested when the police are performing the same activity. Both Ireland and the UK had earlier “impaired driving” legislation where impairment and the presence of “an intoxicating substance” is a serious driving offence. In the UK this is known as a RTA s4. In law “impairment” and the presence of a drug means that the two acts are linked, therefore the impairment was due to the presence of the intoxicating substance. A tired driver taking two Co-codomol tablets could be convicted on this basis. Impairment is determined by the typical field sobriety test, walking, touching the nose etc. or a physician observing small pupils, large pupils, sweating, shaking etc.

The UK in April, delayed enacting the Psychoactive Substances Act. This act has major impact for EWDTS and workplace drug testing however “impairment” and the lack of a defined measurable impact on the central nervous system have caused implementation delays.