

Senate Standing Committee on Education and Employment

QUESTIONS ON NOTICE Supplementary Budget Estimates 2015 - 2016

Outcome 2 - Workplace Relations and Economic Strategy

Department of Employment Question No. EMSQ15-000388

Senator Lines provided in writing.

Question

Building Code Amendment Instrument 2015 - safeguards

What safeguards exist in the regulation or other laws to guard against some of these examples?

- How do we ensure the reliability of results?
- Is a person who returns a positive test immediately prevented from work?
 - Is a person who refuses a test, for example a urine test, immediately deemed not fit for work?
 - How would a worker prove their fit to return to work?
 - Is it incumbent on the worker?
 - Would it require them to visit a GP and get a test?
- There's nothing in the regulation about how a worker discharges their responsibility to prove they're fit to return to work so couldn't a particular worker be refused back to work by a recalcitrant employer?
- Is it possible that a situation might arise where a head contractor implements their work policy but because there's no positive obligation on the contractor to provide training to their workforce on the policy that workers might be totally unaware of the policy? How does the regulation ensure otherwise? Do you think no mandated training undermines the ability of workers to engage and comply with the policy?
- The policy can be imposed unilaterally by management rather than agreed and endorsed by the workforce?
- Who is the person that can conduct the test? There's no reference in the regulation to whether or not the person needs to be qualified – couldn't it just be any old person?
- There's no reference in the regulation to supporting workers to modify their behaviour?
 - There's no reference in the regulation which would ensure the safe transportation of a worker home if they return a positive test?
- There's no reference to employees being entitled to privacy during testing nor is there any reference to the maintenance of confidentiality?

Answer

The Building Code 2013 requires that, on Commonwealth-funded building projects that meet the financial threshold, principal contractors must have a fitness for work policy to manage alcohol and other drugs in the workplace which includes drug and alcohol testing.

The fitness for work policy must address certain matters, including providing for the use of an objective testing method. Relevant Australian Standards, including AS 4760-2006 – *Procedures for specimen collection and the detection and quantitation of drugs in oral fluid*; AS/NZS 4308:2008 – *Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine*; and AS 3547-1997 – *Breath alcohol testing devices for personal use* detail objective testing methods. This includes:

- testing performed;
- testing conducted using equipment tested and calibrated according to the manufacturer's instructions and certified to the relevant Australian Standard;
- a percentage of testing results confirmed with an accredited laboratory;
- testing conducted by a competent person;
- testing conducted in a designated area that ensures privacy;
- collection and performance of initial test performed in the presence of the donor; and
- other relevant matters.

The Building Code does not provide the drug and alcohol policy that is to apply at a workplace. Rather, the Building Code sets the minimum requirements for each workplace policy. How the requirements for the Building Code are implemented at a certain workplace, and other practical matters, are matters for each workplace.

The Building Code states that a person who returns a positive result will be prevented from performing work until they can prove they are fit to return. A policy can provide the procedure if an initial screening test indicates the presence of alcohol or other drugs.

A policy can also outline the disciplinary action that will be taken when a worker returns a confirmed positive test or refuses to submit to a test. The policy could further outline who bears the costs associated with leave absences and obtaining further confirmation testing and how an affected person can make their way from the workplace.

The Building Code requires that the fitness for work policy must address how workers who attend for work affected by alcohol or other drugs will be counselled or assisted, apart from any disciplinary process that might take place.

A fitness for work policy is required to be developed in consultation with workers. Under work health and safety laws, employers have a duty to consult with workers. Consultation is required on hazards and risks (in this case the risk being work being performed under the influence of alcohol or other drugs), how to manage risks and when making decisions about procedures.

Workers must be informed, trained and instructed by their employer regarding the requirements under their employers' fitness for work policy. Under work health and safety laws, employers have a duty to provide information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work. Performing work under the influence of alcohol or other drugs creates a risk to the health and safety of all persons in a workplace and, as such, employers must educate their workers on compliance with drug and alcohol policies.

In addition, in developing and implementing the fitness for work policies, principal contractors would still be required to meet their obligations under relevant laws, including privacy laws.