

RANDOM DRUG TESTING TO HIT THE ROAD IN APRIL

New legislation under the Road Traffic Act 2016, which is due to come into force in April, will give the Gardaí the authority to subject motorists to random drug testing checks using a portable device for cannabis, cocaine and heroin. Maurice Quinlan, Director of the EAP Institute, outlines the legal implications for employers.

Employees who drive as part of their work either in a company vehicle or in their own vehicle, and who receive an allowance from their employer for miles driven, will be subject to random roadside drug testing, which comes into effect this Easter weekend.

The commencement order will give effect to the Road Traffic Act 2016, which adds to the Road Traffic Act 2011 (which introduced new drink driving limits) while the Road Traffic Act 2014 allowed Gardaí to conduct roadside impairment for intoxicants.

Employment legislation, impacting those who drive for work, currently in force includes:

- The Safety Health and Welfare at Work Act 2015.
- The Non – Fatal offences Against the Person Act 1997.
- Employment Equality Act 1998 - 2012.

EASTER WEEKEND ROLL-OUT

Road testing motorists for drug driving will begin this Easter Bank Holiday Weekend (14-17 April), as recently confirmed by the Minister for Justice Frances Fitzgerald to the Dáil.



A hard-hitting TV advert to raise awareness of Roadside Drug Impairment Testing was produced by the Road Safety Authority in December 2014.

THE LEGAL IMPLICATIONS FOR EMPLOYERS

The EAP Institute will hold a series of seminars on the legal implications for employers on 'Reporting and Driving for Work Under the Influence of Drugs and Alcohol'.

- The Heritage Hotel, Portlaoise – Thursday 9 March
- The Inn at Dromoland, Co. Clare – Thursday 27 April
- The Ashling Hotel, Dublin – Thursday 21 September

For further information email anita@eapinstitute.com or book online at www.eapinstitute.com



The legislation will make it illegal for motorists to drive while under the influence of cannabis, cocaine or heroin. It is also now an offence to drive while under the influence of cannabis containing the drug Salvi-dex, which is used in the treatment of multiple sclerosis.

A new testing kit, to be operated by the Gardaí at random roadside tests, will test for illegal drugs and will have major implications for all those who drive as part of their work.

The Health and Safety Authority (HSA) has listed a number of additional hazards and control measures for drivers, such as pre-vehicle safety checks, legal compliance and knowledge, speed management, awareness and anticipation skills, forward planning, hazard awareness and avoidance, fuel efficient and driving, impairment and distractions.

While the Road Safety Authority (RSA) indicates two dangers of using mobile devices when driving and driver fatigue, the EAP Institute has also highlighted the hazards of driving whilst under personal or work-related stress.

HEALTH & SAFETY LEGISLATION

Section 13(1)b of the Safety, Health and Welfare at Work (SHWW) Act 2005, which contains a provision on drugs and alcohol, states that 'an employee shall, while at work, ensure that he or she is not under the influence of an intoxicant (defined as including drugs and alcohol and any combination of drugs or of drugs and alcohol) to the extent that he or she is in such a state as to endanger his or her own safety, health or welfare at work or that of any other person'.

Removal from Workplace: Since 1 September 2005 employers can prevent an employee from working if he or she is deemed to be a danger to themselves or to others, due to being under the influence of an intoxicant to the extent that they are in such a state as to endanger their own safety, health or welfare at work or that of any other person.

Duty of Care: Under the Non-Fatal Offences Against the Person Act 1997, an employer has a duty of care to employees or to other visitors and guests. The company is obliged to manage and conduct their undertakings in such a way as to ensure, so far as is reasonably practicable, that individuals at the place of work, who are not their employees, are not exposed to risks to their safety, health and welfare. This includes the consumption of intoxicants at any company-sponsored event.

Employment Equality Acts: In March 2006 the Labour Court upheld the principle that alcoholism is a disability under the

Employment Equality Acts 1998-2012. The decision in 'A Government Department vs. An Employee' crystallises the principle that alcoholics cannot be treated any less favourably at work. Other case law has developed where an employee with alleged alcohol problems was found to have a disability, which required to be reasonably accommodated.

SURVEY STATISTICS (2009-2013)

There was a total of 240 work-related deaths reported to the Health and Safety Authority (HSA) between 2009 and 2013; 99 of these deaths involved work related. 76 of these deaths occurred in the workplace and 123 occurred on the public road and resulted from activities associated with driving for work and working on or near the road.

According to the Road Safety Authority (RSA), one in every six drivers killed in fatal collisions were driving. In 2014, 12% of injured drivers were driving for work while 8% were commuting to and from work; 9% of those fatally injured were driving for work while 8% were commuting to and from work.

Prescription drugs, including commonly prescribed tranquilisers, are found almost as often as alcohol in people who are killed in road accidents. Of the study of 115 fatalities including drivers, passengers and motorcyclists, the RSA report showed that 34 of them (30%) were found with prescribed drugs in their system.

The most common drugs recorded were alcohol, benzodiazepines and cannabis; 30% of drivers who lost their lives had taken more than one substance.

UNDER THE INFLUENCE

On-call fire service personnel carry a high risk if they report under the influence of an intoxicant. The risk is also high for local authorities, where up to 30,000 employees are engaged in diverse tasks on busy roads such as surface dressing, gritting in icy and snowy conditions, road restoration, setting up signage and lighting equipment.

Many companies and managers see random drug testing as the best option for tackling drugs and alcohol in the workplace. However, this action may lead to a lot of resistance, especially from trade unions.

Companies intending to tackle workplace drugs and alcohol should follow the international gold standard developed by the Substance Abuse and Mental Services Administration (SAMSA).

To comply with Ireland's health and safety legislation, the following steps should be taken:

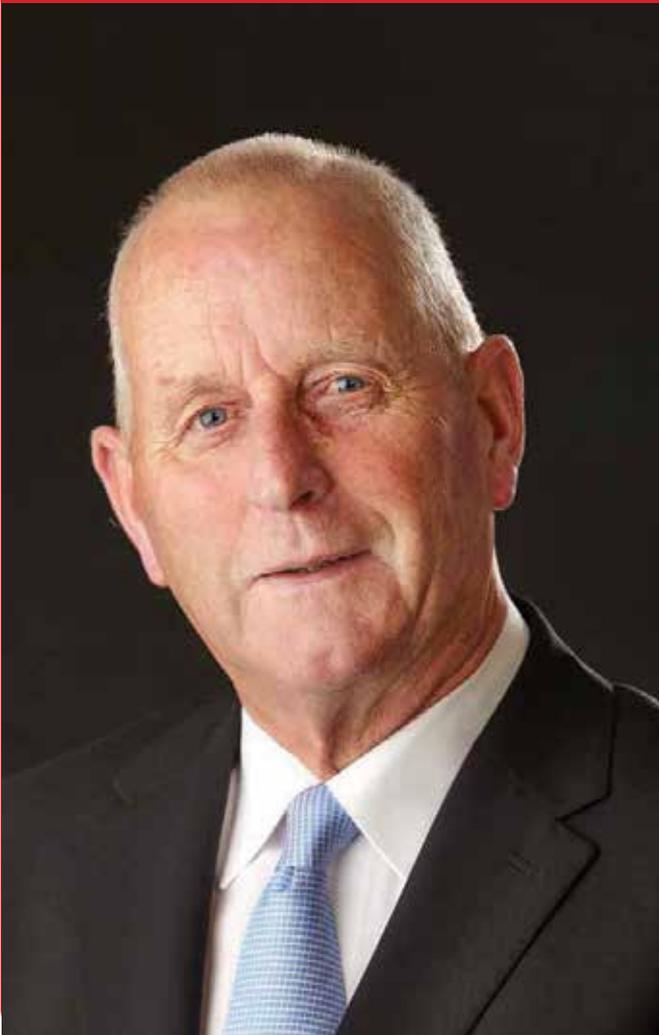
1. Develop a workplace intoxicant policy.

ABOUT THE AUTHOR – MAURICE QUINLAN

Maurice Quinlan's interest in Employee Assistance Programmes (EAPs) developed when he worked with an Irish semi-state company. Following a short period studying EAPs in the US, he introduced the Occupational Alcoholism Programme (OAPs) concept to Europe and hosted the first seminar on this topic in the Clarence Hotel, Dublin, in September 1980.

He introduced one of the first European external EAPs at Guinness in Kilkenny in 1985. He founded the EAP Institute to provide EAP services, training and consulting to a variety of companies, public and private, ranging from shipping, retail, hospitality industry, construction, manufacturing and the public service.

He recently designed a comprehensive training seminar and reference manual for workplace intoxicants (defined as drugs and alcohol) to comply with Section 13(1) b of the Safety, Health & Welfare at Work Act 2005. In November 2004 he received a special recognition award by EAPA at the 33rd Annual Conference in San Francisco, California in recognition for his commitment and contribution to the Employee Assistance Profession and The Employee Assistance Professional Association.



2. Consult with employee representatives and trade unions (Section 26(1)a of SHWW Act 2005).
3. Conduct a written intoxicant risk assessment, identify safety critical tasks and specify control measures for intoxicants (Section 19 of SHWW Act 2005).
4. Update the safety statement (Section 20 of SHWW Act 2005).
5. Conduct intoxicant testing. It is now established in Ireland that companies operating in road transportation, shipping and air and others are considered safety critical and the Labour Court has found in favour of testing in such companies. (CD/07/413)

Those workers who work at heights, electrical technicians, forklift drivers and those working with dangerous chemicals are considered safety critical workers. A risk assessment should be carried out to identify all safety critical workers (Section 19). Control measures may include intoxicant testing. All testing should be carried out to the European Workplace Drug Testing Society (EWDTs) Standards.

All identified risks should be communicated to all staff and written procedures should then be developed for managing the situation where an employee reports or drives or is on duty under the influence of an intoxicant (Section 13(1) b SHWW Act 2005).

Those performing safety critical tasks should be identified and a protocol for drug testing for cause/post-accident should be introduced for those who test positive following a major safety incident.

By following those steps employers will comply with all of their legal obligations and have a sound basis for addressing workplace drugs and alcohol.

REFERENCES

- * **Road Traffic Act 2016** www.irishstatutebook.ie/eli/2016/act/21/enacted/en/html
- * **Deirdre Sinnott-McFeat** – HSA Senior Policy Inspector; Presentation to 'Health and Safety Review' Conference (14 May 2015)
- * **Safety Health and Welfare at Work Act 2005** www.irishstatutebook.ie/eli/2005/act/10/enacted/en/print
- * **Non-Fatal Offences Against the Person Act 1997** www.irishstatutebook.ie/eli/1997/act/26/enacted/en/pdf
- * **Employment Equality Acts 1998/2012** www.disability.ie/disability-ie-information-portal/site-sections/rights-legislation/186-discrimination/540-the-employment-equality-acts-1998-and-2004
- * **Moyagh Murdock** – CEO, Road Safety Authority; Interview with 'Health and Safety Review' (June 2016)
- * **European Workplace Drug Testing Society:** Guidelines on Legally Defensible Workplace Drug Testing
- * **Maurice Quinlan** – Director, EAP Institute; Presentation to seminar on 'Reporting for Work under the influence of Drugs and Alcohol – Employer's Legal Obligations' Kilkenny (25 February 2016)