

Methamphetamine Use in the Workplace: What's An Employer To Do?

By Richard H. Kaiser

Like an increasing number of employees, "Scott" snorts a white, odorless powder before reporting to work. Scott's rationale? He claims that his drug use increases his productivity and concentration, thus making him a more valued employee. Scott is a methamphetamine user and represents a troubling pattern for Washington employers.

According to a nationwide survey in 2004, the number of employees who test positive for methamphetamine is consistently increasing. With this increase in use comes a decrease in worker productivity and an increase in costs for employers. This Note will discuss the signs of illegal drug use and steps employers can take to deter it.

Methamphetamine: Signs and Costs of Use.

Methamphetamine is an illegal stimulant that can literally be manufactured in someone's kitchen. Not that you would want this kind of stuff near your food or cooking supplies: it frequently contains chemicals like Red Devils Lye, Coleman fuel, Acetone, and nasal decongestants, the most common ingredient.

Users report that methamphetamine offers a burst of energy, alertness and confidence. The long term effects are more troubling, however, for employee and employer alike: paranoia, anxiety, unpredictable and violent behavior, weight loss, and tooth decay, which is commonly known as "meth mouth." Additionally, one study estimates that methamphetamine users lose approximately 1% of their brain cells a year, a loss equal to that caused by Alzheimer's disease. The fallout is also costly to employers: one study estimates that each addicted employee costs his or her employer approximately \$42,000 in higher absenteeism and health costs.

Employers should be alert to the following signs that may signal an employee's use of methamphetamine or other controlled substances, as well as abuse of alcohol:

- ✓ Recurring absences on Mondays or unexplained absences during working hours, especially at the end of a day.
- ✓ Sudden changes in behavior or performance that cannot be explained by intervening events.
- ✓ Excessive agitation, which methamphetamine users call "tweaking," or its opposite: fatigue.
- ✓ Unusual impairment in attention or memory.

How Employers Can Respond.

An employer's first line of defense against use of illegal drugs in the workplace is to not hire an applicant who uses illegal drugs. This is best accomplished by announcing that all successful applicants will be drug tested. The announcement itself hopefully causes most users to seek work elsewhere; the testing program should catch those persons who are serious users, *i.e.*, not able to "clean up" despite having notice of the drug testing requirement. Pre-employment drug testing can be supplemented by a "drug-free workplace" policy that includes a drug testing component, *e.g.*, "reasonable suspicion," "random," post-accident," and/or "return to work" testing.

Issues Affecting Drug-Testing.

In addition to the monetary and administrative costs, there are certain legal issues affecting drug testing. Private sector non-unionized employers in Washington have considerable leeway to determine the scope of their drug-testing program. Unionized employers may have a duty to bargain over drug testing and the consequences of testing positive. Public sector employers face constitutional (privacy) issues, which limit their ability to engage in random drug testing. And, any drug-testing program may be challenged if it is applied in a discriminatory manner.

Pre- and post-employment testing for illegal drugs does not trigger any protections under the Americans with Disabilities Act or the Washington Law Against Discrimination. However, testing for legal drugs or alcohol does trigger their protections and should occur only (a) when the employer makes a conditional job offer to an applicant; or (b) when the test is job related and consistent with business necessity, *e.g.*, when the employee holds a safety-sensitive position.

Conclusion.

Methamphetamine use is on the rise. Unfortunately, it may be coming soon to a workplace near you. A carefully crafted drug-testing program can help protect against the impact of drug and alcohol abuse. Conversely, because of legal issues surrounding drug testing, employers should consult with counsel prior to beginning their actual program. For more information about implementing drug testing programs, please see our [September Special Note](#) at <http://www.smarttalent.net/ClientResourceCenter.htm> or contact [Jeff James](#) with Sebris Busto at 425-450-3384.

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