



Do you employ staff?

Do you have difficulty understanding your legal and contractual responsibilities as an employer?

Do employment problems keep you awake at night?

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Complying with Ofsted's EYFS Safeguarding and Welfare Requirements

Alcohol and Drug Misuse

Ofsted's Opinions

Do you have an Alcohol and Drug Misuse Policy to support you in complying with the requirements of Ofsted's EYFS Safeguarding and Welfare requirements? Ofsted requires that "*Practitioners must not be under the influence of alcohol or any other substance which may affect their ability to care for children.*" Any other substance also includes prescribed medication. Some medication can have side effects which may affect a nursery nurse's ability to look after the children placed in their care therefore as a childcare provider / employer; it is your responsibility to ensure that all your employees are capable of fulfilling their duties without any impairment due to alcohol or any other substance. Also, if an employee brings their medication to work, this should be stored securely and also kept out of reach of children at all times.

Suspensions and Confidentiality

Your policy should include a statement on how confidentiality will be maintained, e.g. if an employee notices obvious signs of alcohol or drug use in a colleague, can they be sure that reporting these suspicions to management will be managed in complete confidence? By having a confidentiality agreement it is much more likely that employees will be willing to speak up about any inappropriate behaviour that management may have missed, meaning that any situations that need to be dealt with can be, before situations get out

of hand.

Duty of Care

It is stated in the Health and Safety at Work etc Act of 1974 that employers are under a general duty to “ensure, so far as is reasonably practical, the health, safety and welfare at work of all (their) employees.” As a childcare provider / employer you are not only responsible for the children placed in your care, but for your employees care as well. Your duty of care therefore includes ensuring your employees are not acting under the influence of alcohol and drugs as this could not only put their own health and safety at risk but also the health and safety of their colleagues and the children in your care.

Exercising your ‘duty of care’ also means ensuring that any employee who reveals an alcohol or drug misuse problem is treated appropriately. Whilst you are entitled to dismiss an employee in this situation you should always be seen to offer them support before you do so. This may involve providing them with support in the form of information on appropriate services provided by the NHS or by allowing them time off to attend these services. If an employee refuses this support and the problem continues, then you must proceed by managing the problem more formally.

Random Testing

If, as an employer / childcare provider you want to ensure that there would be no chance of an employee being under the influence of alcohol or drugs then your industry is one where the practice of “random testing” would be justified due to your responsibility for providing care to others. Normally there are only certain circumstances that allow random testing due to respect for an individual’s right to a private life in line with the Human Rights Act 1998.

If you are going to introduce random testing then you must ensure it forms part of your Alcohol and Drugs Misuse Policy and that testing or searches for evidence of substance abuse must be preceded by a “well-publicised warning”. For example it wouldn’t be appropriate to launch in to a random testing without having spoken to the individual beforehand to express your concerns and give them an opportunity to stop whatever they may be doing.

Even after you have spoken to the individual and given them a “well-publicised warning” their testing can still be going against their human right to a private life. This is because these tests have to be justified not only by suspicion but also by “a proportionate means of achieving a legitimate business aim,” e.g. to protect the health and safety of the children placed within your care.

If random testing shows that an employee is working under the influence of alcohol or drugs then you will need to ensure you comply with Ofsted’s EYFS Safeguarding and Welfare requirements and suspend and manage the issue in line with your Alcohol and Drugs Misuse Policy and Disciplinary Procedure. All alcohol and drug misuse issues will need to be managed consistently in order to avoid unfair dismissal claims.

Please contact us if you require advice and guidance on managing an alcohol or drug misuse related problem or if you would like our support in introducing a new Alcohol and Drug Misuse Policy.

Further Advice

If you would like our support in complying with Ofsted’s safety and welfare requirements then please don’t hesitate to contact us; khedley@hasslefreehr.co.uk for further advice and information.

For clarification of any of the above updates or for advice and guidance on any HR and/or Health and Safety Concerns contact us by emailing ehedley@hasslefreehr.co.uk or by calling 02476 664092.

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