

Part 115 Testing for Drugs and Alcohol in the Workplace

Depending on the nature of the work or the workplace it may be appropriate to develop a policy for drug and alcohol testing for staff who work in key safety roles. Pilots, parachute packers, and tandem and AFF instructors are primary examples of roles considered to be 'key safety roles'. Additionally, van drivers, hang glider launch masters/assistants, and staff performing passenger manifest and weight and balance tasks should also be considered.

The CAA expects that adventure aviation operators will manage drug, alcohol and substance impairment as a significant risk, and that they must develop and implement policies and procedures that give assurance that, while performing work in key safety roles, neither themselves, their employees, contractors nor sub-contractors are impaired by drugs, alcohol or substances. The CAA expects assurances to be evidenced by data derived by tests.

Standards for Testing

Training Requirements

Any person who performs testing must be trained in order to do so competently and the test should be performed according to applicable testing standards and methods, such as testing with equipment that is within the manufacturer's use-by date, appropriately calibrated, certified as to accuracy and reliability, and used in accordance with its manufacturer's approved testing procedure.

When seeking assistance from a third party testing organisation, check that they have and hold the necessary training and qualifications to ensure that the test information is reliable and accurate. When an operator/owner themselves are also personally involved in a key safety role, that person must be subject to testing by an independent third party such as a registered testing company.

Urine Sample Testing

Employers themselves can perform testing; however, in order that any test result is performed accurately and has credibility, they must be trained and certified as a 'collector' under AS/NZS 4308: 2008, "Procedures for the collection, detection and quantification of drugs of abuse in urine".

Two NZQA unit standards are available through a number of drug testing and training companies, which provide appropriate training for urine sample testing:

- NZQA Unit Standard 25458 'Perform Urine specimen collection in the workplace for drug testing', and
- NZQA Unit Standard 25511 'Perform urine drug screening in the workplace'.

Alcohol Breath Screening

The device used for alcohol breath tests should conform to Australian standard AS 3547, Type II. This means that the device has been certified to the standard having been tested for accuracy and reliability. The operator must be trained to use the device correctly as per the manufacturer's device use procedure.

Post-test Actions

When a test result is 'non-negative' for detectable substance use, or if the breath alcohol level is high, there may be a range of actions that occur as a consequence. Among these are that a person's work may be withdrawn, duties altered, and/or the person's employment may be terminated. Whatever happens, the action should include help provided via an Employee Assistance Programme (EAP), or otherwise.

Consideration must be given as to how any confirmation test, which follows the initial test, is to be performed. Generally, a third party testing organisation will be used to provide the confirmation test and result.

Any staff that have a confirmed alcohol breath test or are confirmed as 'positive' for substance use should be further monitored by follow-up testing.

Challenges to results

Any action which may have financial, reputational or other repercussions upon the person tested, needs to be carefully considered as challenges to poorly performed tests may result if the test is not performed accurately by accredited or otherwise competent testers.

It is recommended that you check on the costs and then determine what test regime you will have:

- either one in which you perform the test(s), but carry the risk(s) of being challenged, or
- one in which you might carry additional upfront costs to give you certainty and reliability around the results. This could be through having a third party conduct the testing, or through undertaking training yourself.

The Test Regime

The regime should include processes for testing in situations such as:

- Pre-employment: which means before employment or engagement commences,
- with reasonable cause during working hours if impairment is suspected,
- on a random basis, and
- after accidents or incidents.

Testing in these situations will ensure that you are demonstrating appropriate management.

Prior to the testing taking place ensure the employee notes with the tester any prescription or over the counter drugs that may affect the results. For example, codeine based pain relief. This then allows for a prior reason for a non-negative test and can be taken into account when assessing the outcomes.

Pre-employment

When a potential employee or contractor is to work in a key safety role, screening is essential to ensure that you have the necessary information concerning the candidate's use of drugs and alcohol before making an offer of employment or contractor engagement.

Reasonable Cause

An employment agreement or contract may provide for an employer to require staff to undergo testing for impairment on “reasonable grounds”. What is reasonable will depend on the particular situation and workplace, but the following questions will help determine if an employer has reasonable grounds:

- Are there any obvious signs of impairment that cannot otherwise be explained?
- Does the employee’s work directly affect the safety of others or themselves?
- Are the hazards associated with the work or workplace significant?
- Has the employee been involved in a workplace accident or 'near-miss'?

Random Testing

Where work is carried out and is 'safety critical', as it can be in the aviation sector, there is a case for including random testing in the workplace’s drug and alcohol policy.

Random testing is performed in addition to 'reasonable cause'. It helps ensure the work place is sustained as drug and alcohol ‘clean’. Random testing for everyone working in a key safety role ensures the continued maintenance of that workplace during the course of time, for example, over months or the entire season. Employers and others, who control the work, should aim to have all staff in key safety roles randomly tested at least twice per season. Importantly, random testing should not be notified in advance. Using simple methods, such as having staff numbered off from 1 to 5 and using a random number generator will assist in demonstrating how the random testing method is being utilised.

If the provision for random testing for alcohol or drug use is not included in the employment agreement or contract, then independent legal advice should be obtained before random testing is undertaken.

Post-accident/incident Testing

Whenever an accident or incident occurs and has involved safety critical work, post event testing must be considered a priority in establishing that drug or alcohol use has not been a contributing factor. The test must be performed as soon as possible after the event - any delay will only serve to cause doubt as to the credibility of the result.

Once again, employment agreement or contract should include this type of testing.

What are the Levels?

In New Zealand the cut-off levels for detectable drug amounts are determined by The Australian New Zealand Standards AS/NZS4308:2008. This standard establishes the levels for urine testing.

All tests have a cut-off level – this is the point below which there is not enough of the substance being tested for to be detected. Concentrations above the levels specified are non-negative and concentrations below are negative. A sample is only considered ‘positive’ after confirmation by laboratory testing.

Drug	Can stay in the system for	Cut-off level
Amphetamines, Methamphetamine, Ecstasy	6 days	300 µg/L
Cocaine, Opiates	2 - 5 days	300 µg/L
Benzodiazepines	2 - 14 days	200 µg/L
Cannabis	2 - 30 days	50 µg/L

In regard to Alcohol this tested by breath testing. It is up to each individual PCBU to set an acceptable level for Alcohol, but below are the legal limits for driving.

Alcohol legal limit for driving	250 µg/L and 400 µg/L for over 20 year olds 0 µg/L for under 20 year olds
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The information presented in this document is intended for general use only. It should not be viewed as a definitive guide to the law, and should be read in conjunction with the Health and Safety at Work Act 2015 and associated regulations (where relevant).
