

Alcohol Use – Can you regulate and/or discipline an employee for using alcohol outside of work?

Labor & Employment Law Update

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Can I regulate and/or discipline an employee for using alcohol outside of work?

While you might think the answer is pretty straightforward – it is NOT. Attorneys often respond by saying, “it depends.”

If an employee’s use of alcohol (or any other legal product) outside of work is negatively impacting their performance or resulting in them coming to work impaired, then you can issue discipline in line with your policies and procedures for that conduct.

What if it is not impacting their performance and they are not coming to work drunk?

Again, the answer is the dreaded – “it depends.” In part, the reason for this is that different states have different laws. For example, in Illinois, Minnesota, Missouri, Montana, Nevada, North Carolina, Tennessee, and Wisconsin employers are prohibited from discriminating against or treating employees different because of their use of legal products.

In California, Colorado, New York, and North Dakota employers cannot treat employees differently based on their decision to engage in legal activities.

What if you are not in one of those states?

It again depends on the circumstances and what actions the employer is trying to take. In an Informal Discussion Letter from August 28, 2014, the EEOC addressed whether an employer can require employees who are alcoholics, or are perceived to be alcoholics, to permanently abstain from drinking alcohol on or off the job as a condition of continued employment.

The EEOC advised that requiring these employees to permanently abstain from drinking would likely violate the American with Disabilities Act (ADA) and constitute discrimination based on alcoholism, which is a recognized disability.

Employers may have a legitimate business interest in ensuring that employees are not impaired during work; however, they generally do not have a legitimate business interest in regulating an employee's conduct outside of work. When dealing with alcohol and alcoholism there are a few things that employers should remember:

1. Employers can prohibit employees from using, being impaired by or possessing alcohol in the workplace – i.e. have a drug and alcohol free workplace policy.
2. Alcoholism is a protected disability under the ADA
3. The ADA specifically allows employers to hold alcoholics to the same performance and conduct standards as other employees.
4. Employers can discipline/terminate employees for performance or conduct, in the same manner as other employees, even if the employee claims the performance or conduct was due to alcoholism.
5. Last Chance Agreements can be used to require an employee to get substance abuse treatment, avoid further workplace problems, be tested for alcohol and not violate the company drug and alcohol policy. However, it should steer clear of any prohibition on alcohol use outside of work.

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