



Drug & Alcohol Testing Under the Building Code 2013

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The Building Code 2013 (“Code”) has recently been amended to introduce a mandatory requirement for contractors and building industry participants involved in government funded construction projects to:

- implement a comprehensive policy on drug and alcohol testing (called a “fitness to work” policy); and
- address drug and alcohol testing in their Work Health & Safety and Rehabilitation management plans.

APPLICATION OF THE CODE

The Code was introduced in 2013 and applies to building contractors or building industry participants undertaking building work which is the subject of the following levels of Commonwealth funding:

- at least \$5 million and 50% of the total construction project value; or
- at least \$10 million (irrespective of the proportion of that sum to the total project value).

WHAT THE POLICY MUST ADDRESS

From 16 October 2015, all building contractors and industry participants covered by the Code must have a Fitness to Work policy which includes, as a minimum, the following:

1. how workers on site will be required to comply with the policy;

2. the use of an objective medical testing method to detect the presence of drugs or alcohol (the detection methods that will be used must also be detailed in the policy);
3. the requirement that the following are tested for:
 - (a) alcohol;
 - (b) opiates;
 - (c) THC;
 - (d) cocaine;
 - (e) benzodiazepines;
 - (f) amphetamine; and
 - (g) methamphetamine;
4. that a person returning a positive result will be deemed “not fit for work” and will be prevented from working until they can prove they are “fit for work”;
5. the frequency of the testing (as prescribed in schedule 3 which is dependent on the number of workers on site);
6. the procedure for selecting personnel to be tested (ie will it be random or staged selection testing);
7. procedures for targeted testing of higher risk activities; and

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8. the counselling and assistance that will be provided to workers returning a positive result.

Fair Work Building and Construction is responsible for conducting audits on building contractors to ensure fitness for work policies comply with the requirements of the Code.

ENSURE COMPLIANCE WITH THE CODE

Any building contractor or industry participant wishing to tender for Commonwealth funded construction projects will need to demonstrate compliance with the Code and, if successful in the tender, continue to comply with the Code.

Accordingly, ensuring a suitably drafted Fitness to Work policy is prepared in accordance with the requirements of the Code is important.

The Fitness to Work policy is also a useful document for the purposes of disciplining employees who attend work while under the influence of alcohol or other drugs. The Fair Work Commission has confirmed that for high risk

industries such as the construction industry, drug and urine testing is reasonable to protect the health and safety of workers. However, the reasonableness and fairness of the terms of the policy are also matters the Tribunal will have regard to in considering whether or not disciplinary action against an employee was justified in the circumstances.

Accordingly, although the Fitness to Work policy is a mandatory requirement for Commonwealth funded construction projects, it is perhaps best practice for all employers in the construction industry to implement comprehensive and fair policies dealing with drug testing of employees. .

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