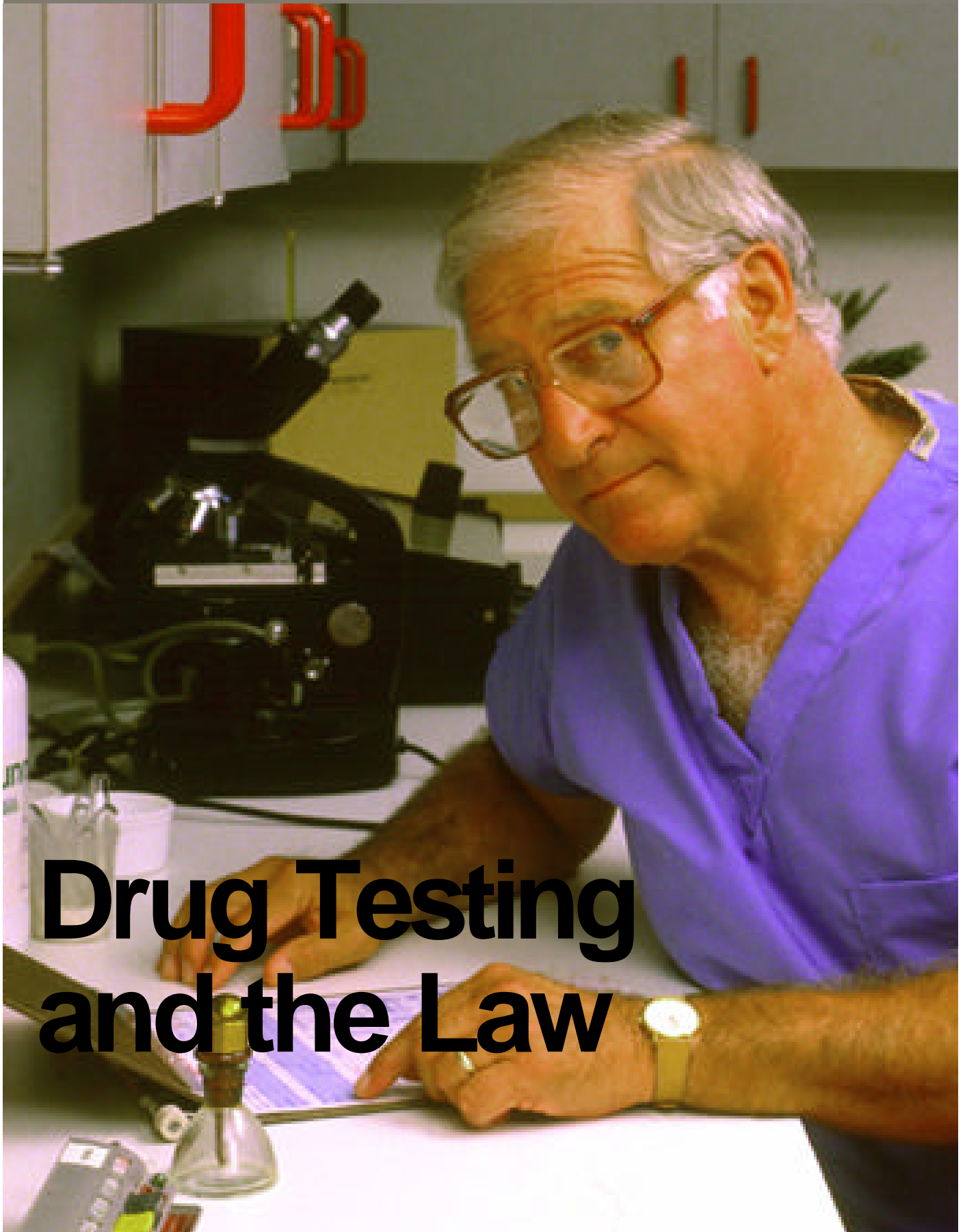


Legal Services



Drug Testing and the Law

Locations:

Sydney

363 George Street
Sydney NSW 2000
Australia
Ph: 612 9993 6600
Fax: 612 9993 6650

Melbourne

360 Elizabeth Street
Melbourne Victoria 3000
Australia
Ph: 613 9286 8888
Fax: 613 9286 8999

This publication provides a summary only of the subject matter covered, without the assumption of a duty of care by Andersen Legal. The summary is not intended to be nor should it be relied upon as a substitute for legal or other professional advice. No person should rely on the contents of this publication without first seeking the advice of a qualified lawyer.

Ensure the **Health, Safety** and **Welfare** of your employees

Occupational health and safety legislation in all states and territories requires the employer to ensure the health, safety and welfare of employees.

Employees affected by drugs in the workplace are a risk to themselves and to others around them. The International Labour Organisation estimates that 15% of all fatal workplace accidents and 25% of all workplace accidents are drug related.

The penalties for breaching occupational health and safety obligations are significant. In NSW, companies with previous convictions face a maximum penalty of \$825,000. In most states and territories, directors and senior managers can also be held personally liable for breaches by their company and face significant penalties including imprisonment of up to 5 years in Victoria and South Australia.

In many heavy industries, the employer does not discharge their legal obligations in relation to occupational health and safety unless they implement policies and procedures to address the risks associated with drug use in the workplace. In addition, specific industry legislation such as rail safety and mine safety legislation require employers to ensure that employees are not affected by drugs or alcohol while they are at work.



Four Components One Program

The drug testing side is only one of four components in a proper drug and alcohol program:

- Policy
- Awareness/education
- Testing
- Assistance (EAP)

We, Andersen Legal, Drug Testing Australia and IPS Employee Assistance, have joined forces and established a complete package that links and covers all four areas - ready to be implemented in your workplace.

All you have to do is to call us for a presentation.



Do it right...

Drug and Alcohol Policy

Implementing a drug testing program as part of a wider drug and alcohol management program will assist you in meeting your legal obligations and reducing workplace accidents. However, these policies need to balance a number of competing obligations such as privacy considerations, employment law and discrimination law. If these competing obligations are not balanced, you risk:

- industrial disruption;
- industrial litigation;
- unfair dismissal claims;
- discrimination claims;
- privacy complaints;
- occupational health and safety prosecutions.

Andersen Legal's Workplace Drug and Alcohol Advisory Services Team can assist you to develop and implement a drug and alcohol program which meets your legal obligations.





Awareness

Training and Education

IPS provides in-house and external training and additionally conducts train-the-trainer courses, which are designed to enable management and other key personnel to implement and manage such programs with staff.

IPS train-the-trainer courses are an integral component of a drug and alcohol program as it teaches managers and supervisors how to integrate the program into:

- OH&S training and policies
- an existing Employee Assistance Program
- an IPS Employee Assistance Program

IPS training in regards to a drug and alcohol program is also designed to educate management on such issues as:

- workplace intervention
- communication skills
- effects of alcohol and common drugs
- drugs and alcohol in the Workplace Policy Training.



Drug Testing

Urine or swab testing, on-site or lab-based testing, collection procedures, privacy issues, cut-off levels etc. There are many elements that can make or break your workplace's drug testing program.

To facilitate compliance with competing legal obligations Andersen Legal and Drug Testing Australia has developed a new drug testing program based on oral fluid.

Oral fluid testing is less intrusive than urine testing and less invasive than blood testing. Yet, oral fluid gives blood-equivalent test results, whereas a positive urine test is no proof of impairment.

Oral based drug testing merely detects what the employee has been taking over the last 6-12 hours ("same day use") whereas drugs are detectable in urine for several days ("recent use").

Employee Assistance Program

IPS Employee Assistance implements and provides Employee Assistance Programs into any workplace as part of a drug and alcohol program.

Incorporating an Employee Assistance Program enables all employees and their family members to access professional and confidential counselling services that are available 24 hours a day, 7 days a week from 125 locations nationwide.

The (IPS) Employee Assistance Program is an imperative part of any drug and alcohol program as it allows employees to actively resolve the drug and alcohol issues they are facing whilst simultaneously addressing any associated problems that may need to be attended to. The Employee Assistance Program is designed for healthy employees who are ready to re-enter the workplace.

IPS recognizes that family participation is an integral component of any Employee Assistance Program. This enables family members of individuals suffering from drug and alcohol problems to also be provided with support and advice from professional psychologists. It also helps those families where an employee's work performance is suffering because a family member has a drug and alcohol problem.

An employee's participation in the Employee Assistance Program is always voluntary and IPS has various systems in place that allow for a range of referral options from self-referral to management referral to the program.



Does your Drug and Alcohol program measure up



To make sure you limit the risk of litigation in implementing your program, make sure you:

- Consult your employees and their representatives in planning and developing the program. It is often useful to involve your workplace safety committee at the outset to ensure that the program remains focussed on safety risks.
- Identify which drugs the program will monitor. Note that not all drugs will have a negative effect on safety.
- Set reasonable cut-off levels for each of the drugs. It may be prudent to set cut-off levels for your workplace which are slightly higher than those recommended in relevant drug and alcohol testing standards to make sure that insignificant usage which is unlikely to affect safety is not detected.
- Prepare a drug and alcohol policy setting out the test procedures.
- Implement a drug and alcohol education program.
- Incorporate information on the drug and alcohol program in employee manuals.
- Develop fair and reasonable procedures for dealing with positive test results. Note that a positive drug test result is not of itself sufficient grounds for summary dismissal. The employee should be given an opportunity to address the problem. It is preferable that employees who return a positive test result be referred to counselling and an attempt is made at rehabilitation prior to resorting to disciplinary action.
- Develop and implement an employee assistance program to compliment the drug and alcohol program.

How to contact the Workplace Drug and Alcohol Advisory Services Team

Stephen Hibbert

Partner

Ph: 612 9993 6694

stephen.hibbert@au.andersenlegal.com

Wayne Spanner

Partner

Ph: 612 9993 6629

wayne.spanner@au.andersenlegal.com

Christopher Shaw

Director

Ph: 612 9993 6678

christopher.h.shaw@au.andersenlegal.com

Joseph D'Abaco

Director

Ph: 612 9993 3617

joseph.m.dabaco@au.andersenlegal.com

Michael Tooma

Associate

Ph: 612 9993 6619

michael.tooma@au.andersenlegal.com

Jane Parker

Associate

Ph: 612 9993 3619

jane.parker@au.andersenlegal.com

www.andersenlegal.com.au

www.drugtesting.com.au

www.eap.com.au