A BANKER WALKS INTO A BAR …..

Alcohol abuse in the workplace is no joke

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Dealing with an employee with a drinking problem is one of the thornier issues for a manager.

On the one hand, alcohol use by adults is legal.

In fact, drinking is deeply entrenched in our society's mores. It eases moments of social awkwardness ("Let me buy you a drink!"). It celebrates our triumphs (pop the champagne). And it medicates our losses ("drowning" sorrows). Alcohol may even be served at bank-sponsored events, like the Holiday Party, and when entertaining customers.

On the other hand, alcohol abuse destroys families. Compromises health. Kills on the road. And ruins careers.

Often these disastrous results happen in the midst of denial. The drinker claims that he can stop at any time. He may claim that his performance (driving, personality, focus...) is actually improved by a couple of drinks.

When does drinking become a problem that must be addressed in the workplace? There is no bright line, but there are some legal standards and HR best practices that can guide managers.

By the way, this posting applies equally to prescription drug abuse. Use of such drugs by the individual for whom they are prescribed is legal, their proper use is beneficial, and indeed the bank, through its employee health plan, pays for them.

But over-use and dependence may lead to similar problems to alcohol abuse, and have similar consequences at work. I am not covering illegal drug use in the workplace here; that poses slightly different legal and practical issues.

Americans with Disabilities Act

Alcoholism is a disease. Most courts and commentators have found that alcoholism is therefore a disability covered under the Americans with Disabilities Act (ADA). Accordingly, it is illegal to discriminate against an individual in hiring, promotion, discipline, or any other term or condition of employment because the individual is an alcoholic. In addition, the ADA imposes an obligation on employers to provide reasonable accommodations to individuals suffering from the disease (which I'll discuss in a moment).

However, the ADA does not require the bank to hire, or continue to employ, an individual who is unqualified for the job, or who cannot perform the essential duties of the job, just because they are an alcoholic.

Nor does the Act mandate that the bank accommodate problem drinking, for example, by allowing an employee to take Mondays off to recover from weekend binges. A "reasonable accommodation" for an alcoholic employee might go as far as flexible scheduling to permit attendance at AA meetings, or more extensive time off for a rehabilitation program, but no further.

Address the performance, not the drinking

The key in handling an employee with a drinking problem is to focus on performance.

While you may suspect that missed customer appointments or a failure to follow loan approval procedures are the result of heavy drinking, don't verbalize your suspicions.

Describe the performance problems factually in a counseling session, and explain why these lapses cannot be tolerated. Discuss with the employee what steps are necessary to ensure better performance in the future.

Document the discussion and conclusions with a Performance Improvement Plan (PIP). A PIP is a formal document that defines the performance problem, and sets goals and timetables for improvement. The goals should be SMART:

• Specific

• Measurable

• Achievable

• Relevant

• Timed

An example: Goal: no more missed customer appointments! Make X customer appointments per week. Record these on a calendar shared with the boss. Give boss at least three days' advance notice, with explanation, for any appointment that needs to be rescheduled. After six weeks, you and boss will review calendar and determine whether appointments have been appropriately kept.

The consequence for failing to meet PIP goals should be clearly spelled out. Initially, this might be simply extending the PIP for six more weeks. The ultimate consequence - termination - should be reserved for repeated failures, but should not be shied away from, if warranted.

Partners in treatment

What do you do if, during a performance counseling session, the employee breaks down and confesses his or her alcohol problem?

As a manager, you are not only responsible for maintaining performance standards but for supporting and assisting your subordinates through hard times. Keeping these roles separate is important at moments like these.

"OK, let's set these performance problems aside for the moment. How can the bank help you overcome your drinking problem?"

This will lead to an explanation of the Bank's Employee Assistance Program (EAP) or what benefits might be available under the health plan. Does the employee have accumulated paid time off? Don't venture too far into diagnosis or prognosis; you can describe what resources are available, but ultimately the responsibility for seeking treatment has to be the employee's.

When this area has been explored, return to the purpose of the counseling session:

"Now, what can we do about these missed customer appointments? Let's draft a performance improvement plan ..."

Drug and alcohol testing in the workplace

Does your bank have a substance abuse policy that reserves the right to conduct "reasonable cause" employee testing?

At ELC, we recommend including such a policy in your employee handbook. (ELC's Bankers' HR Toolkit contains a comprehensive substance abuse policy template. For more information, go to www.employlawcompliance.com). The policy should state the Bank's intention to maintain a workplace free of the problems associated with the illegal use of drugs and the abuse of alcohol, and to encourage rehabilitation by stating that no employee will have their job jeopardized by a voluntary request for counseling or referral assistance.

The policy should define substance abuse to include reporting to work or working while under the influence of or impaired by alcohol or any other drug, and chemical dependence on or abuse of alcohol or other drugs, where job performance or the safety of employees is adversely affected.

Under such a policy, an employee could be sent for testing after involvement in an accident. Not every accident should result in testing, but it may be required where there is evidence of substance abuse. The following are some of the indicia of substance abuse, and their presence alone, without an accident, might be enough to justify testing:

• Excessive absenteeism or tardiness.

• Unexplained significant deterioration in job performance.

• Significant change in personality, such as abusive behavior, insolence, insubordination.

• Unexplained absences from desk or workspace.

• Changes in appearance and demeanor.

• Reddened eyes or dilated pupils.

• Odor of alcohol or drugs.

• Slurred speech.

• Difficulty in motor coordination.

Testing is a powerful tool, and, as such, a bank should use this discretionary testing tool with care.

Testing may flush out an alcoholic employee in denial, get him or her into treatment, and restored to a successful career path. However, if a positive test is used as the basis for employment termination, even if it is only the final straw on top of a string of performance issues, it may draw a legal challenge.

A "zero tolerance" policy may look good on paper, but juries expect employers to temper strict rules with mercy, especially in the ambiguous area of alcohol use.

Some states have passed laws regulating drug and alcohol testing in employment. Check with legal counsel in your state before implementing or modifying a substance abuse testing policy.

Privacy concerns must be observed

Whether explaining treatment resources or referring an employee for testing, it is important for all managers involved to respect the employee's right to privacy.

Under HIPAA--the Health Insurance Portability and Accountability Act of 1996--employers must treat personal health information (PHI) confidentially, including keeping such information separate from the general personnel file, and protected by passwords, encryption, or physical security, such as in a locked file cabinet. Access should be on a strictly "need to know" basis. Information about drug and alcohol treatment qualifies as PHI.

Even if the law did not mandate confidentiality, treating an employee's drinking problem as a sensitive matter is just sensible HR practice. Walking the narrow line between being the enforcer of policy and performance standards and the sympathetic employee advocate is hard enough without the added distraction of co-worker gossip, speculation, and opinionizing.

About Marian Exall

Marian Exall (marian.exall@gmail.com) is an employment lawyer and HR professional with more than 25 years’ experience advising banks and other employers on compliance issues. She is a principal and co-founder of Employment Law Compliance, Inc. which provides HR compliance solutions to banks exclusively through the American Bankers’ Association. She is a frequent speaker and writer on human resources compliance in the banking industry, including in ABA Banking Journal, on ABA Telephone Briefings, and at national and state bankers’ association conferences.

For more information on this or other employment compliance topics, please call Employment Law Compliance at 866-801-6302 or go to www.employlawcompliance.com.

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