

SUBSTANCE USE: PRACTICAL LEGAL UPDATE

Duration: 3 hours

1. Understanding Zero Tolerance

- Definition and purpose of zero tolerance in the workplace under South African law.
- The limits: Why dismissal is not always justified and what proportionality means.

2. Under the Influence vs Testing Positive

- Legal distinction between being "under the influence," "intoxicated," and merely testing positive for an intoxicating substance.

3. Alcohol

- Admissibility and Reliability of Breathalyser Tests
 - Are breathalyser results sufficient and reliable for disciplinary hearings? Practical steps for compliance and evidentiary value.
 - The importance of calibrated devices and trained personnel.
- Importance of Observation Tests
 - Why physical and behavioural observation remains critical for proving impairment, especially where testing technology may be challenged.
 - Recent disputes and outcomes relying on observation vs breathalyser results: Relevant case law.

4. Cannabis

- Right to Privacy vs Employer's Duty to Safety
 - Update on the right to private cannabis use (Minister of Justice v Prince, Enever v Barloworld) and how it intersects with occupational health and safety obligations.
 - Proportionality: Blanket zero-tolerance policies found to be overbroad and irrational by the LAC if they invade privacy and do not serve a legitimate safety purpose.



- Testing: Intoxication – Urine vs Saliva?
 - a. Comparison of urine versus saliva testing: which route to go.
 - b. Scientific and legal considerations for choosing tests; implications for policy and fairness.

5. What Should Be in Your Policy

- a. Clause essentials: Scope, purpose, prohibited conduct, testing procedures, privacy rights, consequences, and support measures.
- b. Legal compliance: Consent for testing, confidentiality, progressive discipline, accommodation for medicinal/rehabilitating employees.

6. Latest Case Law

