

K. WORKPLACE DRUG USE SHOULD NOT BE TOLERATED AND EMPLOYERS SHOULD INSTITUTE PREVENTION AND EARLY INTERVENTION PROGRAMS FOR EMPLOYEES

ISSUE: Employers and unions agree that drug use in the workplace is a problem. It has a detrimental effect on productivity, employee morale, safety and trust. They disagree on the method to ensure a drug free workplace. Employers adopt a zero tolerance policy with termination of employees who test positive for illegal drug use. Unions urge that employees should be permitted to enter treatment before faced with job loss.

BACKGROUND INFORMATION

According to the 2002 National Survey on Drug Use and Health sponsored by the SAMHSA, 74.6 percent of illicit drug users are employed either full-time or part-time. However, the rate of illicit drug use is higher among those who are unemployed than those who are employed. There are no statistics for illicit drug use broken down by employment status for Hawai`i. Thus, no specific conclusions can be reached about the magnitude of illegal drug use among Hawai`i's employed population. However, the Task Force received factual information from two sources, DOH/ADAD and the two largest drug testing laboratories in Hawai`i that shed light on workplace drug use.

Admissions data provided to DOH/ADAD by ADAD funded treatment providers¹² for eleven months in FY2002, indicates that 20 percent of treatment admissions for alcohol or drug abuse are employed. This number could be significantly higher because the admissions data reported

¹² DOH/ADAD funded treatment providers may report on treatment services that are paid by a health insurance carrier and private sources, in addition to Quest, Medicare/Medicaid and DOH/ADAD funds. Since DOH/ADAD funded treatment providers tend to serve persons who are eligible for Quest or DOH/ADAD funded treatment, we can expect that most admissions would be unemployed in order to meet the income eligibility requirements for those treatment payment sources.

tends to be skewed by the unemployed population who qualify for Quest or ADAD funded treatment services based on indigence status.

According to data provided by Diagnostic Laboratory Services, of the 40,000 drug tests administered to employees or applicants during an 18-month period, about 4.2 percent tested positive for marijuana and 3 percent tested positive for methamphetamine. Clinical Labs of Hawai`i reports that of 60,000 tests administered to employees or applicants during an 18-month period, 2 percent tested positive for methamphetamine¹³.

Compared to national test results data, Hawai`i's workplace drug use is higher. Based on 7 million tests for calendar year 2002, 4.4 percent tested positive for illicit drugs. Of the general U.S. workforce, 0.34 percent tested positive for amphetamines and 2.96 percent tested positive for marijuana. Nationally, methamphetamine positive test results increased by 70 percent over the past five years. (Quest Diagnostics Inc. Drug Testing Index 2003)

Therefore, based on this limited data and anecdotal testimony, it appears that illegal drug use exists, probably at higher rates than the national rates, among Hawai`i's employed population. While marijuana is the drug of choice for Hawai`i's employed users, methamphetamine use is significantly higher in Hawai`i than national use.

The employers' response to drugs in the workplace appears to be primarily punitive and zero tolerance. Testimony from employers and unions indicate that preemployment drug testing is widely used to screen illegal drug users from

¹³ Clinical Labs did not provide data on positive tests for other illegal drugs.

employment. Employers believe that this tactic is necessary to reduce drug use in the workplace. No testimony was received suggesting that legislation should be enacted to control or limit the employer's ability to conduct preemployment drug testing.

Under a zero tolerance policy, employers terminate an employee who tests positive on a drug test or is found to be impaired by or under the influence of drugs. Some employers have a "two strikes" policy that permits an employee to seek treatment through an employee assistance program for the first violation of the zero tolerance policy, provided the employee submits to random testing. If the employee tests positive for a second time, the employee is terminated. Unions complain that a "two strikes" policy is too harsh, especially for the ice abuser because of the tendency for relapse. One union testified that no employee had ever successfully completed treatment under a "two strikes" policy. As a result, the terminated employee is unable to continue treatment because of loss of financial support, which in turn pushes the person back into the spiral of drug dependency.

Employers urge for the unrestricted ability to conduct drug testing and to terminate an employee upon a positive test result. Employers claim that drug testing improves safety and productivity and leads to fewer workers' compensation claims.

One employer group asks for legislation to permit hair testing because hair testing is less intrusive. However, it is not authorized for use for workplace drug testing by the federal government in mandated testing programs. Hawai`i laws only permit urinalysis testing.

Hair testing is helpful to an employer who has a policy of terminating an employee for any illegal drug use, regardless of whether such use results in job impairment or affects the workplace. Hair testing, which can indicate drug use at

any time over several months, does not tell how much of an illegal drug a person has used or how long ago the drug was used. Hair testing can report a false positive if the hair sample is touched by something that contains a drug or if the person inhales second hand smoke of a person who smoked marijuana or cocaine. (Quest Diagnostics Hair Analysis, November 27, 2002) Thus, hair testing will reveal illegal drug use but may not be sufficient to demonstrate current impairment or being under the influence of drugs. Hair testing has one other drawback. Recent studies indicate that hair testing has a disproportionate impact on black-haired persons, such as Asians, because dark hair more readily stores up drugs for longer periods of time. The black hair contains higher concentrations of melanin pigment that is particularly attractive to chemicals. Thus, persons with blonde or red hair are more likely to avoid detection through hair testing and Asians are more likely to be caught. (Marcus, "Fair Tresses Hide Drug Excesses," HealthSCOUT, March 17, 2000)

Unions urge for more employer compassion, more treatment resources through health plans and more intervention and prevention programs in the workplace.

Community organizations and persons testified about the difficulty of recovering addicts to find employment in order to put their lives back on track. One business testified about its program, in partnership with a community treatment program, to hire persons in treatment and recovery. That business did not terminate the employee upon relapse because they understood that relapse can and does occur as part of the recovery process.

FINDINGS

- Employers are required to provide a safe workplace and need to operate under conditions to maximize business objectives. Employee drug use in the

workplace undermines business objectives and should not be tolerated.

- The Task Force is concerned that employers who simply eliminate the problem employee from the workplace ultimately shift the problem to the taxpayers to bear the societal consequences of an unemployed drug user, such as increased criminal activity, burden on public resources for welfare, health care and treatment and impact on the family. The Task Force finds that employers must partner with government and the community in solving the ice epidemic.
- While employers have policies to deal with punishment for drug use by employees, and some even have policies that encourage employees to seek treatment, few employers have prevention or early intervention programs. The Task Force has previously found that prevention and early intervention programs are the key to abating the ice epidemic.
- Hawai`i's limited job market requires special attention to ensure that Hawai`i's residents are fully employed while still meeting the staffing needs of Hawai`i's businesses. A growing unemployed population who are victims of the ice epidemic does not serve the public interest.

RECOMMENDATIONS

- The Task Force recommends that employers with more than 15 employees be required to provide three hours of mandatory drug education and awareness each year to its employees.
- The Task Force recommends a tax credit of \$250 for employers who

institute drug prevention and education programs for their employees.

- The Task Force recommends a tax credit for employers who partner with community based treatment organizations to provide jobs for those in recovery who maintain a clean and sober lifestyle.
- The Task Force recommends that private sector employers be required to maintain health insurance benefits for three months that provide substance abuse treatment for an employee who is terminated for impairment of performance due to substance abuse or working under the influence of drugs, provided that the employee is otherwise eligible for health insurance benefits under the employer's policies. Excluded from this requirement are employees who are terminated for sale, distribution or manufacture of illegal drugs at the workplace, who are terminated due to the inability to work because of arrest or conviction for criminal activity relating to the sale, distribution or manufacture of illegal drugs or who are terminated for theft, violence or safety reasons, even if such actions are related to the drug use. This requirement would apply to employers with workforces of 25 or more employees. Employees eligible for continued benefits would have to be employed for more than one year or who have completed the probationary period. Excluded from this requirement are employees who are subject to federally mandated drug testing programs and those who hold management, safety-sensitive or trust positions.

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L. THE ENVIRONMENTAL EFFECTS OF THE MANUFACTURE OR CONVERSION OF METHAMPHETAMINE ARE UNKNOWN AND SHOULD BE STUDIED AND ANALYZED

ISSUE: The nature and extent of the impact of the manufacture of crystal methamphetamine on Hawai`i's environment is unknown.

BACKGROUND INFORMATION

In the last three years, the Honolulu Police Department uncovered at least 31 clandestine laboratories. Hawai`i and Maui County police also discovered several clandestine laboratories. HIDTA reports that the number of clandestine laboratories operating in Hawai`i is significantly undercounted due to the lack of training as to what constitutes a clandestine laboratory. While some of the clandestine laboratories are involved in the production of methamphetamine, most labs are conversion labs that convert the powdered form of methamphetamine to crystal form. HIDTA reports that production labs are believed to be less prevalent in Hawai`i because of the difficulty of obtaining the precursor chemicals needed to manufacture methamphetamine.

When the Task Force attempted to ascertain what, if any, information was being collected or maintained about the hazardous and toxic materials from clandestine laboratory sites and the disposal of such materials, it discovered that little information existed. Apparently, no data or analysis has been conducted by any state, federal or local government office about the effects of the toxic materials on the environment.

Waste materials produced from clandestine production laboratories contain 70 hazardous byproducts, some of which are heavy metals that never degrade. For every pound of methamphetamine manufactured, five pounds of toxic mixed waste is produced. (Li, Kamita) This waste is not controlled

and is disposed by dumping in the ground or flushing into the sewer system. Toxic vapors are also produced, affecting air quality. Meth labs have been discovered everywhere, in hotel rooms, vehicles, residences, open areas and any structure. (Kamita) Contamination exists at the site, in the air, the ground, nearby physical structures and watercourses.

The danger of exposure to toxic materials exists not just for the manufacturers and persons present at the laboratory, but also for the first responders who uncover the clandestine laboratory and wildlife populations.

The leaching of toxic chemicals into Hawai`i's sensitive aquifer system poses an unknown risk. Toxic chemicals can reach the groundwater in one day.

Disposal of hazardous materials involves shipment to mainland sites. The cost to ship and dispose one 55 gallon drum ranges from \$200-500 per drum.

FINDINGS

- Toxic materials that are the byproducts of the manufacture or conversion of methamphetamine pose a danger and risk of harm to the public and environment. The site of the clandestine laboratory itself may pose a danger to the environment and public.
- Little information is available about the impact of toxic materials produced by the clandestine laboratories in Hawai`i.
- No apparent action plan exists for systematic handling of hazardous materials found at laboratory sites, including the site itself. While there appears to be a process for disposal of

the materials located at the site, there does not appear to be a process to determine whether the site itself poses an environmental hazard.

- Hawai`i's sensitive aquifer system is particularly at risk due to toxic chemicals that leach into the groundwater.

RECOMMENDATIONS

- The Task Force recommends that \$300,000 be allocated to the DOH to conduct a study and analysis of the effects of methamphetamine clandestine laboratories on our environment particularly the groundwater, the disposal of toxic waste materials found at the site, the disposal of the site and provide recommendations for action.

CONCLUSION

In addition to the specific factual findings and recommendations by subject areas, the Task Force makes the following observations:

1. Current statistics on the drug user population in Hawai`i are incomplete because no recent assessment of the adult population in need of substance abuse treatment is available. The Task Force relied on estimates and best data available.
2. An accurate count of the number of persons treated for ice addiction in Hawai`i is not available because there is no reporting mechanism for this data. Data on admissions to treatment are generally available, but this does not represent an unduplicated count of persons treated. The Task Force does not contend that such data should be reported, but the absence of the data meant that the Task Force relied primarily on best estimates and anecdotal information.
3. State agencies who provide treatment or social services to those with drug abuse problems do not routinely collect data on the number of persons served, the type of drug abuse and the successful outcomes of treatment services provided. Most state agencies responded to requests for data with "no information available" or the information had to be manually compiled for the Task Force. The two exceptions are Drug Courts and DOH/ADAD. Many community treatment providers who receive funding from DOH/ADAD routinely compile such information, as required by DOH/ADAD. Nonprofit organizations that receive federal funding also compile data as required by the federal grant. Accordingly, because data collection practices differ widely between treatment providers and government agencies, the Task Force had difficulty assessing whether gaps exist in types of services

that are state funded and whether state funding for services was well spent.

4. Public funds spent on treatment and prevention services could not be determined with any reasonable accuracy because no centralized source collects this information. Even more difficult to determine are the private sources of funding for treatment and prevention services.
5. Coordination of efforts and resources are critically necessary to avoid duplication of efforts, increase efficiency and share information and resources.

The Task Force makes the following general recommendations relating to funding substance abuse treatment and prevention programs:

1. As a condition of funding, state agencies should be required to compile data, establish evaluation criteria and performance goals for programs under their supervision. The information submitted to the Legislature as part of the budget process, while generally informative about the use of the funds, is not adequate to assess whether the objectives for funding certain services have been met or to justify continued funding.
2. As a condition of funding, state agencies should be required to report to the Legislature on a periodic basis, at least prior to the commencement of the biennial Legislature. These reports should contain specific information about the population served, the goals and objectives for the program, the evaluation criteria used to assess whether the goals and objectives were met and recommendations.
3. State agencies should require purchase of services contractors to compile data, implement standard evaluation criteria

and performance goals and make reports to the state agency. If a contractor fails to provide such reports to a state agency, the contract should be terminated or not renewed.

4. The Legislature should consider adopting performance goals to guide future funding decisions. For example, the rationale for recommending funding for substance abuse prevention and treatment services is to reduce costs in other areas. Research shows that such reductions are probable if treatment and prevention dollars are available to address the substance abuse problems. If this research conclusion is correct, i.e. that for every dollar spent in treatment saves \$7.14 in other areas, then these projected savings should become evident in three years. The Task Force has identified several areas where costs should decline,

if prevention and treatment services are effective in reducing drug addiction:

- ❖ Offender population
- ❖ Child welfare services, foster care
- ❖ Health care and welfare costs
- ❖ Criminal activities
- ❖ Law enforcement

Thus, if the Legislature adopted performance goals reflecting an expectation that services would no longer be necessary in certain areas, then state agencies affected would be able to plan for such reductions. In expectation of reduced funding in certain areas, a plan for personnel reduction, redirection and retraining could be developed based on future growth areas in government services.