

## What is Reasonable Suspicion?

In many of our policies addressing problem behaviors in the workplace, we use the term “reasonable suspicion” to define the time at which it is appropriate to ask an employee to submit to further assessment, whether it be a drug test or other “fitness for duty” determination. In many situations, managers or other supervisors observe or otherwise become aware of workplace behaviors which concern them, but they don’t know exactly when their “suspicion” becomes “reasonable”. While there is no one indicator of when further assessment is warranted, the list below includes many considerations that should be taken into account when deciding how to effectively manage a potentially problematic or dangerous situation.

As someone who knows your employees and how they work and behave, your reactions are often the most important piece of information needed when determining whether to ask someone to submit to some form of assessment. This is not to say that it’s appropriate to send an employee in for an assessment when you are merely frustrated or upset with them, but look at the workplace behaviors/performance as well as the demeanor and behaviors of the employee in question.

When determining if your suspicion of a problem is warranted, you should always take the time to fully investigate the situation. You are not “scapegoating” or otherwise taking out your frustration on a particular employee. You are taking an honest inventory of what you have observed and addressing the potential workplace safety concerns in order to safeguard the company, employee, and customers. People may not be aware of how their appearances or behaviors are being perceived by others. These workplace concerns need to be addressed with the employee in a time sensitive manner.

**Step 1:** Document the evidence you have that leads you to believe that the employee is impaired. Remember to use specific behaviors that if another person was watching the same situation they would report and document the same behaviors/observations that you did. Identify which specific behaviors/smells/appearance have let to you concerns. An example of this might be: An employee showed up to work one hour late on the following dates (document specific dates). The employee failed to meet their assigned deadlines on ...for the following projects... The employee raised their voice to their supervisor on the following dates...when the supervisor inquired about the progress of one of their projects. When documentation is specific, it allows it to be about the behaviors and not about the employee as a person. It also allows for the employee and supervisor to work together to create performance goals for the employee and decreases the arguments about whether or not the poor work performance occurred. The employee is being treated like any other employee exhibiting performance problems in the workplace.

One straightforward and common instance when suspicion could become reasonable suspicion is when an employee causes or is otherwise involved in a workplace accident. In these situations, it is easy to describe the incident, the actions or reactions normally expected of the employee, how the employee failed to meet those expectations, and what the next steps should be. Other workplace performance problems are more difficult to describe, so we have included additional information below to assist you when you are concerned about an employee’s behavior and are considering requiring them to submit to further assessment, such as a drug or alcohol test.

When documenting these workplace performance problems, consider:

- **The source of information:** Did you observe the behavior yourself or was it reported to you by another employee? If you are working with secondhand statements, it is important to consider the veracity of the information and to confirm the information with the witness.
- **How these behaviors represent a change from what is normally known or expected of the employee:** Changes in appearance, behavior, or performance are typically better indicators of problems than a pattern of behavior which has always been exhibited by an employee. The previous level of functioning can also

act as a target for an employee to get back to. However it is important to document patterns of performance problems in the workplace so that they can be addressed too.

- **Whether the problem behaviors are ones of “commission” or “omission”:** Which is to say was it something the employee *was doing* that is a problem, or is it things that they *are not doing* which is concerning?
- **The relative safety risks posed by the problem behaviors:** Serious, imminent health or safety risks need to be addressed quickly, while other problems may allow for additional time to determine a course of action.

Some specific behaviors which may be signs of an employee in trouble who poses a risk of safety or loss to the employer include (but are not limited to):

#### **The employee’s work behavior:**

- Frequent or otherwise excessive absence or tardiness, with or without explanation
- Inappropriate demeanor; mood which is often incongruent with the setting or situation
- Frequent failure to follow workplace rules, procedures, or protocols – *especially safety protocols*
- Marked changes in productivity, either completing far less or more work than would normally be expected of them
- Avoidance of supervision or supervisors
- Repeated errors despite training or other remediation efforts
- Unusual level of supervision has been deemed necessary

#### **The employee’s physical qualities:**

- Unsteady on their feet
- Decreased energy levels
- Decreased hygiene or other self-care behaviors
- Disoriented, confused, or incoherent
- Red eyes/dilated or constricted pupils
- “Flushed” appearance or other “flu-like” symptoms
- Slurred, pressured, or rapid speech
- Marked change in fine motor skills, poor motor skills/control, shaking or unsteadiness
- Extended periods of coughing or sniffing which are not likely due to allergies or seasonal illness
- Slow reaction response
- Injuries without a feasible explanation

#### **The employee’s interpersonal qualities:**

- Mood incongruence (just as described above), or an individual who is universally sad, worried, withdrawn, or elevated in their mood
- Unusually sensitive or unpredictable response to critique or supervision
- Frequently involved in verbal altercations with coworkers or customers/clients, general irritability
- Withholding information or being otherwise secretive with coworkers or supervisors
- Supervisory concerns about sexual behavior or harassment of coworkers or clients
- Unpredictable or inappropriate displays of emotion
- Rigidity or inflexibility, either with others or in assignments, procedures, or tasks
- Significant or sudden changes in relationships with supervisors or coworkers
- Change in frequency or nature of complaints to supervisors

#### **Other behaviors or factors (including those outlined above) which can indicate substance use or abuse:**

- Observed use or abuse of substances
- Observed possession of illicit substances

- Smell of alcohol or marijuana smoke on the employee
- Sudden or drastic changes in physical health or appearance

**Other behaviors or factors (including those outlined above) which can indicate persistent or extreme psychosocial distress:**

- Excessively talking about or otherwise idealizing death or violence
- Excessively talking about interpersonal problems with others, including coworkers and family members
- Excessive vigilance to danger, being easily startled
- Frequent requests for advances in pay (i.e. asking for money between paydays)
- Frequent requests for early breaks
- Frequent requests for time off (for medical purposes or otherwise)
- Skipping breaks or meals (when not required by an unusually busy day)
- Excessive or frequent difficulty in managing workplace change (schedules, personnel, procedures, supervisors, etc.)
- Unreasonable self-assessment (either excessively positive or excessively negative)
- Cynicism or excessive distrust of others
- Unfounded perception of persecution
- Seeing or hearing things which others do not observe (hallucinations), or believing things which can not reasonably be believed (delusions)
- Persistent sleep problems
- Frequent, observed arguments with non-employees while at work (e.g. arguing with spouse on the phone)