SELECTED REFERENCES
INDUSTRIAL RELATIONS SECTION
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EMPLOYEE SUBSTANCE ABUSE AND THE LAW**


This report on the general subject of employee substance abuse includes a section entitled "Legal/legislative developments" which covers a broad range of issues. Beginning with a discussion of constitutional protections applicable to drug and alcohol control measures in the workplace, it goes on to discuss the Vocational Rehabilitation Act of 1973 and Federal regulation aimed at reducing substance abuse in transportation industries. Detailed sections on tort liability and arbitration decisions give a clear picture of current trends in employee drug and alcohol abuse cases. Legal analysis of drug screening and polygraph examinations provides information on how law and public opinion are developing on these two controversial subjects.


This pamphlet presents in outline form an overview of legal issues which may affect the implementation and functioning of employee assistance plans. It includes detailed information regarding government regulation and labor-management liability. Carnahan points out that liability claims against treatment facilities are being pursued and that, in some circumstances, unions or employers may also be held liable as agents in referring employees to these programs. Sections on discipline of alcoholic employees and drug and alcohol screening highlight relevant arbitration and court decisions.


The discipline of alcoholic or drug addicted professionals poses special problems. It is necessary to protect both clients and the profession as a whole, and to attempt to rehabilitate the affected individual. For instance, while an al-

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** Items on this list should be ordered directly from the publisher. Addresses are given in connection with each reference.
cohesive lawyer may be guilty of conduct which would normally lead to disbarment, the Illinois Supreme Court has developed a rule which allows for the attorney to, instead, be placed on probation if he or she participates in a suitable rehabilitation program. This represents a shift in disciplinary policy which allows substance abuse and mental illness to be viewed as treatable disorders which may be considered as mitigating factors in misconduct hearings. Carroll and Feldman detail the provisions of the Illinois Supreme Court rule and how it has been applied.


This article will frustrate anyone hoping to find clear patterns in employee substance abuse arbitration decisions because it presents excerpts from many conflicting judgements. What Denenberg clearly communicates by example is that there is much disagreement among arbitrators on how to deal with drug and alcohol cases. She concludes that the best tactic for labor unions and management is to establish early intervention and assistance programs that may prevent substance abuse problems from ever reaching arbitrators.


The implementation and social impact of the Rehabilitation Act of 1973 as it applies to drug addicts and alcoholics are discussed in detail. The application of the law in this area is still forming, and Forcier explores some of the gray areas. For example, section 504 of the law requires employers to consider "reasonable accommodations" for a worker's handicap. Forcier suggests that an employer might comply by granting time off for an employee to participate in a treatment program. The author notes that the Act clearly defines substance abuse as a disease rather than a moral failing. He attempts to assess the effectiveness of the law in deterring discrimination against substance abusers by employers and by society as a whole.


Drug tests currently in use are not foolproof. The Army and Navy recalled 49,000 service personnel who were mistakenly discharged after testing positive for drug use in inaccurate urinalyses. Investigation by researchers from the Centers for Disease Control and the National Institute on Drug Abuse found that drug testing done between 1972 and 1981 at 13 different laboratories was highly imprecise. In the face of the risk of error, the invasion of employees' privacy, and the fact that urine tests do not demonstrate im-
pairment, Gampel and Zeese find that drug testing may not be a cure-all for employers' problems with substance abuse in their work force.


This comprehensive article attempts to define the limits of a reasonable substance control policy in the workplace. Beginning with a review of handicap discrimination provisions applicable to drug addicted and alcoholic employees, Geidt moves on to examine employee privacy issues involved with drug and alcohol control and investigation. The pattern which emerges is that if employees are notified of a clear and reasonable company policy of consistently and fairly applied drug and alcohol searches, tests, and surveillance, such investigative procedures are generally upheld by courts. Geidt outlines a few important cases related to employer liability for actions of intoxicated workers and examines some workers' compensation claims involving substance abuse. Also included is a review of recent arbitral decisions and a section entitled “Practical suggestions for employers.”


This practical reference guide is aimed at supervisors and union representatives and may help them handle and assess grievances rising out of alcohol-related work problems. It is not intended to be a predictor of arbitration outcomes but rather to explain how basic standards used by arbitrators apply to this type of misconduct.


Based primarily on an analysis of labor arbitration decisions published between 1963 and 1980, this article attempts to assess the use of rehabilitation as a remedy in arbitration. Marmo finds that union contracts and management rules usually do not make specific provisions for handling drug and alcohol related discipline. In the absence of rules which might establish guidelines for the use of rehabilitation, arbitrators tend not to recommend such remedies in their decisions, focusing instead on progressive discipline and existing contract language.


In a recent decision, the Texas Supreme Court held that an employer was liable for the off-duty acts of an intoxicated employee who was sent home
from work by his supervisor. This case and others like it have many implications for employers which are examined in this article.


Schachter and Geidt survey significant recent court cases which begin to establish limits on what controls and disciplinary actions employers can rightfully establish to curtail employee substance abuse. A set of guidelines are included to help management cope with alcohol and drug use without abusing employees' rights or risking law suits.


The advent of drug testing in industry has brought with it a host of legal perils and uncertainties. Stille's article discusses recent suits challenging random urine sampling, the accuracy of drug tests currently in use, and the potential for error and abuse of this type of screening. As there is no consensus yet on what screening procedures are legal and appropriate, many lawsuits may soon be filed challenging an employer's right to implement drug testing programs.


This article provides information on the dimensions of alcohol abuse in aviation and examines measures to control it. Weed traces the history of alcohol regulation in air transportation beginning with the Federal Aviation Act of 1958 and lists the penalties which have been imposed on those who violate these regulations. Although a history of alcoholism will technically disqualify anyone from receiving the Class I Medical Certificate required for commercial pilots, the FAA will make exemptions for recovered alcoholics who can demonstrate their fitness. For example, in 1976, 98 petitions for this exemption were filed and 77 were granted. This represents a shift in attitude in the FAA toward the recognition of alcoholism as a treatable illness. In an attempt to encourage pilots to confront drinking problems before they become a danger, the Air Line Pilots Association has developed "Human Intervention Committees" which provide information and assistance to their members.