Chris Kujawa of K.E.I. instituted a drug testing program two years ago, and he's glad he did.

by JOHN B. CALSIN, JR.

K.E.I. of Cudahy, Wisc., is a $4 million landscape management company with design/build and interior plantscape divisions. Owner Chris Kujawa realizes the need to have a drug-free workplace.

"Drug usage is prevalent not only in society, but in our particular industry," Kujawa observes.

When his company initiated a drug testing plan, it chose to do pre-employment screening, random testing and mandatory testing after major accidents. K.E.I. chose this rather than instituting a "wholesale" policy.

The tests began with owners and supervisors to show the rest of the workforce that the company was serious about having no drugs in the workplace. K.E.I. employs up to 85 people depending on the time of the year.

That was nearly two years ago.

Since then, two people have tested positive.

**Two strikes, you're out**

K.E.I. employees who test positive are immediately suspended. They may return to work if they take another test and there is a clean report. The employee must pay for the follow-up test. Second offenses result in dismissal.

The type of users that company drug policies generally unmask are "casual or recreational drug users," says agent Tom Childers of the Drug Enforcement Administration in Phoenix.

Childers said that Americans use about 60 percent of the world's supply of illegal drugs. Yet only 20 percent of that is consumed by hard-core, clinically dependent people.

So who uses the remaining 80 percent?

Childers said it's quite possible you work next to, or with, one of these casual or recreational drug users unless your company has a drug-free policy.

**Facing the problem**

"Quite honestly, we want to help our employees. We are not out strictly to catch people doing drugs," says Kujawa.

"Our employees are an extension of our family. But, as with any family, there may be problems that must be faced and then addressed head-on." K.E.I. does have a partial employee assistance program (EAP).

Experts say that K.E.I.'s approach is a sound one. Rather than trying to scare or intimidate employees, it communicates care and concern. While not every company can afford to cover the costs of treatment for drug abuse (including alcohol abuse), they can, at least, encourage employees to seek outside help and make it clear that help is available.

That help can be in the form of an employee assistance program (EAP) designed to assist employees with personal problems that affect their job performance. Although some EAPs focus primarily on alcohol and other drug problems, most address a wide range of employee problems: stress, marital difficulties, financial trouble and legal problems.

Most EAPs offer a range of services: employee education, individual and organizational assessment, counseling and referrals to treatment. In general, the more comprehensive the services, the greater latitude to act than a public employer.

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Get your drug program reviewed by a professional

Thomas K. Schindler writes drug testing policies for companies.

"The law in this area is evolving. It's an active area of the law," says Schindler, a member of the law firm of Lamb, Windle & McErland, West Chester, Pa.

He says it's tough to generalize about testing and test-base employment decisions, but some observations are appropriate:

- A private employer has greater latitude to act than a public employer.
- A non-union employer has greater latitude to act than a unionized employer.
- Any employer, either public or private, has a greater latitude to act concerning applicants for employment, as compared with existing employees.
- It's vital that a company publicize the existence of a testing program; make it clear...
at the outset what the test will
disclose and stick to it.

► Any employer increases
its risk of liability if it uses a
testing program that is
broader than necessary to ad-
dress a problem that the em-
ployer had identified, and in
which he/she has a legitimate
interest. In the case of green
industry employers, certainly,
safety is a concern, because
power equipment used by em-
ployees under the influence of
some drug can cause injuries.
(Testing labs can test for pro-
hibited drugs but not also test
for pregnancy or HIV.)

► Any employer increases its
risk of liability if it fails to ad-
minister an otherwise lawful
program in a careful and confi-
dential manner. Confidentiality
is absolutely essential.

► A company must have a
clear, consistent policy, known
to the employees, that a posi-
tive test will result, for exam-
ple, in discharge.

► Additional policy criteria
are required of private contrac-
tors working for the govern-
ment.

The length of the general
policy is usually 15 to 20 pages
because of what must be cov-
ered. Due to recent case law,
being specific about what is
being covered is important.

Have employees sign off on
the policy at the time of their
hire or at the time the policy is
instituted.

Schindler and other experts
recommend using an attorney
to either write your company's
policy or, at the very least, re-
view and recommend changes
that will keep your company
within the laws of your particu-
lar state.

—J.C.