
099 – Norwegian Oil and Gas recommended guidelines for alcohol and drug testing

Translated version

FOREWORD

These guidelines are recommended by a work group comprising representatives from Norwegian Oil and Gas member companies, in collaboration with the Norwegian Shipowners Association. They are recommended by the Norwegian Oil and Gas committee for employer policy and expertise. The guidelines have also been approved by the director general.

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These guidelines have been developed with broad participation by interested parties in Norway's petroleum industry and are owned by Norwegian Oil and Gas on behalf of the industry. Their administration is assigned to Norwegian Oil and Gas.

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1 INTRODUCTION

1.1 Purpose

These guidelines apply to petroleum activities in so far as these fall within the scope of the Norwegian Working Environment Act.

Alcohol and drug abuse is incompatible with work in the oil and gas industry because it represents a potential for harm not only to life and health but also to big material assets and the natural environment.

These guidelines will contribute to the creation of a healthy corporate culture in this area, with predictability for both employee and employer over the treatment of alcohol and drug abuse.

The company should establish a policy on the use of alcohol and drugs which clearly communicates its attitudes towards these substances and the expectations it sets for employees. It should also have clear procedures for preventing and identifying abuse, covering every aspect from work on building attitudes to various control measures – including the implementation of recommendations from relevant expert bodies.

Possessing a well-entrenched system for alcohol and drug testing could raise the level of HSE in a company, both as a preventive measure and through subsequent follow-up of the individual employee. People who have difficulties with alcohol or drugs will be less inclined to apply for jobs at companies where a clear and explicit policy on alcohol and drugs is in place. Such a policy which includes random testing could in itself have a positive and preventive effect.

The individual employer must assess whether and to what extent alcohol and drug testing should be incorporated as an instrument in its efforts to combat the abuse of such substances. Alcohol and drug policy should form an integrated part of HSE work. All aspects of this policy should be discussed with union representatives and entrenched in the workforce as a natural part of the corporate culture. It is desirable that member companies support those of their employees who have a genuine and acknowledged problem with alcohol and drugs. Akan offers one option, but others also exist.

1.2 Definitions and abbreviations

Akan	The workplace advisory centre for issues relating to alcohol, drugs and addictive gambling and gaming
HSE	Health, safety and the environment
ISPS	International Ship and Port Facility Security Code
NCS	Norwegian continental shelf

1.3 References

Working Environment Act

Petroleum Act

Personal Data Act

Basic Agreement between the Confederation of Norwegian Enterprise (NHO) and the Norwegian Confederation of Trade Unions (LO)

2 SPECIFICATION OF CHANGES

2.1 Summary

The guidelines have been comprehensively revised, with updated references and citations.

3 REGULATIONS

Three sets of regulations must be taken into account when planning and implementing control measures for alcohol and drug abuse.

- The Working Environment Act, which specifies conditions for such measures and provides for employee participation before decisions are taken.
- The Personal Data Act, which regulates the right to process the information obtained through the control measure.
- Applicable collective agreements on pay and conditions may also provide special rules for dealing with cases.

A brief overview of some of the main principles in these regulations is provided below.

3.1 Working Environment Act

Section 9.1 of the Act provides that “the employer may only implement control measures in relation to employees when such measures are objectively justified by circumstances relating to the undertaking and it does not involve undue strain on the employees”. In other words, the control measure must have an objective purpose rooted in the undertaking as such. At the same time, an objective justification must exist for including the individual employee in the control measure.

This provision requires a discretionary balancing of the undertaking’s need for the control measure against the disadvantages to the employees. For the control measure to be legal, the heaviest weight must be given to the needs of the undertaking. Relevant assessments will include the suitability of the alcohol and drug testing for identifying the risk factors to be prevented. Means must be proportionate to ends. Among other considerations, the possibility of achieving the goal in another and less intrusive manner must be assessed. It is important to note that the provisions in section 9-1 cannot be overridden by consent or through the terms of employment contracts or collective pay agreements.

Supplementary provisions specified in section 9-4 of the Working Environment Act apply to control measures which involve medical examinations. Pursuant to this section, such examinations may only be conducted “when provided by statutes or regulations, in connection with posts involving particularly high risks [or] when the employer finds it necessary in order to protect life or health”. All alcohol or drug testing which involves the use of biological material (samples of blood, urine, saliva and so forth) are to be regarded as a medical examination. The ministry specified in the preparatory work on the Act that the provision could authorise such activities as alcohol and drug testing.

The provision “necessary in order to protect life or health” can authorise alcohol and drug testing when a justified suspicion of their abuse exists. The concept of “life or health” covers the employee concerned, other employees and third parties. The necessity criterion is meant to be interpreted narrowly, and the risk must be serious and regarded as specific, obvious and probable. See pages 149, 314 and 315 of the Proposition to the Odelsting number 49 (2004-2005).

Should the employer wish to introduce random alcohol and drug testing, this must be confined to safety-critical positions in line with the provision in section 9-4 (1) b) of the Act concerning “posts involving particularly high risks”. The ministry defines these as posts where the employee/applicant routinely encounters circumstances where errors have particularly substantial consequences for the employee involved or for third parties or have major consequences for society, and where special requirements must accordingly be set for the exercise of due care and attention. When assessing which posts are safety-critical, it will be relevant to consider the potential for harm associated with reduced judgement and/or attention, and the number of barriers between action/failure to act and an incident (see section 5 on the identification of safety-critical posts).

In addition to the material conditions for implementing control measures, requirements for information and discussion apply pursuant to legislation and collective pay agreements. Section 9-2 of the Working Environment Act requires that employees are informed about the purpose and assumed duration of the control measure, and how it will be implemented. The employer is obliged as early as possible to discuss needs, design, implementation of and major changes to control measures with the employees’ elected representatives.

Employees who refuse to be tested can be subjected to disciplinary sanctions when the stipulated conditions for testing have been met. Such sanctions could include a written warning with exclusion from the workplace until the next work period. The person concerned can then be asked again to submit to testing. Should they refuse, it could be appropriate for the company to assess their continued employment pursuant to the Working Environment Act’s rules on dismissal with or without notice. In every case, an employee who refuses to be tested should be informed that such a refusal could be used against them in a possible employment case.

The company is recommended to make provision for the necessary samples to be taken or examinations conducted when employees themselves wish to be tested in order to free themselves from suspicion.

For more information on the Working Environment Act, go to Lovdata:

<http://www.lovdato.no/all/tl-20050617-062-009.html>.

3.2 Personal Data Act

The right to process personal information acquired from control measures is regulated by the Personal Data Act. Processing in this context means the collection, storage, further communication and so forth of information which can be traced back to specific employees. The basic assumption of the Act is that all processing of personal data is prohibited unless it has been authorised by statute or consent or is necessary for specified reasons. See section 8 of the Act.

For more information on the Personal Data Act, go to Lovdata:

<http://www.lovdata.no/all/nl-20000414-031.html>.

The ministry has said that it is highly likely that the conditions specified in section 8 of the Personal Data Act for processing information on employees in connection with control measures will normally be met if the legal provisions for conducting the actual measures are fulfilled. This presumption was applied by the Privacy Appeals Board in its consideration of complaint 2005-06 (Securitas).

See the link: http://personvernemnda.no/vedtak/2005_6.htm.

Section 9 of the Personal Data Act stipulates additional condition for processing sensitive personal data. One of these is that processing is necessary to enable the controller to fulfil their obligations or exercise their rights in the field of employment law.

3.3 Collective pay agreements

Supplementary agreement V to the national pay agreement (Basic Agreement) between the NHO and the LO on control measures in companies regulates the design and implementation of new control measures or significant changes to the design of existing control measures in a company. Measures to be introduced must not exceed the necessary scope and must be objectively justified on the basis of the specific company's business and requirements. As specified in the provision, questions must be discussed with union officials.

For more information on the national pay agreement, see the link to the NHO en http://tariffavtaler.nho.no/?avtale=2&TA_Radnr=3406.

4 PROCEDURES FOR IDENTIFYING ALCOHOL/DRUG INFLUENCE AND ABUSE

Procedures for conducting control measures, including alcohol and drug testing, should form part of the company's governing documentation.

Taking samples is a critical element in the testing process and must accordingly be conducted in accordance with formal instructions on sample collection, and the location where samples are taken should also have its own written routines for this procedure.

Samples should be analysed by a laboratory which can document that it satisfies the applicable requirements for analysis methods, quality control and the expertise of personnel conducting the analyses and interpreting the results. Testing offshore personnel when checking in at the heliport is recommended. On land, personnel can be tested at the workplace during working hours. Employees can also be called in for testing outside their regular working hours.

Testing must be implemented in such a way that it does not in itself impose an unreasonable burden on the employees who are selected to undergo this procedure.

It is recommended that the company's procedures for alcohol and drug testing make reference to the recommendations and guidelines provided at any given time by the relevant expert bodies. Reference is made here to the Norwegian Board of Health's procedures for alcohol and drug testing. When setting limit values for how far an employee is under the influence of alcohol and drugs, the company is recommended to apply the applicable recommendations issued at any given time by the Norwegian Institute of Public Health.

For more information, go to the Norwegian Board of Health:

<https://helsedirektoratet.no/retningslinjer/prosedyrer-for-rusmiddeltesting>.

5 IDENTIFICATION OF SAFETY-CRITICAL POSTS

Posts which are considered by the company to involve duties and/or decision-making authority where the consequences of error are particularly substantial, and which can be subject to alcohol and drug testing, should be clearly identified in its governing documentation. Note that employees with emergency response duties of particular significance for safety in the company should also be included in the category of safety-critical personnel.

Examples of such posts could include platform managers and other leading personnel on offshore facilities as well as crane drivers, process technicians and nurses. On land, leading posts related to drilling and operation as well as duty officer assignments pursuant to the ISPS in the emergency response organisation can often be defined as safety critical. Assessments must be made on the basis of risk factors and the organisation of the work in each company.

When the company assesses whether posts selected for random testing fall within the scope of section 9-4 (1) b) of the Act – “posts involving particularly high risks” – it would first be appropriate to include those where the holder routinely encounters circumstances where the consequences of error are particularly substantial and no barrier exists between their actions and a serious incident. Second, positions should be included where the holder may encounter circumstances where the consequences of errors are particularly substantial and only one barrier exists between their actions and a serious incident. Third, it could be appropriate to extend testing to posts where impaired judgement may also have particularly substantial consequences in other ways for the company or society. Testing could also cover certain posts on land which are regarded as safety critical for offshore operations. Posts which have no particular consequences or where errors have consequences but where two or more barriers exist between action and incident will fall outside a testing regime. The barrier concept is based on normal HSE principles which find expression, for example, in section 5 of the regulations relating to management and the duty to provide information in the petroleum activities and at certain onshore facilities (the management regulations).

Comments in the preparatory work for section 9-4 (1) b) of the Act on posts which routinely encounter circumstances where the consequences of errors are particularly substantial should not be interpreted to mean that a high frequency is required. Normal legal risk principles should be applied, so that the question of whether the post involves particular risk is answered in the affirmative if the consequence is particularly substantial, even if the frequency of harmful incidents or of work which could yield such consequences is low.