

Workplace Drug Testing in Austria and Switzerland

Michaela Neuhofer



Overview

Austria and Switzerland

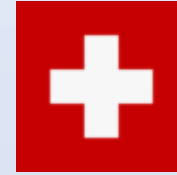
- General information
- Corporate landscape
- Legal framework for drug of abuse testing
- Workplace drug testing

Austria



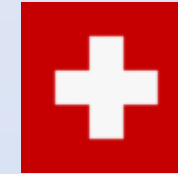
- Area 83,879 square kilometres
- Inhabitants 8,404,000
- Employed 4,141,000
- Unemployed 175,000
- Labor force participation rate 75 % (15-64y)

Switzerland



- Area 41,285 square kilometres
- Inhabitants 7,639,900
- Employed 4,708,000
- Unemployed 153,000
- Labor force participation rate 82.5 % (15-64y)

Corporate Landscape



	Austria (2010)	Switzerland (2008)
Operating companies	442,991	312,861
Employees	3,500,000	3,500,000
Small enterprises (1 – 9 employees)	412,462	272,346
Medium size enterprises (10 – 199 / 249 employees)	29,173	39,361
Large companies (> 200 / 250 employees):	1,356	1,154

Hierarchy of Legal Sources



- National Constitution: “Fundamental Principles” with the rights provided by the European Convention on the Protection of Human Rights and Fundamental Freedoms
- Public Law: “Fundamental Principles”
- Private Law: “Fundamental Principles”, esp.:
 - Individual freedom (private autonomy)
 - Contractual and testamentary freedom: includes the freedom (i) over the form of the contract, (ii) the content of the contract, and (iii) to dissolve a contract
 - Principle of consensus
- Labor Law: Most items of employment law are part of Private Law

Labor Law



- Collective Labor Law
 - Governs collective interest organisations
 - Workforce representatives bodies (i.e. law on works constitution)
 - Preconditions for collective normative agreements (i.e. law on collective agreements)
 - Collective use of action to press (law on industrial disputes)
 - Companies with >4 employees have to establish a workers council
- Individual Labor or Employment Law
 - Governs legal relations between the individual employee and individual employer (i.e. law on vacation,...)

Consumption of Alcohol and Drugs at Workplace



A branch of law regulates the performance of human work

§ 15 Abs 4 ASchG (employee protection at work):

Employees are not allowed not to put themselves in a condition where they could endanger somebody

§15 Abs 5 ASchG :

employee is under impairment of alcohol or drugs the employee has the obligations to tell it to the line manager

§ 1157 ABGB (General Civil Code):

the employer has the duty to take care for the employees: to take care of their life, health and morality

§ 27 AngG: (White collar worker Law):

employees duty of good faith

§ 96 Abs 1 Z 2 ArbVG (collect. Law):

employer can only establish something with the agreement of the workers council (>4 employees: a representative has to be in the company)

§ 97 ArbVG (collect. Law)

and so on.....

-> “Workplace alcohol and/or drug testing” is not mentioned

Influence on Workplace Drug Testing

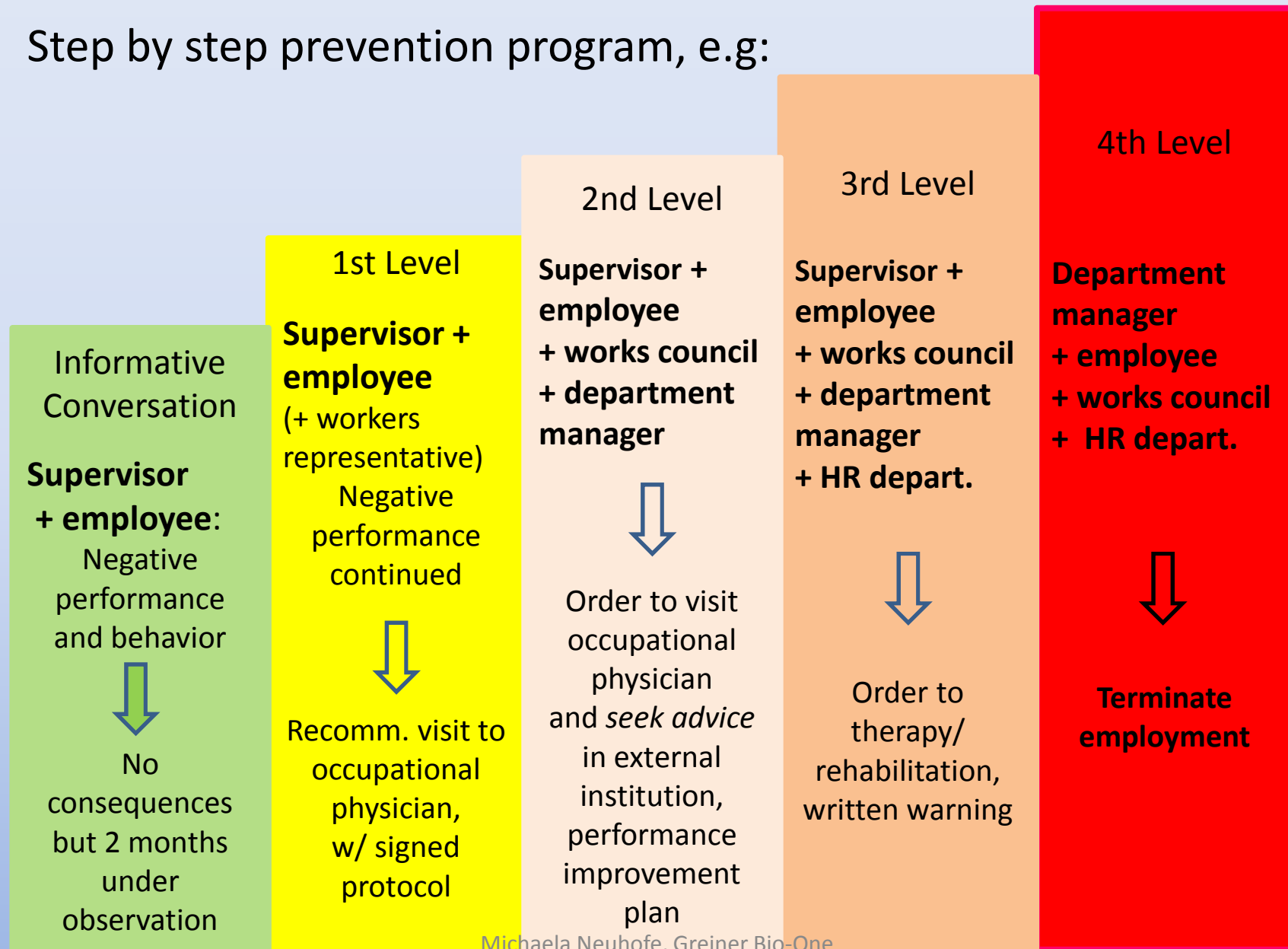


- The legal hierarchy is obligatory:
 - Benefit of the doubt principle – National constitution
 - Labor Law
 - Collective agreements
 - Works council agreements
 - Contract of employment
 - Directives
- Workplace drug testing, even pre-employment drug testing, is seen as an infringement of personal freedom & rights (§16 ABGB)
 - + “no obligations between employee and doctor” are not for sure
 - + bodily injury
- Except: transportation companies can refer to the Drivers Licenses Law
 - The alcohol limitation is 0.01 g/l for D and E – driver (bus, truck)

**nothing worse or contradictory
compared to higher ranking laws
can be established**

-> works council agreements for prevention programs

Step by step prevention program, e.g:

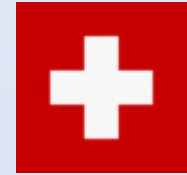




- Courses for department managers,....
- Education for apprentices
 - Workshops, out-door trainings, visit rehabilitation centres, theater,....
- Prevention programs, e.g: OMV, IBG, VOEST Alpine,.....



Switzerland



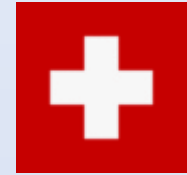
- Swiss employment law is part of federal legislation and “Law of Obligation” (OR)
- Accident insurance act
 - Art. 82 and Art. 11 / 3 Regulations on accident prevention:
The employer has to do everything to prevent any kind of accidents and the employee has the obligation to support the employer.

Switzerland

Labor Law only for employment contracts is less strict than in Austria

- In Switzerland drug testing is only allowed when there are safety risks and the employee has signed an agreement in combination with the employment contract.
- The agreement is obligatory.
- Drug testing during pre-employment medical examination is only allowed in specific cases and need the agreements of the applicants.
- Not announced testing is forbidden.

Switzerland



- Procedure quite similar to Austria
 - Prevention programs
 - Trainings for department manager, apprentices
 - E.g:



Thank you for your attention!

Michaela Neuhofer

michaela.neuhofer@gbo.com

