



Drug Testing in the Workplace

This section of the Kit will concentrate on how an employer can analyze, design, and implement a drug testing program. One of the first steps may be to consult with a certified laboratory in the Federal workplace program. In addition, the following information provides an in-depth view of some of the information known about drug testing in the workplace.

1. Why Do Some Workplaces Test Employees for Drug Use?

The Substance Abuse and Mental Health Services Administration (SAMHSA) reported that, in 2006, 74.9 percent of all illicit drug users over 18 were employed.¹ Drug testing is a prevention and deterrent method that is often a component of a comprehensive drug-free workplace program. Frequently, workplaces that do not have a drug-free workplace program produce higher health care costs, injury rates, and other negative outcomes related to employee substance abuse.

Drug-free workplace programs and policies are adopted by workplaces for a variety of reasons.² Prevention of substance abuse is first and foremost. Others do it to comply with Federal regulations, with requirements from customers or



contracts, or with insurance carrier requirements. All intrastate truckers, commercial driver's license holders, and other transportation workers are required to

undergo drug testing. Further, as required by joint government agreements, the United States, Canada, and Mexico monitor truckers crossing international borders.

A drug testing program can lead to employees seeking early intervention and treatment, deter them from using alcohol and other drugs (and from coming to work unfit for duty), and create a safer and more positive environment in the workplace with less turnover, increased loyalty, and higher standards of quality.

2. Do Drug Testing Programs Work?

Certified laboratories are enhancing their procedures, based on research and technologies, to better determine those specimens that will be reported either negative or positive on a drug



test.³ Using a Medical Review Officer (MRO) to review the test results reported by certified laboratories will ensure that employees are not falsely accused of drug

abuse. According to SAMHSA: "[A]n MRO is defined as a licensed physician who receives laboratory results, has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an employee's positive test result together with his or her medical history and any other relevant biomedical information. Only individuals holding either a Doctor of Medicine or Doctor of Osteopathy degree may serve as MROs for federally regulated programs."⁴

3. When Did Workplace Drug Testing Begin, and How Has It Evolved?

A Federal program was established in 1988, with enactment of the Drug-Free Workplace Act.



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Substance Abuse and Mental Health Services Administration
www.samhsa.gov



The Act requires some Federal contractors and all Federal grantees to agree that they will provide drug-free workplaces as a condition of receiving a contract or grant from

a Federal agency. Although all covered contractors and grantees must maintain a drug-free workplace, the specific components necessary to meet the requirements of the law vary. The requirements for organizations are more extensive than those for an individual, because organizations must take comprehensive, programmatic steps to achieve a workplace free of drugs.⁵

Organizations with contracts from any U.S. Federal agency must comply with the provisions of the Act if the contract is a) for \$100,000 or more, b) for services rather than goods, and c) performed in the United States. The Act covers all contracts and grants awarded to individuals.



Since the Drug-Free Workplace Act became law, workplace drug testing has evolved. In 1991, Congress passed and the president signed into law the Omnibus Transportation Employee Testing Act.

It requires that the transportation industries (aviation, trucking, railroad, mass transit, and pipeline) regulated by the Department of Transportation (DOT) test employees working in certain safety-sensitive positions for drugs and alcohol. The transportation industry has established additional policies on drug and alcohol testing, to ensure that workers operate aircraft, trains, trucks, and buses safely and responsibly.

4. What You, as a Federal Contractor or Grantee, Must Do

If your organization is covered by the Drug-Free Workplace Act, you must

- Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace. The statement should also clarify any punitive actions that will be taken.
- Establish a drug-free awareness program.
- Make sure each employee receives a copy of the workplace substance abuse policy.

If you, as a Federal contractor, are found not to have a drug-free workplace, each contract



awarded to you by any Federal agency may be suspended, terminated, or both.⁶ You may find yourself ineligible for award of any contract by any Federal agency, and for participation in

any future procurement by any Federal agency, for up to 5 years.

5. What Should a Drug Testing Policy Include?

A comprehensive workplace drug testing program maintains a clear policy of no use. It educates employees about the program, about why substance abuse is harmful not only to the abuser but also to those in his or her presence, how substance abuse costs the organization, and the consequences to the abuser for getting caught. A comprehensive program provides supervisor training, drug testing, and an employee assistance program. Having a written policy helps you and your employees concentrate on important details. And it makes legal review possible.⁷

6. Motivating Your Employees and Providing Assistance

It makes little sense to have either a drug-free workplace policy or a workplace drug testing

program without, at the same time, having a drug-abuse education program. You should have a health care professional speak to your staff about the dangers of alcohol and drug abuse—and make attendance mandatory. (Schedule the speaker on multiple dates, as full attendance on a given day is unlikely.) Make brief literature about drug abuse accessible to your employees, with handouts, bulletin board flyers, and email.

7. What Are the Major Kinds of Drug Tests, and What Do They Test?



The specimens collected and tested typically are either urine, hair, saliva, or sweat. However, the only specimen collected and tested in federally regulated programs is

urine. The testing of hair specimens is becoming more common in some unregulated, private-sector programs. But urine drug testing is used most often because of its proven accuracy, reliability, and fairness.

What drug tests look for varies greatly based on the testing company, the expense, the client's expectations, and so forth. Here is what you can expect from the standard tests.

The SAMHSA 5

The "Mandatory Guidelines for Federal Workplace Drug Testing Programs" require Executive Branch Federal agencies to have a drug testing program. The "Mandatory Guidelines" permit testing for drugs in five specific categories of drugs, sometimes referred to as the "SAMHSA 5":

- Marijuana
- Cocaine
- Opiates
- Phencyclidine (PCP)
- Amphetamines⁸

Expanded Tests

Most drug testing companies offer an expanded test that includes a few additional drugs in the testing process. Typically the tests will look for a few of the following: ethanol (alcohol), hydrocodone (Lortab, Vicodin), barbiturates, methaqualone (Quaaludes), methadone, Benzodiazepines (e.g., Valium), MDMA (ecstasy), propoxyphene (Darvon).⁹

8. A Drug Testing Checklist

A Drug Testing Checklist

Here's a list of "must do's" before you implement a drug-testing policy:

A. Identify any Federal or State laws with which you must comply. (Call your State's attorney general or talk with legal counsel.)

B. If applicable, talk with union officials.

C. Identify and contact a U.S. Department of Health and Human Services (DHHS)-certified laboratory.

D. Contract with a medical review officer.

E. Develop a system to protect the confidentiality of employee drug testing records. Call SAMHSA's Workplace Helpline for assistance.

F. Designate a person at your company who will receive the test results from the lab, and make sure he or she is aware of confidentiality issues.

G. Write a clear, consistent, and fair policy, and have it reviewed by legal counsel.

H. Notify employees 30 to 60 days before the testing program goes into effect.

I. Communicate to employees that you will abide by the policy also.

9. What NOT to Do

Should you choose to go forward with a drug-free workplace policy or a drug testing program, there are a handful of things you should make sure *not* to do:

- *Do not enforce a workplace policy inconsistently.* Not only is an inconsistent policy unfair, but it also makes an employer an easy target for litigation.
- *Do not publicize drug test results.* Disseminate employee or job applicant test results only to those who "need to know."
- *Do not take action when only an initial positive drug test result is available.* A confirmatory test must always be conducted on specimens

that had initial “positive” drug test results.

- *Do not use laboratories that do not participate in an accreditation program.*
- *Do not address drug abuse without also addressing alcohol abuse.* Alcohol is the most commonly abused drug in the United States,¹⁰ the world over,¹¹ and in American workplaces.¹² Make the dangers of abusing alcohol part of the drug-abuse education program you offer your employees.
- *Do not confront a suspected drug user alone.* Confronting a person “under the influence” or engaged in illegal behavior could be physically dangerous. Further, in the event of a legal challenge, it helps to have a witness on your behalf.
- *Do not allow impaired employees to drive home.* The reason is self-evident, but then how do you get the person off your site? Have a supervisor drive him or her home.

10. Who Gets Drug Tested, and Who Does the Testing?

Because drug testing costs money (although frequently the benefits far outweigh the costs),

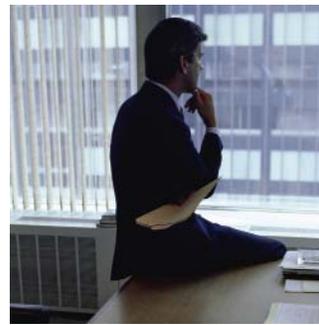


some employers choose to test only those employees in safety-sensitive positions. You may choose to test only your professional-level staff, or you may test all your employees.

Testing everyone can send a message that all employees (despite a range of salaries and responsibilities) are held to a certain code of conduct.

As an employer, you may choose to use a DHHS-certified drug testing laboratory that is certified under the National Laboratory Certification Program. After that decision is made, you may decide to have a trained collector come to your office to collect specimens, or you may choose to send employees to the certified laboratory (assuming the laboratory is located within a

reasonable distance of the workplace) to have their specimens collected. In either case, you may direct the certified laboratory to test the



specimens collected from your employees using the same procedures the certified laboratory would use if the specimens were being tested as regulated specimens (that is, from a Federal employee or an employee from a DOT-regulated industry).

Though not required, it is recommended that you use a Medical Review Officer to review results reported by a laboratory before the result is reported to the employer to ensure that an employee is not falsely accused of drug abuse. An MRO is a licensed physician who has a thorough knowledge of substance abuse disorders. This person knows the Federal regulations regarding drug testing. An MRO is trained to interpret and evaluate test results together with the employee’s medical history and other relevant biomedical information. The MRO makes a determination and reports the result of the test to the employer.

11. When Are Drug Tests Given?

Random Tests

The most effective drug tests, for deterring any illicit drug use, are those given randomly. Simply put, if an employee is tempted to use drugs but knows he or she may be tested at any time, the temptation is reduced. Random testing—or testing a selected group of employees at random and unpredictable times—is most commonly used in



safety- and security-sensitive positions, where a mistake can cost a fortune or be catastrophic (at a nuclear power plant, for example). A random test is when an

employer selects, using a truly random selection process, one or more individuals from all the



employees included in the employer's workplace drug testing program. A random selection process precludes an employer from attempting to preselect a particular

employee for a drug test.¹³

But there are other logical times to conduct drug tests, including before employment, because of reasonable suspicion or cause, following an accident, when an employee returns to duty, and as a follow-up to a previous test.

Preemployment Tests

If you institutionalize drug testing at your workplace, you can then move to test all job candidates.



That is, you can make passing a drug test a condition of being hired. If you choose to have a policy of zero tolerance for substance abuse at your workplace, you will

find it much easier to dismiss a candidate for employment whom you have yet to hire than an employee who has been on your payroll for any period of time.

A negative drug test does not indicate that a person has never used illicit drugs in the past, nor that he or she will never use them again.¹⁴ But offering employment only after a negative drug test result does decrease the chance that you will hire someone who is currently using or abusing drugs illegally.

Prepromotion Tests

Some employers will test an employee prior to promotion within the organization. The investment

in more highly paid staff is greater. Further testing an employee as a condition of promotion reinforces the message that the employee must now take on greater responsibility.

Annual Physical Tests

You may test your employees for alcohol and other drug use as part of an annual physical. A word of caution: If you conduct drug tests in tandem with physical examinations, make certain your employees know they are being tested for drugs as part of the exam. As with all drug testing, to test a patient for drugs as part of his or her annual physical without notifying the person beforehand that this will occur is a violation of the person's constitutional rights.

Reasonable-Suspicion and For-Cause Tests

You may test employees who show obvious signs of being unfit for duty (this is called for-cause testing) or who have documented patterns of unsafe work behavior (this is reasonable-suspicion testing). This helps protect the safety and well-being of the employee and other coworkers and provides the opportunity for rehabilitation if the employee tests positive.

Post-Accident Tests

To protect the safety of employees, and to identify and refer to treatment those persons whose



alcohol or other drug use threatens the safety of the workplace, some employers will test staff members who are involved in an accident or unsafe practice incident—to help

determine whether alcohol or other drug use was a factor.¹⁵

Treatment Follow-Up Tests

Many employers choose to periodically test employees who return to work after participating in a rehabilitation program.¹⁶ This can encourage

employees to remain drug-free after they have completed the first stages of treatment.

12. Who Pays for Drug Tests?

Usually, the employer pays for a drug test. Occasionally, an employer requires the employee to pay for the test, and if the results are negative the employer reimburses the cost. If employees are expected to pay, this should be stated in the written policy.

13. What Are the Consequences for Employees of a Positive Drug Test?

Depending on the specific policy, an employee who tests positive on a drug test may be referred for assistance, for disciplinary action (such as suspension or dismissal from work), or for both assistance and disciplinary action. Expulsion—and



even suspension—from work is considered an extreme consequence. Discussing the positive test result with the employee and possibly referring him or her for treatment are

considered more common first steps. Of course, if the employee is in a safety-secure position, probation may be appropriate.

14. What Are the Legal Rights of Employees Who Test Positive?

A Federal employee or an employee working for a DOT-regulated industry who tests positive on a drug test has the right to have his or her specimen tested by a second DHHS-certified laboratory to verify the positive result reported by the first DHHS-certified laboratory. Although it is not required, it is recommended that all employers include this right in their workplace drug testing programs. All employees who test positive have equal rights—do not offer rehabilitation selectively. And if your employees are represented by a union, you may not implement a policy and program unilaterally. The National Labor Relations Act

requires that terms and conditions regarding any workplace drug testing program you institute be included in your collective bargaining agreement.

Drug-free workplace policies can always be



challenged in the justice system. Many people use SAMHSA-approved labs to reduce the possibility of being challenged. There are Federal laws regarding drug testing. But there

may also be laws unique to your State or locality. Consult with an attorney—one experienced with labor and employment matters in your State—before you institute a drug-free workplace program.

15. What Steps Are Taken to Ensure the Accuracy of the Drug Tests?

A drug testing program must be scientifically accurate, precise, and forensically supportable. To that end:

- Every urine specimen collected for a drug test must be analyzed using both an initial test and a confirmatory test.
- The amount of the specimen taken must be sufficient for multiple testing.
- Trained personnel must carry out laboratory testing in a secure facility.
- The chain of custody of the specimen, from receipt until disposal, must be continuous.

When a urine specimen is collected by a trained collector who follows the required collection procedure, is tested in accordance with the “Mandatory Guidelines,” and is reviewed by an MRO before the result is reported to an employer, the result for that specimen will be forensically and scientifically supportable.

**U.S. Department of Health and Human Services
Drug Cutoff Concentrations^a**

Initial Test Cutoff Concentration (nanograms/milliliter)	
Marijuana metabolites	50
Cocaine metabolites	300
Opiate metabolites	2,000
Phencyclidine	25
Amphetamines	1,000
Confirmatory Test Cutoff Concentration (nanograms/milliliter)	
Marijuana metabolite ^b	15
Cocaine metabolite ^c	150
Opiates:	
Morphine	2,000
Codeine	2,000
6-Acetylmorphine ^d	10
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine ^e	500

Notes:

- ^a From "Mandatory Guidelines for Federal Workplace Drug Programs," Federal Register notice published April 13, 2004 (69 FR 19644), effective Nov. 1, 2004.
- ^b Delta-9-tetrahydrocannabinol-9-carboxylic acid.
- ^c Benzoyllecognine.
- ^d Specimen must also contain amphetamine at a concentration greater than or equal to 200 nanograms/milliliter.
- ^e Test for 6-AM when morphine concentration exceeds 2,000 nanograms/milliliter.

Initial Test

The initial test is used to eliminate negative urine specimens from further consideration and to identify the apparent positive specimens that require confirmation or further testing. A negative



specimen is any specimen that contains no drug or whose apparent concentration of the drug or drug metabolite in question is less than the cutoff concentration for that

drug or drug class. If the lab uses a second test to further identify a specimen as positive before the confirmation procedure, the second test is subject to the same requirements for accuracy as the first test.¹⁷

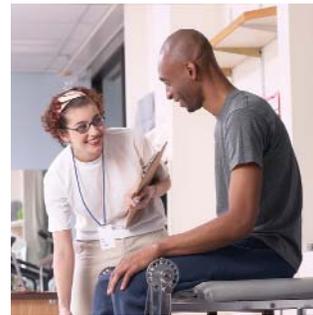
Validity Test

The laboratory next conducts a validity test to identify whether anyone has tried to tamper with

the specimen. Tampering attempts would be either by substitution (swapping the specimen with drug-free urine or diluting it with a liquid to effectively decrease the concentration of a drug below the cutoff concentration) or adulteration (for example, putting a substance into a specimen that is designed to mask or destroy the drug or drug metabolite it may contain).¹⁸

Confirmatory Test

All urine specimens identified as "presumptive" positive on the initial test must be confirmed positive using gas chromatography/mass spectrometry (GC/MS) before the laboratory can report the positive result to an MRO. Gas chromatography physically separates the various



substances that have been extracted from a specimen (such as urine). Mass spectrometry is the technique used to provide positive identification of

substances that were separated by the gas chromatograph. In general, GC/MS analysis involves using a solid phase or solvent/solvent-extraction procedure to extract a drug from most other components of a urine specimen. Following the extraction procedure, the extract is injected into the GC/MS to perform the final separation, identification, and quantification of the specific drug or drug metabolite present in the urine specimen.¹⁹

References

- 1 U.S. Department of Health and Human Services (DHHS), SAMHSA, Office of Applied Studies. 2007. *Results From the 2006 National Survey on Drug Use and Health: National Findings*. Rockville, Maryland, 27.
- 2 Michael T. French, Mark Christopher Roebuck, and Pierre Kebreau Alexandre. 2004. "To Test or Not To Test: Do Workplace Drug Testing Programs Discourage Employee Drug Use?" *Social Science Research* 33(1):45–63.
- 3 <http://www.workplace.samhsa.gov/DrugTesting/comments/Public%20Comment%208400097.pdf/>.
- 4 U.S. DHHS, SAMHSA, Center for Substance Abuse Prevention (CSAP), Division of Workplace Programs (DWP). 2004. *Medical Review Officer Manual for Federal Agency Workplace Drug Testing Programs*. Rockville, Maryland.
- 5 Walter F. Vogl. 1999. "Workplace Drug Testing." PowerPoint slide presentation. U.S. DHHS, SAMHSA, CSAP, DWP.
- 6 U.S. DHHS, SAMHSA, CSAP. 1992. "Guide for Drug-Free Workplace Policy Makers: Issues, Options, and Models." Rockville, Maryland.
- 7 Ibid.
- 8 http://dwp.samhsa.gov/DrugTesting/Files_Drug_Testing/Labs/Drug%20Cutoff%20Concentrations%20-%20February%202005.pdf/.
- 9 http://www.questdiagnostics.com/employer_solutions/standard_urine_testing_es.html/.
- 10 U.S. DHHS, SAMHSA, Office of Applied Studies. 2007. *Results From the 2006 National Survey on Drug Use and Health: National Findings*. Rockville, Maryland, 3.
- 11 Boyd Gibbons. "Alcohol, the Legal Drug." *National Geographic* 181(2):2–35.
- 12 Paul M. Roman and Terry C. Blum. 2002. "The Workplace and Alcohol Problem Prevention." *Alcohol Research & Health* 26.
- 13 Jacques Normand, Richard O. Lempert, and Charles P. O'Brien (eds.). 1994. *Under the Influence? Drugs and the American Workforce*. Washington, D.C.: National Academy Press.
- 14 Ibid.
- 15 Ibid.
- 16 Ibid.
- 17 U.S. DHHS, SAMHSA, CSAP, DWP. N.d. "Drug Testing: Analytical Testing Methods." Available at <http://www.workplace.samhsa.gov/DrugTesting/AnalyticalTesting/index.html/>.
- 18 Ibid.
- 19 Ibid.