

# Drug-Free Workplace Program

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## HIGHLIGHTS:

- Section A: Considering a Drug-Testing Program? What You Should Know.
- Section B: Implementing a Drug-Testing Program: Information and Tools to Make it Work.
- Section C: Useful tools to help you develop a program that meets your needs.
- Section D: Ready to start your company program? The final steps.

Developing a proactive safety and health program that includes a drug-free workplace program, is one of the best ways to help control costs associated with workplace injuries and property damage.

This packet provides information to help you establish a drug-free program within your organization.

This plan was not written with the intent to meet any minimum performance standards of any related Federal and State regulations. Be certain that you evaluate additional needs, related covenants or regulations and your commitment to workplace safety. Solicit input from your workforce and management team in development of any program. Any such written plan is only as good as your commitment behind it.

*We strongly advise the use of legal counsel to ensure that your plan meets the requirements applicable to your business including the law and regulations for each state in which you operate.*

*You must modify the program to fit your specific organizational needs. This material is not intended to be all-inclusive and may not address your special safety issues unique to your industry.*



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## Section A: Considering a Drug-Testing Program? What You Should Know.

### A1. Implementation Benefits and Considerations

There are numerous advantages to establishing a drug-free workplace program.

#### Several leading reasons are the following:

- Workplace safety
- Compliance with laws, regulations or contracts
- Incentives

#### Workplace Safety

- Workers with substance abuse issues may cause bodily injury and property damage losses from accidents and injuries at work. Drug use impacts the mind's ability to think, reason, comprehend and remember. There is also a physical toll as reaction time and motor skills are diminished. The effects from impairment carry over from recreational use to the workplace as the body slowly purges the substances. Combining various drugs and alcohol increases the length and severity of the response in the body and increases the likelihood of a costly mistake.
- Reinforcing safe work habits. Provide a workplace environment that supports and protects the employees who do not abuse alcohol or other drugs.
- Identifying problem employees. Employers may suspect they have some employees with a drug or alcohol problem and need to start a formal drug-testing program to properly handle the situation.

#### Compliance with Laws, Regulations or Contracts

- **OSHA:** Federal and state courts have ruled against employers who don't provide a safe work environment. OSHA imposes fines when employees are not adequately protected. If you know that there is a drug or alcohol problem within your organization, your best protection is to take steps to eliminate the problem. For additional information reference the General Duty Clause – OSHA 1910 5(a)(1).
- **DOT:** The Department of Transportation (DOT) requires drug testing of all employees who fall within their definition, regardless of company size or type. The Omnibus Transportation Employee Testing Act of 1991 requires drug and alcohol testing of all safety-sensitive transportation employees. This includes trucking, aviation, railroads, mass transit, pipelines and any other industry with employees operating commercial motor vehicles. Employers who are subject to the requirements of the act must ensure that their policies and procedures strictly adhere to DOTs requirements.
- **Federal and State Contracts:** Federal and state contracts may be suspended or terminated if your organization does not comply with the mandatory drug-free workplace clauses. Non-compliance can affect eligibility for future contracts.
- **Private Contracts:** Many private contracts include prerequisites for drug testing. It is a common practice to find mandatory drug testing provisions for workers at construction job sites and manufacturing plants.

#### Incentives

- Some states offer incentives to encourage businesses to adopt drug-free workplace programs that meet their requirements. Incentives can include reductions in workers compensation premiums and legal protections.
- Prevention of associated issues resulting from drug and alcohol problems can have a positive influence on your bottom line (e.g. absenteeism, productivity, morale). It may take a while before some cost savings become visible, but improvements in employee morale may be evident right away. Healthy workers are more productive, creative and motivated. Government statistics indicate that drug and alcohol abuse impacts profits through higher absenteeism and health care costs.

## Resources

Substance Abuse and Mental Health Services Administration (SAMHSA). Studies, data, issues and publications.

[www.samhsa.gov](http://www.samhsa.gov)

SAMHSA Drug-Free Workplace Kit and other resources.

[www.workplace.samhsa.gov](http://www.workplace.samhsa.gov)

National Institute on Drug Abuse (NIDA). Science of drug abuse and addiction.

<http://www.drugabuse.gov>

Executive Office of the President of the U.S. Office of National Drug Control Policy. Facts, figures and state-specific information.

[www.whitehouse.gov/ondcp](http://www.whitehouse.gov/ondcp)

Department of Labor policy builder program.

Menu: <http://www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp>

Developing a Policy Statement: <http://www.dol.gov/elaws/asp/drugfree/drugs/screen2.asp>

Bureau of Labor Statistics. Studies, injuries and death from various sources.

<http://data.bls.gov/search/query/results?cx=013738036195919377644%3A6ih0hfrgl50&q=drugs+inurl%3Abls.gov%2Fiif>

Department of Transportation. Regulations on drug and alcohol testing requirements.

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: <http://www.dot.gov/odapc/part40?proc>

Office of Drug and Alcohol Policy and Compliance: <http://www.dot.gov/odapc>

## **A2. Department of Transportation (DOT) Drug and Alcohol Testing Requirements**

Federal law requires that drug and alcohol testing be conducted by employers under certain circumstances. Following is a summary of the DOT requirements.

### **Who Should Be Tested?**

Under the DOT regulations, drug and alcohol testing is required on all current and/or prospective employees who meet all three of the following conditions:

1. Have a Commercial Driver's License (CDL)
2. Operate a Commercial Motor Vehicle (CMV)
3. Perform a safety-sensitive function

### **Definitions of the Commercial Motor Vehicles included for Testing**

- A gross vehicle weight rating of 26,001 or more pounds
- A gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds
- A vehicle designed to transport 16 or more passengers, including the driver
- A vehicle of any size that is transporting hazardous material requiring placards

### **Definitions of the Safety-Sensitive Functions Requiring Testing**

- Driving
- Time spent waiting to be dispatched at a carrier's or shipper's terminal, plant facility or other property, unless the driver has been relieved from duty
- Inspecting, servicing or conditioning a commercial motor vehicle

- Being in or on a commercial motor vehicle (except resting in the sleeper berth or as a bus passenger)
- Loading or unloading, including:
  - Supervising or assisting in loading or unloading
  - Attending a vehicle being loaded or unloaded
  - Remaining in readiness to operate the vehicle
  - Giving or receiving receipts for a shipment being loaded or unloaded
  - Securing the vehicle and taking all other precautionary measures required by DOT regulations following an accident
  - Repairing, obtaining assistance or attending a disabled vehicle

### **Types of Required Testing**

- Pre-employment (drug testing only)
- Post-accident
- Reasonable cause
- Random (50% per year for drugs PLUS 10% per year for alcohol)
- Return-to-duty
- Post-rehabilitation/follow up (testing for up to 60 months including a minimum of 6 tests in the first 12 months)

### **Remember...**

- For a new driver, the employer must obtain testing information from previous employers for the 2 preceding years.
- The employee must be given a copy of your program and educational materials before testing.
- The employer must obtain a form, signed by the driver, acknowledging acceptance of the testing program.
- When you start your program, supervisors must have 1 hour of alcohol training and 1 hour of drug training on the physical, behavioral, speech and performance indicators of alcohol misuse and drug use.
- Keep good records and document everything you do in your program. DOT consortiums are formed to assist employers with a small number of employees who fall under the regulations. DOT specialists advise that you should join and group your employees with other small employers. Your program is then handled by an administrator who is familiar with the regulations and will help you stay in compliance with the rules. Your employees will become a part of a pool, so random tests can be handled appropriately.

For more details call DOT at 800-225-3784 or check the DOT website: [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov)

## **A3. Marijuana in the Workplace**

Medical marijuana and legalized marijuana are issues that currently impact employers in many states. These issues are difficult for employers as they are held accountable for workplace safety while employees insist on their rights.

### **The following are suggestions on how to handle the issue of marijuana in the workplace:**

- Focus on safety and avoid discussions about legality (state laws vs. federal law).
- Don't discuss impairment. It is difficult to prove if a particular employee was fit for duty at a particular time.
- Handle issues in a similar manner as you would alcohol or prescription medications, with a clear understanding of acceptable behaviors.

- If “prescribed,” request that the treating doctor acknowledge his consideration of workplace safety by certifying in writing that the use of marijuana does not put the employee, co-workers or the public at risk for injury.
- Develop work rules and expectations that you can live with, and communicate them in a safety meeting where employees can ask questions and get answers.
- Distribute your rules, procedures and consequences in a formal written policy and obtain a signed acknowledgement form.
- Tie consequences to violating company rules (e.g. if you fail a test, you will be terminated).
- Provide supervisor training and employee education. Supervisors should understand their role and how to handle reasonable suspicion tests.
- Employees who fall under DOT requirements to be tested must comply with federal drug testing laws.
- Drug testing laws vary by state. Attorney involvement is essential.

Following these suggestions does not eliminate the risk of an unhappy employee challenging the employer, but it can help build a defense. Laws are constantly changing and being tested in court, but currently, state courts are ruling in favor of employers who have followed these practices.

#### **A4. Medical Marijuana**

Mainstream businesses across the county are struggling to understand the impact of medical marijuana laws in their state. Current and pending legislation affects more than half of the states in our country in various ways, but there are some common threads.

**Most states specifically prohibit the use of medical marijuana in the following circumstances:**

- When it endangers the health or well-being of another person
- When driving a motor vehicle
- In plain view of the general public
- In a place of public occupancy

Medical marijuana laws are not meant to restrict the employers’ ability to provide safety in the workplace while shielding medical marijuana patients or allowing them broad employment protections. Most state laws are enacted to avoid unnecessary arrest and provide protection from prosecution under specific situations for seriously ill people who have a medical need to use marijuana.

Despite their varied positions on how to write and administer the laws, the states are consistent in some areas that affect employers.

Generally:

- Medical marijuana patients are not exempt from employment-related drug testing.
- Employers are not required to accommodate the use of illegal drugs.
- Employers are not required to accommodate employees working while under the influence or using medical marijuana in any workplace.

The treating doctor who “prescribed” marijuana as the medication appropriate for the illness should be willing to certify, in writing, that the prescribed use of marijuana does not put the employee, coworkers and the public at risk for injury.

The treating physician should:

- Be aware of the safety issues
- Be willing to be involved with the employer and employee in the evaluation of the risks
- Be willing to stand behind his decision

Due to continuous changes in medical marijuana and American’s with Disabilities Act (ADA) laws, employers should keep their focus on safety best practices to reduce risk.

For example:

- It is the *duty* of the employer to be sure their drivers and safety-sensitive workers are not impaired from alcohol and drugs while at work.
- It is the *right* of the employer to establish a formal Drug-Free Workplace Program with rules that apply to all workers.

The following suggestions offer guidance on this issue:

- Develop a formal Drug-Free Workplace Program that includes drug testing.
- The written substance abuse policy should include rules and expectations about reporting the use of any substance that may affect safety.
- Carefully protect the confidentiality of any information received.
- Prior to implementing the program, obtain legal counsel from an employment practices attorney to ensure compliance with all state-specific laws in the states where you operate.

Medical Marijuana is a complicated issue but one that should not be ignored.

## **Section B: Implementing a Drug-Testing Program: Information and Tools to Make it Work.**

### **B1. Issues to Consider**

Consider these issues when setting up a new drug testing program within your organization.

#### **State Law**

State laws vary. You will need to know if there are restrictions on the types of drug tests you can include in your program. The method of testing and specific required wording for your written policy may be dictated by state requirements. A final review by your attorney should ensure that your program fully complies with any state-specific requirements.

#### **Testing Types**

*We recommend professional legal review of your program before you start testing and continued guidance from your attorney when handling any disciplinary action.*

State law may limit the types of tests conducted in a Drug-Free Workplace Program.

Formal programs frequently include:

- Pre-employment
- Post-accident
- Reasonable suspicion
- Random

Return-to-duty and Follow-up testing should be added to the program if employees are allowed to return to work after they have been rehabilitated.

#### **Five-Panel Drug Test**

Marijuana, cocaine, amphetamines, opiates and PCP are the drugs included in the standard five-panel drug test. Adulterant testing can be added for a small fee to detect products that are taken to mask drug use. An expanded ten-panel test will include several prescription drugs and may not generate any additional fee. Testing for synthetic drugs, Oxycodone, Ecstasy and other “club” drugs should be considered if you have concerns that employees may be abusing these substances. You may want to take steps to learn what drugs are commonly abused in your area by following news reports, checking with local police or discussing the issue with your collection site to get insight on unusual drugs that are showing up in their test results.

## Testing Methods

Once you evaluate your testing choices, make a decision on the method of testing that will work best for your program.

- Urine testing is the most common form of drug testing and is accepted by the DOT in all states. Urine samples are primarily collected at local facilities by trained medical professionals. Urine specimens are sent to government-certified labs where the tests are conducted. On-site urine collection has largely been eliminated as a viable option for many employers due to the cost of hiring qualified collectors.
- Alternate testing methods such as blood, saliva and hair may be considered, but are sometimes restricted by state drug-testing laws.
- Oral on-site test kits are available but their low cost and convenience must be weighed against their short detection time and state restrictions.
- Instant oral kits should be avoided as experts question the reliability, accuracy and defensibility.
- Lab-based oral kits are recognized as a viable option by many employers in states that permit their use.
- Alcohol tests are normally done using a breathalyzer.

## Prescription Medications and Over-the-Counter Medications

The level of importance in addressing this issue has escalated due to the increase in prescription medication abuse. Medical information is protected by privacy laws, so approach this issue with caution.

A written substance abuse policy should prohibit illegal drug use, including prescribed drugs not legally obtained, prescribed drugs not being used for prescribed purposes, or prescribed drugs exceeding the recommended prescribed dosage.

It should be clear to employees that it is their responsibility to confer with their doctor or medical professionals about any over-the-counter medications and prescriptions they are taking to determine if they are fit to perform their required job duties. Although these medications may be legal, in some situations it is not appropriate to work while under their influence. Safety warnings on labels should not be ignored. If safety can be compromised, the employee must report the issue to their supervisor. In some situations, a written medical authorization should be provided to ensure job performance is not impaired. Employee education should reinforce the policy message.

## Unions

Many unions have changed their contracts in recent years to allow drug testing. Some unions conduct the tests and allow employers to select from their members who have agreed to be drug-tested. If you work with a union, check your collective bargaining agreement to see how it addresses this issue.

You will not be able to start a Drug-Free Workplace Program if your union contract does not permit you to test their members. To allow testing, the union contract will need to be changed at the next negotiation.

## Testing Costs

The cost of the drug testing program is affected by the choices you make. The cost to an employer for a Drug-Free Workplace Program includes more than just the cost of the tests.

You should also consider the following:

- Lost production time during testing and training
- Program administration time spent by management
- Attorney fees for reviewing the program prior to implementation and as needed

Serious accidents that result from drug or alcohol use can make the cost of your program appear insignificant. The Cost Calculator Resource will help you estimate your annual testing cost.



## **Consequences: Zero Tolerance vs. Rehabilitation**

Decisions regarding a failed test need to be carefully considered when starting a program. To avoid accusations of discrimination, the consequence for a failed test needs to be consistent. Some employers choose a zero tolerance approach where the employee is terminated upon a failed drug test. Other employers, with concerns about retaining key employees or the cost of training and hiring new employees, choose to allow employees to complete rehabilitation and return to work.

When an employee tests positive they should not be allowed to continue working without consequence. If a second chance is offered, the employer should follow steps to ensure that the employee makes a serious attempt to address the problem. Immediate suspension will allow the employer time to investigate further and work with the medical professionals and their attorney to determine the proper course of action.

The employer should establish procedures that include suspension, the employee's commitment to recovery demonstrated by a signed Second Chance Agreement, enrollment in a rehabilitation program, and a follow-up negative drug test.

Recommended rehabilitation varies based on the drug, but the Medical Review Officer (MRO) connected with the collection site should be able to advise the employer on the appropriate rehabilitation. Employers may be able to allow an employee to return to work if they confirm that the employee is drug free and following the proper treatment. Continued follow-up testing is important to remind the employee to stay clean to avoid future behavior that is unacceptable in the workplace.

## **Medical Marijuana**

Mainstream businesses across the county are struggling to understand the impact of medical marijuana laws in their state. At the time of publication, current and pending legislation affected 27 states in various ways, but there are some common threads.

Most states specifically prohibit the use of medical marijuana in the following circumstances:

- When it endangers the health or well-being of another person
- When driving a motor vehicle
- In plain view of the general public
- In a place open to the general public

The laws are not meant to restrict the employers' ability to provide safety in the workplace while shielding medical marijuana patients or allowing them broad employment protections. Most laws are enacted to avoid unnecessary arrest and provide protection from prosecution under specific situations for seriously ill people who have a medical need to use marijuana.

Despite their varied positions on how to write and administer the laws, the states are consistent in some areas that affect employers.

- Medical marijuana patients are not exempt from employment related drug testing.
- Employers are not required to accommodate the use of illegal drugs.
- Employers are not required to accommodate anyone working while under the influence or using medical marijuana in any workplace.

Due to changing ADA law and shifting state medical marijuana laws, employers should keep their focus on safety. It is the duty of the employer to be sure that their drivers and safety-sensitive workers are not impaired from alcohol and drugs while at work. It is the right of the employer to establish a formal Drug-Free Workplace Program with rules that apply to all workers. Consult with your attorney to ensure compliance with all your state specific laws.

## **Third-Party Administrators (TPA)**

Using a third party to run your company's drug testing program can be cost effective as they handle many administrative and record keeping tasks related to your program.

TPAs provide services that include:

- Assistance with program development
- Technical advice
- Collection site locations

- Random testing name selections
- Day-to-day administration and consultation
- Access to a medical review officer

Some administrators are prepared to handle the testing and record keeping required by the DOT. The services offered and costs for a third-party administrator will fluctuate between vendors. When considering a third-party administrator, confirm that their collection sites are using government-certified labs for testing.

### **Employee Assistance Program**

Your company may choose to use an Employee Assistance Program (EAP) as a component in a Drug-Free Workplace Program. An EAP is one way to offer help to employees with personal problems including drug and/or alcohol addictions. EAP counselors provide confidential assistance to employees and their families for problems that can adversely affect job performance. Companies not offering an EAP should display information to guide employees to treatment resources that are available through health insurance, local hospitals, state and federal programs.

### **Americans with Disabilities Act (ADA)**

This information is intended as a brief overview and is not intended as legal advice. We recommend professional legal review of your program before you start testing and continued guidance from your attorney when handling any disciplinary action.

The ADA can impact your testing program if you have at least 15 employees who work at least 20 weeks each year. The ADA prohibits employers from discriminating against any “qualified individual with a disability.” It does not protect employees who are currently using illegal drugs, but in certain circumstances, an individual may be deemed to have an impairment under the act. Alcoholics may qualify for ADA protection but disciplinary action can be taken in certain situations of continued use. Drug tests are allowed under the act. Alcohol tests are considered medical examinations and therefore subject to ADA requirements.

The act limits the types of medical information you may ask employees and applicants and how you use that information.

### **Family and Medical Leave Act (FMLA)**

We recommend a legal review of your program’s potential interaction with FMLA requirements prior to implementation.

The Family and Medical Leave Act should be considered if you have at least 50 employees who work at least 20 weeks each year. Among other things, FMLA requires employers to provide a 12-week, unpaid leave of absence for employees to receive treatment for substance abuse, or to care for a family member receiving treatment. The leave depends on whether the substance abuse constitutes a serious health condition. Entering treatment does not prevent the employer from taking action against the employee if the employee has violated its established substance abuse policy.

## **B2. Drug Testing Definitions**

Following are definitions for the types of testing that make up a complete Drug-Free Workplace Program.

### **Pre-Employment/Post-Job Offer**

These are tests that are conducted after an offer of employment is made. Offers of employment are contingent upon an applicant passing a drug test prior to starting work. This includes all employees for all positions, including owners, management, clerical, full or part time, and temporary/seasonal help.

### **Post-Accident**

Post-accident tests are conducted after a job-site or auto accident or incident if there was serious injury or substantial damage to property. The person hurt, the person who caused the accident, or both may be tested. The employer will maintain company guidelines defining when to test to determine

if drugs or alcohol played a part in the accident/incident. Serious injury usually involves lost time and is for situations requiring more than basic first aid. Workplace accidents that result in substantial damage to company property or the property of others can be defined based on a minimum dollar amount or the serious nature of the accident.

Privacy laws prevent anyone from sharing medical information, so the employer is not entitled to details revealed when the employee seeks medical treatment for injuries. If drug and alcohol problems exist, they will be disclosed to the employer only if a post-accident test is conducted in accordance with the established program.

In some states, the employer is not responsible for the workers compensation injury when it was caused by drug or alcohol use.

### **Reasonable Suspicion/Cause**

This is a very important part of the program and is permitted in every state. These tests are utilized where the supervisor observes or becomes aware of behavior that indicates a problem with drugs or alcohol. In such cases, the employee should be tested immediately. Employers should establish guidelines regarding the confirmation of the behavior, the documentation process, and the transportation of the employee to the collection site.

Most behaviors causing suspicion are subtle, for example the supervisor might recognize changes in physical appearance, deterioration in the quality of work, or an increase in absenteeism. A change in attitude or someone taking needless risks, combined with slurred speech or red eyes could indicate a problem. Sometimes the employee may not seem to understand simple instructions. These symptoms could be caused by problems unrelated to drug use but may warrant a discussion to offer the employee an opportunity to explain the behavior.

Employers should adequately train supervisory staff in the following:

- How to recognize a problem and document it
- How to determine an acceptable explanation
- When to require a drug test to confirm that the problem is not drug related

Training videos are available to help educate and train supervisors on recognizing symptoms.

### **Random**

Random tests are periodic and unannounced. A general recommendation is that an employer tests a total of 25% of their employees each year. Most employers conduct random tests quarterly. Every employee has an equal chance of being chosen each time a random selection is made, regardless of having been tested in the past.

In Connecticut, Maine, Minnesota and Montana, random testing is restricted to “safety-sensitive” positions. “Safety sensitive” is not always clearly defined, so caution is advised in these states.

Random testing is completely prohibited in Rhode Island and Vermont, as well as in the city of Boulder, Colorado.

Federal Department of Transportation (DOT) laws governing drug testing supersede state laws, so employees who fall under the federal guidelines must be tested in accordance with federal law. This includes random testing 50% of employees annually for drugs and 10% annually for alcohol.

### **Follow-Up/Return to Duty**

This testing is appropriate if the employer has established a drug testing program that allows a second chance. After a positive test, the employee must take the required steps to become and stay alcohol and/or drug free. Employers should determine the level of commitment required of an employee, such as enrolling in rehabilitation or other drug and alcohol counseling.

Before returning to work the employee should have negative drug test results. Follow-up testing should be done periodically over the next two years to ensure that the employee stays drug free.

### **B3. Reasonable Suspicion: When should the Employer Test?**

Since employers are responsible for workplace safety, it is important that they address any situation when facts or circumstances indicate there may be a problem with drugs or alcohol.

Legally, the employer is at risk if they do not take appropriate action. OSHA fines and court rulings reinforce the need to remove an employee who threatens safety.

Drug testing is an appropriate action when behaviors indicate there may be a problem. Reasonable suspicion testing is a legal response to help the employer determine if the employee has violated the company rules against illicit drug or alcohol use.

The U.S. Supreme Court has defined "Reasonable Suspicion" as more than a hunch.

To understand the employer's burden of proof when they require the reasonable suspicion drug test, review the following chart. It shows levels of proof recognized within our legal system.

<b>Minimum</b>
<b>Hunch</b>
<b>Reasonable Suspicion:</b> Facts indicate a problem
<b>Probable Cause:</b> Police searches
<b>Preponderance of Evidence:</b> Generally civil suits
<b>Proof Beyond a Reasonable Doubt:</b> Criminal
<b>Maximum</b>

#### **In connection with drug testing, the employer...**

- Is responsible for addressing situations when they suspect the employee may have violated the company policy against using drugs or alcohol.
- Should not attempt to determine if the person is intoxicated; a drug addict; or under the influence.
- Should focus on the behaviors that indicate a problem; that something has changed; or that performance issues have developed.
- Should document the facts they have witnessed.

The employer should act if they have something more than a hunch to believe that their rules have been violated.

The following are a few signs that should trigger supervisory action:

- Smell of alcohol or marijuana
- Finding drugs or paraphernalia
- Slow and slurred speech
- Bloodshot eyes
- Staggering
- Changes in appearance including weight loss, rumpled clothes, poor hygiene

If an accident occurs and the facts indicate there was a reasonable suspicion, a jury may end up judging the employer who did not test. The legal standard used will be based on whether or not something more than a hunch existed at the time of the incident.

Supervisor training is required for programs regulated by the DOT and recommended for non-regulated programs. Training will provide your supervisors the confidence and skills they need to properly handle difficult situations.

Liberty Mutual Insurance Risk Control can assist with resources that enable you to develop appropriate training.

#### **Consulting Center**

[RCConsultingcenter@libertymutual.com](mailto:RCConsultingcenter@libertymutual.com)

866-757-7324 toll-free

#### **Drug Free Workplace Program**

[drugfreeworkplaceprogram@libertymutual.com](mailto:drugfreeworkplaceprogram@libertymutual.com)

877-397-2255 toll-free

## **B4. Reasonable Suspicion Test Procedures**

Employers should review their Substance Abuse policy to ensure they follow the rules they have set in place. They should follow established procedures to help reduce the risk of being accused of discrimination.

### **The following are some general instructions on the topic.**

If the trained supervisor observes or becomes aware of behavior that indicates a problem with drugs or alcohol, the employee should be tested immediately. The supervisor should carefully document the behavior that indicates a problem. Then the supervisor should call the employee in for a disciplinary meeting where they explain the problem behaviors to the employee and take the employee for an immediate test. To avoid any problems on the way to the test, the employee should not drive himself to the test. If someone were to be injured in an accident on the way to the drug or alcohol test, the presumption in law would be that the employee was impaired and should not have been allowed to drive.

Drugs and alcohol continually pass through the body so you do not want delayed testing to impact the results. Quick testing will give the employer a better indication of any drugs in the employee at the time the problem was recognized. You also don't want the employee to delay taking the test and have the opportunity to mask any drug use.

It is important that the supervisor not make accusations or try to diagnose the drug use. Focus on the unacceptable behavior and the impact on workplace safety.

Many employers have procedures in place requiring that the employee not return to work until the results of the test are received. Some have determined that they will have an automatic three-day suspension. Some employers pay the employee for the time off if the test is negative. Others allow the employee to come back to work under restricted duty pending receipt of the results.

If the confirmed test is positive after a review from the Medical Review Officer, the employee should be called in for another disciplinary meeting to determine the next steps. State laws can be very specific and may require the employer to provide a copy of the test results to the employee. Often, the employer must offer retest and rebuttal opportunities.

Confidentiality should be a primary concern of the employer and is required by most state laws. It is strongly recommend that the employer talk with their attorney before taking action against the employee to be sure they are following the state-specific statutes.

If the employee refuses to take the test, it is treated the same as a positive test. If the normal discipline for a failed test includes termination, then the employer would follow that path.

## **B5. Oral On-Site Drug Testing**

Oral on-site drug testing kits have become a viable testing method for some employers in recent years. To understand this option, the following is a review of advantages, disadvantages and considerations.

### **Advantages**

- The kits are convenient. Oral tests involve a quick swab of the mouth and are observed without embarrassment or discomfort to the employer or employee.
- At approximately \$20 per test, the cost is lower than the standard urine test. In addition to the higher cost of the urine drug test, the employer must also factor in the production time lost while the employee and supervisor are away from work at the collection site.
- This form of collection eliminates the risk of substitutions and significantly reduces the risk of adulteration.
- The tests are useful and appropriate for reasonable suspicion and post-accident testing as they detect drugs recently used.

- Ecstasy is detected in the oral test because of the way the actual raw chemicals react to the saliva. The standard urine tests do not detect Ecstasy unless you pay extra and ask for the test.

### Disadvantages

Although oral test kits are accurate, drugs metabolize faster in saliva than in urine, so detection time is reduced substantially. The window of drug detection ranges from ten hours to a maximum of one day, so the value of the oral test may be limited. Detection time fluctuates for many reasons in both urine and oral tests but is reduced for all drugs, especially marijuana, in the oral test. See the Oral vs. Urine Testing Chart below.

- Due to the shortened detection time, employers may be wasting their pre-employment or random testing dollars as the results of tests do not provide the appropriate history of drug use needed to make informed decisions. Employers can be tricked into a false sense of security about employee behavior if results are not comprehensive.
- Many states have laws about on-site testing and oral testing. Some prohibit it completely and some limit when it can be used. Some states require a confirming test from a lab whenever a test is positive. Some states restrict the type of testing allowed in connection with receiving the workers compensation credit on their state Drug-Free Workplace programs, but don't prohibit the oral on-site testing for other reasons.
- On-site testing is not approved for Department of Transportation-required testing.

### Considerations

- Originally, all oral tests involved sending the saliva sample to a lab for analysis. Instant-result products are now available that provide results in less than 15 minutes. Experts have ongoing questions on the reliability, accuracy and defensibility of the instant kits. *We suggest that employers only use the lab-based tests until the issues are resolved.* Not all government-certified labs are prepared to handle all types of samples, so you should confirm that the lab you choose can properly test saliva.
- The standard five-panel saliva and urine tests both detect marijuana, cocaine, amphetamines, opiates and PCP. You will want to verify that the oral test kit you purchase includes all drugs in the standard five-panel screen, as some of the first oral tests did not include PCP. Also, check carefully if you want to add additional panels to your tests to verify that they are available.
- There is a difference between on-site collections and on-site tests. Many states allow on-site collections by qualified collectors but require that the specimen be sent to a government- certified laboratory for the initial and/or confirming test.
- There are numerous products available you may wish to review in greater depth. The results of an internet search will show many oral on-site drug testing kits available. Check the products carefully for FDA approval.
- Your attorney should guide you in determining if oral on-site testing is permitted in your state and is an option you can consider. After discussing options with legal counsel, you may choose the oral on-site test as an elimination or first test, especially if cost is your primary concern. Proceed with caution and talk to your attorney before making a purchase.

A review of the following chart may impact your decision as you compare oral testing with the standard urine test.

### Oral vs. Urine Testing Chart

Issues	Oral Testing Saliva	Urine
Maximum detection time for chronic marijuana user.	10-24 hours	30 days
Maximum detection time for casual marijuana user.	10-24 hours	3 days
Normal detection time for other drugs in five-panel test.	Less than 24 hours	2-3 days
States with laws affecting on-site tests	32 states	32 states
States with laws prohibiting or restricting oral tests.	14 states	Not applicable
DOT-regulated testing.	Prohibited	Required

In a non-regulated program where cost is not a factor and state laws allow it, employers can explore the option of developing a program that combines urine, saliva and hair testing. For pre-employment, random, return-to-duty, and follow-up testing, consider using a combination of urine and saliva, or hair and saliva to get the best information on the presence of current drug use and a history of past use. Urine or saliva may be appropriate choices for post-accident and reasonable suspicion testing.

## **B6. Cost Calculator Tool**

This tool will help you calculate the estimated cost for implementing a drug testing program.

### **Step 1: Determine program basics.**

#### **Consider these questions:**

- When will you drug test? Pre-employment, post-accident, reasonable suspicion, random, and follow-up are the norm for a full program.
- What method of drug testing will you use? Urine is the most common testing method and costs approximately \$50 per test at a local collection site. Saliva and hair testing are alternate options with varying costs. Hair testing usually costs more and saliva testing usually costs less than urine testing.
- Who will collect samples and conduct tests?  
Choices to consider are:
  1. Administer your program internally and pay a local facility to collect samples and send them to government-certified laboratories to conduct the tests. This is the most common.
  2. Contract with a third party to administer your program. They may be able to include your company in a consortium with other businesses to achieve reduced costs. Negotiate with the third party as fees are based on participation, services and testing.
  3. The Department of Transportation requires the use of a DOT consortium to ensure compliance with their testing rules and documentation. DOT testing and program administration costs approximately \$80 per test.
  4. Purchase kits, conduct on-site collections and send specimens to the lab for tests. Products and prices vary so caution is recommended. On-site instant result kits are not recommended.

Some of these choices are dictated or limited by state-specific drug testing laws.

### **Step 2: Estimate testing cost.**

Based on a urine test conducted by a collection site, the following equation is designed to help determine your approximate cost.

Estimate your new hires (pre-employment tests)			_____
Number of Accidents in the past 12months (post-accident tests)	+		_____
25% of your employees (random tests)	+		_____
Total number of tests needed	=		_____
Average test price	X	\$50	
Estimated annual cost of testing	=		_____

#### **Example**

ABC Company employs 50 people and plans to hire five new employees this year. They had three accidents in the past 12 months that resulted in serious injury or substantial property damage.

Five pre-employment tests, plus three post-accident and 12 random tests totals 20 tests at \$50.00 each.

By using the equation above, they were able to estimate their annual testing cost at \$1,000.00.

### **Step 3: Consider other cost factors.**

The overall cost to an employer for a Drug-Free Workplace Program includes more than just the cost of the tests.

Also consider the following:

- Lost production time during testing and training
- Program administration time spent by management
- Attorney fees for reviewing the program before implementation and as needed.
- Additional alcohol tests as required by the DOT or when reasonable-suspicion situations indicate the need.

Any serious accident resulting from drug or alcohol use can make these costs appear insignificant.

## **Section C: Useful tools to help you develop a program that meets your needs.**

### **C1. Steps to Implement a Program**

The following steps are best practices to help you enhance your current program, or if you have no current program, to provide you a base line from which to begin.

This template should provide an understanding of the primary elements necessary to build the foundation for a substance abuse and prevention plan. Your commitment is essential. We encourage you to follow through and assign the responsibility and authority to develop your program.

Elements of a Drug-Free Workplace Program include:

- Written Substance Abuse Policy (approved by your attorney)
- Supervisor training and employee education
- Proper collections
- Testing within the boundaries of your state laws

#### **Step 1: Notify your employees.**

Notify your employees 30-60 days in advance that your company will institute a Drug-Free Workplace Program. (See Sample Employee Letter Announcing Program Implementation.)

#### **Step 2: Write your substance abuse policy.**

Your written substance abuse policy should clearly communicate the drug and alcohol rules you expect your employees to follow. The policy is the primary document that will be referenced in any legal action, so carefully consider your options on issues that will impact your program.

As you review the Sample Substance Abuse Policy, determine what will work best for your company and then develop your policy to reflect your decisions. State laws, testing methods, when to test, consequences for failing a test, and offering employee assistance are just some of the issues to understand and address before starting a program. (See sample policy.)

Below are links to the Department of Labor's on-line policy builder program.

- <http://www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp>
- <http://www.dol.gov/elaws/asp/drugfree/drugs/screen2.asp>

#### **Step 3: Review policy with your company attorney.**

Consult with your company attorney in the development of your policy and the review of the finalized policy. This is important step as drug-testing laws vary from state to state. You need to be sure your program is lawful and includes proper protections for your company and your employees.



#### **Step 4: Choose collection site or third-party administrator.**

The collection site can be a local urgent care facility, doctor's office or hospital with an established relationship to a government certified lab where the actual tests will be conducted. Or you may contract with a Third-Party Administrator (TPA) and use the collection sites within their network. Use a collection site with formal procedures in place that will protect the chain of custody of testing specimens when they are mailed to the lab. Ask about services offered as well as the cost of testing. Appropriate collection sites should have a Medical Review Officer (MRO) available to assist with issues on positive tests. For more information, see the following document, Questions to Ask When Choosing a Collection Site.

#### **Step 5: Train supervisors and educate employees.**

##### **Supervisors**

Supervisors should be familiar with your program's rules and procedures. They should be trained to recognize when a reasonable suspicion test should be conducted, how to properly document a problem, how to handle confidentiality issues and should know your drug-testing process.

##### **Employees**

Every employee should receive a copy of your written substance abuse policy and sign an acknowledgement that they have received the policy, understand it and agree to abide by the rules as a condition of employment. The signed acknowledgement forms should be kept by the employer in a confidential personnel file. (See Sample Acknowledgement form.)

Employee Education should include an understanding of the problems of drug and alcohol abuse in general, their use in the workplace, as well as your company rules and the consequences of a positive drug test.

#### **Step 6: Notify agent, broker or risk control consultant.**

Notify your agent, broker or risk control consultant when you have developed your program. We encourage and support your efforts to impact safety through this important safety program so be sure to inform us when you have a program in place. Our Drug-Free Workplace Program specialist can provide guidance and resources.

Assistance is available by email at [drugfreeworkplaceprogram@libertymutual.com](mailto:drugfreeworkplaceprogram@libertymutual.com) or by calling toll-free 877-397-2255.

*We strongly advise the use of legal counsel to ensure that your plan meets the requirements applicable to your business, including the law and regulations for each state in which you operate.*

## **C2. Questions to Ask When Choosing a Collection Site**

Consider the following questions and rationale when choosing a collection site.

### **Is the facility capable and willing to handle all required collections and reporting?**

This could be for DOT-regulated programs or any non-regulated program, and includes pre-employment, reasonable suspicion, post-accident, random, follow-up and return to duty testing.

### **Does the collection site use a government-certified lab to conduct the actual test?**

Using labs certified by Substance Abuse and Mental Health Services Administration (SAMHSA) assures consistency and quality in the test. Specimen collections are conducted at local facilities. The collection site should have procedures in place to ensure the documentation and chain of custody paperwork is handled properly as this is a vulnerable step in the drug testing process. A mistake in tracking specimens from donors to the collection site and to the lab can invalidate the test.

Once the sample has been collected, it should be sent to a government-certified lab to ensure that safeguards are in place. Proper collections and testing helps build a defense if the test is challenged.



### **Does the laboratory conduct a confirmatory test on all initial positive tests?**

On urine specimens, labs typically conduct an Enzyme Multiplied Immunoassay Technique (EMIT) test first because it is less expensive and still approximately 97% accurate. If this EMIT test is positive, the lab will automatically conduct a confirming Gas Chromatography with Mass Spectrometry (GC/MS) test. The GC/MS test is virtually 100% accurate and upheld in court.

### **Does the government-certified laboratory test for adulterants?**

Adulterants are substances that interfere with specimen testing procedures by altering targeted drugs, thus “masking” the use of those drugs.

Adulterant use is widespread and generally falls into three categories:

1. Flushing the body with various fluids
2. Sample substitution
3. Using products designed to mask drug use

Current technology has improved to detect tampering or dilution of urine samples. Adulterant tests are available and can usually be included for a nominal fee.

### **Does the collection site or lab have a Medical Review Officer (MRO) to review all confirmed laboratory positives? If not, can the collection site contract with one? Will the MRO offer suggestions and guidance on appropriate rehabilitation if there is a positive test?**

The MRO is essential to ensure that there is no medical reason for a laboratory positive. The MRO will interview the employee, consult his physician about prescriptions or follow up on any other explanation the employee may provide to justify the positive test result. Only then will the employer be notified that the test was positive. This puts the human factor into the process and provides additional safeguards to protect employees. Employers should ask about MRO services when negotiating with potential collection sites.

In unregulated programs, a trained medical professional can guide the employer and employee on proper steps to take to get the employee through appropriate rehabilitation and safely back to work. In DOT-regulated programs there are strict rules about employees returning to work after a positive test, so employers will have to follow specific DOT procedures.

### **What drugs are commonly abused in your region? In non-regulated programs, what drugs should be added to the testing panel to ensure you are identifying likely problems?**

The five-panel test (marijuana, cocaine, amphetamines, opiates and PCP) has been appropriate for many years but does not include many substances available now. Due to growing problems with prescription medication abuse, the advance in synthetic drugs and the popularity of “club” drugs, many employers are choosing to include addition panels. Ask your local collection site about recent positive test-result activity to help determine if you should expand testing to include additional drugs. Police or local news can also help you stay current on issues in your area that may affect the behaviors of your employees. Drug testing panels can be expanded to include additional drugs for little or no additional cost. DOT regulations do not permit testing beyond the five-panel test at this time.

### **What will be the cost to you for all the above services as well as the confidential reporting of results back to your company?**

If the cost per test (including collection, transporting the specimen to the lab, lab analysis, MRO review and confidential reporting) exceeds \$50, you may want to consider a contract with a third-party program administrator to handle your entire program. They can often bundle services that will result in an overall reduction in cost to the employer. DOT-regulated programs usually have higher fees as the program administrator will be keeping records that show the program is compliant with DOT rules.

*We strongly advise the use of legal counsel to ensure that your plan meets the requirements applicable to your business, including the law and regulations for each state in which you operate.*

### **C3. Sample Employee Letter Announcing Program Implementation**

This sample is not intended to provide legal advice. It is provided to help you develop or enhance your existing Drug-Free Workplace program. It may not be complete or represent all existing laws or regulations. We strongly suggest you consult with your legal counsel and make necessary changes to ensure compliance with applicable laws in those jurisdictions in which you operate.

**Copy text to your own letterhead as you begin to develop your own program.**

**Date:**

**To:** All Employees

**From:** Company President

**Re:** Drug-Free Workplace Program

Our policy at (*Company Name*) is to provide our employees and customers a safe, productive workplace that is free of alcohol and drug abuse. We feel strongly that alcohol and drug abuse in the workplace can undermine individual performance, the security of other employees and the company's business.

For these reasons, we are implementing a Drug-Free Workplace Program, effective (*date*). The program will apply to all employees as well as applicants for employment. Our policy formally states that the abuse of alcohol and/or the illegal use of drugs by any of our employees while on company premises or on company business will not be tolerated.

You will soon receive a copy of the company's policy which will thoroughly explain the details of our Drug-Free Workplace Program. At that time you will also be asked to review the policy and sign and return the policy acknowledgement form.

If you currently need help with an alcohol or drug problem or if you have any questions about the Drug-Free Workplace Program, contact (*employee name or name of your Employee Assistance Program*).

Let's work together to keep (*Company name*) free of alcohol and drugs and continue it as a safe place to work.

Sincerely,

(*Company President's Signature*)

### **C4. Sample Substance Abuse Policy**

This sample is not intended to provide legal advice. It is provided to help you develop or enhance your existing Drug-Free Workplace program. It may not be complete or represent all existing laws or regulations. We strongly suggest you consult with your legal counsel and make necessary changes to ensure compliance with applicable laws in those jurisdictions in which you operate.

**Copy text to your own letterhead as you begin to develop your own program.**

This sample Substance Abuse policy is a multi-state version, to be edited to meet individual state drug-testing laws. Contact your attorney for a review of your final version before distribution.

## Purpose

(Company) values its employees and recognizes their need for a safe and healthy work environment. Employees abusing drugs/alcohol are less productive and are often a critical risk to the safety, security and productivity of our Company. The establishment of a Drug-Free Workplace policy is consistent with our desired culture and is in the best interest of our Company.

## Policy

It is the policy of (Company) to maintain a workplace free from the use and abuse of drugs and alcohol. Compliance with this policy is a condition of continued employment. It supersedes any other Company policy or practice on this subject. At any time, (Company) may unilaterally, at its discretion, amend, supplement, modify or change any part of this policy. The policy does not represent an expressed or implied contract and it does not affect your status as an at-will employee. If you have any questions about this policy, please direct them to (Drug Program coordinator).

To maintain a drug and alcohol-free workplace, (Company) has established the following policy effective (Date) with regard to the use, possession and sale of drugs and/or alcohol. The policy covers all employees of (Company). Drug and alcohol testing practices will be adopted to identify employees or applicants using drugs and/or alcohol.

## Drug and Alcohol Prohibitions

“Illegal Drug” means any of the following.

A drug that is:

- Not legally obtainable
- That is legally obtainable but has not been legally obtained
- A controlled substance

The term includes prescribed drugs not legally obtained, prescribed drugs not being used for prescribed purposes or prescribed drugs exceeding the recommended prescribed dosage.

1. Any employee engaged in any of the activities listed below is in violation of Company policy and subject to disciplinary action:

Bringing illegal drugs and/or alcohol onto Company premises or property, including Company-owned or leased vehicles, or a (Company) customer's premises

- a) Having possession of, being under the influence of, or having in one's system illegal drugs or alcohol
  - b) Using, consuming, transporting, distributing or attempting to distribute, manufacture or dispense of illegal drugs or alcohol
  - c) Switching, tampering with, altering or adulterating any specimen or sample collected under this policy or attempting to do so
4. Operating a Company vehicle, rental vehicle (under the Company name), or personal vehicle used for Company purposes under the influence of alcohol at any time while representing (Company)
  5. (Company) strictly prohibits the abuse of prescription drugs. (See “Illegal Drug” previously mentioned.)
  6. (Company) prohibits the use of alcohol on the job or use of alcohol prior to the start of the employee's next scheduled duty period.
  7. Any employee refusing to cooperate with or submit to questioning, medical or physical tests or examinations, when requested or conducted by the (Company) or its designee, is in violation of Company policy and subject to disciplinary action.

## Drug and Alcohol Testing

(Company) asserts its legal right and prerogative to test any employee for drug and/or alcohol abuse. Employees may be asked to submit to a medical examination and/or submit to urine, saliva, breath, sweat and/or hair testing for drugs and/or alcohol. Any information obtained through such examinations may be retained by (Company) and is the property of (Company).

In particular, (*Company*) reserves the right, in its discretion and within the limits of federal and state laws, to examine and test for the presence of drugs and alcohol in situations such as, but not limited to, the following:

1. **Post Job Offer Testing:** All offers of employment will be made subject to the results of a drug test. Applicants will be required to voluntarily submit to a test and sign an acknowledgment form that will release (*Company*) from liability. (*Company*) will not discriminate against applicants for employment because of past drug abuse. It is the current abuse of drugs that prevents employees from properly performing their jobs.
2. **Post-Accident Testing:** A drug and/or alcohol test will be conducted on all employees involved in accidents occurring during work time or while on Company property.  
Covered accidents include, but are not limited to accidents that the employee caused or contributed to that involve:
  - Personal injury to employees or others which necessitates medical attention (beyond first aid) or results in lost work time; and/or
  - Damage to Company propertyEmployees are expected to make themselves available for post-accident testing. If circumstances require an employee to leave the scene of an accident, the employee must make a good-faith attempt to be tested and to notify the Company of his/her location.  
Failure to report any accident that meets the post-accident testing criteria is in violation of Company policy and subject to disciplinary action. Employees testing positive may be ineligible for workers compensation and unemployment compensation benefits.
3. **Random Testing:** (*Edit or remove this section on random testing in states that limit or prohibit this type of testing.*) All employees are subject to random, periodic, unannounced drug tests at any time the Company deems necessary to maintain a drug-free workplace. This testing is conducted to ensure public and employee safety and to protect the Company profitability, image and reputation as a drug-free organization. The rate of random selection will be a percentage of the annual average employee or consortium base. Every employee has an equal chance of being chosen every time a random selection is made.
4. **Reasonable Suspicion:** Any employee may be asked to submit to a drug and/or alcohol test if reasonable cause exists to suggest that the employee's health, safety or ability to perform expected job duties is currently impaired.
5. **Return-to-Duty:** Any employee who has tested positive and has been removed from his/her job duties must submit to and furnish a negative drug test prior to returning to his/her job duties.
6. **Follow-Up:** Any employee who has been removed voluntarily or otherwise from his/her job duties on the basis of a verified positive drug test will be subject to unannounced drug testing to determine whether he/she is under the influence of drugs. The testing can continue for up to 24 months from the return-to-work date.

### **Employee Assistance Program (EAP)**

*Edit or remove this section if EAP is not a part of your program.*

A fundamental purpose of (*Company*)'s Drug-Free Workplace Program is to assist employees and family members who suffer from drug or alcohol abuse. The Company offers an EAP for employees and their dependents. If you need confidential help with a drug or alcohol problem, contact the Company-sponsored EAP. If eligible, you will be granted a medical leave of absence for rehabilitation. If you are enrolled in a Company health plan, your health care benefits may pay a portion of your rehabilitation costs. Any additional costs are the employee's responsibility.

It is the employee's responsibility to seek assistance before drug or alcohol abuse leads to disciplinary action. The employee's decision to seek prior assistance from the EAP will not be used as the basis for disciplinary action. Contacting the EAP will not be a defense to avoid disciplinary action where the facts proving a violation of this policy or giving rise to other disciplinary action are obtained outside of this consultation.

## Procedures

The drug test will be performed from specimens collected at a qualified collection site or at a Company facility using an on-site testing kit. A breath or saliva test will be performed for all post-accident and reasonable-cause situations to determine alcohol levels. If the saliva alcohol test reads positive, a breath-alcohol test will be performed at the collection site.

The collection site will take necessary steps to avoid any dilution or alteration of specimens. However, the test shall be conducted in a professional and sanitary manner with due regard for the individual's privacy, dignity and confidentiality. Proper handling of the specimens will be maintained so that the specimen results can be traced to the proper individual.

The specimen will be analyzed by a SAMHS-certified, professional laboratory for adulterants and the following controlled substances:

- Cannabinoids (marijuana)
- Cocaine
- Phencyclidine (PCP)
- Opiates (heroin, morphine, codeine)
- Amphetamines (stimulants such as Benzedrine and Dridex)

(**Note:** List additional controlled substances if you add to the normal five-panel drug screen.)

All specimens that were not analyzed initially by an on-site testing kit will undergo an initial Enzyme Multiplied Immunoassay Technique (EMIT) screening. Any positive EMIT or on-site testing kit screens will be confirmed through a Gas Chromatography with Mass Spectrometry (GC/MS) by a laboratory certified by SAMHSA. Any positive results from this GC/MS test will be reviewed by an independent Medical Review Officer (MRO) prior to the result being communicated to the Company. The MRO will give the employee the opportunity to rebut a positive test result and provide evidence of the proper use of prescription drugs. This will ensure that positive results are not due to legally obtained prescription drugs or other factors that the MRO feels justify the presence of controlled substances.

Any employee who is tested will have the right, upon request, to see the results of his/her test and request a retest of the original specimen at a different SAMSHA-certified laboratory (at the employee's expense) within 10 business days of being notified of a positive test result. All drug and alcohol information regarding the test results or failure to complete rehabilitation will remain confidential and will only be given out on a strict need-to-know basis. The Company's workers compensation carrier will be notified of results from post-accident tests that may affect compensability under (*Company*) insurance program.

## Disciplinary Actions

(*Company*) reserves the right to use disciplinary actions, up to and including termination of employment, depending upon the seriousness of the violation, the employee's present job assignment, the employee's record with the Company, and other factors, including the impact of the violation upon the conduct of (*Company*) business.

## Acknowledgment

As a condition of continued employment, employees must sign the following Employee Acknowledgment form.

### **C5. Sample Policy Employee Acknowledgement Form**

This sample is not intended to provide legal advice. It is provided to help you develop or enhance your existing Drug-Free Workplace program. It may not be complete or represent all existing laws or regulations. We strongly suggest you consult with your legal counsel and make necessary changes to ensure compliance with applicable laws in those jurisdictions in which you operate.

**Copy text to your own letterhead as you begin to develop your own program.**

I hereby acknowledge receipt of (*Company's*) Substance Abuse Policy regarding drugs and alcohol. I have read and understand the policy. I understand that refusal to submit to any drug or alcohol test required by this policy or a positive test result is grounds for disciplinary action, up to and including termination. Furthermore, I authorize the release of the test results to my employer, Medical Review Officer, applicable state unemployment agencies, and/or regarding post-accident tests, the Company's workers compensation carrier. I understand that refusal to release these results is grounds for disciplinary action, up to and including termination. I understand that if I test positive for drugs or alcohol or refuse to submit to any drug and/or alcohol test required by this policy, I may be ineligible for workers compensation and/or unemployment benefits.

I recognize that (*Company's*) policy on drugs and alcohol does not constitute an expressed or implied contract of employment.

---

*Employee Name (Printed)*

---

*Employee Address*

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<i>Employee Signature</i>	<i>Date</i>
<i>Witness Signature</i>	<i>Date</i>

*This sample is not intended to provide legal advice. It is provided to help you develop or enhance your existing Drug Free Workplace program. It may not be complete or represent all existing laws or regulations. We strongly suggest you consult with your legal counsel and make necessary changes to ensure compliance with applicable laws in those jurisdictions in which you operate.*

**C6. Sample Last Chance Agreement**

This sample is not intended to provide legal advice. It is provided to help you develop or enhance your existing Drug-Free Workplace program. It may not be complete or represent all existing laws or regulations. We strongly suggest you consult with your legal counsel and make necessary changes to ensure compliance with applicable laws in those jurisdictions in which you operate.

**Copy text to your own letterhead as you begin to develop your own program.**

I, \_\_\_\_\_ (*print name*), understand that my reinstatement/continued employment is contingent upon compliance with all of the following terms of this agreement.

1. I will be evaluated for chemical dependency by the company's Employee Assistance Program (EAP) and/or rehabilitation or treatment facility.
2. I will comply with all of the treatment and follow-up recommendations.
3. I authorize the company to receive all relevant information regarding my progress in my rehabilitation program.
4. I will be subject to unannounced testing (follow-up monitoring) for up to two years.
5. I recognize, accept and agree that any future violation of the company's drug-free workplace policy by me will result in the termination of my employment.
6. I am responsible for meeting the same standards of performance and conduct that are set for other employees.

I understand that failure to comply, in whole or in part, with all of the terms and conditions of this agreement, will result in further disciplinary action, up to and including termination of employment with the (Company name).

_____	_____
<i>Employee Signature</i>	<i>Date</i>
_____	_____
<i>Company Representative</i>	<i>Date</i>

*This sample is not intended to provide legal advice. It is provided to help you develop or enhance your existing Drug-Free Workplace program. It may not be complete or represent all existing laws or regulations. We strongly suggest you consult with your legal counsel and make necessary changes to ensure compliance with applicable laws in those jurisdictions in which you operate.*

## **C7. Resource Help for Employers**

### **Substance Abuse and Mental Health Services Administration (SAMHSA)**

[www.samhsa.gov](http://www.samhsa.gov) or 800-729-6686

#### **Primary source for materials available from the U.S. government, including:**

- Statistical information from national surveys and reports
- Prevention management and resources
- National Registry of effective programs and practices for intervention
- Publications and Toolkits
- Treatment locator (24/7 Treatment Referral Line) 800-662-HELP (4357)
- Center for Substance Abuse Prevention (CSAP)
  - Contact them for information to help develop a program
  - Workplace Helpline 800-WORKPLACE (800-967-5752)
  - [www.workplace.samhsa.gov](http://www.workplace.samhsa.gov)

### **Department of Labor – elaws – Drug-Free Workplace Advisor**

[www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp](http://www.dol.gov/elaws/asp/drugfree/drugs/screen1.asp)

#### **Free, online tools to help employers with:**

- Creating a written substance abuse policy with an interactive policy builder program
- Supervisor training and employee education
- Employee Assistance Program (EAP)
- FAQs on drug testing

### **Employee Assistance Professionals Association**

[www.eapassn.org](http://www.eapassn.org) or 703-387-1000

Find a provider list of employee assistance professionals for an EAP.

### **Center for Disease Control’s (CDC) National Hotline**

800-CDCINFO (800-232-4636).



## Section D: Ready to start your company program? The final steps.

### **D1. Certification Form**

#### Certification of Drug-Free Workplace Program Premium Credit Program

Complete this form to notify Liberty Mutual Insurance about the details in your program so we are aware you are implementing this new safety program.

You will be advised on the required additional documentation if there is a potential for a state-specific discount.

_____ <i>Name of Employer</i>	
_____ <i>Address</i>	
_____ <i>Contact Person</i>	_____ <i>Phone Number</i>
_____ <i>Date Drug Testing Began</i>	_____ <i>Insurance Policy Number</i>

#### **Testing**

Use the following options for all tests that apply

**A** = All Employees   **S** = Safety Sensitive   **D** = DOT Only   **V** = Named Drivers   **N** = None

- \_\_\_\_\_ Pre-Employment                      \_\_\_\_\_ Follow-up to Rehabilitation  
\_\_\_\_\_ Reasonable Suspicion or Cause    \_\_\_\_\_ Random (% done on an annual basis)  
\_\_\_\_\_ Post-Accident  
\_\_\_\_\_ Other: \_\_\_\_\_

#### **Notice Given To Employees: (Check all that apply)**

- \_\_\_\_\_ Each employee was given a copy of the company's Drug-Free Workplace policy  
\_\_\_\_\_ Notice was given to job applicants prior to testing

#### **Education/Training: (Check all that apply)**

Training was conducted at commencement of drug testing program for:

- \_\_\_\_\_ Employees                              \_\_\_\_\_ Supervisors on Reasonable Cause

Annual training is conducted for:

- \_\_\_\_\_ Employees                              \_\_\_\_\_ Supervisors on Reasonable Cause

Other Training: \_\_\_\_\_

#### **Rehabilitation:**

- \_\_\_\_\_ Company-sponsored Employee Assistance Program  
\_\_\_\_\_ List of rehabilitation providers or hotlines provided/posted to employees

#### **Laboratory and MRO:**

Name of SAMHSA-certified laboratory: \_\_\_\_\_

Name of Medical Review Officer: \_\_\_\_\_

**\*\*\* Please attach a copy of your company's Drug-Free Workplace Program \*\*\*  
written substance abuse policy**

_____ <i>Officer/Owner Name</i>	_____ <i>Date</i>
_____ <i>Officer/Owner Signature</i>	_____ <i>Date</i>

The above certifies that this information is a true and factual depiction of your current Drug-Free Workplace Program and that you agree to abide by the rules of the program.

## **D2. Frequently Asked Questions about Drug Testing**

### **Q. Is drug testing legal?**

- A.** Every company has a clear legal duty to take reasonable steps to ensure a safe workplace. OSHA fines can be levied if an employer ignores this responsibility. Drug testing is recognized as a viable response. Federal and state courts continually uphold an employer's right to drug test in an effort to impact safety for workers and the public. Federal law actually requires drug and alcohol testing of employees who fall under the Department of Transportation regulations.
- Drug testing laws vary state-to-state and some states dictate who can be tested and when testing is permitted. Development of a formal Drug-Free Workplace Program that includes testing and has been reviewed by your attorney can be the best way to provide protection while complying with the drug-testing laws where you operate.

### **Q. Is drug testing an invasion of privacy and a violation of important individual rights?**

- A.** The rights of one individual do not supersede the rights of others. Employers must balance the obligation to provide a safe work environment for the common good against the rights of an individual. If an employee comes to work impaired, the employer has the right and duty to restrict his actions. Focus on protecting all employees' rights by establishing a drug testing program that ensures privacy, confidentiality and accuracy through a written substance abuse policy that is properly communicated and consistently enforced.

### **Q. How long can drugs be detected?**

- A.** The length of time a drug may be detected varies by the type of drug, purity, metabolic rate, body size, combination of drugs and liquids consumed. The time for detection can range from a couple of hours, a few days, to a month or more. Detection time is affected by the type of testing and if the employee is a casual or chronic user.

### **Q. Is drug testing accurate?**

- A.** Laboratory procedures normally used in a drug-testing program involve a three-step process. The specimen is split and the first step is a screening test to detect the presence of drugs. Specimens that test positive in the screening phase are re-tested to confirm that the specimen does contain the drug. This second confirming test is conducted on the second half of same urine specimen, not another specimen given at a later time, since the concentration of drugs changes over time as the drugs are excreted from the body. The second test uses a procedure called gas chromatography/mass spectrometry (GC/MS) which analyzes levels of elements found in the specimen. Using GC/MS, the possibility of obtaining false positives is virtually eliminated. As a final safeguard, the initial screening test, followed by the confirming GC/MS test, is then reviewed and verified by a Medical Review Officer (MRO). This process of checking and re-checking essentially eliminates the possibility of error. Tests conducted by a government certified lab using these procedures protect the employee and will build defense for the employer as the results have been repeatedly accepted and sustained in the courts.
- Employees intent on beating their drug test may purchase adulterant products, drink substances to dilute or change their results, or try to substitute clean urine. Collection sites and labs test for adulterated specimens. Attempts to change the test results are normally detected. The adulterated test is reported as positive.

### **Q. What are the chances of a false positive result?**

- A.** The chance that a non-user will have a false positive is almost non-existent with a formal program that includes proper safeguards including:
- Proper collection methods, such as a qualified collection site or on-site collection kits
  - Proper chain-of-custody procedures
  - Tests conducted at government certified laboratories
  - Confirmed positive tests
  - Evaluation and input from a Medical Review Officer (MRO) when test results are positive

The standard urine drug test evaluates urine components to determine if substances are present that may cause unacceptable behavior in the employee. The presence of trace elements of drugs may appear at low levels. These levels must reach specific amounts before the test will be considered “positive.” The cut-off levels for positive tests used by government-certified labs have been established by medical professionals in conjunction with the Substance Abuse and Mental Health Services Administration.

Due to testing procedures and drug concentration levels, it is not likely that an individual would test positive for marijuana from second-hand smoke.

It is possible that eating an unusually large amount of poppy seeds can produce detectable amounts of opiates in the urine. But this trace amount is not enough to cause side effects. If it triggers a positive initial test for opiates, the confirming test and MRO will detect the difference between poppy seeds and the heroin metabolite.

**Q. What are the protections against a false positive due to a misplaced urine sample or mistaken identity?**

**A.** The chain-of-custody process tightly controls and safeguards the sample from the time it is provided by the employee or applicant, through the testing, reporting and storage procedures.

It works as follows:

1. Employee identification is verified at the collection site.
2. The urine sample is collected, sealed in the specimen bottle with evidence tape and assigned a control number. The employee or applicant personally signs and witnesses the sealing of the sample.
3. Sealed samples are sent to certified labs where they are tested and stored following government standards.
4. Test results are sent back to the collection site using the control number without a name.

If there are any indications of tampering or any inconsistencies on the chain-of-custody paperwork, the specimen will be rejected and another urine specimen collected for testing.

**Q. Can prescription drugs, cough syrup or antihistamines trigger a positive test?**

**A.** The testing procedure may identify the presence of prescription drugs and over-the-counter medications. If there is a confirmed positive test due to the use of medications, the applicant or employee will have an opportunity to demonstrate to the MRO that they have a valid prescription, in their name, for a drug from a medical or dental treatment. The results will be reported to the employer as a negative test if the MRO can confirm proper use of the medication.

**Q. What procedures are recommended to safely deal with prescription and over-the-counter medications?**

**A.** Over-the-counter (non-prescription) drugs can have adverse side effects, especially when labeled instructions are not followed carefully. Some non-prescription drugs cause drowsiness that can affect safety and can lead to a dependence on that medication.

The written substance abuse policy should prohibit illicit drug use including prescribed drugs not legally obtained, prescribed drugs not being used for prescribed purposes, or prescribed drugs exceeding the recommended prescribed dosage.

In regard to legal prescriptions that are properly taken, it should be clear to employees that it is their responsibility to confer with their doctor or medical professionals about over-the-counter medications and prescriptions. Together they should determine if the medications they are taking affect their ability to perform their required job duties. Safety risks from operating equipment and the privilege of driving a company vehicle should be considered. Although the medication may be legal, in some situations, side effects make it inappropriate to work or drive while under the influence. Safety warnings on labels should not be ignored. If safety can be compromised, the employee must report the issue to their supervisor. In some situations, a written medical authorization should be provided to ensure job safety is not jeopardized.

**Q. Can an employer take action against an employee who tests positive for medical marijuana or legalized marijuana?**

**A.** Yes. Employers have the right to make work rules that employees must follow, including wearing safety equipment, not drinking alcohol before or during work, not permitting firearms in the workplace, etc. These things are not legal or illegal, but are conditions of employment. There are consequences if you violate the rules. An employer may develop rules outlining acceptable behavior and the employee is expected to follow them if he wants to work there. If the employee chooses to ignore the rules, he can expect disciplinary action. If the employer has a Drug-Free Workplace Program which includes drug testing, they can include termination, suspension, or rehabilitation requirements as consequences for failing a test.

**Q. Is Synthetic Marijuana an herb? Are synthetic drugs prohibited?**

**A.** Synthetic marijuana is not an herb; and yes, synthetic drugs are prohibited. These drugs have gained in popularity and are frequently used to mask drug use or avoid a positive drug test. There are a variety of synthesized compounds designed to mirror the effects of marijuana, cocaine and methamphetamine. The products are sold under various names including Spice, K2 and Bath Salts, and are smoked, snorted or injected. They contain chemicals and unknown ingredients to induce the high and have serious side effects including anxiety attacks, seizures, vomiting, disorientation, paralysis, hallucinations and suicidal thoughts. Emerging as one of the serious drug issues of this time they have resulted in thousands of emergency room visits and a surge in calls to poison control centers. The DEA has outlawed many of the chemical components to protect public health and safety. Employers are encouraged to include tests for the components when deciding which drugs will be included in their test panel.

**Q. Is it worse to test positive for cocaine or methamphetamine than for marijuana or alcohol?**

**A.** The public does perceive some drugs as “hard” drugs when compared with marijuana or alcohol, but it makes no difference what drug was abused when an accident occurs. Employers are responsible for safety, so any impairment can be a problem. Alcohol and marijuana are the most widely abused drugs, and therefore, cost businesses the most in terms of lost productivity and high accident rates. Alcohol may be legal and marijuana may be considered a “soft” drug, but employees under their influence have distorted perception, delayed reflexes, difficulty with thinking and problem solving, impaired coordination and problems with learning and memory. Someone who smokes pot every day may be functioning at a suboptimal intellectual level all of the time. Failure to perform critical work-related tasks can be expensive, regardless if you are in an office or at a job site. Recovery or rehabilitation time may differ depending on the drug involved, but employers cannot afford to minimize the impact of any of these substances when addressing the problems of drugs in the workplace.

**Q. What action should be taken when an employee tests positive?**

**A.** All disciplinary options should be considered carefully before conducting the first test. Choices range from zero tolerance (termination), suspension, second chance and rehabilitation; to company-paid rehabilitation through an Employee Assistance Program. Employers should evaluate the cost for workers’ training and the availability of replacement workers with experience. Many companies find it less expensive to provide assistance to an employee rather than hiring and training someone new.

Every effort should be made to avoid any appearance of discrimination by establishing written procedures that can be enforced for all employees. Before emotions become a factor, discuss options with your attorney. Determine company rules, write the substance abuse policy, train your supervisors, and communicate the repercussions to all employees.

**D3. Treatment Resources for Employees**

Post this resource list on a bulletin board or other visible location as a guide for troubled employees seeking assistance.

*We strongly advise the use of legal counsel to ensure that your plan meets the requirements applicable to your business, including the law and regulations for each state in which you operate.*

### **Behavioral Health Treatment Service Locator**

On-line locator that lists 12,000 state-by-state treatment facilities

<http://findtreatment.samhsa.gov>

**800-662-4357**

### **Center for Substance Abuse Treatment (CSAT)/Phoenix House**

A drug information hotline that provides nationwide free information, advice and local referrals for substance abuse treatment. Also offers printed material on addiction, treatment and recovery.

[www.drughelp.org](http://www.drughelp.org)

**Hotline 800-662-HELP (4357)**

### **Narcotics Anonymous (NA World Services)**

An information and support group operating through local chapters to provide assistance to recovering substance abusers.

**818-773-9999**

### **Alcoholics Anonymous**

A nationwide hotline that provides information on alcohol and other drugs, and referrals to alcohol/drug rehabilitation and counseling services in the caller's area.

**1-800-ALCOHOL (252-6465)**

### **American Council on Alcoholism**

Helpline and treatment referral hotline.

**800-527-5344**

### **Al-Anon**

Provides information on alcohol abuse to callers, and offers support through local chapters to the family and friends of alcoholics.

**888-425-2666**

### **Families Anonymous**

**800-736-9805**

### **AIDS Treatment Information Service**

**800-448-0440**

### **National Council on Alcoholism and Drug Dependence Hopeline**

Referral service and oversight agency provides written information on national treatment and counseling services.

[www.ncadd.org](http://www.ncadd.org)

**800-NCA-CALL (800-622-2255)**

**Check your local phone book, library, and bookstores for additional resources.**

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The illustrations, instructions and principles contained in the material are general in scope and, to the best of our knowledge, current at the time of publication. No attempt has been made to interpret any referenced codes, standards or regulations. Please refer to the appropriate code-, standard-, or regulation-making authority for interpretation or clarification. Provided that you always reproduce our copyright notice and any other notice of rights, disclaimers, and limitations, and provided that no copy in whole or in part is transferred, sold, lent, or leased to any third party, you may make and distribute copies of this publication for your internal use.

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