

Drug and Alcohol Testing Policy

I. Introduction:

Drug-free workplace programs are an integral component of workplace safety and loss prevention programs for all businesses.

There are a variety of reasons a business may consider implementing a drug-free workplace program:

- Federal regulations (Federal Drug Free Workplace Act of 1988);
- U.S. Department of Transportation (DOT)/Federal Motor Carrier Safety Administration (FMCSA);
- Customer or contract requirements; and
- A desire to deter drug and alcohol abuse in the workplace.

FMCSA/DOT have identified the importance of drug-free workplace programs and mandate employers to implement a program for employees in “safety sensitive” positions, such as those that require driving a commercial motor vehicle.

In general, employers with successful drug-free workplace programs report improvements in employee morale and productivity, and decreases in absenteeism, downtime, turnover, theft, accidents, and injuries. Employers with longstanding programs report better health status among employees and family members, as well as decreased use of medical benefits by these same groups.

Whatever the reason, West Bend recognizes drug-free workplace programs are an essential part of all business’ loss prevention programs.

Employers may need help, as well as access to resources, to implement a drug- free workplace program. This guide will provide a basic explanation of these programs, along with additional resources for the employer’s reference.

There are two types of employees identified in this guide: DOT-covered employees and non-DOT-covered employees.

DOT-covered employees

The federal government has very specific rules for testing DOT-covered employees in “safety-sensitive” positions. These rules must be followed for any employee covered under these rules.

Non-DOT employees

These are general population employees who aren’t covered under DOT rules. Employers may elect to develop separate policy language and rules for this classification of employee OR they may elect to implement the same or similar rules developed by the federal government/ DOT. This is done at the employer’s discretion after legal consultation.

NOTE

Federal laws and individual state laws may have different requirements. Employers should **always** consult legal counsel when developing drug-free workplace policies.

I. Key Components of a successful drug-free workplace program

- Written policy
- Employee education on the policy
- Supervisor education on the mechanics of the policy
- Access to an employee assistance program (EAP)
- Drug and alcohol testing procedures

II. Types of testing for consideration

Several types of testing options are available to employers seeking to implement a substance-testing program, including:

- Post-offer drug testing
- Random drug/alcohol testing
- Reasonable suspicion drug and alcohol testing
- Post-accident drug and alcohol testing
- Return-to-duty testing
- Follow-up testing

Post-offer drug testing

An offer of employment is contingent upon the selected candidate passing a post-offer drug test. The candidate for employment must pass this drug test before his or her first day of work. Best practice is that a post-offer test be completed within 24 hours of the offer of employment to the selected candidate. Refusal to submit to a test or a positive test result may result in disqualification from further consideration of employment. Individual state employment laws must be consulted for this area of testing.

FMCSA/DOT specific requirements must be followed for post-offer testing.

Random drug testing

Random testing uses a lottery-type of selection process that dictates when employees go for testing. An employee's identification information is entered into a data base. A time period for frequency of lottery selections is determined. Lottery selections are then polled at the determined intervals and the employees selected will be subject to testing.

It's recommended that employers looking to implement this type of employee testing use an outside vendor experienced in random testing, such as a local occupational medical clinic, to help with the selection of the individuals to be tested. Employers want to ensure the integrity of the random selection process; removing the employer from the selection process eliminates the risk of any impropriety.

DOT-covered employees

Random drug testing is required under FMCSA/DOT rules for "safety-sensitive" positions. Employers with these employees are required to follow these specified rules:

Non-DOT-covered employees

Employers may elect to use this type of testing for all employees within the organization. If an employer uses this type of testing, it's recommended they follow the testing guidelines already established by the federal government under the FMCSA/DOT rules. These guidelines have withstood the test of time and legal challenge.

Policy language should indicate the consequences for failure to consent to a random test and for a positive test result.

Reasonable suspicion drug and alcohol testing

Employees are subject to testing based on observations, such as impaired behavior; however, testing is not limited to behavior. With this type of testing, training for signs of impaired behavior is critical for supervisory and senior staff. Checklists may be developed and used to help management make decisions. Standard operating procedures (SOPs) should also be developed to help persons in authority make the decision to test an employee and to ensure documentation of actions taken are developed and maintained. Policy language should indicate the consequences for failure to consent to a random test and for a positive test result.

Post-accident drug and alcohol testing

Employees are subject to drug and alcohol testing following an accident/incident. A variety of criteria can be developed for this type of testing and policy language should specify the criteria that will trigger this type of testing. Some examples of criteria are:

1. The accident/incident may result in an injury to the employee with or without medical treatment;
2. The accident/incident may result in injury to a co-worker with or without medical treatment; and
3. The accident/incident may result in damage to property, such as a vehicle, machinery, equipment, or building.

DOT-covered employees

Post-accident testing is required under FMCSA/DOT rules for safety-sensitive positions. Employers who have such employees are required to follow these specified rules.

Return to duty testing and follow up testing

Not every positive drug or alcohol test needs to result in an employee's termination. Employers may establish criteria for employees who have violated the company's substance use/abuse policy which allows these employees to retain employment under certain conditions set forth by the employer. Policy language should be developed that specifies the criteria that allows the employee to retain employment.

This type of criteria is commonly referenced as a "Last Chance Agreement." This is a written contractual agreement between the employee and employer that sets forth conditions of follow-up drug/alcohol testing at the employer's discretion over an agreed-upon time period, typically in years. These agreements tend to have terms in which the employee waives the right to contest termination if the terms and conditions of the agreement aren't met.

Follow-up testing is required under FMCSA/DOT rules for safety-sensitive positions. Employers who have such employees are required to follow these specified rules. This becomes a more challenging issue for employers when employees are covered under federal rules. If the employee is no longer capable of meeting the requirements to work in a safety-sensitive position, the organization must make a decision about employment. Employers must develop policy language that addresses these situations. Legal counsel should always be consulted.

III. Types of substances to test for

Drugs

Depending on whether or not the employee is covered under the FMCSA/DOT, employers have a choice about the types of drugs for which they may have an employee tested. FMCSA/DOT rules or company culture will dictate this decision.

DOT-covered employees

The FMCSA/DOT has specified guidelines for testing each category of covered employee. The FMCSA/DOT has a required list of substances to be tested. Vendors typically refer to this list as a DOT 5-panel drug screen for which these substances are tested:

1. Marijuana (THC metabolite)
2. Cocaine
3. Amphetamines
4. Opiates (including heroin)
5. Phencyclidine (PCP)

Non-DOT-covered employees

Employers may elect to use only the DOT 5-panel test or an employer may wish to expand the number and type of substances tested in order to discover the presence of prescription drugs and their potential abuse or misuse that impairs a person's ability to perform work tasks safely. In this case, vendors may offer a 7-panel, 10-panel, or 12-panel test. The decision is up to the individual organization.

Examples:

7-Panel

- THC
- Cocaine
- Amphetamines
- Opiates
- PCP
- Benzodiazepines
- Barbiturates

10-Panel

- THC
- Cocaine
- Amphetamines
- Opiates
- PCP
- Benzodiazepines
- Barbiturates
- Methadone
- Quaaludes
- Propoxyphene

12- Panel

- THC
- Cocaine
- Amphetamines
- Opiates
- PCP
- Benzodiazepines
- Barbiturates
- Methadone
- Quaaludes
- Propoxyphene
- Ecstasy/MDMA
- Percoset/Oxycodone

Alcohol

Alcohol is a lawful product available for use by those of legal drinking age. Employers may test for the presence of alcohol in an employee's bloodstream once that person is in the workplace and/or is conducting work activities for the employer. As a result, alcohol tests are not typically included for post-offer of employment testing.

Alcohol testing is typically incorporated into these testing processes for employees on work hours:

- Random drug/alcohol testing
- Reasonable suspicion drug and alcohol testing
- Post-accident drug and alcohol testing
- Return-to-duty testing
- Follow-up testing

DOT-covered employees

As noted throughout this guide, the DOT has specific rules that must be followed for DOT-covered employees. Consult the DOT guidelines and requirements for testing products and services to ensure compliance.

Non-DOT employees

Employers may develop their own rules and guidelines that define their tolerance for the presence of or suspicion of alcohol use in the workplace. Policy language must specify the consequences of being under the influence of alcohol while at work.

IV. Testing methods

In-house use devices

There are many products on the market today suitable for use by an employer to test or screen employees in-house/onsite. Technology continues to evolve with these products. Research is recommended, along with consultation of legal counsel, before using any of these in-house products.

Medical clinic

Occupational medical clinics and medical providers may be able to conduct tests at nearby facilities. Research of nearby hospitals and clinics that offer these services is recommended to understand pricing, hours of service, testing options, and the certifications of the laboratory used for test verification of samples.

Certified labs

It's recommended that only certified labs be used for all specimen testing.

The Substance Abuse and Mental Health Services Administration website offers a current list of certified labs: www.samhsa.gov.

Medical review officer (MRO)

A licensed physician, designated as a MRO, is required for the review of drug tests. The DOT offers specific guidance on the MRO's role. It's best practice to ensure an MRO's services are used when conducting testing on any employee or prospective employee, regardless of whether or not the employee is DOT covered.

V. Resources

Many online resources are available to help guide employers in the development of drug/alcohol testing programs. Before the implementation of any testing policy/program, it's always best practice to consult your own labor counsel for legal review to ensure you're meeting the requirements of all labor laws and FMCSA/DOT requirements if applicable.

On-line resources

U.S. Department of Transportation Office of Drug & Alcohol Policy & Compliance

www.dot.gov/odapc

<http://www.dot.gov/sites/dot.gov/files/docs/ODAPC%20EmployerGuidelinesOctober012010.pdf>

These sites contain information on compliance guidance for DOT-covered positions, regulation interpretation, employer and employee handbooks, frequently-asked questions, and explanatory video.

Federal Motor Carrier Safety Administration

www.fmcsa.dot.gov/overview-drug-and-alcohol-rules

This site contains an overview of rules the commercial driver license (CDL) driver needs to know, information for drivers, information for employers, and frequently-asked questions.

U.S. Department of Labor: Policy development advisor website

<http://www.dol.gov/elaws/drugfree.htm>

This site contains a step-by-step advisor to help users build tailored drug-free workplace policies, and provides guidance on how to develop comprehensive drug-free workplace programs. It also provides information about coverage and requirements of the Drug-Free Workplace Act of 1988. The Drug-Free Workplace Advisor is one of a series of e-law (employment laws assistance for workers and small businesses) advisors developed by the U.S. Department of Labor (DOL) to help employers and employees understand their rights and responsibilities under federal employment laws.

Note: This is not a substitute for your own legal counsel review.

Substance Abuse & Mental Health Services Administration

<http://beta.samhsa.gov/workplace>

This site contains links to helpful resources, such as a certified laboratory list, a drug-free workplace toolkit, and Department of Labor e-laws.

National Institute on Drug Abuse (NIDA)

<http://www.drugabuse.gov/related-topics/drug-testing>

This site contains additional resources about policy development and testing procedures and laboratories.