

***Drug Test Policy Samples & Information***

### Thank you for requesting information from KRESS Employment Screening. Attached to this document is a series of drug test policy samples, a drug test consent form and a pair of documents produced by the Substance Abuse and Mental Health Service Administration (SAMSHA) that provide guidance on the development and implementation of a drug testing policy. Please review this information and use it to develop a policy or compare it with your current policy.

#### [Developing a Drug Free Workplace Policy](#_bookmark7)

1. [Drug Test Policy Sample 1](#_bookmark8)
2. [Drug Test Policy Sample 2](#_bookmark9)
3. [Drug Test Consent Form](#_bookmark10)
4. [Drug Test Search Policy](#_bookmark11)
5. [Drug Testing in the Workplace](#_bookmark12)
6. [Hallmarks of Successful Workplace Programs](#_bookmark13)

KRESS Employment Screening cannot provide legal guidance or advice. We are offering this information as a service to help aid your organization to construct a policy that will lead to a more productive, safer work environment. Please consult with an attorney who specializes in employment law when considering the writing and implementation of this type of policy.



**Deciding What to Put Into a Policy**

This section of the Kit describes the key elements of an effective drug-free workplace policy. When developing a policy, organizations need to take into account factors such as drug-free workplace laws and regulations that may apply to them, characteristics of their workplace and employees, and the organization leaders’ values and priorities. When it comes to drug-free workplace policies and programs, one size does not fit all—different organizations in the same industries and in different industries may address workplace drug use and abuse in a variety of ways. There are many options. It is vital that organizations go through the steps needed to ensure that the drug- free workplace policy is right for their workplace and their workers. Every business owner and every department director will want to talk with their employees and with colleagues in other organizations and gather accurate information about the challenges, problems, and strengths unique to their workplaces.

*When Drug-Free Workplace Laws and Regulations Apply*

Businesses and other organizations covered by drug-free workplace laws and regulations must ensure that their drug-free workplace policies and programs fully comply with those laws and regulations. This compliance will help reduce drug- related problems in the workplace.

In addition, organizations may want to go beyond meeting the minimum requirements.

For example, they may want their policies and programs to address legal substances (such as alcohol and tobacco) as well as illegal substances (such as marijuana and cocaine) and workplace behaviors and outcomes that can be related to drug use (such as repeated sickness and

absenteeism directly before or after holidays or weekends).

*When Drug-Free Workplace Laws and Regulations Do Not Apply*

Organizations may want to establish drug-free policies and programs even if there are no drug- free workplace laws or regulations that apply to them. Such policies can be relatively narrow (with a concentration on illegal drugs) or broader (with attention paid to legal substances, prescription drugs, and behaviors that can be drug related).

*Whether or Not Drug-Free Workplace Laws Apply, a Lawyer or Other Legal Expert Must Review the Policy*

Every organization should ask a lawyer or other legal expert—with specific knowledge about drug- free workplace policies, programs, and case law— to review the draft policy, whether or not the businesses are covered by drug-free workplace laws or regulations. (Some organizations may ask a lawyer to do more than review the draft policy; they may want a lawyer to help them put it together from the beginning.)

The steps taken to prevent or reduce drug abuse can affect the employment, and future

employability, of the workers. As a result, there are legal, health, safety, and productivity issues that can lead to legal appeals and lawsuits. Every organization needs to

ensure that all legal obligations are fully met and that both the employer’s and the employees’ legal rights are properly protected.

***A Written Policy Helps Each Organization*** There are many reasons to put the drug-free workplace policy in writing:

* A written policy may be required by a law or by the organization’s insurance carriers.
* It makes legal review possible.
* It provides a record of the organization’s efforts and a reference if the policy is challenged. It may protect the employer from certain kinds of claims by employees.
* A written policy is easier to explain to employees, supervisors, and others.
* Putting the policy in writing also helps employers and employees concentrate on important policy information.

## Basic Elements of an Effective Policy

An effective drug-free workplace policy covers the following elements:

*Statement of Purpose*

**Background**

* How was the policy developed? (For example, was it developed in meetings with union representatives or employees representing different segments of the workforce, after consultation with other businesses in the same industry, in collaboration with the organization’s legal counsel?)

**Goals**

* What are the drug-free workplace laws and regulations (Federal, State, or local) with which the organization must comply

(if applicable)?

* What other goals does the organization expect to achieve? (For example, does it hope to reduce or eliminate drug-related workplace accidents, illnesses, and absenteeism?)
* Does the organization want to address the

issue of preventing and treating workplace drug use in the context of accomplishing a broader goal of promoting worker health, safety, and productivity? Many successful policies have taken this approach.

###### Definitions, Expectations, and Prohibitions

* How does the organization define substance abuse?
* What employee behaviors are expected?
* Exactly what substances and behaviors are prohibited?
* Who is covered by the policy?
* When will the policy apply? (For example, will it apply during work hours only, or also during organization-sponsored events after hours?)
* Where will the policy apply? (For example, will it apply in the workplace, outside the workplace while workers are on duty, in organization-owned vehicles while workers are off duty?)
* Who is responsible for carrying out and enforcing the policy?
* Will the policy include any form of testing for alcohol or other drugs?
* Are any employees covered by the terms of a collective bargaining agreement, and, if so, how do the terms affect the way the policy will be carried out and enforced for

those employees?

*Implementation Approaches*

**Benefits and Assurances**

* How will the organization help employees comply with the policy?
* How will the organization protect employees’ confidentiality?
* How will the organization help employees who seek help for drug or related problems?
* How will the organization help employees who are in treatment or recovery?
* How will the organization ensure that all aspects of the policy are implemented fairly and consistently for all employees?

###### Consequences and Appeals

* What are the consequences of violating the policy?
* What are the procedures for determining whether an employee has violated the policy?
* What are the procedures for appealing a determination that an employee may have violated the policy?

###### Dissemination Strategies

How will the organization educate employees about the policy? (For example, the organization

can train supervisors, discuss the policy during orientation sessions for new employees, and inform all employees about the policy using a variety

of formats—such as a section in the employee handbook, posters in gathering places at work sites, information on the organization intranet.)

## Resources for Developing a Written Policy

The most important task for every organization is to ensure that the policy meets the needs of its employees and workplace. Whether or not laws and regulations apply, the policy should address the key topics outlined above. Organizations can write (or adapt) and organize content on the key topics using whatever language and structure will best communicate the information to their workers. Organizations do not need to start from

scratch. They can borrow and adapt information from drug-free workplace policies put together by other organizations in their industry. Since the Drug-Free Workplace Act was passed, many national, regional, and local programs have been set up to help employers create effective policies. The programs provide free or low-cost information, technical assistance, or model policies that organizations can customize to meet their particular needs. To learn more about these and other resources, organizations can call SAMHSA’s Workplace Helpline at 1.800.Workplace.

Following are general guidelines for developing or adapting a written drug-free workplace policy.

## Statement of Purpose

The statement of purpose should contain the organization's goals for the workplace policy, the organization's definition of *substance abuse*, other information outlined under “Definitions, Expectations, and Prohibitions,” and a description of how the policy was developed. Some organizations may want the policy to have a very narrow goal, such as meeting the minimum requirements of a law. Other organizations may prefer broader goals that go beyond minimum requirements.

*If Laws and Regulations Apply*

Organizations covered by drug-free workplace laws and regulations may choose to use or adapt one of the following sample statements of purpose:

1. **Meeting the Legal Requirements**

The purpose of this policy is to meet the requirements of applicable laws and regulations to ensure that the workplace is free of illegal drugs.

1. **Addressing Other Substances as Well** The purpose of this policy is twofold: a) to meet the requirements of applicable laws and

regulations to ensure that the workplace is free of illegal drugs and b) to establish restrictions on the workplace-related use of legal substances, such as

alcohol, cigarettes, and prescription drugs.

###### Addressing Other Problems, Which Can Be Related to Drug Use

The purpose of this policy is fourfold: a) to meet the requirements of applicable laws and regulations to ensure that the workplace is free of illegal drugs; b) to establish restrictions on the workplace-related use of legal substances, such as alcohol, cigarettes, and prescription drugs; c) to address other behaviors (such as repeatedly calling in sick or being absent directly before and after holidays and weekends, repeatedly damaging inventory or failing to meet reasonable production

schedules, being involved in frequent accidents, and the like) that can be related to the abuse of alcohol and other drugs; and d) to explain the steps that will be

taken to prepare employees, identify problems, and provide assistance.

*If No Laws or Regulations Apply*

Even if drug-free workplace laws and regulations do not apply, organizations may want to develop a drug-free workplace policy and program. If so, they still can adapt one of the sample statements of purpose above, simply omitting the words “to meet the requirements of applicable laws and regulations.”

## Policy Options

*Option 1. Meeting the Requirements of The Law*

When laws or regulations apply, organizations must ensure that they know exactly what the laws or regulations require. For this reason, it is essential to seek the advice of an experienced lawyer or other appropriate legal expert.

In addition, it is good practice for organization executives to be familiar with three types of Federal laws and regulations that cover many businesses. Summarized below are requirements, including rules and regulations, for 1) Federal grantees and contractors, 2) safety-sensitive

industries, and 3) Department of Defense (DOD) contractors. Organizations not covered by these requirements still may want to adopt some of the same language for use in their drug-free workplace policy.

**Requirements of Federal Contractors and Grantees in General**

The most important piece of legislation regulating Federal contractors/grantees is the Drug-Free Workplace Act of 1988.1 This Act requires any organization that receives a Federal contract worth at least $100,000 to establish a drug-free workplace policy. It also requires that all organizations receiving Federal grants of any size establish and maintain such a policy.

At a minimum, the organization must

1. *Prepare and distribute a formal drug-free workplace policy statement.* This statement should clearly prohibit the manufacture, use, and distribution of controlled substances in the workplace and spell out the specific consequences of violating this policy.
2. *Establish a drug-free awareness program.* The program should inform employees of the dangers of workplace substance abuse; review the requirements of the organization's drug-free workplace policy; and offer information about any counseling, rehabilitation, or employee assistance programs that may be available.
3. *Ensure that all employees working on the Federal contract understand their personal reporting obligations.* Under the terms of the Act, an employee must notify the employer within 5 calendar days if he or she is convicted of a criminal drug violation in the workplace.
4. *Notify the Federal contracting agency of any covered violation.* Under the terms of the Act, the employer has 10 days to report that a covered employee has been convicted of a criminal drug violation in the workplace.
5. *Take direct action against an employee convicted of a workplace drug violation.* This action may involve imposing a penalty of some kind or requiring that the employee participate in an appropriate rehabilitation or counseling program.
6. *Maintain an ongoing good faith effort to meet all the requirements of the Act throughout the life of the contract.*

Covered organizations that fail to comply with terms of the Drug-Free Workplace Act may be subject to a variety of penalties, including suspension or termination of their Federal grants/contracts and prohibition from applying for Federal Government funds in the future.

**Requirements for Safety-Sensitive Industries *Department of Transportation (DOT) rules and regulations.*** Employers and employees in fields that affect public safety and national security are, understandably, subject to additional drug testing requirements. The most important piece of Federal legislation affecting safety- sensitive industries is the Omnibus Transportation Employee Testing Act of 1991.2 This Act requires drug and alcohol testing of all safety-sensitive transportation employees in aviation, trucking, railroads, mass transit, pipelines, and other transportation industries.

Any employer whose business is regulated by one of the following Federal agencies is covered under the Act:

* Federal Aviation Administration
* United States Coast Guard
* Federal Motor Carrier Safety Administration
* Federal Transit Administration
* Federal Railway Administration
* Research and Innovative Technology Administration
* Pipeline and Hazardous Materials Safety

Administration

While each of these agencies has developed its own specific set of guidelines and procedures for complying with the Omnibus Transportation Employee Testing Act, the following core requirements apply to all employers and employees within the transportation industry:

1. All employers in the transportation industry are required to test safety-sensitive employees at certain key points in their professional careers. These key points include preemployment (before the employee is hired), whenever there is reasonable suspicion that the employee has been involved in drug use, immediately after the employee is involved in an accident, and before allowing the employee to return to duty following suspension for drug abuse.
2. All employers in the transportation industry are also required to have a program of random drug testing in place.
3. All drug testing conducted under the Act must be carried out by a laboratory certified by the U.S. Department of Health and Human Services.
4. All drug testing conducted under the Act must test for five different classes of drugs (and only those five classes): marijuana, cocaine, amphetamines, opiates, and phencyclidine (PCP).
5. All alcohol testing of employees must strictly adhere to the DOT’s policies and procedures for alcohol testing, and the testing must be conducted using devices and equipment approved by DOT.
6. All positive tests must be reviewed by a trained Medical Review Officer, and employees must be allowed to consult with this officer before the test result is reported to the employer.
7. All employees, whether in safety-sensitive positions or not, must receive drug and alcohol awareness training and education.
8. All supervisors must receive at least 2 hours of training in substance abuse detection,

documentation, and intervention. Half this training time should be devoted to drug abuse, the other half to alcohol abuse.

1. Any employee who is determined to have a substance abuse problem must be referred by the employer to a trained Substance Abuse Professional. This person will be responsible for evaluating the employee’s treatment needs and assessing the employee’s ability to return to work.

Employers who are subject to the requirements of the Omnibus Transportation Employee Testing Act must ensure that their policies and procedures strictly adhere to DOT’s requirements. Otherwise, employers run the risk of failing to comply with the Act or violating their employees’ civil liberties, either of which can have serious consequences.

Organizations can obtain more detailed information on how to meet the requirements of the Act from DOT’s Office of Drug and Alcohol Policy and Compliance, which publishes helpful guidelines and manuals for employers and employees. These materials are available online at<http://www.dot.gov/ost/dapc/NEW_DOCS/part40.h> tml?proc/.

###### Requirements for Security-Sensitive Industries

***DOD rules and regulations.*** Transportation workers are not the only types of employees whose work affects public safety or security. The Department of Defense has developed its own set of regulations for contractors working in the national security arena (Section 48 CFR 252.223- 70043). Under these regulations, all DOD contractors with access to sensitive, classified information must maintain a drug-free workforce policy that includes the following:

1. A comprehensive employee assistance program, including coordination with local community service providers and resources.
2. Provision for self-referrals and supervisory referrals for drug treatment.
3. Supervisory training on detecting and responding to illegal drug use.
4. A carefully controlled and monitored employee drug testing policy. This testing policy should include provisions for testing a) when there is reasonable suspicion that an employee has been involved in illegal drug use, b) when an employee has been involved in an accident or unsafe practice, c) as part of a program of counseling or rehabilitation, and d) as part of a voluntary employee drug testing program.

The DOD regulations also require covered contractors to ensure that their drug testing policies are consistent with applicable State laws and that they are agreed to by any relevant labor unions. For more information on the Department of Defense’s requirements, organizations can consult the Code of Federal Regulation (48 CFR 252.223-7004) and DOD’s procurement center Web site at [http://www.acq.osd.mil/dpap/.](http://www.acq.osd.mil/dpap/)

***Option 2. Addressing Other Substances*** Organizations may want their drug-free workplace policies to cover one or more types of legally obtainable substances as well as illegal drugs.

Under certain circumstances, substances such as alcohol, tobacco, and prescription drugs can adversely affect workplace health, safety, and productivity. Issues and options include the following:

###### Alcohol

***The presence and use of alcohol in the workplace.*** Alcohol in the workplace can compromise safety and productivity. Thus, organizations may want their policy to prohibit the presence and consumption of alcohol in the workplace.

***Working under the influence of alcohol.*** Organizations also may want to prohibit working under the influence of alcohol, especially in safety- sensitive positions, where operating heavy machinery while under the influence of alcohol could result in serious accidents.

***Alcoholic and nonalcoholic beverages at work-related parties.*** Organizations also may consider restricting the use of alcohol at work- related parties and other events. Or they may require that nonalcoholic beverages be available for those who choose not to drink alcoholic beverages.

###### Tobacco

Organizations may choose to specify in their policy that they maintain a smoke-free workplace. Or they may prohibit the sale of tobacco products through vending machines located in the workplace and designate certain areas of the workplace as smoke free.

###### Prescription Drugs

Organizations may decide to set limits regarding allowing employees who are taking certain prescription medications to perform certain safety- sensitive jobs, especially if the medications could affect concentration and motor skills. Or they may choose to require that workers who perform certain safety-sensitive jobs inform their supervisors if they are using such medications.

*Option 3. Addressing Behaviors That Can Be Related to Drug Use*

In their drug-free workplace policy, organizations may want to mention behaviors that can be related to drug use—such as repeatedly calling in sick or being absent before and after holidays and weekends, damaging inventory, and repeatedly missing reasonable production schedules. (However, businesses will want to avoid jumping to the conclusion that drug use is the culprit, because many other factors can cause or contribute to such problems.) Organizations may consider framing the issue of drug-related workplace behaviors in the larger context of worker health, safety, and productivity. For example, they may want the policy to make two general points. First, the policy’s immediate objectives are to a) comply with drug-free workplace laws and regulations (if applicable) and

b) prevent drug-related workplace accidents, illnesses, absenteeism, and performance problems, which can occur in any workplace. Second, the policy’s broader goals are to help increase and protect worker health, safety, and productivity. Workplace alcohol and other drug use and abuse are the most widely occurring threats to worker well-being in many different kinds of businesses and industries.

## Implementation Approaches

The policy’s implementation section should cover the elements listed under “Consequences and Appeals,” “Benefits and Assurances,” and “Dissemination Strategies.” Businesses may also want to address the following broad categories: “Prepare the Workplace,” “Identify Issues,” and “Provide Assistance.”

*Prepare the Workplace*

The policy could state that all workers are responsible for being ready to work when they arrive at the workplace and for avoiding behaviors that could threaten their own safety and health or that of their coworkers. The policy could make clear that all employees will be educated about the policy, will be expected to understand it, and will know what they can do—given their particular work roles—to help make the policy succeed. The policy could clarify options for addressing coworkers’ problem behaviors as well as the meaning of a) taking responsibility for one’s own behavior, b) showing compassion by helping others, c) and being honest about problems that threaten health and safety in the workplace. The policy should state that the organization will train supervisors to ensure that they a) understand all applicable laws and regulations, b) know how to communicate effectively with their subordinates, and c) are consistent and fair when carrying out and enforcing the policy.

*Identify Issues*

The policy could indicate that supervisors will continually be on the lookout for major health and

safety issues including, but not limited to, workplace alcohol and other drug abuse. (Examples of other common health and safety concerns are exposure to toxic chemicals and excessively long work shifts.) If applicable, the policy could state that random testing for alcohol and other drugs will be part of this process. The policy must clearly explain how the organization will protect workers’ privacy and confidentiality rights. The policy also could indicate that there will be regular reviews of aggregated organization data on absenteeism, damaged or stolen inventory, production problems, and the like. The point could be made that a drug-free, safe, healthy, and productive workplace is not one that is paralyzed by overly intrusive watchfulness.

Rather, it is one in which employees willingly pursue the organization’s goals by performing their jobs to the best of their ability under work conditions that are safe and healthy.

*Provide Assistance*

The policy should name the kinds of formal and informal assistance that the organization will provide to address and prevent workplace substance abuse. The policy could indicate that such assistance also will be available for mental health concerns such as depression and anxiety. Examples of formal assistance include access to an internal or external employee assistance program, a peer-to-peer assistance program based on Amtrak's highly successful Operation RedBlock, health care insurance that covers substance abuse and mental health treatment, and an organizationwide health promotion program that includes education about alcohol and other drug abuse. Examples of informal assistance include making available information on Alcoholics Anonymous, Narcotics Anonymous, and related

12-Step programs, and providing time out or walking breaks.

The policy should name the major consequences of violating the drug-free workplace policy and of failing to obtain and benefit from organization- provided assistance. Possible consequences could

range from a note in the record to suspension from work during treatment, transfer to a less safety-sensitive or security-sensitive position, demotion, or firing. The policy could state that the organization prefers to avoid severe penalties—by preventing workplace drug and alcohol abuse in the first place and by responding comprehensively as soon as a problem is identified—and will apply those penalties only when other actions

have failed.

## References

1. U.S. House of Representatives. 1988. Drug-Free Workplace Act of 1988 U.S.C. 701–707. *and* U.S. House of Representatives. 1998. Drug-Free Workplace Act of 1998 U.S.C. 105–584.
2. U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance.

*Procedures for Transportation Workplace*

*Drug and Alcohol Testing Programs*. Available at [http://www.dot.gov/ost/dapc/.](http://www.dot.gov/ost/dapc/)

1. U.S. Department of Defense, Office of the Under Secretary, Defense Procurement and Acquisition Policy. 2005. *Defense Federal Acquisition Regulation Supplement*, Subpart 223.5-Drug- Free Workplace. Available at<http://www.acq.osd.mil/dpap/dars/dfars/html/> r20070212/223\_5.htm/.

# [YOUR COMPANY NAME]'s [Drug Testing Policy](#_bookmark1)

***Employees Subject to Testing***

Under [YOUR COMPANY NAME]'s drug and alcohol testing policy, current and prospective employees who work or would work in high-risk or safety-sensitive positions will be asked to submit to drug and alcohol testing. No prospective employee will be asked to submit to testing unless an offer of employment has been made. An offer of [YOUR COMPANY NAME], however, is conditioned on the prospective employee testing negative for drugs and alcohol.

***Safeguards***

[YOUR COMPANY NAME]'s policy is intended to comply with all state laws governing drug and alcohol testing and is designed to safeguard employee privacy rights to the fullest extent of the law.

***Selection***

Not all [YOUR COMPANY NAME] employees will be asked to submit to drug and alcohol testing. Only those employees who [list criteria such as job titles or duties that will require drug testing] are subject to drug and alcohol testing.

***Tested Substances***

[YOUR COMPANY NAME]'s drug and alcohol testing program is limited to testing for [list what you’ll test for, e.g., blood alcohol, specific drugs and drug types]. Any other substances that may be tested using the same method used to test for controlled substances will not be tested and, if found, will not be reported.

***Written Notice***

Before being asked to submit to a drug and/or alcohol test, the employee will receive written notice of the request or requirements.

***Licensed Laboratories***

Any drug and/or alcohol testing required or requested by [YOUR COMPANY NAME] will be conducted by a laboratory licensed by the state. The employee may obtain the name and location of the laboratory that will analyze the employee's test sample by calling [name of collection lab] [number of hours] hours before the employee is scheduled to be tested.

***Notice of Results***

If the employee is asked to submit to a drug or alcohol test, [YOUR COMPANY NAME] will notify the employee of the results within [specify time limit, e,g., “24 hours” or “one week”] after it receives them from the laboratory. To preserve the confidentiality [YOUR COMPANY NAME] strives to maintain, the employee will be notified by [method of notification] whether the test was negative or confirmed positive and, if confirmed positive, what the next step is.

***Positive Test Results***

If the employee receives notice that the employee's test results were confirmed positive, the employee will be given the opportunity to explain the positive result following the employee's receipt of the test result. In addition, the employee may have the same sample retested at a laboratory of the employee's choice.

***Adverse Employment Action***

If there is reason to suspect that the employee is working while under the influence of an illegal drug or alcohol, the employee will be suspended [with or without] pay until the results of a drug and alcohol test are made available to [YOUR COMPANY NAME] by the testing laboratory.

Where drug or alcohol testing is part of a routine physical or random screening, there will be no adverse employment action taken until the test results are in.

***Confidentiality***

[YOUR COMPANY NAME] will make every effort to keep the results of drug and alcohol tests confidential. Only persons with a need to know the results will have access to them. The employee will be asked for the employee's consent before test results are released to anyone else. Be advised, however, that test results may be used in arbitration, administrative hearings and court cases arising as a result of the employee's drug testing. Also, results will be sent to federal agencies as required by federal law. If the employee is to be referred to a treatment facility for evaluation, the employee's test results will also be made available to the employee's counselor. The results of drug testing in the workplace will not be used against the employee in any criminal prosecution.

***Costs***

[YOUR COMPANY NAME] will pay the cost of any drug and alcohol testing that it requires or requests employees submit to, including retesting of confirmed positive results. Any additional tests that the employee requests will be paid for by the employee.

***Drug and Alcohol Use at Work Prohibited***

[YOUR COMPANY NAME] will not tolerate any use of nonprescribed drugs or alcohol during work hours. If the employee comes to work under the influence of drugs or alcohol or use drugs or alcohol during work time, the employee will be [describe consequences #&151; e.g., “sent home without pay,” “disciplined,” “terminated”].

***Posting***

Besides being outlined here, [YOUR COMPANY NAME]'s drug policy is posted in [name location of posting] where the employee may review it.

**[YOUR COMPANY NAME]'s** [**Drug Testing Policy**](#_bookmark2)

[YOUR COMPANY NAME] does not test employees for drug and alcohol abuse. Because the nature of [YOUR COMPANY NAME]'s business is neither high risk nor particularly safety sensitive, [YOUR COMPANY NAME] feels that drug and alcohol testing would be too intrusive a procedure for the expected results. Therefore, employees will not be asked to submit to drug and alcohol testing in the workplace setting. However, [YOUR COMPANY NAME] strictly prohibits the use of drugs or alcohol in the workplace and will take disciplinary action against any employee found using drugs or alcohol during working hours. In addition, if the employee arrives at work under the influence of drugs or alcohol, the employee will be sent home for the day, without pay. Repeated instances of arriving at work under the influence of drugs or alcohol may result in [describe consequence #%151; e.g., “written warning,” “suspension,” “termination”].

**Safety in the Workplace**

**Each Employee's Responsibility**

Safety can only be achieved through teamwork at our company. Each employee, supervisor and manager must practice safety awareness by thinking defensively, anticipating unsafe situations and reporting unsafe conditions immediately.

Please observe the following precautions:

* 1. Notify human resources of any emergency situation. If you are injured or become sick at work, no matter how slightly, you must inform human resources immediately.
	2. The use of alcoholic beverages or illegal substances during working hours will not be tolerated. The possession of alcoholic beverages or illegal substances on the company's property is forbidden.
	3. Use, adjust and repair machines and equipment only if you are trained and qualified.
	4. Know the proper lifting procedures. Get help when lifting or pushing heavy objects.
	5. Understand your job fully and follow instructions. If you are not sure of the safe procedure, don't guess; just ask human resources.
	6. Know the locations, contents and use of first aid and fire fighting equipment.
	7. Wear personal protective equipment in accordance with the job you are performing.

A violation of a safety precaution is in itself an unsafe act. A violation may lead to disciplinary action, up to and including discharge.

**Workplace Violence**

Violence by an employee or anyone else against an employee, supervisor or member of management will not be tolerated. The purpose of this policy is to minimize the potential risk of personal injuries to employees at work and to reduce the possibility of damage to company property in the event someone, for whatever reason, may be unhappy with a company decision or action by an employee or member of management.

If you receive or overhear any threatening communications from an employee or outside third party, report it to human resources at once. Do not engage in either physical or verbal confrontation with a potentially violent individual. If you encounter an individual who is threatening immediate harm to an employee or visitor to our premises, contact an emergency agency (such as 911) immediately.

All reports of work-related threats will be kept confidential to the extent possible, investigated and documented. Employees are expected to report and participate in an investigation of any suspected or actual cases of workplace violence and will not be subjected to disciplinary consequences for such reports or cooperation.

Violations of this policy, including your failure to report or fully cooperate in the company's investigation, may result in disciplinary action, up to and including discharge.

**Good Housekeeping**

Good work habits and a neat place to work are essential for job safety and efficiency. You are expected to keep your place of work organized and materials in good order at all times. Report anything that needs repair or replacement to human resources.

**Smoking In The Workplace**

Our company is committed to providing a safe and healthy environment for employees and visitors. Smoking is not permitted.

Violations of this policy may result in disciplinary action, up to and including discharge.

**Concealed Weapons**

Possession, use or sale of weapons, firearms or explosives on work premises, while operating company machinery, equipment or vehicles for work-related purposes or while engaged in company business off premises is forbidden except where expressly authorized by the company and permitted by state and local laws. This policy applies to all employees, including but not limited to, those who have a valid permit to carry a firearm.

Employees who are aware of violations or threats of violations of this policy are required to report such violations or threats of violations to human resources immediately.

Violations of this policy will result in disciplinary action, up to and including discharge.

**Environmental Compliance**

Our dealership adheres to all state and federal environmental protection laws. Human resources will inform you of the law impacting your specific job and you will receive instruction on compliance procedures including but not limited to Hazardous Material Management, Emissions Inspection and Tampering, CFC Recycling, Tank Management and Waste Water Management.

**Clean Air Policy**

Our company has developed this policy in an effort to decrease severe or extreme ozone pollution in our community. Measures that our company takes may include, but are not limited to ridesharing, company provided carpooling programs, flexible work schedules, financial incentives for carpooling and changing existing parking policies. Suggestions or questions on our company's specific implementation measures should be discussed with human resources.

**In An Emergency**

Human resources should be notified immediately when an emergency occurs. Emergencies include all accidents, medical situations, bomb threats, other threats of violence, and the smell of smoke. If human resources is unavailable, contact the nearest company official.

Should an emergency result in the need to communicate information to employees outside of business hours, human resources will contact you. Therefore, it is important that employees keep their personal emergency contact information up to date. Notify human resources when this information changes.

When events warrant an evacuation of the building, you should follow the instructions of human resources or any other member of management. You should leave the building in a quick and orderly manner. You should assemble at the pre-determined location as communicated to you by human resources to await further instructions or information.

Please direct any questions you may have about the company's emergency procedures to human resources.

**Substance Abuse**

The company has vital interests in ensuring a safe, healthy and efficient working environment for our employees, their co-workers and the clients we serve. The unlawful or improper presence or use of controlled substances or alcohol in the workplace presents a danger to everyone. For these reasons, we have established as a condition of employment and continued employment with the company the following substance abuse policy.

The company has implemented a drug testing program in compliance with local, state and federal laws. Employees are prohibited from reporting to work or working while using illegal or unauthorized substances. Employees are prohibited from reporting to work, or working when the employee uses any controlled substance, except when the use is pursuant to a doctor's orders and the doctor advised the employee that the substance does not adversely affect the employee's ability to safely perform his or her job duties.

In addition, employees are prohibited from engaging in the unlawful or unauthorized manufacture, distribution, sale or possession of illegal or unauthorized substances and alcohol in the workplace including: on company paid time, on company premises, in company vehicles, or while engaged in company activities. Our employees are also prohibited from reporting for duty or remaining on duty with any alcohol in their systems. Employees are further prohibited from consuming alcohol during working hours, including meal and break periods.

Your employment or continued employment with the company is conditioned upon your full compliance with the foregoing substance abuse policy. Any violation of this policy may result in disciplinary action, up to and including discharge. Furthermore, any employee who violates this policy who is subject to termination may be permitted in lieu of termination, at the company's sole discretion, to participate in and successfully complete an appropriate treatment, counseling or rehabilitation program as recommended by a substance abuse professional as a condition of continued employment and in accordance with applicable federal, state, and local laws.

Consistent with its fair employment policy, the company maintains a policy of non-discrimination and reasonable accommodation with respect to recovering addicts and alcoholics, and those having a medical history reflecting treatment for substance abuse conditions. We encourage employees to seek assistance before their substance or alcohol use renders them unable to perform their essential job functions or jeopardizes the health and safety of themselves or others. The company will attempt to assist its employees through referrals to rehabilitation, appropriate leaves of absence and other measures consistent with the company's policies and applicable federal, state or local laws.

The company further reserves the right to take any and all appropriate and lawful actions necessary to enforce this substance abuse policy including, but not limited to, the inspection of company issued lockers, desks or other suspected areas of concealment, as well as an employee's personal property when the company has reasonable suspicion to believe that the employee has violated this substance abuse policy.

This policy represents management guidelines. For more information, please speak to human resources.

[**DRUG AND-OR ALCOHOL TESTING CONSENT FORM**](#_bookmark3)

**EMPLOYEE AGREEMENT AND CONSENT TO DRUG AND/OR ALCOHOL TESTING**

I hereby agree, upon a request made under the drug/alcohol testing policy of

 (the Company), to submit to a drug or alcohol test and to furnish a sample of my urine, breath, and/or blood for analysis. I understand and agree that if I at any time refuse to submit to a drug or alcohol test under company policy, or if I otherwise fail to cooperate with the testing procedures, I will be subject to immediate termination. I further authorize and give full permission to have the Company and/or its company physician send the specimen or specimens so collected to a laboratory for a screening test for the presence of any prohibited substances under the policy, and for the laboratory or other testing facility to release any and all documentation relating to such test to the Company and/or to any governmental entity involved in a legal proceeding or investigation connected with the test.

Finally, I authorize the Company to disclose any documentation relating to such test to any governmental entity involved in a legal proceeding or investigation connected with the test.

I will hold harmless the Company, its company physician, and any testing laboratory the Company might use, meaning that I will not sue or hold responsible such parties for any alleged harm to me that might result from such testing, including loss of employment or any other kind of adverse job action that might arise as a result of the drug or alcohol test, even if a Company or laboratory representative makes an error in the administration or analysis of the test or the reporting of the results. I will further hold harmless the Company, its company physician, and any testing laboratory the Company might use for any alleged harm to me that might result from the release or use of information or documentation relating to the drug or alcohol test, as long as the release or use of the information is within the scope of this policy and the procedures as explained in the paragraph above.

This policy and authorization have been explained to me in a language I understand, and I have been told that if I have any questions about the test or the policy, they will be answered.

I UNDERSTAND THAT THE COMPANY WILL REQUIRE A DRUG SCREEN TEST UNDER THIS POLICY WHENEVER I AM INVOLVED IN AN ON-THE-JOB ACCIDENT OR INJURY UNDER CIRCUMSTANCES THAT SUGGEST POSSIBLE INVOLVEMENT OR INFLUENCE OF DRUGS OR ALCOHOL IN THE ACCIDENT OR INJURY EVENT.

(Important note for the company [*omit this from any consent form!*]: Remember, "involved in an on-the-job accident or injury" means not only the one who was injured, but also anyone who arguably or potentially contributed to the accident or injury event in any way, i.e., the person suspected of causing someone else to get hurt gets tested as well. Testing only accident or injury victims can, in the eyes of some, appear to be a way of discouraging workers from filing workers' compensation claims, and that in turn can have a very unfavorable effect on workers' compensation retaliatory discharge lawsuits. See the sample drug/alcohol testing policy for an idea on how to reflect that caution in the policy.)

Employee's Name Date

Name of Company Representative Date

[**SEARCHES**](#_bookmark4)

The Company reserves the right to conduct searches to monitor compliance with rules concerning safety of employees, security of company and individual property, drugs and alcohol, and possession of other prohibited items. "Prohibited items" includes illegal drugs, alcoholic beverages, prescription drugs or medications not used or possessed in compliance with a current valid prescription, weapons, any items of an obscene, harassing, demeaning, or violent nature, and any property in the possession or control of an employee who does not have authorization from the owner of such property to possess or control the property. "Control" means knowing where a particular item is, having placed an item where it is currently located, or having any influence over its continued placement. In addition to Company premises, the Company may search employees, their work areas, lockers, personal vehicles if driven or parked on company property, and other personal items such as bags, purses, briefcases, backpacks, lunch boxes, and other containers. In requesting a search, the Company is by no means accusing anyone of theft, some other crime, or any other variety of improper conduct.

There is no general or specific expectation of privacy in the workplace of XYZ Company, Inc., either on the premises of the Company or while on duty. In general, employees should assume that what they do while on duty or on the company premises is not private. All employees and all of the areas listed above are subject to search at any time; if an employee uses a locker or other storage area at work, including a locking desk drawer or locking cabinet, the Company will either furnish the lock and keep a copy of the key or combination, or else allow the employee to furnish a personal lock, but the employee must give the company a copy of the key or combination. The areas in question may be searched at any time, with or without the employee being present. As a general rule, with the exception of items relating to personal hygiene or health, no employee should ever bring anything to work or store anything at work that he or she would not be prepared to show and possibly turn over to Company officials and/or law enforcement authorities.

All employees of XYZ Company, Inc. are subject to this policy. However, any given search may be restricted to one or more specific individuals, depending upon the situation. Searches may be done on a random basis or based upon reasonable suspicion. "Reasonable suspicion" means circumstances suggesting to a reasonable person that there is a possibility that one or more individuals may be in possession of a prohibited item as defined above. Any search under this policy will be done in a manner protecting employees' privacy, confidentiality, and personal dignity to the greatest extent possible. The Company will respond severely to any unauthorized release of information concerning individual employees (for more details, see the policy on "Confidentiality").

No employee will ever be physically forced to submit to a search. However, an employee who refuses to submit to a search request from the Company will face disciplinary action, up to and possibly including immediate termination of employment.



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

## Why Do Some Workplaces Test Employees for Drug Use?

The Substance Abuse and Mental Health Services Administration (SAMHSA) reported that, in 2006,

74.9 percent of all illicit drug users over 18 were employed.1 Drug testing is a prevention and deterrent method that is often a component of a comprehensive drug-free workplace program. Frequently, workplaces that do not have a drug- free workplace program produce higher health care costs, injury rates, and other negative outcomes related to employee substance abuse.

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

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

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

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

## Do Drug Testing Programs Work?

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

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

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

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

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

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

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

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

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

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

## What You, as a Federal Contractor or Grantee, Must Do

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

* Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited

in the workplace. The statement should also clarify any punitive actions that will be taken.

* Establish a drug-free awareness program.
* Make sure each employee receives a copy of the workplace substance abuse policy.

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

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

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

## What Should a Drug Testing Policy Include?

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

## Motivating Your Employees and Providing Assistance

It makes little sense to have either a drug-free

workplace policy or a workplace drug testing

program without, at the same time, having a

drug-abuse education program. You should have a health care professional speak to your staff about the dangers of alcohol and drug abuse—and make attendance mandatory. (Schedule the speaker on multiple dates, as full attendance on a given day is unlikely.) Make brief literature about drug abuse accessible to your employees, with handouts, bulletin board flyers, and email.

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

*Expanded Tests*

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

## A Drug Testing Checklist

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

**A Drug Testing Checklist**

**Here’s a list of “must do’s” before you implement a drug-testing policy:**

1. Identify any Federal or State laws with which you must comply. (Call your State’s attorney general or talk with legal counsel.)
2. If applicable, talk with union officials.
3. Identify and contact a U.S. Department of Health and Human Services (DHHS)–certified laboratory.
4. Contract with a medical review officer.
5. Develop a system to protect the confidentiality of employee drug testing records. Call SAMHSA’s Workplace Helpline for assistance.
6. Designate a person at your company who will receive the test results from the lab, and make sure he or she is aware of confidentiality issues.
7. Write a clear, consistent, and fair policy, and have it reviewed by legal counsel.
8. Notify employees 30 to 60 days before the testing program goes into effect.
9. Communicate to employees that you will abide by the policy also.

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

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

*The SAMHSA 5*

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

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

## What NOT to Do

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

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

test must always be conducted on specimens

that had initial “positive” drug test results.

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

## Who Gets Drug Tested, and Who Does the Testing?

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

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

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

of conduct.

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

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

specimens collected from your employees using the same procedures the certified laboratory would use if the specimens were being tested as regulated specimens

(that is, from a Federal employee or an employee from a DOT-regulated industry).

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

## When Are Drug Tests Given?

*Random Tests*

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

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

random test is when an

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

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

employee for a drug test.13

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

*Preemployment Tests*

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

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

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

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

*Prepromotion Tests*

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

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

*Annual Physical Tests*

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

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

*Post-Accident Tests*

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

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

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

*Treatment Follow-Up Tests*

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

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

## Who Pays for Drug Tests?

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

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

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

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

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

## What Are the Legal Rights of Employees Who Test Positive?

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

unilaterally. The National Labor Relations Act

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

Drug-free workplace policies can always be

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

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

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

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

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

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

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

|  |
| --- |
| **U.S. Department of Health and Human Services****a****Drug Cutoff Concentrations** |
| ***Initial Test Cutoff Concentration (nanograms/milliliter)*** |
| Marijuana metabolites **50** |
| Cocaine metabolites **300** |
| Opiate metabolites **2,000** |
| Phencyclidine **25** |
| Amphetamines **1,000** |
| ***Confirmatory Test Cutoff Concentration (nanograms/milliliter)*** |
| Marijuana metaboliteb **15** |
| Cocaine metabolitec **150** |
| Opiates: |
| Morphine **2,000** |
| Codeine **2,000** |
| 6-Acetylmorphined **10** |
| Phencyclidine **25** |
| Amphetamines: |
| Amphetamine **500** |
| Methamphetaminee **500** |
| **Notes:**a From “Mandatory Guidelines for Federal Workplace Drug Programs,” Federal Register notice published April 13, 2004 (69FR 19644), effective Nov. 1, 2004.b Delta-9-tetrahydrocannabinol-9-carboxylic acid.c Benzoylecognine.d Specimen must also contain amphetamine at a concentration greater than or equal to 200 nanograms/milliliter.e Test for 6-AM when morphine concentration exceeds 2,000 nanograms/milliliter. |

*Initial Test*

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

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

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

first test.17

*Validity Test*

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

*Confirmatory Test*

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

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

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

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### Characteristics of an Effective, Comprehensive Drug-Free Workplace Program

Employers who have successfully implemented drug-free workplace programs offered these suggestions to employers beginning to address possible alcohol and other drug abuse in their own organizations:

*Think Things Through*

Starting a drug-free workplace program is not difficult, but to be successful it helps to plan carefully. It is important to think ahead, define clear goals for the program, and seek advice from other employers with experience. Learn as much as you can about existing programs and policies before you begin.

*Involve Employees*

Work with your most valuable resource: your employees. They can help get the message out, clarify goals, and make sure the program fits into the daily reality of your workplace. Showing employees that you value their input vests them in the program and helps make it work. Most of your employees are not

abusing alcohol or other drugs—they are already part of the solution.1

***Have Clear, Written Drug-Free Workplace Policies and Procedures That Are Applied Uniformly*** Drug-free workplace programs are serious business. Protect your organization with procedural rules that are clear, fair, and consistently applied. The policy should also include provisions for appeal. With these steps in place, employees are more likely to support the program and trust that the employer will carry it out fairly.

*Consider the Collective Bargaining Process*

Where drug testing is a mandatory subject of collective bargaining, the rules for involvement of employee representatives are clear. Even when drug testing is not subject to collective bargaining, or when it is mandated by law, discussing the drug-free workplace policy with union representatives can be

quite useful.2 They may have model programs or other ideas to offer, and they can be helpful in communicating program purpose, procedures, and policies to the employees they represent.3

*Protect Confidentiality*

Employees will support and have faith in your drug-free workplace program when their confidentiality is protected. If employees choose to tell coworkers about their private concerns (such as the results of a drug test), that is their decision. However, when an employee tells you something in confidence, you are obligated to keep it between the two of you. To ensure employee support of the program and avoid legal problems, make confidentiality a priority and spell out the penalties for anyone who violates it.

*Ensure Accurate Testing and Objective Review*

If your program includes drug testing, ensure that a) samples are correctly collected, b) the chain of custody is flawless, c) the tests are conducted by properly trained and supervised lab technicians using equipment that is appropriately maintained, d) laboratory performance and accuracy are independently reviewed, and e) results are communicated through a Medical Review Officer trained to render judgments.

*Ask for Legal Review*

Whether you write the first draft of your policy yourself or tailor an existing policy to your needs, having your program, policy, and procedures reviewed by an attorney experienced in labor and employment matters in your State is extremely important. An attorney can advise you on any relevant State laws governing drug-free workplace programs or employer testing and on how the Americans with Disabilities Act may affect your program implementation. An attorney can also alert you as laws and regulations change over time.

*Eliminate Stigma: Address Workplace Drug Abuse in the Context of Health, Safety, and Productivity*

Policies and programs that foster workplace substance abuse prevention and intervention are part of a larger national movement to promote the health, safety, and well-being of individuals, families, and communities and to improve health, safety, and productivity in workplaces. A drug-free workplace program that communicates care and concern for employees is more likely to succeed than one that intimidates employees.

*Ensure Good Communication and Ongoing Review*

Successful programs ensure that managers, supervisors, union representatives, and employees are knowledgeable about their roles, rights, and responsibilities under the drug-free workplace policy. Explain your drug-free workplace program by using a variety of communication strategies. The message should be clear from the start. Effective ways to communicate include written materials, charts, meetings, question-and-answer sessions, and a suggestion box. Employers who are successful at this know it is important to repeat the message periodically, watch how the program works on a day-to-day basis, invite feedback, and revise the program as needed to meet the specific needs of the workplace.

### Common Concerns Faced by Employers Considering Implementing a Program

*Is My Organization Too Small?*

No organization is too small to be concerned about creating a workplace free of the effects of alcohol and other drug abuse. Problems related to alcohol and other drug abuse can arise in a workplace of any size, and a workplace without a policy or program is exactly where problems are likely to occur.

*Will a Drug-Free Workplace Program Cost Too Much Money?*

You can be part of the solution without spending a lot of money. Although smaller organizations usually have fewer resources for hiring outside trainers or for paying for treatment, they can do something. Free or low-cost assistance is often available. Implementing a drug-free workplace program in stages is another option; for example, you could begin by establishing a clear policy that defines the organization’s expectations. That way, everyone knows what to do if an alcohol or other drug problem arises. The materials in this Kit offer suggestions to help you minimize the cost of a program. Finally, remember: the new drug-free program may look like a costly investment; however, in the long run, it saves many dollars for each dollar spent. For example, a large

transportation company found a 27-to-1 return on investment for its program.4

*Will I Be Sued?*

Drug-free workplace policies, drug testing, and personnel actions that are tied to violating a drug- free workplace policy are widely accepted employment practices. As long as confidentiality is protected and the employer implements the policy fairly and consistently, the chances of being sued are minimal. Again, have your policy and procedures reviewed by an attorney who is experienced in labor and employment matters in your State—before you put the policy and program in place.

*Do I Need to Bother? Wouldn’t I Know if Employees Were Abusing Alcohol or Other Drugs?*

Abuse and addiction are serious and complex, and they can be progressive illnesses.5 You may not

realize that an employee is having a problem until the later stages of the disease, since the health indicators of abuse or addiction are more apparent in the later stages. Many of those who abuse alcohol and other drugs are in denial of their problem or don’t recognize it in themselves. Others are concerned about being found out and losing their jobs and their homes.

Having a program in place now can reduce costly problems in the future. In addition to all of the other health, safety, and security risks that can arise, no employer wants to be the employer of choice for people who abuse alcohol or other drugs.

*Will Having a Program Create Negative Attitudes Among Employees?*

Employees may be concerned and have questions about any new policy or program that their workplace introduces. Because of the sensitive nature of a drug-free workplace program, it is important to involve employees, listen to their questions and concerns, and explain why the decision has been made to implement a drug-free workplace program in the organization.

Frequently, sharing how these programs increase the health of both employees and their families and possible health cost savings can be a reassuring discussion.

References: **1.** U.S. Department of Health and Human Services (DHHS), SAMHSA, Office of Applied Studies. 2007. *Results From the 2006 National Survey on Drug Use and Health: National Findings.* Rockville, Maryland,

27. **2.** Ted R. Miller, Valerie S. Nelkin, Les R. Becker, J. Crivelli, Bryon Sogie-Thomas, and Rebecca S. Spicer. 2002. “The PeerCare Program: Process Evaluation.” Calverton, Maryland: Pacific Institute for Research and Evaluation. Prepared under Cooperative Agreement 1–U1K–SP08096 for the Center for Substance Abuse Prevention, SAMHSA, U.S. DHHS. **3.** Robert R. Bonds and Effie Bastes. 1999. “A Peer-Professional Team Intervention Approach in the Treatment of Drug and Alcohol Problems in the Workplace.” Paper presented at the International Union of Railways World Conference on Occupational Health and Safety (September 23). **4.** Ted R. Miller, Eduard Zaloshnja, and Rebecca S. Spicer. 2007. “Effectiveness and Benefit-Cost of Peer-Based Workplace Substance Abuse Prevention Coupled With Random Testing.” *Accident Analysis & Prevention* 39(3):565–73. **5.** Tian Dayton. 2000. *The Origins of Trauma: Trauma and Addiction: Ending the Cycle of Pain Through Emotional Literacy.* Deerfield Beach, Florida: Health Communications Inc.