Creating a Drug-Free Workplace & Corporate Employee Drug Testing Policy
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Introduction

Maintaining a safe environment in the workplace is of the utmost importance in protecting your employees and yourself as the employer. In creating a safe work environment, the issue of drug use and drug testing is often overlooked. One of the best ways to ensure that you are providing a protected work environment is by performing employee drug testing.

Whether you currently perform employee drug testing or are just in thinking about starting a program for the first time, the information provided here can help you.

Starting a workplace drug testing program can be daunting if you don’t know where to start and making changes to your current program may not seem worth while, yet read on. Confirm BioSciences has done the research for you and we have come up with the following information to help you, the employer, start a lab facility or in-house drug testing program.

Please make sure to go over the frequently asked questions about drug-free workplace policy preparation and employee drug testing at the end of this document.
What You Should Know Before Starting a Program

1. Examine Your Organization Drug Risk Exposure to Determine Special Needs

Before investing in a drug testing program for your workplace, you should first identify the drug abuse risk in your organization. Have you noticed a decrease in productivity, an increase in absenteeism, or accidents by your employees? Are your insurance and workers claims costs soaring? Random employee drug testing can help determine if there is a drug problem in your workplace and to ensure that your office is safe and productive.

a. Drug Problems Affecting Productivity & Quality & Cost

Identify areas of your organization that may be negatively impacted by drug and alcohol abuse. Research has shown that health care, workers' compensation, insurance and liability costs can be affected by drug and alcohol use. In addition, productivity of employees can be impacted as a result of their own or family members' and coworkers' problems with alcohol or drugs.

Here are some of the areas you can analyze information to determine the magnitude and types of drug problems that your organization might be facing:

» Absenteeism
» Liability and insurance costs
» Product and/or service issues
» Workers' compensation claims
» Accidents
» Health care costs
» Cost for replacing damaged equipment and inventory
» Cost of work spoilage

If any of these costs are higher than you would expect for a business of your size in your industry, alcohol and other drug problems may be a contributing factor. Track these costs following implementation of your drug-free workplace program to see if your new policy has contributed to bringing these costs down to your expectations.

b. Drug Problems Regarding to Sensitive Employee Tasks

Your organization may employ or contract with individuals who are in safety-sensitive jobs. These can include positions that require individuals to operate machinery, handle money or care for people who are dependent upon them. These types of employees may be held to a higher standard of safety than other employees. If you have such employees, you may want to implement the most comprehensive type of drug testing program.
Examples of safety-sensitive positions are:

» Drivers
» Security personnel
» Health care workers
» Employees who work with young and/or elderly
» Employees who handle money
» Employees who handle sensitive information like financial data, social security numbers, and personal records
» Employees that you send to customer locations, especially homes
» Employees who work with dangerous equipment and/or chemicals
» Employees who, in the performance of their duties, are entrusted with public safety

2. Understand the law

Some states and federal laws can make setting up an employee drug testing program difficult. Because many people view drug testing as an invasion of privacy, many recent court cases have involved the protection of employee rights. Seeking legal advice can help you understand what you can and cannot do within the parameters of a drug test program in your state.

3. Design a program for your needs

Each drug user can cost a company thousands of dollars, translating into billions spent each year due to healthcare needs, injuries, damage, lawsuits and lost working time. By implementing a drug testing program in your workplace, it enables you to achieve on-the-spot results with the use of inexpensive testing products which provide laboratory accurate results. Lab analysis is not needed in many tests, which can greatly reduce costs or provide a cost-effective alternative for your company.
What to Include in the Employee Drug Testing Program

A Clearly Written Policy

Before you purchase or administer a drug test, a detailed employee drug testing policy is required. In order to create a drug-free workplace, you will need to consider several factors such as:

1. What are you trying to accomplish with your drug testing program? Defining your goals and parameters for an employee drug testing program can help you shape the guidelines and achieve the best results.

2. Decide on the who, what, when, where and why. Who does your employee drug testing policy apply to and why? What rights do your employees have within the parameters of a drug testing program? Will they be subject to random searches and tests? Who will you assign to administer the tests? Will this person need to be qualified to administer the tests? Answering these questions will help you focus to prepare the policy.

3. Decide what the consequences be if the employee policy is violated. Disciplinary action must be outlined in the drug testing policy. This way, you company may avoid litigation if an employee must be disciplined or fired from the job. Also, decide if you will offer rehabilitation programs or outsource this sort of program for employees who test positive on drug tests.

Sharing all policies with all employees is essential for success; therefore, employers should be certain that all employees are aware of the policy and drug-free workplace program.

Drug Testing Program Planning

It is important to take steps to ensure that the drug-free workplace program you design will work well in your organization. Since every organization is different and has unique issues, the drug-free workplace policy and program you design needs to match your workforce and the needs of your organization.

The organization's philosophy concerning alcohol and other drug problems sets the tone for the policy and defines the drug-free workplace program components. Some organizations focus on detection, apprehension and discharge and apply a strong law enforcement model that treats employees who use drugs as criminals. Other organizations focus on performance and emphasize deterrence and assistance, because they view alcohol and drug use as causing impairment of otherwise capable employees. The most effective drug-free workplace programs strike a balance between these two philosophies. They send a strong clear message and, at the same time, encourage employees to seek assistance if they are struggling with alcohol and other drug problems.
Here are some of the practices that can undermine the effectiveness of drug-free workplace programs:

- Focusing only on illicit drug use and failing to include alcohol
- Focusing on termination of users rather than rehabilitation
- Do not balance the rights of employees and the rights of employers
- Do not balance the need to know and rights to privacy
- Reinforcing an individual's denial regarding the impact of his/her alcohol and drug use

Employee Consent and Notification

As an employer you may not have to notify your employees when drug testing will take place (in most states). It is, however, necessary to have the employee's consent to administer these drug tests. This can be done by requiring each employee to read and sign a copy of the employee drug testing policy and to have an official meeting discussing the policy to clear up any discrepancies or concerns that may exist.

Drug Testing Specifics

Once your employee drug testing policy is completed, the next step is to decide on the specifics of the actual drug testing.

Here is a summary of questions to think about regarding drug testing at your workplace:

- **Who will be tested?** Options may include all staff, job applicants and/or employees in safety-sensitive positions.

- **When will tests be conducted?** Possibilities including pre-employment, upon reasonable suspicion or for cause, post-accident, randomly, periodically and post-rehabilitation.

- **Which drugs will be tested for?** Options including testing applicants and employees for illegal drugs and testing employees for a broader range of substance, including alcohol and certain prescription drugs.

- **How will tests be conducted?** How to administer the drug tests and what to do should a positive result be found and what to do when an employee is reluctant to provide a sample are all important questions to answer. (Lab testing is available should you require confirmation of a positive result.)

- **What type of drug testing will be utilized?** Weighing the pros and cons of drug testing methods in the workplace is the best way to decide which type—urine, saliva or hair—is best for your workplace.

- **What will be the consequences of positive result for drug testing?** The employee could be retested at a SAMSHA approved lab and GC/MS (Gas Chromatograph/Mass Spectrometer) test could be used this time to ensure absolute accuracy, or the actual non-negative sample could be retested. Once the positive is determined, what actions would be taken will depend on the organization’s decision. Will termination or rehabilitation be the first step?
**Drug Testing Circumstances**

There are a variety of circumstances in which an organization may wish to require a drug test. Go over these options and decide on which circumstances best fit the needs of your organization:

**Pre-Employment:** Pre-employment testing is conducted to prevent hiring individuals who illegally use drugs. It typically takes place after a conditional offer of employment has been made. Applicants agree to be tested as a condition of employment and are not hired if they fail to produce a negative test. Pre-employment screening is more legally defensible than other forms of testing since it is not complicated by issues of job performance, benefits, etc. Employees, however, can prepare for a pre-employment test by stopping their drug use several days before they anticipate being tested. Therefore, some employers test probationary employees on an unannounced basis. Some states, however, restrict this process.

**Pre-Duty:** Pre-duty testing is used when an employee is transferred from a position where he or she was not subject to testing to a position where testing is required. This type of testing also is used when an employee has been offered a promotion. If the employee tests positive, the offer of transfer or promotion is withdrawn and the employee usually is required to participate in rehabilitation.

**Periodic:** Some employers use periodic testing on an annual basis, especially if physicals are required for the job. Periodic testing is scheduled in advance and uniformly administered. Such tests generally are more accepted by employees than unannounced tests, but employees can prepare for the tests by stopping their drug use several days before the scheduled test.

**Random:** Random testing is unannounced. Employees' identifying data are placed in a testing pool from which a scientifically random selection is made. Every employee in the pool has an equal chance of being chosen for testing every time a random selection is drawn. This selection is usually computer generated to ensure random distribution.

Random testing is believed to have the greatest deterrent effect on drug use since no one is sure when he or she will be tested. Testing employees on a random basis is subject to the greatest controversy unless the employees fall under Federal regulations for safety-sensitive and security personnel.

**Post-Accident:** Since property damage or personal injury may result from accidents, testing following an accident can help determine whether drugs and/or alcohol were a factor. It is important to establish objective and documented criteria that will trigger a post-accident test.

**Examples of criteria that would trigger a test after an accident include:**

- Fatalities
- Injuries that require anyone to be removed from the scene for medical care
- Damage to vehicles or property above a specified amount
- Citations issued by the police
**Reasonable Suspiion:** Reasonable suspicion testing, sometimes referred to as probable-cause testing, is conducted when supervisors document observable signs and symptoms that lead them to believe that the individual may pose a danger to himself or herself, other employees or the public. It is extremely important to have clear, consistent definitions of what behavior justifies drug and alcohol testing. Since this type of testing is at the discretion of management, it requires careful, comprehensive supervisor training. Supervisors should be trained to consult with another supervisor or manager and always document:

- Specific observations concerning appearance, behavior, speech, body odors or performance
- Violations of any safety rule or unsafe work incident, which after further investigation of the employee's behavior leads the supervisor to believe the employee may be unsafe
- Other physical or existing indicators of alcohol or other drug use

It is very important to avoid any appearance of discriminatory testing. Suspicion, rumors or reports alone cannot be the basis of reasonable suspicion testing. Suspicion should trigger investigations, which should result in documentation of observable signs and symptoms. This alone should lead to reasonable suspicion testing.

**Return-to-Duty:** Return-to-duty testing is a one-time announced test that usually is used whenever an employee who has tested positive has completed the required treatment and is ready to return to the workplace. Some employers also utilize this type of testing for any employee who has been absent for an extended period of time. This time limit must be established in policy and, like all testing, return-to-duty testing must be consistently applied to all employees.

**Follow-Up:** Follow-up testing also is referred to as post-rehabilitation testing. This testing follows an employee's return to the workplace after completing rehabilitation. It is administered on an unannounced, unpredictable basis for a period of time determined by your policy (usually over a two- to five-year period).

**Consequences of a Positive Test**

According to a recent American Management Association survey of employers, the following consequences are used when an employee tests positive for alcohol/drug use:

- 63% refer the employee to counseling
- 22% dismiss the employee immediately
- 21% enforce a suspension or other disciplinary action
- 14% dismiss the employee, but only as the last resort
- 2% reassign the employee to other duties
Here are some of the actions you may consider as a result of a positive drug test:

- Immediately removed from duty
- Suspended without pay for a period of 30 days
- Referred to a substance abuse professional for assessment and recommendations
- Required to successfully complete recommended rehabilitation including continuing care
- Required to pass a Return-to-Duty Test and sign a Return-to-Work Agreement
- Subject to ongoing, unannounced, follow-up testing for a period of five years
- Terminated immediately if he/she tests positive a second time or violates the Return-to-Work Agreement
- Employees who test positive will be terminated immediately

Many employers treat refusal to cooperate and/or adulteration/substitution the same as a positive test. If you intend to do so, here are some of the statements you can use for your drug-testing program and mention that an employee will be subject to the same consequences of a positive test if he/she:

- Refuses the screening or the test
- Adulterates or dilutes the specimen
- Substitutes the specimen with that from another person or sends an impostor
- Will not sign the required forms
- Refuses to cooperate in the testing process in such a way that prevents completion of the test
**How much will I save using instant drug testing as the first step testing method, compared to lab based drug testing?**

Here is a simple calculation of possible savings for an average employee testing case to find one positive.

### Case 1: Marijuana Testing Employees (Annual Salary less than $35k)
- Drug Testing Positive Rate: 2.50% (Average marijuana positive rate for general workforce)
- Gross Hourly Employee Cost: $20/hour (Retail, Service or Construction type industries without extensive benefits, but high workers comp cost)
- Lab Drug Testing per specimen: $75
- Comparable Instant Test Kit: $10
- Employee time spent (including productivity loss) to get the lab test done: 2 Hours
- Employee time spent (including productivity loss) to get the instant test done: 0.1 Hours

**Lab-Based Testing Cost**
- Cost of One Drug Test: $115
- Cost of One Positive Test: $3,833

**Instant Drug Testing Cost**
- Cost of One Drug Test: $12
- Cost of One Positive Test: $400
- Confirmation Cost of One Non-Negative Test in a Lab: $75

**Total Cost of One Positive Test: $475 (87% Savings = $3,358)**

### Case 2: Prescription Drug Testing Employees (Annual Salary about $75k)
- Drug Testing Positive Rate: 0.25% (Average Barbiturates, as in some prescription drug abuse, positive rate for general workforce)
- Gross Hourly Employee Cost: $50/hour (Management, Engineering, Medical industries including benefits, insurance, workers comp)
- Lab Drug Testing per specimen: $100
- Comparable Instant Test Kit: $10
- Employee time spent (including productivity loss) to get the lab test done: 2 Hours
- Employee time spent (including productivity loss) to get the instant test done: 0.1 Hours

**Lab-Based Testing Cost**
- Cost of One Drug Test: $200
- Cost of One Positive Test: $80,000

**Instant Drug Testing Cost**
- Cost of One Drug Test: $12
- Cost of One Positive Test: $4800
- Confirmation Cost of One Non-Negative Test in a Lab: $75

**Total Cost of One Positive Test: $4,875 (94% Savings = $75,125)**

***The higher the cost of your employee time, cost of your current lab-based testing and lower the positive rate for the drug your testing, the savings using our product & services will be higher.***
Why should you start a drug testing program at the workplace?

Reasons and rights regarding drug testing at the workplace can differ by state, industry and by the specifics of the employment agreements in place at the workplace. In Feb 2005, SAMSHA Division of Workplace Programs posted the below possible drug testing reasons in a comprehensive workplace drug testing program:

Pre-employment Test: An individual is required to provide a specimen during the job application process. Generally, a negative drug result is required before an employer may offer employment to an individual.

Random Test: 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 pre-select a particular employee for a drug test.

Reasonable Suspicion/Cause Test: An employee is required to provide a specimen when there is sufficient evidence to indicate that the employee may have used an illicit substance. Typically, the evidence is based on the direct observations made by supervisors or co-workers that an employee has used or possesses illicit substances, exhibits physical symptoms of being under the influence, and has patterns of abnormal or erratic behavior.

Post-accident Test: An employee is required to provide a specimen after being involved in an accident or incident on the job. The results of such a test may provide evidence as to the cause of the accident or incident.

Return to Duty Test: An employee is required to provide a specimen to ensure that the employee is drug-free before being allowed to return to work.

Follow-up Test: An employee is tested at random intervals after returning to work to ensure that the employee remains drug-free.

How do you Prevent Employees from cheating on a Urine Drug Test?

Unfortunately there exist a significant size industry supplying various cheating supplies, remedies and drug adulteration methods to the drug using employees. The most important precautions a drug testing collector can take to minimize the opportunity an employee would have to adulterate or substitute a urine specimen are:

- Ensure that the employee does not have access to anything at the collection site that could be used to adulterate or substitute a urine specimen.

- Request the employee to remove and display any items he or she may have concealed in pockets, coats, hat, etc.

In a March 2005 publication SAMSHA, the Center for Substance Abuse Prevention Division of Workplace Programs recommended the following. (Please note: Some of these recommendations could be used by private companies to prevent cheating and adulteration of urine drug testing. Please check with your attorney to see if your employment agreement will permit any of the SAMSHA recommendations before you use them)

The most important actions a Federal agency can take to prevent an employee/job applicant from attempting to defeat a drug test are as follows:

1. If possible, the agency representative who notifies the employee/job applicant that he or she must submit to a drug test accompanies the employee/job applicant to the collection site. Maintaining direct personal contact with the employee/job applicant from the time of notification until arriving at the collection site can prevent the employee/job applicant from drinking excessive amounts of fluids prior to providing a urine specimen or obtaining anything that could be used to adulterate or substitute the specimen they provide.
2. If direct personal contact with an employee/job applicant cannot be maintained, give the employee/job applicant less than 2 hours time to report to a collection site from the time the employee/job applicant is notified that a drug test is required. Using a 2 hour reporting time minimizes the opportunities an employee/job applicant has to use one or more of the above techniques to defeat the drug test. Additionally, the Federal agency should notify the collector that an employee/job applicant is expected to arrive at the collection site before a specified time.

Depending on the reason for the drug test, other actions a Federal agency may take to prevent employees from attempting to defeat a drug test are as follows:

**For Random Drug Tests**

1. Vary the number of times each month that random specimens may be collected (that is, employees should not be able to predict when the Federal agency schedules its collections).
2. Vary the day of the week that random specimens may be collected (i.e. specimens should not always be collected on a Monday).
3. Use a random selection process that does not preclude selecting and testing the same employee more than once during a specific period of time (i.e., an employee selected for a random test remains in the total population subject to testing each time the Federal agency collects random specimens).

After a Federal agency establishes the total number of specimens to be collected each year, the Federal agency should distribute the number of random specimens to be collected over the entire year (if an employee knows that only a certain number of specimens are tested each year and that the agency collects all of them on the same day - an employee will know he or she is free and clear for the remainder of the year).

**For Pre-Employment (Applicant) Drug Tests**

Note: When conducting applicant testing, Federal agencies must inform an individual who is applying for a job that the application process includes a drug test. Generally, individuals applying for a Federal position submit a completed application and other required information. The completed applications are used by the Federal agency to determine which applicants satisfy the requirements for the position. The applications from the qualified applicants go through a review process that, in conjunction with the interview process, eventually leads to offering a position to one of the applicants. If the Federal agency requires that the job offer is subject to the applicant passing a drug test, the tentative selectee is directed to go to a collection site to provide a urine specimen. The notification for the drug test may occur the day the tentative selectee is offered the position or he or she may be directed to go to a collection site by a certain day. In either case, the applicant knows that a drug test is required before the job offer is made final. Knowing this process usually allows the applicant to predict when he or she will be asked to provide a urine specimen. Thus, an applicant can avoid being positive by simply refraining from using any illicit drug for several days prior to the test, unless the applicant is, in fact, dependent on a drug in which case he or she will not be able to stop using an illicit drug.

Request the tentative selectee to come to the agency's employment office before telling the tentative selectee that he or she is being offered the position and that a drug test is required.

**For Reasonable Suspicion/Cause Drug Tests**

Collect the urine specimen as soon as possible after the decision has been made that there is a reasonable suspicion/causes to conduct a drug test on an employee.

**For Post-Accident Drug Tests**

Collect a urine specimen as soon as possible after the accident from the employee who apparently caused the accident and possibly from other employees involved in the accident.
For Return to Duty Drug Tests

1. Authorizing the use of a direct observed collection procedure to collect the urine specimen from the employee (The Mandatory Guidelines permit a Federal agency to use a direct observed collection procedure when an employee’s previous drug test was drug positive, adulterated, or substituted).
2. Schedule the return to duty drug test to occur before the employee is reinstated.
3. Randomly select the day that the employee will be directed to provide a urine specimen.

For Follow-up Drug Tests

1. Authorizes using a direct observed collection procedure to collect a urine specimen from the employee (The Mandatory Guidelines permit a Federal agency to use a direct observed collection procedure when an employee’s previous drug test was drug positive, adulterated, or substituted).
2. Schedule the follow-up drug tests to occur on a random basis.
3. Do not tell the employee how often he or she will be directed to provide a urine specimen.
4. Do not tell the employee when the requirement for follow-up testing will end.

F Do I have the legal right to require my employees in my workplace to take a drug test?

A private employer is free to drug test employees as long as it is legal within the State and local jurisdiction. However, it is important to prepare a well-thought drug testing workplace policy tailored to your needs and then have your program reviewed by an employment law attorney for legal sufficiency prior to implementation.

F I don’t have a formal workplace drug testing policy but I suspect one of my employees of using drugs. Can I make the employee to take a drug test?

Before you drug test any employee in your workplace for any reason, you should have a written policy in place that includes a drug testing provision that has been reviewed by an attorney. That provision should specify the reasons for which you may require a drug test. Reasons may include pre-employment, random, for cause (conduct-related), accident or injury, follow-up to treatment, or voluntary. Inherent in your question may be the presence of some “incident” involving the employee that gave rise to your suspicion of drug use. If your drug testing policy provides for drug testing following a determination by an appropriate company official that an employee’s conduct or performance on the job met the criteria for the “for cause” or “accident or injury,” you may be free to require a drug test.

Please consider that something other than “substance abuse” may have caused the performance or conduct problem that might not otherwise justify a drug test (such as an untreated medical condition or a prescribed medication).

F What is considered an ideal workplace drug testing policy in order to deal most successfully with substance abuse problems in the work place?

The ideal drug testing policy would be the one that has been put into written form and shared with all employees before it is implemented. Important points an ideal policy may include:

1. An educational component for all employees to learn about the negative impact that substance abuse could have in their Workplace and in the personal lives
2. Training for supervisors to prepare them to deal constructively with employees who are having performance and/or conduct problems that may be caused by substance abuse
3. Access to an employee assistance program for employees to obtain appropriate treatment for substance abuse or other kinds of problems that may be affecting their performance and/or conduct
4. Use of drug testing components that are based on reliable and accurate scientific and technical procedures

While preparing your Drug-Free Workplace program, please keep in mind that studies have shown such a program/policy may be ineffective if it is solely a program of drug testing. Drug testing is most effective when it is combined with an employee education and access to substance abuse counseling and treatment for abuse problems.

**F Which employees should I include in a Random Drug Testing Program?**

Who to include in a random drug testing program differs from company to company. Some companies include all employees in their random drug testing program. Other employers may limit random testing to those employees who occupy positions which require the performance of duties which, if performed under an impairment caused by drug abuse, could result in injury or death to the employee or others, or property damage. In other cases, employers are required by Federal regulations to include incumbents of certain positions in a random testing program, such as commercial drivers who may be covered by Department of Transportation regulations.

**F Our Company just got a Federal Government Contract (or Federal Government Grant). Do we need to start drug testing employees in our workplace?**

There is no Federal government requirement for a company to implement drug testing policy simply because it has received a Federal government contract. The same is true for Federal grants. However, in accordance with the Drug-Free Workplace Act of 1988, as amended, any company which receives a Federal contract of $100,000 or more (or a Federal grant regardless of the amount) must:

1. Have a written policy about the prohibitions and consequences for drug use in the Workplace
2. Provide education to employees on substance abuse
3. Provide education for supervisors on the administration of the policy and substance abuse awareness.

**F Can my company use instant drug testing kits to the at site or a non-certified laboratory for employee drug testing?**

A private sector employer may use any non-certified laboratory or instant drug testing kits to provide drug testing services as long as it is not required to use a Federally-certified laboratory in accordance with Federal or State regulations.

**F How long a notice should we give to employees before we implement a Drug-Free Workplace program in our company?**

It is usually recommended that employees be given a minimum of 60 days advance written notification of the implementation of a drug-free workplace program policy, whether or not it contains a drug testing provision. This advance notice will provide the employer with the opportunity to conduct educational training sessions for all employees on the drug-free workplace policy and what is expected of all employees under the program. More focused training for supervisors to ensure they understand their role under the new policy.
In a new program where drug testing will be implemented, the advance notice will give employees who are abusing alcohol or drugs the opportunity change their abusing behavior and/or to seek assistance for their abuse problems before the program is implemented.

Some employers use the advance notice period as a window of “safe harbor” for those with substance abuse problems to come forward and seek treatment assistance without the threat of disciplinary action (during the advance notice period) providing they follow through with the treatment recommendations and return to duty with acceptable performance, and stay “clean”.

**F Are there any common mistakes that we can avoid when implementing and maintaining a drug- and alcohol-free workplace program?**

- Don’t misuse the workplace drug policy to discipline employees for problems not related to the program.
- Don’t single out any employee or group of employees for scrutiny under the company’s policy. Too much attention to any one group could leave the company/organization liable for charges of discrimination. Be consistent with all employee groups or classes.
- Don’t forget that policy must be in writing. An effective policy must be written, circulated, and acknowledged (in writing) by employees.
- Don’t take action against employees based on the positive results of a drug screen only. Always obtain the results of a gas chromatography/mass spectrometry (GC/MS) confirmation before taking action.
- Don’t offer rehabilitation selectively.
- Don’t implement a policy and program unilaterally if you have a unionized workforce. The National Labor Relations Act requires that working terms and conditions be included in your bargaining agreement, and a drug program falls into that requirement.

**F What are the legal issues we need to consider about drug abuse at the workplace?**

In summer of 2003 US Drug Enforcement Administration released guidelines that also included the legal issues surrounding drug abuse and drug testing at the workplace.

Ignoring the drug problem in the corporate setting can result in disastrous legal problems. Conversely, reasonable and well-intended drug prevention programs may also be challenged in arbitration or court. However, experience reveals a relatively large legal exposure by waiting to address the issue (reactive) versus potentially small penalties in trying to mitigate the problem of drugs and alcohol in the workplace (proactive). Ultimately an employer must decide the potential legal costs from instituting a prevention program and the occasional legal challenge from an affected employee versus potentially much larger losses from not instituting a program.

Legal action related to maintaining a drug-free workplace has so far been concentrated in the following six areas:

- Right to privacy;
- Freedom from unreasonable searches;
- Due process;
- Negligence (including negligent hiring, supervision, libel and slander);
- Contract law;
- Discrimination (including racial, sexual, and disabilities).

Cases brought under the first three categories usually involve public employment, although there have been exceptions. Private companies need not be as concerned about those issues if they already exercise good
personnel practices. However, the last three—negligence, contracts, and discrimination—clearly apply equally to all employers.

While an employer cannot be guaranteed protection from legal challenge, some things can be done to minimize successful legal challenges:

- Inform employees that drug use on or off the job is a concern. Write your policy to prohibit employees being at work with “any detectable trace amount of drugs or alcohol in their system,” not “under the influence” or “impaired.” Drug tests detect “presence,” not “impairment.”

- Intra-company communications concerning current employees’ performance, conduct or problems should be treated with appropriate confidentiality. Only management personnel with a “need to know” the particular situation should be involved. Additionally, managers must be consistent and thorough in documenting employee performance, investigations, and workplace observations.

- Minimize negligent hiring by requiring all job applicants to pass a drug test prior to being hired.

- Minimize negligent retention by routinely testing employees and being prepared to intervene when a worker is identified as having, or shows signs indicative of, substance abuse problems.

- Minimize negligent testing by adhering to the testing standards established by the U.S. Department of Health and Human Services.

- Conduct personal searches only on a limited basis, and obtain clear documentation of employee consent prior to conducting a search.

- Ensure that workers are not, or do not perceive that they are, being detained against their will in any workplace investigations of suspected drug or alcohol use or possession.

- Minimize breach of contract and wrongful discharge claims by following established policies and revising policies that lack sufficient flexibility to deal effectively with various confrontational situations.

- Establish your drug- and alcohol-free workplace policy in writing, and ensure that all employees receive and acknowledge (in writing) receiving a copy of it.

F  What are the average drug testing detection time periods by drug and test type?

The detection period of any drug (illegal or prescribed) will vary significantly from person to person. The reasons for that could be any of the following features of the person being tested:

- Height, weight and amount of body fat (human metabolism slows with increased body mass, resulting in longer drug detection periods)
- The age and current health situation (deteriorating health and older age results in longer detection period)
- Frequency of use (quantity of drug use each time and how long consistent drug use prior to testing; Single, isolated, small doses are generally detectable at a lower boundary. Chronic and long-term use typically result in detection periods near or at the upper boundary.)
- Quality of drug used (Higher quality - potency- will stay longer in the system)
- Urine pH: (Urine pH can impact drug detection periods. Typically, highly acidic urine results in shorter drug detection periods)
The following chart gives some approximate detection periods for each substance by test type. Please keep in mind the above factors that affect the drug testing detection times.

<table>
<thead>
<tr>
<th>Substance</th>
<th>Saliva</th>
<th>Urine</th>
<th>Hair</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amphetamine</td>
<td>2-3 days</td>
<td>2-4 days</td>
<td>N/A</td>
</tr>
<tr>
<td>Barbiturates</td>
<td>N/A</td>
<td>2-20 days</td>
<td>N/A</td>
</tr>
<tr>
<td>Benzodiazepines</td>
<td>N/A</td>
<td>2-40 days</td>
<td>N/A</td>
</tr>
<tr>
<td>Marijuana (light use)</td>
<td>1-2 days</td>
<td>2-4 days</td>
<td>up to 90 days</td>
</tr>
<tr>
<td>Marijuana (heavy use)</td>
<td>2-4 days</td>
<td>up to 90 days</td>
<td>up to 90 days</td>
</tr>
<tr>
<td>Cocaine</td>
<td>2-3 days</td>
<td>4-5 days</td>
<td>up to 90 days</td>
</tr>
<tr>
<td>Opiates (Heroin)</td>
<td>2-4 days</td>
<td>2-4 days</td>
<td>up to 90 days</td>
</tr>
<tr>
<td>Methamphetamine</td>
<td>3-4 days</td>
<td>3-5 days</td>
<td>up to 90 days</td>
</tr>
<tr>
<td>PCP</td>
<td>3-4 days</td>
<td>3-7 days</td>
<td>up to 90 days</td>
</tr>
</tbody>
</table>

F What causes false positives on urine drug tests?

Most drug test processes (whether instant or lab based) are not completely free from error. Some over-the-counter medication and certain foods can cause you to drug test “positive” for different drug types. The metabolism of the person, the amount and time of medication (food) taken will all determine the possibility of the false positive in drug tests. However when you test positive then the specimen can be retested by various different methods to confirm without error for the false positive. So if you have not used the given drug and still got positive result in the initial test (whether instant or lab-based) you don't have to worry. A non-negative confirmation done at a lab (GC/MS (Gas Chromatograph/Mass Spectrometer) Test) will without error find that you are drug free.

However if you want to avoid even the temporary false-positive drug test result, here are some of the over-the-counter medications and certain foods that you need to watch for:

- Marijuana (THC): Ibuprofen based medication (like Advil, Motrin, Nuprin, Excedrin), Naxproxen (Aleve). Even though EMIT (an immunoassay test) was changed to use a different enzyme to eliminate false positives due to Ibuprofen, still very high doses could still effect the test result.

- Opiates (Morphine – Heroin): Poppy Seeds, Tylenol and cold remedies with codeine, Most Painkillers, Dextromethorphan, Some Cough Suppressants. Vicks Formula-44, Demerol, Mydol, Primatene-M and common prescription antidepressants such as Elavil and Tofanil can also show up as positive for opiates.

- Amphetamines: Emphedrine (Ephedra) has a chemical structure which is closely related to amphetamine, and can reportedly give a false positive for amphetamines. Some common over the counter cold, asthma (Marax, Bronkaid, Primatine), and allergy remedies and diet pills (such as Dextrastrim, Accutrim) and Nyquil can also show up as false positive for amphetamines.

Some other reported false-positive reasons are:

- Valium reportedly can produce erroneous indications of PCP (Phencyclidine), and other cold remedies can apparently produce false reports of methamphetamine usage.

- If marijuana is smoked nearby, even if you do not partake, the second hand marijuana that you might inhale may give your test a positive result for several days.

- Certain newly developed antibiotics may cause positive samples urine tests. Ampicillin is suspect. Amoxicillin has caused positives for cocaine.

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• Few people excrete large amounts of certain enzymes in their urine which can result in a positive drug test. Dr. John Morgan of the Dept. of Pharmacology of New York City University writes: "A false positive test could occur in some individuals because they excrete unusually large amounts of endogenous lysozyme or malate dehydrogenase." Dr. Morgan judges that natural enzyme interference may run as high as 10% of positive samples.

F  What is NIDA 5 Drug Categories?
Federal government guidelines by NIDA (The National Institute on Drug Abuse) and SAMHSA (The Substance Abuse and Mental Health Services Administration) require that companies which use commercial class drivers, specified safety sensitive transportation and/or oil and gas related occupations, and certain federal employers, test them for the presence of certain drugs. These test classes where established decades ago, and include five specific drug groups. They do not, unfortunately account for current drug usage patterns. For example, the tests do not include some substances that are highly abused in US, such as oxycodone, oxymorphone, hydrocodone, hydromorphone, MDMA, benzodiazepines and barbiturates.

NIDA 5 Drug Categories:
- THC (Marijuana)  
- Cocaine (Crack)  
- Opiates (Heroin)  
- Phencyclidine (PCP)  
- Amphetamines (Speed)

F  What is a Medical Review Officer (MRO)?
A medical review officer is a licensed physician who is also an expert in drug and alcohol testing and the Federal regulations governing such testing.

According to DOT related regulations below are the necessary qualifications to be a MRO:

SubPart G - §40.121
To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section:

(a) Credentials. You must be a licensed physician (Doctor of Medicine or Osteopathy). If you are a licensed physician in any U.S., Canadian, or Mexican jurisdiction and meet the other requirements of this section, you are authorized to perform MRO services with respect to all covered employees, wherever they are located. For example, if you are licensed as an M.D. in one state or province in the U.S., Canada, or Mexico, you are not limited to performing MRO functions in that state or province, and you may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.

(b) Basic knowledge. You must be knowledgeable in the following areas:

1. You must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.

2. You must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.

3. You must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom you evaluate drug test results, and you must keep current on any changes to these materials. The DOT MRO Guidelines document is available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site (http:// www.dot.gov/ost/dapc).
(c) Qualification Training. You must receive qualification training meeting the requirements of this paragraph (c).

1. Qualification training must provide instruction on the following subjects:

   i. Collection procedures for urine specimens;
   ii. Chain of custody, reporting, and recordkeeping;
   iii. Interpretation of drug and validity tests results;
   iv. The role and responsibilities of the MRO in the DOT drug testing program;
   v. The interaction with other participants in the program (e.g., DERs, SAPs);
   vi. Provisions of this part and DOT agency rules applying to employers for whom you review test results, including changes and updates to this part and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.

2. Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.

3. The following is the schedule for qualification training you must meet:

   i. If you became an MRO before August 1, 2001, and have already met the qualification training requirement, you do not have to meet it again.
   ii. If you became an MRO before August 1, 2001, but have not yet met the qualification training requirement, you must do so no later than January 31, 2003.
   iii. If you become an MRO on or after August 1, 2001, you must meet the qualification training requirement before you begin to perform MRO functions.

(d) Continuing education. During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (e.g., Continuing Education Medical Units) relevant to performing MRO functions.

1. This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in MRO practice, pertaining to the DOT program, since the time you met the qualification training requirements of this section.

2. Your continuing education activities must include assessment tools to assist you in determining whether you have adequately learned the material.

3. If you are an MRO who completed the qualification training and examination requirements prior to August 1, 2001, you must complete your first increment of 12 CEU hours before August 1, 2004.

(e) Documentation. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.
How Common is Workplace Drug Testing Programs?

According to the 1996 AMA (American Management Association) Survey on Workplace Drug Testing and Drug Abuse Policies, 81 percent of major U.S. companies reported having drug testing programs compared to 78 percent in 1995 and just 22 percent in 1987, the first year of the survey.


<table>
<thead>
<tr>
<th>Business Category</th>
<th>New Hires Drug Testing</th>
<th>All Employees Drug Testing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial Services</td>
<td>35.8%</td>
<td>18.8%</td>
</tr>
<tr>
<td>Business &amp; Professional Services</td>
<td>36.0%</td>
<td>18.4%</td>
</tr>
<tr>
<td>Other Services</td>
<td>60.3%</td>
<td>34.7%</td>
</tr>
<tr>
<td>Wholesale &amp; Retail</td>
<td>63.0%</td>
<td>36.8%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>78.5%</td>
<td>42.2%</td>
</tr>
</tbody>
</table>

If Having Drug Testing Programs at the Workplace is so important and affects the overall productivity and success of the companies, why not all large US companies do it?

One reason is that some companies are reluctant to put together a drug testing program in place and then administer it. However with outside professional help and services, it is not really hard or costly to put these policies in place anymore. Companies like Confirm BioSciences make this process much smoother and less costly for putting together a drug testing policy and administer it.

One other reason drug testing is not used by some employers is the cost. One large electronics manufacturer estimated that the cost of finding each positive result was $20,000. After testing 10,000 employees they only found 49 positive results. A congressional committee estimated that the cost of each positive in government testing was $77,000 because the positive rate was only 0.5%. However these estimated high average costs per positive result is all because of using more expensive and time costly lab-based drug testing. The convenient instant drug testing kits that are only sent to lab for non-negative confirmation will bring significant savings both in testing dollars and employee time spent.

What are some average positive rates for drug testing in federal and private US workforce?

According to Quest Diagnostic (a large provider of lab-based drug testing and other medical diagnostic product and services) December 2005 press release, the drug testing positive rates in US is on a slight decline in the last few years.

<table>
<thead>
<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Federally-Mandated, Safety-Sensitive Workforce</td>
<td>2.3%</td>
<td>2.3%</td>
<td>2.5%</td>
<td>2.5%</td>
<td>2.9%</td>
</tr>
<tr>
<td>General U.S. Workforce</td>
<td>4.7%</td>
<td>4.9%</td>
<td>5.0%</td>
<td>4.8%</td>
<td>4.9%</td>
</tr>
<tr>
<td>Combined U.S. Workforce</td>
<td>4.3%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.4%</td>
<td>4.6%</td>
</tr>
</tbody>
</table>
What are some positive rates for drug testing by the drug testing reason?

According to Quest Diagnostic (a large provider of lab-based drug testing and other medical diagnostic product and services) December 2005 press release, the drug testing positive rates for reason (for the not federally mandated, general US Workforce) are as follows:

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Follow-Up</td>
<td>10.0%</td>
<td>10.0%</td>
<td>9.6%</td>
<td>10.3%</td>
<td>11.3%</td>
</tr>
<tr>
<td>For Cause</td>
<td>28.9%</td>
<td>27.8%</td>
<td>28.2%</td>
<td>25.9%</td>
<td>26.1%</td>
</tr>
<tr>
<td>Periodic</td>
<td>2.4%</td>
<td>1.9%</td>
<td>2.2%</td>
<td>2.7%</td>
<td>3.4%</td>
</tr>
<tr>
<td>Post-Accident</td>
<td>5.7%</td>
<td>5.7%</td>
<td>5.7%</td>
<td>5.9%</td>
<td>6.0%</td>
</tr>
<tr>
<td>Pre-Employment</td>
<td>3.9%</td>
<td>4.1%</td>
<td>4.1%</td>
<td>4.3%</td>
<td>4.4%</td>
</tr>
<tr>
<td>Random</td>
<td>7.1%</td>
<td>7.1%</td>
<td>6.6%</td>
<td>6.5%</td>
<td>7.0%</td>
</tr>
<tr>
<td>Return to Duty</td>
<td>6.1%</td>
<td>5.5%</td>
<td>5.6%</td>
<td>5.6%</td>
<td>5.3%</td>
</tr>
</tbody>
</table>

As you can see from above numbers, the drug testing positive rates are lowest for the periodic (expected) and pre-employment drug testing. The fact that it is getting easier for the job applicants and current employees that use drugs to prepare for these tests might be contributing to the relatively low levels of positive drug testing results. However, above 7% positive rates in random drug testing is probably a better number to look at for most employers.

As an employer, which drugs should I be worried about more in my workplace? What are the more popular drugs used by US workforce today?

Depending on where your business is located (state, city, metro area), popular drug types used will differ. Certain areas will have higher drug testing positive rates that are different than US averages.

However certain drug types are always important to test for. Below two tables summarizes the findings on from Federal sources, and one from a private drug testing lab network. The main drug types that are popular and you would need to consider testing for are: Marijuana, Cocaine, Amphetamines & Methamphetamines, Heroin and Benzodiazepines.

Positivity Rates by Drug Category (For Combined U.S. Workforce, as a Percentage of All Positives)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Marijuana</td>
<td>53.7%</td>
<td>54.8%</td>
<td>54.9%</td>
<td>57.6%</td>
<td>60.6%</td>
</tr>
<tr>
<td>Cocaine</td>
<td>15.2%</td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Amphetamines</td>
<td>10.6%</td>
<td>10.2%</td>
<td>9.3%</td>
<td>7.1%</td>
<td>5.9%</td>
</tr>
<tr>
<td>Opiates</td>
<td>6.6%</td>
<td>6.2%</td>
<td>6.4%</td>
<td>5.5%</td>
<td>5.8%</td>
</tr>
<tr>
<td>Benzodiazepines</td>
<td>4.6%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
</tr>
<tr>
<td>Propoxyphene</td>
<td>4.1%</td>
<td>4.4%</td>
<td>4.5%</td>
<td>5.1%</td>
<td>3.5%</td>
</tr>
<tr>
<td>Barbiturates</td>
<td>2.5%</td>
<td>2.5%</td>
<td>2.5%</td>
<td>2.6%</td>
<td>2.9%</td>
</tr>
</tbody>
</table>
Methadone | 1.7% | 1.5% | 1.4% | 1.1% | 0.88%
Substitution | 0.43% | 0.66% | 0.73% | 0.68% | 0.51%
PCP | 0.40% | 0.38% | 0.61% | 0.58% | 0.59%
Acid/Base | 0.09% | 0.13% | 0.18% | 0.27% | 0.24%
Oxidation Adulterants (incl. Nitrites) | 0.01% | 0.09% | 0.19% | 0.52% | 0.54%
Methaqualone | 0.00% | 0.00% | 0.00% | 0.00% | 0.00%

*Source: Quest Diagnostics (December 2005 Press Release), Combines US Workforce*

### Federal Drug Seizures (in pounds)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cocaine</td>
<td>235,377</td>
<td>266,029</td>
<td>234,105</td>
<td>303,289</td>
<td>%</td>
</tr>
<tr>
<td>Heroin</td>
<td>4,379</td>
<td>3,499</td>
<td>2,569</td>
<td>2,552</td>
<td>2,415</td>
</tr>
<tr>
<td>Marijuana</td>
<td>2,673,535</td>
<td>1,777,434</td>
<td>1,308,171</td>
<td>783,477</td>
<td>1,070,965</td>
</tr>
<tr>
<td>Hashish</td>
<td>433</td>
<td>596</td>
<td>32,020</td>
<td>4,048</td>
<td>51,625</td>
</tr>
<tr>
<td>Total</td>
<td>2,913,724</td>
<td>2,047,588</td>
<td>1,576,865</td>
<td>1,093,366</td>
<td>1,343,702</td>
</tr>
</tbody>
</table>

*Source: Federal-Wide Drug Seizure System*
### NATIONAL HOTLINE NUMBERS

<table>
<thead>
<tr>
<th>Service</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol and Drug Referral Hot Line</td>
<td>1-800-252-6465</td>
</tr>
<tr>
<td>Child Help's - National Child Abuse Hot Line</td>
<td>1-800-422-4453</td>
</tr>
<tr>
<td>National A.I.D.S. Hot Line</td>
<td>1-800-342-2437</td>
</tr>
<tr>
<td>National Cocaine Hot Line</td>
<td>1-800-262-2463</td>
</tr>
<tr>
<td>National Hepatitis Hot Line</td>
<td>1-800-223-0179</td>
</tr>
<tr>
<td>National Runaway Switchboard and Suicide Hot Line</td>
<td>1-800-621-4000</td>
</tr>
<tr>
<td>National Sexually Transmitted Disease Hot Line</td>
<td>1-800-227-8922</td>
</tr>
</tbody>
</table>

### NATIONAL ASSISTANCE GROUPS

<table>
<thead>
<tr>
<th>Organization</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcoholics Anonymous</td>
<td>1-800-344-2666</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>1-301-443-1240</td>
</tr>
<tr>
<td>M.A.D.D.</td>
<td>1-800-438-6233</td>
</tr>
<tr>
<td>Narcotics Anonymous</td>
<td>1-818-780-3951</td>
</tr>
<tr>
<td>AL-ANON Family Group Headquarters</td>
<td>1-800-356-9996</td>
</tr>
<tr>
<td>Nat’l Institute of Drug Abuse, Drug Info., Treatment</td>
<td>1-800-662-4357</td>
</tr>
<tr>
<td>Families Anonymous</td>
<td>1-800-736-9805</td>
</tr>
<tr>
<td>S.A.D.D.</td>
<td>1-508-481-3568</td>
</tr>
<tr>
<td>Tough Love</td>
<td>1-800-333-1069</td>
</tr>
<tr>
<td>American Cancer Society</td>
<td>1-800-227-2345</td>
</tr>
<tr>
<td>Council of Compulsive Gambling</td>
<td>1-800-426-7711</td>
</tr>
</tbody>
</table>