



Loss Control TIPS

Technical Information Paper Series

Innovative Safety and Health SolutionsSM

Drug Screening In The Workplace: Rationale and Guidelines

Introduction

Drug abuse cuts across all ethnic groups, trades, professions, salary ranges, and educational backgrounds in every part of our country. Use of illegal drugs is one of the largest social problems in the United States today, and has entered the workplace in alarming proportions. Substance abuse problems have become a major concern of American businesses, affecting all levels of employment.

The consequences of substance abuse are enormous for business and industry: lowered productivity; escalating healthcare and benefits costs; increased tardiness; absenteeism and employee turnover; a higher incidence of work-related injuries; and petty theft. Substance abuse also produces various negative physical and mental effects, including poor memory, lethargy, reduced coordination, slow reaction time, inability to concentrate, and delay in making decisions.

How Extensive is the Workplace Drug Problem?

The National Institute on Drug Abuse (NIDA) estimates that one in six working Americans has a drug problem, at a cost to American business of \$60 billion a year. According to the U.S. Chamber of Commerce:

- 42% of persons entering the full-time work force for the first time have used drugs illegally within the past year.
- million people use marijuana weekly; 6 million indulge in cocaine; 500,000 are addicted to cocaine.

The average drug user is:

- 2.5 times more likely to use 8 or more days of sick leave per year
- absent about 40% more than non-users
- 3.6 times more likely to be involved in accidents
- 5 times more likely to file a workers' compensation claim
- fired about 40% more often than non-users
- one-third less productive
- likely to incur 300 percent higher medical costs



The dangerous drugs that cause problems for industry are divided into the following broad categories: alcohol, marijuana, stimulants, depressants, narcotics, hallucinogens, and inhalants. Drug testing data from various laboratories have indicated that the overall number of positive results found in pre-employment testing is approximately 12% (primarily marijuana), whereas limited random testing data suggest that "positives" from currently employed workers is about 2% (also marijuana). While marijuana may not affect reaction time, it can reduce attentiveness for up to four hours after usage (24 hours for complex tasks).

How Can a Drug Testing Program Help?

An employer not only has the right, but an obligation, to maintain a safe and healthy working environment. Most legal authorities agree that an employer is obliged to ensure an employee's fitness for duty. From a legal perspective, a drug testing program can be used to protect employee health and safety, but only if it does so without violating employees' individual rights.

In today's business environment, companies are under increasing pressure to implement drug testing programs. Employees under the influence of drugs cannot be allowed to operate equipment that poses safety risks to themselves or others. Neither should such an employee be assigned to work with toxic, hazardous or explosive chemicals, high voltage or other high energy equipment (pressure, high temperature, radiation, etc.). Furthermore, employees whose jobs are closely related to public safety (such as public transportation, police, fire fighting, medical services, etc.) cannot be under the influence of drugs.

Aside from the direct safety risks posed by employees using illegal drugs, or abusing legal drugs or substances, workplace efficiency and effectiveness may also be impaired, as well as an employees alertness and attentiveness (this is also a safety concern). At present, drug screening is mandated for federal employees, employees of employers having federal contracts, and federally regulated DOT drivers of commercial motor vehicles. It is not unusual to see workers' compensation claims drop 60% in the course of several years after a drug testing program has been instituted, or to see job applicants who test positive for drug use drop from 50% to under 15%. The costs involved in managing a drug testing program are normally more than offset by the savings realized from reduced claim activity, let alone the savings realized in increased productivity, reduced turnover and the consequent cost of training new employees.

Who Uses Drug Testing Programs?

Ensuring safety, especially in safety sensitive industries, has become increasingly difficult. Over half of all Fortune 500 companies, and fully 98 percent of Fortune 200 companies, use some form of drug testing, and the proportion is rising. According to a 1990 study of manufacturing, gas and electric utilities, finance and insurance, transportation, wholesale and retail trade, and service industries, almost half of respondents actively test job applicants or employees. Drug testing is highest in the utilities (80% of respondents) and manufacturers (64%) and was lowest in the finance and insurance industries (13%). Large employers were found to test 2.5 times as frequently as small companies. An American Management Association study of nearly 800 medium-sized business found that 69 percent were conducting drug tests on job applicants. Surveys also show that two-thirds of employees support drug testing; this increases to more than 90 percent for "safety sensitive" jobs.

Evidence of workplace drug problems is "the single most compelling reason" for considering and implementing a drug program. More than 40% of those in the AMA study that have drug programs cite evidence of drug use by employees as a "very important" reason for testing. One-third indicated their concern about legal liability for drug-related incidents in the workplace and the costs of workplace drug abuse. Over 90% of employers having testing programs screen job applicants, and 75% test employees following accidents or when suspicious behavior is observed. 80% obtain written consent of applicants and employees before testing.

Recommendation

At the very least, a company should have a simple policy addressing the possession, use and sale of drugs and alcohol on company property. This can, and often should, be expanded to include a total, comprehensive drug-testing program. All drug testing programs should contain certain essential components. The company should develop a written policy that clearly states its position on why the use of illegal drugs and/or the abuse of legal drugs are unacceptable, why testing is necessary, and how the program will be managed.

When Should a Drug Testing Program Be Implemented?

Due to strong public sentiment and employees' legal rights concerning "invasion of privacy," any organization anticipating instituting a drug testing policy or program should obtain legal counsel in the initial stages. Although a testing program makes good business sense for many companies, employers should also consider issues of privacy, social responsibility, and liability. Public employees have challenged drug programs under the Fourth, Fifth, and Fourteenth Amendments, and employees in the private sector have brought wrongful dismissal and invasion of privacy lawsuits against employers.

In light of the potential for employee lawsuits, some labor attorneys advise that companies initiate drug testing procedures only when they have a compelling reason to do so, e.g., when there is known or suspected drug abuse in the workplace. NIDA recommends three tiers of drug testing:

1. an *incident related policy*, where employees are tested after an accident or other incident
2. *scheduled testing* of high risk or safety sensitive occupations
3. *random, unannounced sampling* for screening within hazardous occupations.

Understand Relevant State Laws

In addition to the Federal regulations which provide guidelines for those employers conducting elective drug testing, many state laws need to be considered before drafting a legal drug testing program. Various states have *anti-drug-testing* laws., *neutral* drug testing laws, *pro-drug-testing* laws, or *no relevant* drug testing statutes or case law.

Several states allow drug testing of employees only when there is probable cause or reasonable suspicion under restrictive conditions. Other states distinguish between drug testing for pre-employment screening and for current employees or for "safety sensitive" positions versus routine jobs. Random testing is normally reserved for jobs where safety or security is required, or where public trust is a major concern. The lack of clarity in these and other laws *demand* that you obtain legal advice when developing a drug testing program. Companies must balance the higher likelihood of job applicants who have substance abuse problems being over-represented if they don't have drug screening, compared to applicants at companies where it is known that drug screening does exist. This must be balanced against the costs to institute and maintain a legally defensible and appropriate drug screening program.

Deciding Whether To Test

When deciding whether to test, employers should consider several basic questions so that they don't simply and arbitrarily adopt someone else's program (which may be fine for the application for which it was intended, but not quite right for the case at hand).

Public vs. Private Employer

In the drug testing arena, the legal considerations for public and private employers are quite different. Because public employees possess important constitutional rights in the employment setting—the right to privacy and the right to be free of unreasonable search and seizure—public employers are faced with additional burdens. Nonunion, private employers normally do not need to be concerned with constitutional concepts being part of any legal action against them.

Union vs. Nonunion

Normally, unionized employers will be required to establish that the formula to determine when employees are tested is "reasonable" under the terms of the labor contract. Non-unionized employees in private industry have no legal weapon in a collective bargaining agreement to oppose the implementation of drug testing, unless applicable state or local legislation restricts drug testing in the employment context.

Employee Morale

Collection of urine samples is often a humiliating and demeaning experience. Drug testing may be perceived as an act of distrust on the part of the employer, which can diminish an employee's loyalty and dedication to the employer.

Employee's Job Responsibilities: Safety and Public Image

The degree of safety risk posed by drug use on the job is clearly an important variable. The higher the risk to the public, other workers and to the employee, the more sustainable a drug testing program will be. The validity of the policy will hinge upon its reasonableness as applied to the employees tested. Hybrid policies, incorporating different approaches toward different groups of employees, are often acceptable, especially in a safety-sensitive industry.

Extent of Workplace Drugs

The presence of a rampant, documented drug problem at a workplace will justify more aggressive and comprehensive action than an ungrounded fear for the future or a reactive "everybody is doing it" response. However, even without the presence of an existing problem, employers should give concern to worker safety and the need to keep the workplace from falling prey to a drug problem. An employer must be proactive in the stance against drugs.

State or Local Legislation

Due to the continuously changing legislative climate, every business considering implementation of a drug testing program should obtain current legal advice.

Cost

The initiation and maintenance of a useful drug screening program that is fully defensible is not without significant costs. The implementation and maintenance of a flawed program can lead to increased employee challenges of the employer's termination decisions.

Drug Testing Guidelines And Considerations

The overall goals of employee drug testing include improvements in workplace safety, productivity, and product integrity so that the individual industry will have an improved fiscal bottom line. Some considerations which should be explored, and steps which should be taken, are described below.

Review State Laws As Well As Federal Statutes

Constitutional limitations do not apply to actions of the private employer in the private workplace. The courts are encouraging employers, in both the public and private sectors, to conduct employee drug testing. However, drug testing must be done within the scope of existing state laws, union contracts, and reasonable workplace safety guidelines. The aim of a drug testing program is not to "catch" a drug abuser and punish him or her; the primary objectives are to eliminate the presence of drugs in the workplace and rehabilitate employees who need help overcoming drug problems. A well-planned and correctly executed program can result in peace of mind for you, and a better work environment for all employees.

Demonstrate Need

If it is felt that a drug abuse problem does exist in the workplace, document a relationship between job performance and substance abuse.

Involve Unions

Usually the inclusion of the unions early on in the process enhances the chances for the program's success. In both union and non-union workplaces, management should provide an opportunity for input from affected employees.

Develop a Policy

Involve top management, legal advisors, human resource managers, risk managers, security staff, and OSHA personnel. Formalize the policy by making it a written part of your company rules and procedures. Evaluate each position within the company for potential safety hazards, especially when employees are under the effect of illegal drugs. Don't prohibit legal use of controlled substances prescribed by a licensed physician, but require employees in sensitive positions to make such use known to an appropriate company representative.

Communicate the Policy

Notify employees of the policy *prior to* the program's implementation date. Explain why you are testing for drugs. Review penalties which will be imposed for specific violations. Make it clear that illegal drug use while on the job or on company property will result in discharge. Drug policies should be posted and displayed at appropriate and conspicuous locations throughout the work area. Communication with employees is critical. Face-to-face meetings are most effective. All affected employees should receive a copy of the policy and the drug testing program with their check. Post notices on bulletin boards.

Identify Safety Sensitive Positions

Safety sensitive positions are those jobs in which failure to meet performance standards or the occurrence of accidents may adversely affect the health and lives of other individuals.

Establish Procedures for Suspected Drug Use

When employees are suspected of using drugs, take several steps:

- Document the physical signs which led to management's suspicion of drug use (e.g., slurred speech, weaving, dilated pupils, disorientation, etc.)
- Require the employee to immediately undergo urinalysis or blood test to confirm drug use.
- Send a supervisor to accompany the suspected user to the lab to prevent a "friend" from taking the test.

Be Prepared for Legal Challenges

Successful legal challenges to drug testing have generally been aimed at the accuracy of the tests themselves. These challenges can be minimized by:

- using only a certified laboratory to conduct the tests
- assuring a positive paper trail, and following chain-of-custody evidentiary procedures
- verifying all positive test results by an alternative and equally reliable means
- freezing and keeping all samples from all positive tests until the prospect of legal challenge (60 days to one year) has passed

Develop Rules for Off-the-Job Conduct

Employees dealing in drugs outside of work may be subject to discipline because it can affect on-the-job performance as well as influence the confidence of the public in the company's ability to meet its responsibilities. Be aware that several states prohibit employers from penalizing off-work conduct that is legal.

Determine a Testing Procedure

Determine who will be tested and when they will be tested. These conditions can be incorporated into the program: *pre-employment*, *periodic*, *random*, *post-accident*, and *for-cause*. When initiating the drug testing program, delay testing to at least 30 days from the date employees are notified of the program. Establish procedures for collecting urine samples.

- ***Pre-employment testing*** is the most popular type of drug testing program, and perhaps the most effective, with the least liability to the employer. Over a period of years, pre-employment drug testing would be expected to lead to a lower incidence of drug use in the work population when drug users are screened out prior to employment and older workers leave by natural attrition. In order to withstand legal challenges on common law grounds, a company's pre-employment drug screening must be:
 - carried out under a carefully developed, written policy that is explained to all applicants at the time of application

- presented to the applicants in the context of job safety, employee health , and public welfare, rather than profit and loss
- applied to all applicants in a non-discriminatory manner
- **Probable cause testing** requires reasonable suspicion that a person is using or is affected by drugs. This is useful in proving the presumption of drug use when poor performance is observed, when evidence of intoxication is witnessed, or when accidents are thought to result from drug intoxication.
- **Random testing** is a less popular approach in that it has several shortcomings. Random testing can increase the tension between management and labor, if the determination of selected employees to be tested is not open and above suspicion. One approach to make random testing more acceptable to employees, especially in a unionized workplace, is for the union delegate to work with management to develop periodic random name lists. This will assure the employee's representative that the computer generated list was developed without prejudice. Actually, it is best to generate three to four lists, and then let the union representative pick *one* of the lists—blindly. This assures a *totally* random, unprejudiced selection of names.

Train Supervisors

Training should include policy implementation, familiarity with common drugs, identification and referral of problem employees, chain-of-custody and testing procedures, and legal implications.

Notify Employees

Provide employees with a procedure for contesting positive test results once they have been notified. All initial positive tests should be followed-up with confirmatory tests using independent technology. Provide employee opportunity to explain positive test results.

Keep Results Confidential

Designate specific personnel to receive the results for processing and confidentiality. Strictly enforce "need to know" guidelines. All medical records, and especially all drug related information, should be maintained in a separate, locked file accessible to no one other than designated personnel.

Determine the Role of Employee Assistance Programs (EAPs)

If the company offers an EAP, make participation mandatory as a condition for continued employment for those who test positive. Require random testing for up to one year thereafter.

Apply the Rules Consistently

This is absolutely essential to eliminate any possibility of discrimination.

Prescription Drugs And Alcohol

If the underlying purpose of drug testing is safety, there is no reason why drug testing should be limited to illicit drugs. In terms of the number of people who abuse alcohol and prescription drugs em, and the fatalities, injuries, and property damage caused by their effects in the workplace, legal substances pose a much greater threat than illegal drugs. A 1985 study of work-related fatalities in the Houston area showed that of 173 drug tests performed on 196 autopsies, 23 workers had a detectable blood alcohol content

(BAC), 11 had traces of prescription drugs with the potential to cause injury, and only one worker tested positive for an illegal drug (marijuana). According to another estimate, more than 90 percent of drug and alcohol abusers are actively employed, and a significant number of employees use drugs on the job.

Alcohol Abuse

Alcohol abuse is most prevalent among "blue collar" workers. The cost to society of alcohol abuse is estimated at \$30-40 billion annually; as many as 9 million people are classified as chronic abusers. The effects of alcohol are well known; it is a central nervous system depressant and anesthetic. Alcohol loosens inhibitions, impairs judgment, causes personality changes, impairs memory, and causes loss of coordination. While a BAC of 0.10 percent is deemed to render a driver in most states "under the influence," some states have lower tolerance levels of 0.08 percent. The federal government's tolerance level for commercial drivers is 0.04 percent.

Prescription and Over-the-Counter Drugs.

Improperly used prescription and "over the counter" drugs can also present a problem in the workplace. Policies for these substances should be incorporated into a comprehensive drug testing program. Prescription drugs may be harmful to the user, other employees, and the public, if they are abused. Prescription drugs can present legal problems for employers if drug testing programs do not take into account the fact that employees may be using them, properly or improperly. There are several practical methods available to obtain the necessary information about prescription drug use which would affect job performance.

- Incorporate in the testing consent form a space for employees to list all prescription drugs they are currently taking.
- Provide a separate form for employees to complete whenever they are asked to submit to a physical which includes a drug test.
- Develop and post a rule requiring employees returning to work from an illness to indicate whether he/she has been given a prescription, and if so, for what.
- Develop and post a rule requiring employees to inform a supervisor any time they take a prescription or over-the-counter drug, and provide that management will determine whether the employee is fit to perform his duties while on that drug.
- Require employees returning from illness or layoff to submit to a physical to determine fitness for duty.

References

1. Rothstein, *"Medical Screening and the Employee Health Cost Crisis"*, 1989, 95-124
2. DeGresce...et al, *"Drug Testing in the Workplace"*, 1989, 130-138
3. Swotinsky, *"The Medical Review Officer's Guide to Drug Testing"*, 1992
4. Federal Register, Vol. 54, No.230, 1989, 49866-76
5. de Bernardo, *"Workplace Drug Testing"*, 1994
6. de Bernardo...et al, *"Guide to State Drug Testing Laws"*, 1995

For more information, contact your local Hartford agent or your Hartford Loss Control Consultant. Visit The Hartford's Loss Control web site at <http://www.thehartford.com/corporate/losscontrol/>

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Appendix: Sample Policy Statement

Date:

To: All Employees

From: [Company President]

Re: Policy on Drug-Free Workplace

This is to reiterate, and state in a more formal way, our policy regarding the work-related effects of drug use and the unlawful possession of controlled substances on company premises. Our policy is as follows:

Employees are expected and required to report to work on time and in appropriate mental and physical condition for work. It is our intent and obligation to provide a drug-free, healthful, safe, and secure work environment.

The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, or the abuse of a legal, non-controlled substance such as prescription or over-the-counter drugs and/or alcohol on company premises or while conducting company business off company premises is absolutely prohibited. Violations of this policy will result in disciplinary action, up to and including termination, and may have legal consequences.

The company recognizes drug dependency as an illness and a major health problem. The company also recognizes drug abuse as a potential health, safety, and security problem. Employees needing help in dealing with such problems are encouraged to use our employee assistance program and health insurance plans, as appropriate. Conscientious efforts to seek such help will not jeopardize any employee's job and will not be noted in any personnel record.

Employee Assistance Program Information

National Clearing House for Drug Abuse Information

Box 1635, Rockville, MD 20850

National Institute on Drug Abuse Information

5600 Fisher Lane, Rockville, MD 20857

(800) 843-4971 or (301) 443-6014

American Council for Drug Education

5820 Hubbard Drive, Rockville, MD 20852

Appendix:

Drug Testing for Special Classes of Workers

Federal Employees

In safety-sensitive jobs, the federal government requires testing of federal employees and urges other employers to do the same. The 1988 Federal Drug-Free Workplace Act requires federal contractors to adopt drug testing policies or risk losing their government contracts. In 1989, the U.S. Supreme Court issued two far-reaching decisions on drug testing in the workplace. To be eligible for contract awards or grants, employers must certify to the federal agency that they will meet certain requirements designed to keep their workplaces free of illegal drugs. Included are the requirements to:

- *Publish a policy* prohibiting the possession or use of controlled substances in the workplace, with actions to be taken against employees who violate the rules. Employees must be given a copy of the policy statement.
- *Establish a drug-free awareness program* that informs employees about the dangers of workplace drug abuse; the employer's intent to maintain a drug free workplace; the availability of rehabilitation; and the penalties that may be imposed on employees who abuse drugs.
- *Take appropriate action* against employees convicted of criminal drug offenses.

The U.S. Supreme Court is supportive of blanket drug and alcohol testing (i.e., testing without individual cause or suspicion) of federal employees who occupy sensitive safety and public security positions. The privacy rights of federal employees are deemed by the Court to be less important than the interests of the government employer in discouraging drug use in important positions of federal employment.

In *Skinner v. Railway Labor Executives Association*, railroads were viewed as an instrument of the federal government, and therefore must comply with the railway administration's regulations requiring urine and blood testing following major train accidents or incidents. The Court ruled that the government's compelling interest in ensuring that rail workers are not impaired on the job out-weighs the "minimal" intrusion on employee privacy rights. It thus recognized that on-the-job drug testing is necessary to protect public safety.

In *National Treasury Employees Union v. Von Raab*, three controversial issues were addressed: first, whether testing should be permitted when there is no perceived or documented drug problem in the workplace; second, whether test methods are reliable; and third, whether a positive test proves that there was on-the-job impairment. In all three instances, it was found that government employees did not have a legitimate case to bar the employer from conducting drug testing.

In *Von Raab*, it was decided that if government interests outweigh private expectations, a search, even without a warrant or individualized suspicion, would be deemed reasonable and legal. It went on to state that three compelling government interests had to be weighed: the integrity of the work force; public safety; and the protection of sensitive information. To legally justify any testing approach, compelling government interests must be proven and then demonstrated why they outweigh the employees privacy expectations.

Interstate Drivers

Effective December 1990, the Federal government mandated drug testing for federally regulated motor carriers in five specific areas:

- pre-employment
- periodic (biennial)
- random
- post-accident
- reasonable cause

These regulations apply to interstate drivers of commercial motor vehicles with gross vehicle weight ratings (GVWR) over 26,000 pounds, vehicles transporting hazardous materials which are required to be placarded, and vehicles designed to transport more than 15 passengers.

The *post accident testing* is required only when the accident is "DOT reportable", and the driver was issued a citation by the police for a moving traffic violation. Under the "*reasonable cause*" section, the company officials, in addition to the driver's supervisor, may initiate the demand that a test be made. Reasonable cause means that the motor carrier believes that the driver's appearance or conduct are indicative of the use of drugs. The observations of the driver must occur while the driver is on duty. The supervisor(s) making the observation must have received training in detection of probable drug use by participation in an Employee Assistance Program (EAP). Motor carriers must establish an EAP to provide training for drivers and supervisory personnel (at least 60 minutes). Carriers are not required to provide rehabilitation or to provide job security to drivers who fail a drug test.

All drug testing must be done from urine specimens collected under highly controlled conditions. Specimen collection procedures require a designated collection site; security for the collection site; chain of custody documentation; use of authorized personnel; privacy during collection; integrity and identity of the specimen; and transportation to the laboratory. While there were initially very real concerns about the accuracy of the test results and the confidentiality of the information, these have largely been overcome through the use of government certified testing laboratories (NIDA). The only laboratories that can be used to meet the federal requirements are those that have been certified by the National Institute on Drug Abuse (NIDA). A listing of more than 80 certified labs is published in the *Federal Register* (all states *except* AK, CO, CT, DE, HI, ID, IA, KY, ME, MT, NE, NH, ND, RI, SD, VT, WV, WY).

The initial drug test is an immunoassay for five classes of drugs with the following "positive" levels:

Marijuana	100 ng/ml urine
Phencyclidine (PCP)	25 ng/ml urine
Cocaine	300 ng/ml urine
Amphetamines	1000 ng/ml urine
Opiate	300 ng/ml urine

If a "positive" results on any of these drugs, then a second confirmatory test must be performed using gas chromatography/ mass spectrometry techniques, at the following minimum "positive" values:

Marijuana	15 ng/ml urine
Codeine	300 ng/ml urine
Cocaine	150 ng/ml urine
Amphetamines	500 ng/ml urine
Morphine	300 ng/ml urine
Methamphetamine	500 ng/ml urine
PCP	25 ng/ml urine

Most drugs will not be detected in urine samples after three days from use. The exception to this is marijuana, which can be detected for three weeks, or up to six months after cessation for daily users. Only specimens confirmed positive on the confirmatory test are reported to the Medical Review Officer. Upon conviction of driving under the influence of a prohibited drug, a driver is disqualified for at least one year, and up to three years, depending on previous convictions.

Motor carriers must maintain an annual summary of the program results including:

- Total number of drug tests administered
- Number of tests administered by *type* (pre-employment, periodic, post-accident, random, reasonable cause)
- Total number of individuals who did not pass tests
- Number of individuals who did not pass each type of test
- Disposition of individual who did not pass test
- Number of confirmatory tests required
- Number of positives for each of the controlled substance tests.

Appendix:

Drug Screening In The Workplace

Federal Requirements

(Code of Federal Regulations, Title 49, Part 382, 391 Subpart H)

Employer Requirements

- Employers with drivers required to have Commercial Driver's License (CDL) and operating Commercial Motor Vehicles (CMV) must have controlled substance testing programs in place.
- Includes State and Municipal employees, intrastate as well as Canadian and Mexican drivers (foreign carriers with less than 50 drivers have until 7/1/97 to comply).
- Must provide educational materials explaining the company program, company policies, and testing procedures. This material must cover:
 - Employer's designated person to answer employee questions
 - Categories of drivers affected
 - Details regarding safety sensitive functions and when regulations apply
 - Prohibited conduct
 - Required testing
 - Testing procedures
 - Consequences of refusal of testing
 - The effects of controlled substances on an individual's health, work and personal life.
- Employees must sign a statement indicating they have received the materials.
- Persons designated to determine whether *reasonable suspicion* exists must receive at least 1 hour of training.
- Must establish Employee Assistance Programs (EAPs)
- Employers must give either written or oral notice to an employee that he/she will be tested.
- All tests must be reviewed by a Medical Review Officer (MRO) before being released to the employer. It is the MROs responsibility to contact a driver found to have a *positive* test result.
- Must advise drivers, found to be in violation, of the available resources for resolving their problems.
- Employers must maintain an annual summary of testing records.
- Records must be kept for 1 year indicating:
 - an individual's negative test results
- Records must be kept for 2 years indicating:
 - company's testing procedures
 - training provided to drivers and supervisors
- Records must be kept for 5 years for:
 - Drivers verified positive for controlled substances.
 - Documentation or refusal to take a controlled substance test
 - Driver evaluation and referrals
 - Calendar year summaries specifically requested by a regulatory official.
- Records must be maintained in a "secure" location with controlled access and be available within 2 business days of the request, at the employer's principle place of business.

Driver Requirements

- Cannot report to duty while using any controlled substance, on or off-duty.
- Cannot possess or use controlled substances while performing *safety sensitive* functions.
- Must submit to required controlled substance urine testing.
- Drivers who test positive and are in after-care programs, must be subject to follow-up testing for 5 years.

Types Of Testing

Pre-Employment

- Driver must be tested for controlled substances prior to being used for the first time in a safety sensitive function.

Periodic

- Driver shall be tested at least every 2 years unless
 - the driver participates in a drug testing program of another carrier
 - the motor carrier is testing its drivers at the 50% rate under the random testing requirements.

Random

- For 50% of the average number of driving positions
- Unannounced, using scientific random tables

Reasonable Cause

- Testing must be done if employer determines that there are specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver which point to a violation of the prohibitions have occurred. These may include indications of the chronic and withdrawal effects of controlled substances.
- A written record of the observations that led to the test must be prepared before the results of the test are released or within 24 hours, whichever comes first.

Post-Accident

- Driver must be tested for controlled substance use after an accident if:
 - A fatality resulted
 - The driver received a citation for a moving traffic violation.
- If a test cannot be performed within 32 hours of accident, employer must prepare records detailing the circumstances that prohibited testing and submit same to the FHWA.

Return-to-Duty

- Driver found in violation of the controlled substances prohibitions must be tested *negative* before being allowed to return to a safety sensitive function.

Follow-Up

- Unannounced follow-up testing must be conducted when a driver is determined by a SAP to need assistance in resolving problems associated with controlled substances.
- There must be at least 6 tests within the first 12 months of Return-to-Duty.

Appendix:

Model Drug-Free Workplace Program

The following constitutes an effective drug free workplace program.

- ❑ ***A written mission statement and goal-oriented policy***, clearly written (in language that typical workers can understand), supported by top management, understood by all employees, and consistently practiced and enforced.
- ❑ ***Employee awareness education***, which describes the program to all employees, discusses the hazards associated with drug and alcohol usage, and outlines procedures to follow when testing/evaluating for drug use in the workplace. All training should be documented.
- ❑ ***Separate supervisory training***, covering the rights and responsibilities of the employees and the supervisors, the company's policies and procedures, how to recognize possible drug usage, and how and where to refer individuals with possible problems (i.e., what employee assistance programs or other resources are available). In addition, the training should cover any documentation requirements, performance/behavior criteria, etc.
- ❑ ***Drug testing***, the stated purpose of which is to deter the abuse of drugs and alcohol, avoid hiring employees who use illegal drugs or overindulge in alcoholic beverages, and to provide early identification and referral to treatment of employees who have drug or alcohol problems. Testing should be done by laboratories certified by the U.S. Department of Health and Human Services' National Laboratory Drug Testing Certification Program. Testing by other laboratories is discouraged because of potential legal challenges.
- ❑ ***Drug and alcohol testing guidelines***, to ensure that the drug testing program runs smoothly. Although drug and alcohol testing is normally the most controversial element of a drug free workplace program, it can also be the most cost effective, especially when it is part of a comprehensive program. Employers are encouraged to use drug testing when individuals apply for employment; post-accident and/or "for cause"; and follow-up after positive results are obtained on drug tests. Random drug testing is optional, but it should be strongly considered for premium discounts approaching 5%.
- ❑ ***Consideration of treatment vs. termination***. The suggested (and typically the most cost effective approach) is to treat any employee who tests positive or who voluntarily comes forward with his/her problem. Termination is also an option; but, because of possible legal ramifications, termination should occur only after all previously discussed policy procedures have been followed (and documented).

Each employer's final program should be reviewed by an attorney before it is actually implemented. On the following page is a loss control checklist that can be used to evaluate the effectiveness of a drug-free workplace program.

Appendix: Drug-Free Workplace Evaluation

ITEM	COMMENTS
1. Written policy statement, with evidence of support by top management.	
2. Written program with specified procedures for employee training, supervisory training, drug testing procedures, and treatment/termination options (i.e., enforcement and/or disciplinary program).	
3. Evidence of employee training (documented by having employees sign that they have received and understand provided training).	
4. Evidence of supervisory training (documented with content and objectives listed).	
5. Drug testing procedures <ul style="list-style-type: none"> <input type="checkbox"/> All pre-hire applicants tested <input type="checkbox"/> For cause testing (including post accident and identified suspicious behavior) <input type="checkbox"/> Random testing (a suggested initial target is 25% of the entire workforce annually, adjusted up and down, depending on number of positives). <input type="checkbox"/> Use of certified laboratory for analysis <input type="checkbox"/> Use of medical review officer to interpret results. 	
6. Employee assistance program or resource file for reviewing individuals as needed.	