



Best Practice

Title: Drug and Alcohol Testing
Issue No.: CSDA-BP-018
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Introduction

Employers who implement drug testing as part of the daily workplace culture, as well as part of the hiring process, set a high standard and send a powerful message about the organization's culture. Current and potential employees understand that the issues of drug use and workplace safety are significant considerations. Drug testing in the workplace benefits the employee, the employer and the customer in the following ways:

- Reduces employer liability
- Allows employees to easily say no to illegal drug use. "No, thanks. They drug test at work"
- Helps employers identify workers with substance abuse issues
- Saves lives and prevents injuries

The following information is provided as an introduction to this subject. State and federal regulations provide specific procedures and information that may apply to your organization. Of course, those rules have precedence over this Best Practice document.

Table of Contents

1. Reasons for Testing
2. Possible Outcomes
3. Common Questions
4. Drug Testing Cutoff Levels
5. Drug Test Program Components

1. Reasons for Testing

Here are examples of instances when drug testing may be appropriate in the workplace.

- 1.1 Pre-employment
Testing of an applicant before an offer or after beginning work, with employment conditional on the applicant passing the test.
- 1.2 Reasonable Suspicion
The employer has a specific, contemporaneous and articulable suspicion of drug use based on observations of behavior, appearance, odors, speech, physical symptoms, pattern of abnormal behavior, arrest or convicted of drug offense or corroborated reliable reports.
- 1.3 Incident Related
Used when an employee is involved in an on-the-job accident, possibly involving human error. It is acceptable to test even if no injury occurred, especially if it appears that the accident could have been avoided or the consequences could have been minimized.

1.4 Random

This type of testing is used in high-risk, safety-sensitive occupations. This involves randomly selecting employees without notice or unscheduled testing of all employees. The Department of Transportation (DOT) Agency that regulates a specific transportation industry sets the random testing rate. The rates are always effective January 1 of the calendar year. To check for the current rate, visit ODAPC's website at: <http://www.dot.gov/ost/dapc/rates.html>.

1.5 Return to Duty Testing

The DOT's return-to-duty process is explained in Section 2. A positive test is a violation, as is a refusal to be tested and a number of other things that are prohibited by DOT. An employee who has been removed from duty because of a violation must successfully complete this process before he/she can be considered for return to duty or be hired by a different DOT-covered employer. Employers are encouraged to visit www.dot.gov and review return-to-duty processes.

2. Possible Outcomes

When an employee returns a positive test, refuses to be tested or has one of the DOT's other violations, the DOT requires the employer to immediately remove that employee from safety-sensitive functions. An employer who allows an employee with a violation to continue performing safety-sensitive functions is subject to fines of up to \$10,000 per day.

An employee with a violation has two options:

- 1) He/she can find another job, outside of the transportation industry. **OR**
- 2) He/she can be considered for returning to safety-sensitive functions in the transportation industry, but only after successfully completing the DOT's return-to-duty process and providing a negative result on a return-to-duty drug and/or alcohol test.

The return-to-duty process requires involvement of a qualified and trained Substance Abuse Professional (SAP). The SAP must conduct a face-to-face clinical evaluation of the employee. DOT's rule then requires the SAP to recommend treatment or education for the employee. The SAP must send a report to the employer, specifying the SAP's recommendation for treatment or education. The SAP must then monitor the employee's progress.

When the SAP determines that the employee has made sufficient progress, the SAP will schedule a follow-up evaluation for the employee. Based on that evaluation, the SAP will report to the employer that the employee has successfully complied with the SAP's recommendation (or that the employee has not complied.) If the SAP reports that the employee has successfully complied with the recommendation, the employer will decide whether to arrange for a return-to-duty test for the employee (the employer is not obligated to take the employee back).

If the SAP reports that the employee has not successfully complied with the recommendation, the employer cannot return the employee to safety-sensitive functions. An employee who has not successfully complied with the SAP's recommendation may not return to safety-sensitive functions for any DOT employer until the SAP's recommendations have been fully met, and the employee is able to provide a negative return-to-duty test.

Issue No.	Title	Rev.	Effective Date	Page
CSDA-BP-018	Drug and Alcohol Testing		5/20/2015	Page 2 of 5

3. Common Questions about Drug Testing

3.1 Who gets tested?

Regardless of job titles—supervisor, part time, apprentice or journeyman—people are chosen for testing based on their job function (known as a safety-sensitive function) and not their occupational title. Only DOT safety-sensitive employees may be part of the DOT random pool or pools. Remember, a DOT testing program must always be separate and distinct from a private company or non-DOT testing program. This applies to random testing pools too. DOT and non-DOT random testing pools must be completely separate.

3.2 How are employees selected for testing?

Everyone in the pool must have an equal chance of being selected and tested in each selection period. Be sure to use a scientifically valid method to select employees for testing, which may include the use of a random-number table or a computer-based random number generator that is traceable to a specific employee.

Warning: unacceptable random selection practices include selecting numbers from a hat, rolling dice, throwing darts, picking cards or selecting ping pong balls.

3.3 How often should selections and tests take place?

The element of surprise is essential to an effective program. While employees know they will be tested, they are never quite sure of when. Random selections and testing should be performed at least quarterly but not, for example, only once quarterly. Irregular testing is the key.

Here are smart things you can do to figure out when to test:

- Spread testing dates reasonably throughout the year in a non-predictable pattern.
- Conduct random drug tests anytime employees are on duty and just before, during, or just after the employee performs a safety sensitive job.
- You can enhance the non-predictability of your program by conducting tests at the start, middle or end of each shift. Avoid creating opportunity for such as “Yup, the last Friday of every month the second shift gets tested.”

3.4 How are employees notified to report for a test?

Every employee should be discreetly notified according to your company’s policy, but random testing must also be conducted in strict confidence with a limited number of people having knowledge of the selection list.

Every employer should have procedures in place to ensure that each employee receives no advanced notice of selection. But, be sure to allow sufficient time for supervisors to schedule for the administration of the test and to ensure that collection sites are available for testing. Remember, employers must provide appropriate privacy for each employee while he or she is being tested.

Issue No.	Title	Rev.	Effective Date	Page
CSDA-BP-018	Drug and Alcohol Testing		5/20/2015	Page 3 of 5

3.5 What must employees do when notified of a random test?

When an employee is notified, he or she must proceed immediately to the collection site. Immediately means that after notification, all the employee’s actions must lead to an immediate specimen collection. Many employers develop random testing procedures or policies that clearly state what activities are acceptable after notification. It is important that there is no misunderstanding among employees about what is expected.

4. Drug Testing Cutoff Levels

*DOT Rule 49 CFR Part 40 Section 40.87
Subpart F - Drug Testing Laboratories*

What are the cutoff concentrations for drug tests?

(a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Initial Test Analyte	Initial Test Cutoff Concentration	Confirmatory Test Analyte	Confirmatory Test Cutoff Concentration
Marijuana metabolites	50 ng/mL	THCA ¹	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoyllecgonine	100 ng/mL
Opiate metabolites			
Codeine/Morphine ²	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamines ³			
AMP/MAMP ⁴	500 ng/mL	Amphetamine	250 ng/mL
		Methamphetamine ⁵	250 ng/mL
MDMA ⁶			
	500 ng/mL	MDMA	250 ng/mL
		MDA ⁷	250 ng/mL
		MDEA ⁸	250 ng/mL

¹Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

²Morphine is the target analyte for codeine/morphine testing.

³Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.

⁴Methamphetamine is the target analyte for amphetamine/methamphetamine testing.

⁵To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.

Issue No.	Title	Rev.	Effective Date	Page
CSDA-BP-018	Drug and Alcohol Testing		5/20/2015	Page 4 of 5

⁶Methylenedioxyamphetamine (MDMA).

⁷Methylenedioxyamphetamine (MDA).

⁸Methylenedioxyethylamphetamine (MDEA).

(b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.

(c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.

(d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 49862, August 16, 2010; 77 FR 26473, May 4, 2012]
Updated: Wednesday, January 16, 2013

NOTE: The above information is provided as a summary of rules and procedures at the time of writing. It must not be taken as authoritative; instead, consult appropriate experts or providers and the relevant rules themselves. Rules change from periodically and this general advice may not be current.

5. Drug Test Program Components

A well designed drug testing program should contain the following components:

- Employers should provide notice to applicants and employees regarding testing policies. Notice should contain: purpose, type of testing used, circumstances of when it can occur, describe the procedure, disciplinary policies and consequences of a positive test.
- If random testing of employees in safety-sensitive positions, those employees should get a separate notice.
- Employers should have everyone sign a consent form to acknowledge that they have read the policy and agree to it. Test results should be considered absolutely confidential. Negligent release of test results could result in legal action over issues such as invasion of privacy, intentional infliction of emotional distress and defamation. Due to the laws described in the Americans with Disabilities Act (ADA), it is necessary to maintain such records in a separate, confidential medical file. As a practical matter, the privacy rules in the Health Insurance Portability and Accountability Act (HIPAA) can make it difficult for employers to obtain specific drug test results from the testing lab. For that reason and others, employers should have employees sign a properly-worded consent form allowing the testing lab to release such results to the employer.
- Policy should specify the method of confirming positive results and it should allow the person to explain or challenge the results.
- Policy should, to the greatest extent possible, protect the confidentiality of the employees and limit the disclosure of the results.

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Issue No.	Title	Rev.	Effective Date	Page
CSDA-BP-018	Drug and Alcohol Testing		5/20/2015	Page 5 of 5