

WHEN TO DRUG TEST AT WORK

Reviewing federal regulations and state laws where your business operates is essential to maintaining a compliant and legally defensible workplace drug testing program.



Federal Regulations

- Department of Transportation (DOT) Regulations (49 CFR Part 40)
- Federal Motor Carrier Safety Administration (FMCSA), Pipeline and Hazardous Materials Safety Administration (PHMSA), Federal Aviation Administration (FAA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), United States Coast Guard (USCG)
- Drug-Free Workplace Act of 1988
- Americans with Disabilities Act (ADA)
- Occupational Safety and Health Administration (OSHA)
- Equal Employment Opportunity Commission (EEOC)

State Laws

Each state may have its own drug testing laws, regulating:

- how drug testing must be conducted.
- who can be tested and when.
- required employee notification and consent procedures.
- written policy requirements.
- medical and recreational marijuana use protections.
- workers' compensation premium reductions tied to compliant testing programs.

Pre-Employment



- Which occupations may be required to pass a pre-employment drug test.
- Some states only permit after a conditional offer of employment is made.
- Some states and cities limit or prohibit pre-employment testing for cannabis.

Reasonable Suspicion Testing

"Reasonable suspicion" that the employee is at work while under the influence.

- States may provide specific guidance as to what constitutes reasonable suspicion; review all applicable laws carefully.
- Some states may require written documentation of observed signs of reasonable suspicion.

Post-accident Testing

Drug and/or alcohol testing after an accident has taken place in the workplace.

- Some states may provide a specific definition of what constitutes an accident or may require (and define) reasonable suspicion.
- Some states may guide how soon drug or alcohol testing must take place following an accident.

Random Testing



Testing that takes place randomly on a set pool of individuals in a workplace.

- A random testing pool can be defined by many criteria – some states may provide guidance as to how to define a testing pool.
- The selection method for a pool is often provided by state law or federal guidance.

Return-to-Duty Testing

Testing that occurs prior to an employee's return to work (usually following a leave of absence involving an accident, a medical leave from work, or participation in a substance abuse treatment program, etc.).

Follow-Up Testing

Testing that occurs following participation in an EAP, rehabilitation program, etc.

- Testing generally occurs over a set period.
- Employees may be supervised by a Substance Abuse Professional (SAP).

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sales@drugpak.com



800.321.7826