

Five Things To Know About Drugs And Drug Testing In The Workplace

This issue of DWInfo focuses on drug-testing in the workplace, and addresses some common questions employers have when starting or expanding a Drug-Free Workplace Program. Such questions include: how many workers are likely to be using drugs? What drugs are commonly included in drug tests? What are the legal concerns with drug-testing? When should I perform drug tests on my employees? These are just a small sample of the questions employers ask when they consider implementing a workplace drug-testing program. If you have other concerns or questions, contact the DWI Resource Center at (505) 881-1084 for more information.

1. The First Principle of Administering a Drug-Testing Program

The first rule of drug-testing is simple: policies, policies, policies. Do not perform a drug test unless specifically required by either industry regulations or your company's written policies. The decision to test an employee is relatively easy in the case of pre-employment, post-accident, and return to work testing. Prospective employees should be told about the company's pre-employment testing policy when applying for the position, and the company's policy on post-accident and return-to-work testing should be included in the employee handbook, which

should be signed by all employees to acknowledge receipt and understanding of company policies.

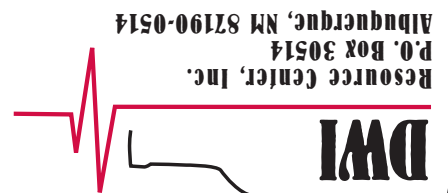
However, the decision to perform testing under "reasonable suspicion" or "probable cause" is more complicated. In addition to including these tests in the company's written policies, be sure that supervisors and managers have received the proper training to recognize probable signs of drug and alcohol use, and understand how "questionable behavior" should be properly documented and tracked. Random testing is often the most difficult for administrators to understand. The golden rule of random testing is simple: on each occasion that a random selection is made, EVERY EMPLOYEE in the pool must have an equal chance of being selected! Remember: random testing does not mean discretionary testing!

2. What Drugs Should We Test For?

Currently, federal programs mandate testing for only 5 drugs of abuse: marijuana, cocaine, amphetamines, opiates, and PCP. Many employers add barbiturates, benzodiazepines, methadone, methaqualone and propoxyphene to make a "ten panel" testing program.

Continued Inside

NONPROFIT
ORGANIZATION
U.S. POSTAGE
PAID
ALB., NM
PERMIT # 1405

**DWI**
Resource Center, Inc.
P.O. Box 30514
Albuquerque, NM 87190-0514

In addition, there are many frequently used drugs that employers rarely test for. These might include: benzodiazepines such as the "date-rape" drug Rohypnol; amphetamine derivatives such as "ecstasy;" opiate analogs like hydrocodone or percodan; mushrooms (psilocybin); betel quid; metcathionine; gamma hydroxybutyrate (GHB), formerly known as a "muscle builder" in health food stores; and inhalants such as glues, aerosols and other volatile substances.

3. Do I Need to Bring My Employee to the Test Collection Site if it is a For-Cause Test?

Mark A. de Bernardo, Executive Director of the Institute for a Drug-Free Workplace, had this answer:

"Need"? No, but it certainly is a good idea. You could just require the employee to report to the specified collection site within a certain time frame (e.g., within 60 minutes, or whatever is practical under your location circumstances), and if the employee does not comply, he or she would have their employment terminated for insubordination/failure to follow company policy. However, you run the risk of the employee having an accident and the potential liability because you sent the employee out over the open roads in a 5500-pound vehicle that goes 55 mph knowing that he or she was/likely was impaired and agitated (or so the Plaintiff's attorney would argue... obviously not so hypothetical, we have seen these cases). Some employers call a cab to transport the employee to-and-from the test site, and therefore avoid the potential accident liability issue (and have a neutral non-company person involved in the transporting). Ultimately, this is a judgment call. It is not a matter of law, but a matter of practicality. Under normal circumstances, I would say "yes," transport the employee to the collection site. An obvious exception is if the employee is belligerent/hostile/potentially violent.

4. What Are The Legal Issues?

The most common legal concern has been the issue of "illegal search and seizure" of bodily fluids. There are many opponents of the whole concept of drug testing and their two favorite watch-words are that the testing is "invasive" and represents "illegal search and seizure." In more pleasant language, there are two questions: are drug and alcohol testing fair and non-discriminatory? Do drug and alcohol testing compromise the right to privacy?

To date, court decisions provide two incentives for drug testing. First, the carrot. To date, courts have upheld drug testing as a legitimate means of determining employees' ability to work. Second, the stick. The majority of courts have held businesses liable for accidents caused by drug-using employees; particularly when the company has no formal Drug-Free-Workplace policy.

Hiring A New Employee? Check out their DWI record online!

A DWI on an employee's record can be an indicator of alcohol & drug-related problems, lack of personal responsibility, and poor decision-making skills. Check your employees' records before you hire! The DWI Resource Center offers employers a free online DWI offender database, containing records from the last five years. Check your employees' records today by visiting our website:

<http://www.dwiresourcecenter.org>

Including employees or labor unions in development drug-free workplace policies can help reduce backlash and potential lawsuits. A joint management-labor Drug-Free Workplace Program boosts morale and results in better acceptance of the plan by a company's work force. Management-driven programs have a much higher probability of being challenged through litigation than those programs that have the full confidence of both management and company employees.

5. Do I Really Need A Drug-Free Workplace?

Here are some startling facts from the *National Drug Task Force Journal*:

- The United States has only 6 percent of the world's population, but 60 percent of the world's illegal drug market.
- Over 20 million Americans use marijuana, 6 million use cocaine, and half a million use heroin.
- Almost one third of Americans between ages 20 and 40 have used an illicit drug once in the past year, and almost half of Americans in the work force have used an illicit drug once in the past year.

Even more startling is that many of these drug users are prominent citizens in our communities. They are business owners, doctors, civic leaders, parents and neighbors. According to the *Journal*, the average cocaine user has some college education, three quarters are employed, and more than a third earn \$25K or more each year.

Alcohol abuse is even more prevalent. An estimated 13 million Americans are alcoholics. According to the New Mexico Traffic Safety Bureau, an alcohol-involved crash occurs in New Mexico every 2.5 hours. A person dies in an alcohol-involved crash every 40 hours, and someone is injured every 3 hours. 18 percent of the alcohol-involved drivers in crashes were less than 21 years old. 77 percent of alcohol-involved drivers in crashes were male.