

## [Drug- and Alcohol-Testing Policies: Key Drafting Tips](#)

**Go to:** [Preparing the Alcohol and Drug Testing Policy](#) | [Sample Alcohol and Drug Testing Policy Maintained](#)

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This practice note addresses best practices for drafting alcohol- and drug-testing policies. Except for certain federal contractors, federal grantees, and employers who employ drivers of commercial vehicles, employers are not required to implement an alcohol and drug testing policy. Nevertheless, because employees who abuse alcohol and drugs may adversely impact workplace safety and productivity, many employers test job applicants and employees as a means to reduce the costs and safety risks associated with alcohol and drug abuse.

For a non-jurisdictional annotated Alcohol and Drug Testing Policy, see [Drug and Alcohol Testing Policy](#). For state-specific alcohol and drug testing policies, see the Safety and Health column of [Employment Policies State Expert Forms and Checklists Chart](#). For state-specific practice notes on alcohol and drug testing policies, see the Pre-employment Inquiries and Testing column of [Screening and Hiring State Practice Notes Chart](#). For more information on drug and alcohol testing laws generally, see [Drug and Alcohol Use, Testing, and Accommodation: Key Employment Law Issues](#), [Drug and Alcohol Testing of Employees Checklist \(ADA\)](#), [Interviewing and Screening Job Applicants — Conducting Drug and Alcohol Testing When Screening Employees](#), and [Employment Screening § 4.01](#) et seq.

### **Preparing the Alcohol and Drug Testing Policy**

A well-written alcohol- and drug-testing policy clearly defines who the employer will test; when testing is required (e.g., pre-employment, reasonable suspicion, random basis); the testing procedures; and the consequences of violating the policy.

Any testing program implicates privacy rights. Therefore, it is important that the employer provide advance notice of the policy to anyone who will be subject to testing. The policy should emphasize the employer's commitment to using the least intrusive testing methods and keeping test results confidential. In addition, you must review applicable state and local laws to determine what prohibitions and/or restrictions exist on drug and alcohol testing.

### **Sample Alcohol and Drug Testing Policy**

The Company is committed to providing a safe, healthy, and productive workplace that is free from alcohol and unlawful drugs as classified under local, state, or federal laws while employees are working for [Company], whether on or off its premises.

In furtherance of this commitment, [Company] maintains a policy by which the Company may request or require applicants and employees to submit to alcohol or drug testing in certain situations. This policy is intended to comply with all applicable laws regarding drug and alcohol testing and privacy rights, and will be administered accordingly.

#### ***Pre-employment Testing and Retesting***

All applicants offered employment with the Company are subject to drug and alcohol testing. All offers of employment with the Company may be conditioned on the applicant submitting to and successfully completing and passing a drug and alcohol test in accordance with the testing procedures described in this policy.

#### ***Testing Based on Reasonable Suspicion***

In accordance with applicable law, an employee may be asked to submit to a drug and/or alcohol test if the employee's supervisor or other person in authority has a reasonable suspicion, based on objective factors such as the employee's appearance, speech, behavior, or other conduct and facts, that the employee possesses or is under the influence of unlawful

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drugs or alcohol, or both. Such employees may be required to undergo immediate medical evaluation to determine fitness for duty and appropriate drug or alcohol testing. Employees who exhibit signs of impairment during work and/or while on Company property will not be allowed to work until the Company receives the test results and determines no further action is necessary.

The Company has sole discretion to determine whether any situation warrants testing, and this policy does not prevent the Company from taking action without testing.

### ***Use of Legal Drugs***

The Company understands that employees may be prescribed legal drugs or take over-the-counter medication that may result in impairment. Nothing in this policy is intended to prohibit the legal use of over-the-counter medication. Individuals who take over-the-counter medication or other lawful medication that can be legally prescribed under both federal and state law to treat an illness or injury should inform their manager if they believe the medication will impair their job performance, safety, or the safety of others or if they believe they need a reasonable accommodation before reporting to work while under the influence of that medication. An individual should not report to work if he or she is so impaired. Individuals may use sick leave or vacation time for the absence. Additionally, employees should reach out to HR or their supervisor to determine whether or not they qualify for an unpaid leave of absence. The Company is committed to reasonably accommodate qualified disabled employees.

### ***Random Testing for Certain Sensitive Positions***

Employees in safety or security-sensitive positions are subject to drug and alcohol testing on a random basis. The Company will inform individuals in such designated positions that their position is subject to random drug testing.

### ***Post-Incident Testing***

The Company may require employees involved in any work-related accident or incident involving the violation of any safety or security procedures to submit to drug and alcohol testing, in accordance with applicable law. This policy applies even if the incident did not result in injury to any person or any property damage.

### ***Testing Procedures***

All drug and alcohol testing under this policy will be conducted by an independent testing facility licensed by the state in which the employee works, which will obtain the individual's written consent prior to testing. The Company will pay for the full cost of the test. All testing will be done with appropriate regard for accuracy, reliability, expediency, and employee privacy and confidentiality, and in compliance with applicable laws.

### ***Confidentiality***

All records relating to drug and alcohol test results will be kept confidential. The results of drug and alcohol tests shall not be disclosed without the prior written consent of the individual or a court order.

### ***Consequences of a Positive Test***

Employees who test positive will be subject to discipline, up to and including immediate termination of employment. Applicants who test positive will have their conditional job offers withdrawn. In accordance with applicable law, employees who test positive and are offered an opportunity to return to work may be subject to unscheduled random testing.

### ***Consequences for Refusing to Submit to Testing or Failing to Complete the Test***

Individuals who refuse to submit to testing as required by the Company or who fail to complete the test will be subject to discipline, up to and including suspension or immediate termination of employment. The Company will not consider applicants who refuse to submit to drug and alcohol testing for employment.

If you have any questions regarding this policy or if you have questions about alcohol and drug testing in the workplace that this policy does not address, please contact the Human Resources Department.

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