



# DRUG TESTING COMPLIANCE GUIDE FOR EMPLOYERS

A Practical Guide to Building and Maintaining a Legally  
Compliant Workplace Drug Testing Program



# INTRODUCTION

Workplace drug testing can help employers promote safety, reduce workplace accidents, improve productivity, and maintain compliance with federal, state, and industry-specific regulations. However, drug testing programs must be carefully designed to comply with applicable laws and protect employee rights.

This guide provides employers with best practices for developing, implementing, and maintaining a compliant drug testing program.

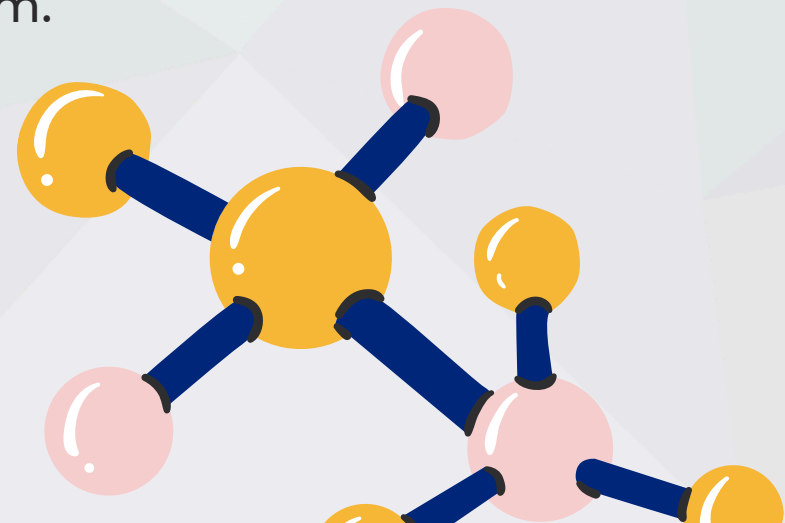


# Purpose of Workplace Drug Testing

Employers commonly implement drug testing programs to:

- Promote workplace safety
- Reduce accidents and injuries
- Protect company assets
- Improve productivity
- Meet federal or state regulatory requirements
- Maintain eligibility for contracts or insurance programs
- Support a drug-free workplace culture

A written policy should clearly state the purpose and objectives of the program.



# Know the Applicable Laws

**Drug testing laws vary significantly by jurisdiction.**

Federal Laws and Regulations

Employers should consider:

- Drug-Free Workplace Act of 1988
- Department of Transportation (DOT) regulations (49 CFR Part 40)
- Americans with Disabilities Act (ADA)
- Occupational Safety and Health Administration (OSHA)
- Family and Medical Leave Act (FMLA)
- Health Insurance Portability and Accountability Act (HIPAA)

State and Local Laws

Many states regulate:

- When testing may occur
- Required employee notices
- Marijuana protections
- Laboratory requirements
- Confidentiality standards
- Adverse action procedures

Best Practice: Review state-specific requirements before implementing any testing program.

# Establish a Written Drug Testing Policy

A comprehensive written policy should include:

## Program Scope

- Who is subject to testing
- Types of tests performed
- Circumstances under which testing occurs

## Prohibited Conduct

- Illegal drug use
- Misuse of prescription medications
- Possession or distribution of controlled substances
- Reporting to work under the influence

## Employee Responsibilities

- Disclosure requirements
- Cooperation with testing procedures
- Consequences of policy violations

## Disciplinary Actions

- Refusal to test
- Positive test results
- Tampering or adulteration

## Appeals Process

- Procedures for contesting results
- Retesting options
- Medical review procedures

## Pre-Employment Testing

Conducted before hiring decisions are finalized.



# Types of Drug Testing

### Best Practices:

- Apply consistently to similarly situated applicants.
- Obtain written consent.
- Ensure compliance with state restrictions.

# Random Testing

Employees are selected through a scientifically valid random process.

Best Practices:

- Use a neutral selection method.
- Apply consistently.
- Maintain documentation of selection procedures.



### Best Practices

- Train supervisors to recognize signs of impairment.
- Document observations immediately.
- Use at least two trained observers when possible.



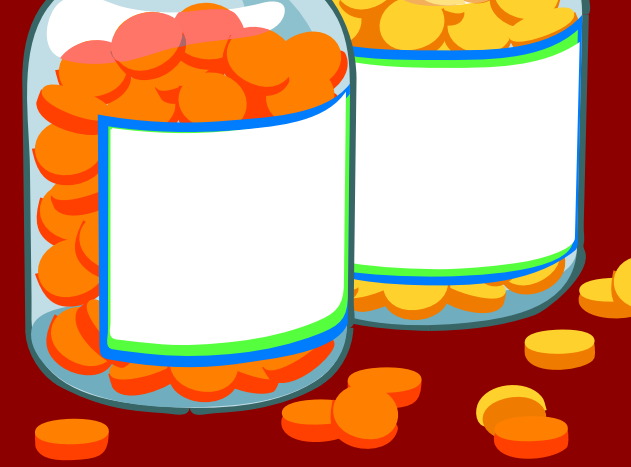
# Reasonable Suspicion Testing

Conducted when objective evidence suggests impairment.

Examples include:

- Slurred speech
- Unsteady movements
- Erratic behavior
- Observable drug or alcohol use





## Post-Accident Testing

Conducted following workplace incidents.

### Important:

Testing should be based on a reasonable possibility that drug use contributed to the incident and must comply with OSHA guidance.

## Return-to-Duty Testing

Required before an employee returns after a policy violation or treatment program.

## Follow-Up Testing

Performed periodically after an employee's return to work.

# SELECTING A TESTING METHOD

Common testing methods include:

**URINE**

Days to weeks



Most common  
employment testing

**ORAL FLUID**

Hours to days



Recent-use detection

**HAIR**

Up to 90 days



Long-term history

**BLOOD**

Hours to days



Accident investigations

**BREATH  
ALCOHOL**

Immediate



Alcohol testing

COMMON USES

# Laboratory and Collection Requirements

Employers should use:

Accredited Laboratories

Recommended accreditations include:

- SAMHSA-certified laboratories
- CAP-accredited laboratories
- ISO-certified facilities

Chain of Custody Procedures

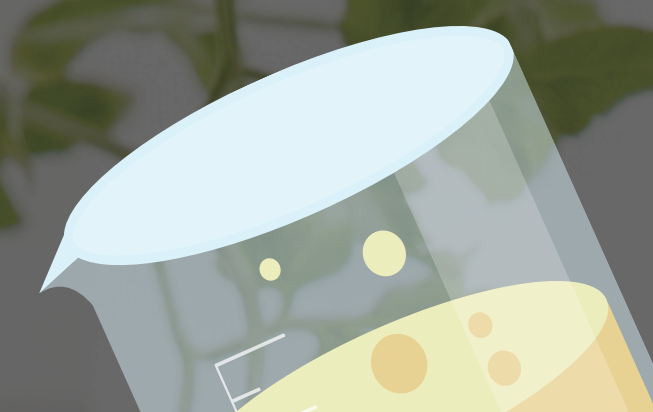
Maintain documentation of:

- Specimen collection
- Transfer and handling
- Laboratory receipt
- Testing and reporting

Specimen Integrity Measures

Include procedures for:

- Preventing adulteration
- Preventing substitution
- Maintaining secure transportation



State marijuana laws  
continue to evolve.



# Marijuana and Cannabis Considerations

Employers should review:

- Medical marijuana protections
- Recreational marijuana laws
- Off-duty conduct protections
- Safety-sensitive position exceptions

Important Consideration

A positive marijuana test does not necessarily prove current impairment.

Employers should develop policies that reflect current state laws and operational needs.

# Employee Consent and Notification

Before testing, employers should obtain:

## Written Consent

Include:

- Authorization for testing
- Release of results
- Acknowledgment of policy

## Required Notices

Provide:

- Drug testing policy
- Testing procedures
- Employee rights
- Consequences of refusal



# Confidentiality Requirements

Drug testing information should be treated as confidential medical information.

Access should be limited to:

- Human Resources
- Designated management personnel
- Medical Review Officers
- Authorized regulatory agencies

Maintain records separately from personnel files whenever possible.



# Recordkeeping Requirements

Maintain records for:

- Testing authorizations
- Chain of custody forms
- Laboratory reports
- MRO determinations
- Employee acknowledgments
- Training documentation

Retention periods may vary by law and industry.



# Supervisor Training

**Supervisors** should receive training on:

- Signs of drug and alcohol impairment
- Reasonable suspicion documentation
- Company policy requirements
- Employee privacy considerations
- Referral procedures

Regular refresher training is recommended.

# RESPONDING TO POSITIVE TEST RESULTS

Employers should follow a consistent process:

## STEP 1

Receive verified result from MRO.

## STEP 2

Review applicable policies and laws.

## STEP 3

Meet with employee.

## STEP 4

Determine appropriate action.

## Possible actions include:

- No action (if medically explained)
- Written warning
- Last-chance agreement
- Referral to Employee Assistance Program (EAP)
- Suspension
- Termination



# Common Compliance Mistakes

Avoid:

- ✗ Testing without a written policy
- ✗ Inconsistent application of testing rules
- ✗ Failure to use certified laboratories
- ✗ Lack of supervisor training
- ✗ Poor documentation
- ✗ Ignoring state marijuana protections
- ✗ Improper disclosure of test results
- ✗ Taking adverse action before MRO review

# Drug Testing Program Compliance Checklist

## Policy & Procedures

- Written drug testing policy exists
- Policy reviewed by legal counsel
- Employee acknowledgments obtained
- State law requirements reviewed

## Testing Operations

- Certified laboratory utilized
- MRO services engaged
- Chain of custody procedures implemented
- Collection procedures documented

## Training

- Supervisors trained
- HR personnel trained
- Refresher training scheduled

## Recordkeeping

- Secure record retention system established
- Confidentiality safeguards implemented
- Documentation retention schedule established

## Program Review

- Annual compliance review conducted
- State law updates monitored
- Vendor performance reviewed





# CONCLUSION

A compliant workplace drug testing program requires more than simply ordering tests. Employers must balance workplace safety, legal compliance, employee privacy, and evolving state laws. By implementing clear policies, using qualified testing providers, maintaining confidentiality, and applying procedures consistently, organizations can reduce risk while promoting a safe and productive workplace.

**Disclaimer:** This guide is for informational purposes only and does not constitute legal advice. Employers should consult qualified legal counsel regarding federal, state, and local requirements applicable to their specific workplace and industry.

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