

U.S. DRUG TESTING STATE AND FEDERAL LAWS & REGULATIONS

A PRESENTATION BY
BILL CURRENT

Comparing the EU Guidelines with the Various Laws and Regulations that Exist in the United States

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Bill Current

- The publisher of **The On-Line Ultimate Guide to State Drug Testing Laws**
- Author of 10 books including **Why Drug Testing?**
- Director of the **Annual Survey of Drug Testing Industry Trends and Predictions**
- Former executive director of the American Council for Drug Education and director of the Institute for a Drug-Free Workplace

European Guidelines

- Guidelines for Legally Defensible Workplace Drug Testing (Adopted)
- Drug and Alcohol Testing in Hair, Collection and Analysis (Adopted)
- Guidelines for Oral Fluid (Out for comments)

Source: <http://www.ewdts.org/guidelines.html>

Additionally...

- European Convention on Human Rights (1950)
- European Directive 89/391/EEC (*relative to improvements in the safety & health of workers*)
- EU directive 95/46/EC (*relative to data protection such as the health status of workers*)
- Charter of Fundamental Rights of the European Union of December 2000 (*Article 7: right to private life and Article 8: right to the protection of personal data*)

And...

- National laws specific to WDT include Finland and Ireland, which require compliance with the EDWTS guidelines, as well as Norway
- Plus... the interpretation of Labour Codes, privacy laws, data protection laws, and health and safety requirements at work also have applicability

U.S. Laws and Regulations

- Federal Regulations
- State Laws

Federal Regulations

- Mandatory Guidelines for Federal Workplace Drug Testing Programs
- Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR part 40)
 - Each DOT agency has its own drug and alcohol testing regulations but comply with part 40
- Other federal agencies have their own drug and alcohol testing regulations such DOD, DOE, NRC, etc.

Federal Regulations

- Additionally, other federal entities that are unrelated to workplace drug and alcohol testing may also have testing regulations.
- These include the criminal justice, law enforcement and other government mandated areas

Federal Regulations

- Various federal agencies play a role in regulating drug and alcohol testing
- These include among others:
 - Food and Drug Administration (FDA)
 - National Highway Traffic Safety Administration (NHTSA)
 - Substance Abuse and Mental Health Services Administration (SAMHSA) a division of DHHS which regulates certified laboratories among other functions

Federal Regulations

- Other federal laws and regulations can have a direct impact on drug testing procedures and practices.
- These include among others:
 - Americans with Disabilities Act (ADA)
 - Health Insurance Portability and Accountability Act (HIPAA)
 - And not least of all... the U.S. Constitution

State Drug and Alcohol Testing

- There are two general categories when it comes to state drug and alcohol testing laws:
 1. Public sector drug testing laws
 - a) State government
 - b) Municipal government
 2. Private sector laws...

State Drug and Alcohol Testing

In addition to non-workplace markets for drug testing, which include:

- Law enforcement
- Drug treatment
- Criminal justice
 - Drug courts
 - Family courts
 - Probation & parole
 - Prisons
- School/Students
- Professional and collegiate athletics

Private Sector Laws

- **All 50 states** permit workplace drug testing... while some regulate it heavily and others actually encourage it, and none prohibit it
- For the private sector, states fall into one or more of three categories relative to workplace drug and alcohol testing laws:
 1. States with no laws
 2. States with mandatory laws
 3. State with voluntary laws

State Drug and Alcohol Testing

- Additionally, one must consider the following:
 - Case law
 - State constitutions and privacy laws
 - Workers' compensation laws
 - Unemployment compensation laws
 - Drug test cheating laws
 - Medical marijuana laws
 - Etc...

Other Considerations...

- Collective bargaining agreements
- Insurance requirements
- State Drug-Free Workplace Acts
- How federal laws and regulations apply
- Etc...

States With No Drug Testing Law

- This includes employer-friendly states such as Texas and Indiana and...
- States with very restrictive approaches to drug testing based on case law and/or state privacy laws such as California or Massachusetts.

States With a Mandatory Law

- Mandatory laws apply to all employers that choose to conduct drug testing within a particular state.
- Some states with mandatory laws are employer-friendly such as Iowa and Maryland... while
- Other states with mandatory laws can be very restrictive such as Vermont and Minnesota

States With a Mandatory Law

- Some states with mandatory laws, such as Maryland, regulate the drug testing process (the “how” of drug testing) but are generally silent on who can be tested and under what circumstances.
- Other mandatory laws, such as Minnesota, regulate virtually every aspect of workplace drug testing, dictating who may be subject to testing and when tests may be required... as well as how drug testing can be conducted.

States with Voluntary Laws

There are two types of voluntary laws relative to drug testing:

1. States that offer workers' compensation discounts to employers who meeting drug testing standards established by the state, and
2. States that offer limited protection from liability when the employer acts in good faith based on the result of a drug test

Workers' Comp Discount States

- Alabama (5% discount)
- Arkansas (5% discount)
- Florida (5% discount)
- Georgia (7.5% discount)
- Idaho (Both: Discount unspecified & limited protections)
- Kentucky (Mandatory for mining industry; 5% discount)
- Mississippi (Both: 5% discount & limited legal protections)
- Ohio (Two levels: 4% or 7% discount available)
- So. Carolina (5% discount)
- Tennessee (5% discount)
- Virginia (5% discount)
- Wyoming (5% discount)

Limited Liability Protection

- Alaska
- Arizona
- Idaho
- Iowa
- Mississippi
- Utah

CONNECTICUT

TITLE 31. LABOR/CHAPTER 557/PART II

(Revised November 2011)

Statutory Requirements	Addressed in Statute	Permitted or Required	Comments
Program Components			
Written Policy	N		
Notice of Policy	N	Y	Applicants must be notified in advance
Testing Permitted			
Applicant	Y	Y	Written notice at time of application required; copy of result if positive; required for applicants to be school bus drivers
Reasonable suspicion (for cause)	Y	Y	Reasonable suspicion of person being under the influence of drug or alcohol which adversely affects job performance
Post-accident	N	Y	See "Reasonable Suspicion" in Notes
Periodic exam	N	Y	
Return-to-duty	N	Y	As part of EAP testing program during rehab.
Random	Y	Y	Per federal requirement; only safety-sensitive occupations as specifically approved by Labor Commissioner may be randomly tested; or as part of EAP testing program during rehab when employee participates voluntarily
Follow Up	Y	Y	
Other			See Notes for drug testing of drivers of commercial motor vehicles of various weight classifications
Alcohol Testing			
Training, required	N	Y	

CONNECTICUT TITLE 31. LABOR/CHAPTER 557/PART II

(Revised November 2011)

Testing Process			
Specimen Specified	Y		Only urine testing is mentioned, though other specimens are not specifically prohibited. Oral fluid specifically permitted according to Dept. of Health (Jan. 2011).
Drug Panels	N		Not mentioned
On-Site Testing Permitted	N	Y	Screen only; laboratory confirmation required
Collection Procedures	N		
Direct Observation	Y	N	Specifically prohibited
Certified Laboratory	N		Advisable to use SAMHSA or other certified lab
Specimen Required	N		
Cut-Off Levels Specified	N		
Confirmatory Test Required	Y	Y	Gas Chromatography/Mass Spectrometry required
Medical Review Officer	N		
Cost for Drug Testing Paid by Employer	N		
Testing Time Considered Work	N		
Specimen, Storage by Lab Required	N		
Confidentiality	Y		Mentioned throughout statute

CONNECTICUT TITLE 31. LABOR/CHAPTER 557/PART II

(Revised November 2011)

Personnel Actions			
Notification of Test Result in Writing	Y		Specifically mentioned for applicant positive results
No Adverse Action Unless Confirmed	Y	Y	
Disciplinary Procedures	Y	Y	Only based on confirmed positive results; otherwise, statute does not restrict employer's ability to discipline
Employee May Request Copy of Test Result	Y	Y	Employees may request a copy of test results; applicants must be given a copy of a positive test result
To Rebut/Explain	Y	Y	In the form of a written statement; to be maintained in the employee's medical files
To Retest	N		
Rehabilitation for First-time Positive	N		
Cost Of Rehabilitation Employer	N		

CONNECTICUT TITLE 31. LABOR/CHAPTER 557/PART II

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Statutory Compliance			
Protection Against Lawsuits	N		
Workers' Compensation Premium Discount	N		
For Cause Termination for a Positive Result	Y	Y	
Civil Actions, If Violation	Y		Against employer, laboratory, or medical facility
Criminal Actions, If Violation	N		

Frequently Asked Questions...

- Which state law applies when a company has operations in more than one state?
- What happens when a company conducts both DOT-mandated and non-mandated drug testing?
- Can a company conduct hair testing for pre-employment screens and lab-based oral fluid testing for post-accident and reasonable suspicion testing?
- When SAMHSA adopts lab-based oral fluid testing will all states permit it? Will DOT permit it?

For More Information...

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