

GUIDELINES

FOR

ALCOHOL AND DRUG TESTING

NO. 099



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1. Introduction

Procedures and routines for substance testing shall be safe and sound in cases when companies elect to use testing as part of their substance prevention work.

Testing employees and contracted personnel has become more pertinent in recent years. The choice to introduce testing is made by the respective companies. However, we do believe it is practical to draw up common guidelines for how testing should be carried out, when a company chooses this method in its substance prevention work.

These guidelines include all forms of testing. These guidelines are, of course, voluntary, but we do believe they will contribute to safeguard the quality of the testing and of the results. The guidelines can be used both onshore and offshore.

It is the respective company which shall ensure contact with its employees before testing is introduced in the company, and which is responsible for carrying out testing. We ask that any suggestions for changes/improvements of the guidelines are continuously submitted.

With this recommendation we wish to provide practical guidelines within applicable laws and regulations.

2. Definitions/references

Searches – unannounced searches for drugs, medication or alcohol on the company’s operational premises, especially in safety and environmentally sensitive areas, as a measure to identify possession and use.

Medical tests (testing) – used diagnostically or for mapping of a substance abuse problem as part of the treatment and follow-up of individuals with a declared substance abuse problem. The analysis result is to be used as support information and not as a means of sanction.

Control tests (testing) – means that the analysis results can have serious sanction consequences. There are other procedural requirements for such tests than for medical tests.

MRO (Medical Review Officer) – the medical doctor who makes a medical evaluation, which is to interpret positive analysis results in light of known medical information and information on the consumption of medication and substances.

Chain of custody – quality requirements for safeguarding samples during substance testing, from sample collection to analysis results, to make sure the activity is regarded as safe and sound.

Vital position/situation – positions/situations for which there is a special risk that the employee on a regular basis will be in a situation where the consequences of errors will be particularly serious, either for the employee himself, third persons or have substantial

consequences for society in general, and therefore stipulating special requirements for due care and attention, cf. Odelsting Proposition, pages 149 and 314.

AKAN – AKAN, The workplace advisory centre for issues relating to alcohol, drugs and addictive gambling, was founded in 1963 by representatives from the Confederation of Norwegian Enterprise [NHO] And the Norwegian Confederation of Trade Unions [LO].

3. History and legislation

Substance testing has its background from the U.S., which has been a strong advocate for occupational drug testing through extensive drug testing in the workplace. A sharp increase in drug use in the American population starting in the 1960s and onwards caused the authorities to declare a “war” on drugs in the early 1980s, see the Drug Free Work Place Act (1988).

The Exxon Valdez disaster at the beginning of 1989 made the issue pertinent for the petroleum industry.

In Norway, the debate on occupational analyses has been characterised by arguments for the right to privacy and safety. Politicians, authorities, labour organisations and institutions such as AKAN and the Norwegian Forensic Toxicology Institute (as of 2003, the Division of Forensic Toxicology and Drug Abuse, the Norwegian Institute of Public Health) have all been sceptical of an increased use of occupational testing in Norway. Still, certain industries, primarily the shipping and petroleum industries, have found it necessary to introduce testing. As a result, it is important to draw up quality requirements.

Control measures must be considered in relation to two main sets of legislation. The company’s right to implement control measures is regulated under the Working Environment Act, Chapter 9. The right to handle information which is identified through the control measures is regulated under the Personal Data Act. A brief account of some of the main principles in the legislation follows. However, this should not be regarded as an exhaustive overview of relevant legal requirements (for further references, see end).

The general terms for implementing control measures are set in the Working Environment Act Section 9-1, which states that the employer may only implement control measures in relation to employees when such measures are objectively justified by circumstances relating to the undertaking and it does not involve undue strain on the employees. The term “control measures” in Section 9-1 includes a wide variety of employer control measures, including substance testing, cf. Odelsting Propostion No. 49 (04-05), pages 135 and 147.

The regulation indicates a discretionary assessment of the company’s need for the control measure on the one hand and the burden inflicted on the employees as a result of the measure on the other. In order for the control measure to be legal, the consideration of interests must fall in favour of the employer. It should be noted that the regulations in Section 9-1 can not be set aside through consent, work contract or collective wage agreement.

The impartiality requirement is to be understood such that there must be an objective intent basis in the company as such, at the same time as there must be an objective intent in relation

to the employee in question who will be subjected to the control measure. In addition, the control measure must be suitable to achieve the purpose of the measure. In the Proposition, page 145, it is stated that control in connection with specific suspicion of punishable and other irregular circumstances in the working relationship and so forth will have to be extensive before being regarded as disproportionate.

The employer can demand medical examinations to be carried out only when in accordance with laws or regulations, for positions involving special risk and when the employer deems it necessary to protect life or health, cf. the Working Environment Act, Section 9-4. The background for the provision is that the Ministry found it necessary to limit the right to conduct medical examinations, including clinical and biological, as these constitute violations of personal integrity. The Ministry specified that the provision can allow substance testing.

”Positions involving special risk” is defined by the ministry as being positions in which the employer/employee on a regular basis is exposed to situations in which the consequences of error are particularly substantial, either for the employee, third persons or having substantial consequences for society in general, and therefore necessitating special requirements for due care and attention, cf. Proposition, pages 149 and 314. The term “life and health” includes the employee, other employees and third persons. The necessity criterion is meant to be interpreted narrowly, and the risk must be serious and appear specific, obvious and probable, cf. Proposition, pages 149 and 315.

In addition to the requirements for implementing control measures, there are statutory requirements for information and discussion in Section 9-2. The provision requires that the employees be informed of the intent of the measure and presumed duration, as well as how the control is arranged. The employer shall, at the earliest possible time, discuss the need, arrangement, execution and important changes to the control measures with employee representatives.

The question regarding the right to handle information about the employees which arises as a result of the control measure is, as mentioned, regulated in the Personal Data Act. “Handling” means collection, storing, communication and so forth of information which can be traced back to specific employees. The Personal Data Act’s starting point is that all handling of personal data is prohibited, unless there is authorisation by law, consent or a special necessity, cf. Section 8 of the Act. The Ministry states that “the conditions in the Personal Data Act, Section 8, on handling information about employees in connection with regular control measures will to a great extent be met, if the legal requirements for carrying out the measure itself are met.”

Additionally, the right to handle sensitive personal data is regulated by the Personal Data Act, Section 9, under which one condition is that the handling is necessary in order to carry out duties and rights under labour law. The Ministry presumes that the right to implement a control measure under the Working Environment Act, Chapter 9, is to be regarded as a right of the employer in this regard.

The National Wage Agreement’s (NHO-LO) Supplementary Agreement V, ”Agreement on control measures in companies” regulates the form and implementation of new control measures or significant changes to the form of existing control measures in the respective company.

Procedures to be followed for substance testing are described in a directive from the Norwegian Board of Health Supervision:

- **”Quality assurance routines for substance testing of samples in a medical environment (handling and diagnostics), (Memo IS-13/2002)**
http://www.shdir.no/assets/3935/rundskrivIS-13_02.pdf (Norwegian only)
- **”Quality assurance requirements for routines when substance testing, where positive analysis can provide grounds for implementation of serious sanctions” (Memo IS-14/2002)**
http://www.shdir.no/assets/3935/rundskrivIS-14_02.pdf (Norwegian only)

It is particularly the last memo, drawn up in 1995 and revised in 2002, which is of great significance if companies are to feel assured they have followed the correct procedure for alcohol and substance testing.

In this connection, we also refer to the pamphlet ”Occupational alcohol and drug testing” published by AKAN. Internet: <http://www.akan.no>

4. Control measures

The type of control measures the company chooses to implement to ensure compliance with company guidelines, will vary based on the size of the problem, risk level and within the framework of applicable regulations. The control measures must be described in the company’s governing documentation.

In case of the use of legal medication, the company must consider, especially for operations vital for safety and environment, that medication can have a negative effect on performance. Employees are responsible for making the line manager aware of such situations, preferably through the company doctor. If such medication is required, the employee is to be given sick leave or put to alternative work in a position which is not safety-sensitive.

Controls should consider the risk level present. Controls can take the form of searches (see definition) or testing. The following types of testing may be relevant:

Before employment:

A person who is to be hired by the company in a critical position for more than six weeks, can be tested and the test results are to be ready before he/she begins in his/her position. A requirement to begin working for the company is a negative test.

Transfer to critical position

Employees are to undergo medical examination and substance testing, as well as signing a statement before beginning in critical positions. The requirement for beginning in the position is a negative test result.

Random testing

Employees in critical positions can be subjected to random testing at least once a year.

Testing with cause

Testing with cause is a term used to identify the grounds for a supervisor to implement specific measures described in the company's substance policy. Such measures have been developed to support the practical implementation of the company's substance policy.

Testing with cause can be based on one or more of the following criteria:

- **Special circumstances**
Measures can be implemented when substances are identified within a safety-critical area. In addition, information from reliable sources (such as the police or security department) on the presence of substances can form the basis for cause. Caution and discretion must be exercised in such cases.
- **Behaviour**
A certain type of behaviour in the workplace can give cause to suspect substance abuse. Such behaviour can be :
 - Unusual behaviour
 - Disturbed balance
 - Unusual speech
 - Obvious personality change
 - Appearance/smell of alcohol/substances
- **Incidents**
Certain incidents/occurrences could cause suspicion in regards to the behaviour of an individual. Testing with cause can be implemented, regardless of whether the incident caused damage or not.
- **Testing following serious accidents**
Testing can be relevant following serious accidents because
 - Police investigators demand testing
 - The internal company investigation demands testing (requirement in governing document)
 - The person or persons involved demand testing to be cleared of suspicion

5. Company guidelines for testing

When implementing substance testing of employees, the respective company must establish guidelines which are legally sound, both in regards to the testing procedure itself and potential

sanctions. These should be included as part of the staff regulations. The following is an example of definitions and administrative guidelines which can be included in the staff regulations or the company's governing documents:

The term safety-critical positions is mainly used in these guidelines. Sometimes it is difficult to define which positions are to be considered critical.

Alternatively, the guidelines can be drawn up based on defined "critical situations". Possible testing will then be directed towards all persons who might experience such a position, regardless of them holding a critical position or not.

It is up to the respective companies to consider the best suitable solution.

5.1 Critical positions

A overview of critical positions and situations is drawn up in collaboration with employee representatives. For assessing which positions can be considered critical, the Ministry's definition of positions involving special risk can be a good starting point, namely positions in which "the employee/applicant regularly is exposed to situations where errors have serious consequences – either for the employee, third persons or have serious consequences for society in general, and therefore necessitate special requirements for due care and attention," cf. Odelsting Proposition, pages 149 and 314.

Any person in a critical position will be informed of this.

Employees who have, are transferred or promoted to a critical position, are asked to

- Inform their supervisor of past or present substance abuse problems or participation in rehabilitation programs. For employees with a critical position, the duty to inform goes back five years.
- Inform their supervisor of any drunk-driving convictions, arrests for public intoxication and/or the possession, sale and distribution of controlled substances, as well as the outcome of any legal procedures. The duty to inform goes back five years.
- To undergo a medical examination and testing for alcohol and drugs before starting work in a critical position, and following that, periodic testing.

5.2 Suspicion of abuse

Observations and actual incidents can form the basis for suspicion of substance abuse or the existence of a substance abuse problem. Examples of observations/occurrences which can give grounds for such suspicion can be when the employee:

- Arrives at work with visible signs of intoxication/being indisposed
- Has been arrested for or convicted of drunk driving

- Been arrested for public intoxication or been in the possession of, selling or distributing controlled substances
- Been caught for illegal possession of alcohol in the workplace
- Submits a positive alcohol/drug test

The management can initiate examination and review of persons in critical positions who are suspected of having a substance abuse problem. The review can include:

- Talks with the employee
- Examination/control of all relevant facts
- Testing in accordance with company guidelines

The review is carried out by the main department head and the head of Human Resources with the necessary assistance of medical expertise and possibly a labour union representative. The panel will assess whether there is a substance abuse problem present, which will demand external medical/clinical institutional treatment, and/or treatment at non-profit organisation such as Blue Cross or AA, or if observation through an AKAN program is recommended.

In the event of justified suspicion of substance abuse, the employee will have a conversation with the company doctor/nurse to clarify the extent and character of possible abuse and to clarify the need for a rehabilitation program within the company's established AKAN scheme.

Otherwise we refer to "Guidelines for handling alcohol and substance abuse."

5.3 Employees "with" substance abuse problems

Employees in critical positions with an identified substance abuse problem, either through their own admission or due to a positive test result and following assessments, will immediately be transferred to a "non-critical position" at the same level.

5.4 Unannounced search

Based on justified suspicion, but without notice, the company can search employees in critical positions for substances at the work place. This includes items at the disposal of the employee. The search is initiated by the supervisors in charge in accordance with established guidelines. The employee and the employee's immediate supervisor shall, if practically possible, be present. A search of the person shall only take place in the form of a request to empty pockets and so forth. A search involving physical contact with the employee shall not take place.

Before a supervisor can demand implementation of unannounced searches, this must be discussed and approved. The suspicion which prompts the measure must be substantiated in writing.

5.5 Alcohol and substance testing

- Employees in critical positions may be asked to submit tests which will be analysed for alcohol and/or drugs.

- a. Based on justified suspicion. Before a supervisor can demand implementation of testing, this must be discussed and approved. For each case where there is suspicion of abuse/substance problems, the reason for the suspicion must be substantiated in writing.
 - b. By random selection of individuals or groups.
- Employees can demand necessary tests/examinations to, for instance, be cleared of suspicion.
 - Tests will be performed by external, certified laboratories. The results of the tests will be handled with confidentiality and sent to the employee and the employee's immediate supervisor.
 - A positive test result does not conclusively mean the existence of a substance abuse problem, but possible disciplinary sanction will be treated with confidentiality and considered at the same time as the employee is put in contact with the local AKAN contact and the company health service to assess the need for an AKAN program. The Human Resources department is also to be contacted. The employee representative shall, if so desired by the employee, be involved as well.
 - Tests which can be carried out are as follows:
 - a) Alco meter - testing for alcohol. Blood sample must be taken for verification in case of a positive result.
 - b) Urine sample is submitted and analysed for drugs.

Tests are to be carried out and analysed in accordance with applicable laws. Procedures for such testing will be established in collaboration with employee representatives.

- The limit for measuring alcohol is the same as in the Road Traffic Act (currently 0.2 blood/alcohol level).

The company health service will make an overview of other substances as well as relevant limits for measurements, see Section 6.3

5.6 Random or periodic testing

- Random or periodic testing will only be varied out for critical positions.
- However, random testing of employees in a rehabilitation program can be a part of the agreed upon AKAN program.
- Random or periodic testing of employees in critical positions shall, as far as it is practically possible, be carried out as testing of groups of employees (for example, all employees in critical positions on a ship are to be tested at the same time).

The company administrates the necessary testing scheme in collaboration with the body which carries out the tests.

6. Medical aspects. Techniques and procedures

Urine is the preferred medium for drug testing as this is a non-invasive method. Other body fluids can also be used.

The results of drug testing must be as flawless as possible, and the following three conditions must be met:

- Formal/correct "chain of custody". Urine samples must be treated as evidence and all aspects of the testing procedure must be documented and archived in case of possible legal procedures.
- Accredited laboratories. Only accredited and quality assured laboratories in accordance with international standards are to be used to analyse the samples.

In Norway we recommend:

The Division of Forensic Toxicology and Drug Abuse,
The Norwegian Institute of Public Health
Lovisenberggt. 6, P.O. Box 4404 Nydalen
0403 Oslo
NORWAY
Telephone +(47) 22 04 22 00
Telefax +(47) 22 35 36 05

- A professional medical evaluation, using a Medical Review Officer, of the test results A positive test result must be interpreted and reviewed together with the medical history and relevant medical-biological information about the employee to ensure that a positive drug test in fact represents drug abuse.

For more information, we recommend the following document:

"Scientific and Technical Guidelines for Drug Testing Programs"

Published by the Department of Health and Human Services,
Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA),
USA

6.1 The role of the company health service

The medical profession is involved in the alcohol and drug policy in two ways.

The first role is as an adviser to the company for assistance in establishing and carrying out an alcohol and drug program. This includes:

- Medical examination to assess and advise the company of whether or not a person is fit for.
- To provide advice on the use of medication which could affect activities critical to safety and the environment.

- Provide recommendations in connection with participation in treatment and rehabilitation of employees and possible return to work.

All medical work is based on the principle of confidentiality as stipulated in the Health Personnel Act.

Substance testing can be carried out by external health professionals, and should not be carried out by the company health service as this can come in conflict with the doctor/patient role. The exception is testing upon hiring and after consent in rehabilitation cases.

The role as Medical Review Officer (MRO) can be held by an external doctor or the company doctor.

The main responsibility for this role is:

- To ensure trustworthy testing procedures, including a strict "chain of custody".
- To ensure a correct interpretation of test results using additional information collected from the employee, the employee's medical doctor, pharmacy and so forth.
- To present the results as "positive" or "negative" test to management, personnel or employees.

MROs must have specific training.

For further information for company health personnel, we recommend three occupational medicine guidelines, drawn up by the Quality Assurance Committee of the Norwegian Association of Occupational Physicians.

Guidelines 6.9: The company doctor's advice to the company regarding substance issues

Guidelines 6.10: The company doctor's role regarding employees' use and abuse of substances

Guidelines 6.11: Substance control

These can be found at the following web page:

[http:// www.nhi.no/amv/](http://www.nhi.no/amv/)

under Group 6: Other guidelines

6.2 Taking samples

We will now mention a few technical aspects of a control program. This can roughly be divided into the following nine points:

1. Information to the employee providing the sample on what the system involves, as well as obtaining consent (signature on laboratory requisition)
2. Collecting medical information, especially on the use of medication
3. The actual sample collection procedure
4. Dispatching/transporting the sample
5. Sample received by the laboratory

6. Sample analysis
7. Interpretation of the results
8. Analysis results are reported to the company in a clear and unmistakable manner
9. Handling of the analysis information by the company's MRO ("medical review officer")

Medical personnel are to handle points one through four in a safe and sound manner. The roles of the company's own medical staff must be clarified. The person in question will not function as medical staff for the employee providing the sample, but be an expert for the company (cf. Section 27 of the Health Personnel Act). The Division of Forensic Toxicology and Drug Abuse has drawn up guidelines for health personnel responsible for collecting urine samples.

When the sample is collected, a number of procedures to ensure the authenticity, identity and prevention of manipulation must be followed. Such measures are often called "chain of custody" of the sample in question.

Points five through eight are handled by accredited laboratories.

The Division of Forensic Toxicology and Drug Abuse has entered into agreements with the Medical Offices for Seamen in Norway to make sure these have received relevant training and equipment as well as procedures for sample collection. All seamen doctors can provide these services.

6.3 Occupational cut-off levels

The program which is chosen for testing should include at least the nine substances mentioned below. Each substance has a cut-off level for screening test and verification test.

We recommend that the following cut-off levels are used in the petroleum industry (verification test):

Amphetamines	1.0 microgr/ml
Barbiturates	0.3 microgr/ml
Benzodiazepines	0.3 microgr/ml
Cannabis	0.02 microgr/ml
Dextropropoxyphene	0.3 microgr/ml
Phencyclidine	0.025 microgr/ml
Cocaine	0.3 microgr/ml
Methadone	0.3 microgr/ml
Opiates	0.3 microgr/ml

These levels are currently used by the Division of Forensic Toxicology and Drug Abuse.