

European Drug Testing Guidelines

In 2007 I participated in a research project to identify the legal landscape for drug testing in more than 60 nations other than the United States. It was the most ambitious project of its kind that had probably ever been attempted. There were reports available on this country or that country but nothing beyond a dozen or so nations. Our target list included most of the European Union countries as well as some from Africa and Asia. We discovered the following:

- 1) Most countries did not have drug testing laws comparable to those found throughout the United States.
- 2) Drug testing in countries other than the United States was primarily governed, if at all, by labor agreements, health regulations and privacy laws.
- 3) Efforts were underway in Europe to identify and promote best practices for the collection, analysis and interpretation of drug tests. Though the guidelines being discussed at the time were in many ways not unlike U.S. regulations, they were just in their infancy compared to where they are today.

Today

The European Workplace Drug Testing Society (EWDTS) has developed three sets of 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 public comment)

Additionally, drug testing programs in Europe are significantly influenced by other regulations and policies, including:

- 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*)

There are national drug testing laws that may or may not reflect or require compliance with the drug testing guidelines mentioned above. Examples of national laws include: Finland and Ireland, which require compliance with the EWDTS guidelines, and Norway, Italy and others. (Later in this section this report will provide an example of a national drug testing law.)

Finally, employers must consider the interpretation of Labor Codes, privacy laws, data protection laws, and health and safety requirements at work before finalizing corporate drug testing policies.

In 2002 the Laboratory Committee of EA (European co-operation for Accreditation) approved a document prepared by the EWDTS entitled “European Laboratory Guidelines for Legally Defensible Workplace Drug Testing.” The guidelines, which deal with urine laboratory testing, may be read in their entirety at the following link:

<http://www.aebm.org/documentos/drogas.pdf>

The establishment of the European Guidelines broke new ground for drug testing in the EU nations and represented order in a fast-growing marketplace. The stated purpose of the guidelines was to establish “best practice” procedures for the:

1. collection of urine samples,
2. laboratory analysis, and
3. subsequent interpretation of the results.

However, the guidelines clearly state that, while they outline best practices, they are not intended to be binding regulations for all testing situations and circumstances. According to the report: “The European Guidelines are designed to establish best practice procedures whilst allowing individual countries to operate within the requirements of national customs and legislation.” Therefore, the detail within the appendices to the Guidelines may vary from country to country.

Yet, a laboratory that desires an accreditation for workplace drug testing must fulfill the requirements in ISO/IEC 17025 and also implement what is stated in the Guidelines for Workplace Drug Testing. Alternatively to ISO/IEC 17025, the standard ISO 15189 or both can be used.

It is important to note that the Guidelines focus on urine drug testing, which as it states “is the usual specimen for analysis.” They may not apply to screening for alcohol.

Equally important to note is that the Guidelines specifically apply to workplace drug testing within Europe. They may not be applicable in other markets such as roadside or criminal justice drug and alcohol testing. Also, they may not apply in countries in other parts of the world. Yet, countries outside of Europe may subscribe to these European Guidelines, especially if they are attempting to be part of the European Union.

The Guidelines are based on the “general principles that have been established internationally. They are designed to ensure that the entire drug testing process is conducted to give accurate and reliable information about a donor's drug use.” Though some of the terminology may be different, much of what is found in the Guidelines will resemble U.S. federal drug testing guidelines and regulations, as well as individual state laws.

For example, the Guidelines discuss chain-of-custody protocols during the collection process, ensuring the integrity of a sample received at a laboratory (including validity testing), screening

and confirmation testing (GC/MS, LC/MS), and result interpretation via a lab toxicologist and a qualified “medical practitioner” or Medical Review Officer. The Guidelines also cover results reporting, long-term specimen storage, and record keeping.

There are seven appendices that provide more specific detail to the general language of the Guidelines. There also is a Definitions Section, which is very similar to something commonly found in a U.S.-based drug testing document. Among the appendices are cut-off levels for both screen and confirmation tests for 12 drugs.

What the Guidelines Do Not Cover

The Guidelines do not mandate or regulate when testing can or should take place. For instance, they do not regulate who can be tested (job applicants versus employees).

They also do not cover drug testing circumstances such as pre-employment screens or reasonable suspicion testing.

They do not provide guidelines for random testing, mandated frequency rates, or random selection processes. Nor do they suggest or regulate consequences for violations of a company’s drug-free workplace policy.

However, the Guidelines do encourage sellers to explain to any purchaser of a laboratory drug testing service that drug testing should “form part of an overall drug policy to which the purchaser has agreed with his employees and should have in place before testing is initiated.” Other than that, no direction is given for what such an “overall” policy could or should include.

Drug and Alcohol Testing in Hair, Collection and Analysis

In August of 2010 the EWDTS published final guidelines for hair testing. Like the laboratory urine guidelines, these hair testing guidelines are not mandatory. However, the fact they exist gives the European market a leg up on the United States, which has yet to establish any type of national standards for hair testing.

The stated objectives of the EWDTS hair testing guidelines include:

- "To provide a common framework for European providers of workplace drug testing services in Europe within which Workplace Drug Testing (WDT) in hair should be performed.
- To provide guidance to European laboratories interested in the determination of drugs of abuse in hair, in order to provide reliable results for the purpose of WDT.
- To help promote and harmonize efforts by providing guidelines which are accepted at the European level.
- To ensure that the processes undertaken are capable of legal scrutiny.

- To provide safeguards to protect the specimen donors.
- To define for laboratories common quality assurance and quality control criteria that are capable of being accredited by an external body."

Use the link below to read the guidelines in their entirety:

http://www.ewdts.org/guidelines/EWDTS%20Guidelines%20Hair_Aug10.pdf

The hair testing guidelines are very extensive and not unlike what a typical hair testing program might look like at a U.S.-based company. The guidelines include collection procedures, collector qualifications, custody and control protocols, cut-off levels for opiates, cocaine, amphetamines, cannabinoids, and benzodiazepines as well as alcohol. Additionally, the guidelines provide information on interpretation of results and results reporting procedures.

Guidelines for Oral Fluid

The EWDTs has developed guidelines for lab-based oral fluid testing, which are not finalized. Currently the EWDTs is seeking comments on the guidelines before they are finalized.

Quoting from the introduction to the proposed guidelines: "These guidelines represent an overview of the best practice for European laboratories providing oral fluid workplace drug testing services. They are designed to ensure that the entire drug testing process is conducted to give accurate and reliable information about a donor's drug use. These guidelines represent the best practice to maintain the legal defensibility of a drug test when tested by either an employment tribunal or a court of law."

Use the following link to read the proposed guidelines in their entirety:

<http://www.ewdts.org/guidelines/EWDTS%20Oral%20Fluid%20Version001%2017MAR11.pdf>

One Example from Europe

It is not possible to give a detailed analysis in this report of the legal status of drug testing in each European nation. For our purposes we will look at the requirements for the country of Finland. Though Finland may not necessarily be indicative of all European nations, it will provide an idea of the issues with which to be concerned.

According to the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the Finland Act on Workplace Drug Testing (759/2004) ss.7-8 permits workplace drug testing, paid for by the employer, in certain defined circumstances (i.e., where intoxication or addiction may endanger life, health, national or traffic safety, security of information in the public interest, or business or professional confidentiality). Further, the EMCDDA informs that "The Act on

Patients Rights (785/1992); s.5 requires the "informed consent" of the patient, thus an employee has the right to refuse testing."

That's good information but it's just a start. Is it not possible to review all the requirements in one single Act or Legislation in Finland; there are several laws that apply. There are two important Finnish Acts that deal with, among other things, drug testing. They are:

- The Act on the Protection of Privacy in Working Life, and
- The Occupational Health Care Act, Section 19

Additionally, employers wishing to conduct drug testing in Finland must be familiar with the Act on Cooperation Within Undertakings and the Narcotics Act.

According to the Act on the Protection of Privacy in Working Life, "The employer may only process information on the drug use testing of the employee which is contained in the drug test certificate supplied to the employer by the person concerned."

So what is a drug test certificate? The Act provides a definition: "A drug test certificate means a certificate issued by a health care professional and laboratory designated by the employer stating that the employee has been tested for the use of a drug referred to in section 2 of the Narcotics Act (1289/1993) and containing a report based on the test stating whether the employee has used drugs for non-medicinal purposes in a manner that has impaired his/her working capacity or functional capacity."

The Act further states: "Drug tests and the certificates of such tests are subject to the provisions of section 19 of the Occupational Health Care Act."

And what does section 19 say?

"A positive test result from the narcotics test performed on a jobseeker or employee must be confirmed in a quality controlled laboratory. Notwithstanding what is provided elsewhere in the law, the tested person is always entitled to obtain the test result in writing. Provisions on the content of the certificate on a narcotics test are laid down in the Act on the Protection of Privacy in Working Life (759/2004). The certificate must be given to the tested person who shall forward it to the employer..."

From this one example we can follow the trail through three different Acts to learn that:

- a) Employers must obtain a drug test certificate
- b) Which is issued by a professional health care provider or laboratory
- c) Which the employer designates
- d) To test only for drugs that are listed in section 2 of the Narcotics Act
- e) That a positive result must indicate a judgment of possible impairment
- f) Positive results must first be confirmed before they can be documented

- g) At a laboratory with quality controls
- h) Employees and jobseekers are entitled to a written copy of the test result
- i) And it the test person who delivers the drug test certificate to the employer

Wow! And that is just one aspect of the drug test process in just one country. And if you think that's complex, wait until you read the U.S. section.

Conclusion: European Guidelines

Each country's drug testing laws should be examined in order to ensure accurate and legally defensible drug testing programs. The "European Laboratory Guidelines for Legally Defensible Workplace Drug Testing" and the "Drug and Alcohol Testing in Hair, Collection and Analysis" guidelines are just what they purport to be, guidelines for laboratories. They are similar to laboratory drug testing guidelines used in the United States at both the federal and state levels... but they are also unique in their own ways.

That said, many countries may regulate who can be drug tested and when, but might otherwise defer to the European Guidelines for lab-based testing procedures. Other countries do not have drug testing laws per se, but will regulate drug testing indirectly through a variety of privacy and labor-related safety regulations. In these cases, unless local law states otherwise, the European Guidelines provide safe and legally defensible processes for laboratory analysis of urine and hair specimens... and soon for oral fluids.