

PERMA 2016 ANNUAL CONFERENCE

Drug and Alcohol Testing in the Workplace



Presented By:

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How Big is the Problem?

- According to a Johns Hopkins 2010 Study:
 - 250 million pain prescriptions filled in U.S.
 - Although U.S. is only 5% of global population, they consume 80% of all Opioids supplied in the world.
- According to Center for Disease Control (2011):
 - Almost 17,000 pharmaceutical deaths involved an overdose of painkillers

How Big is the Problem?

- According to Workers' Compensation Research Institute (2011):
 - Upwards of 85% of all injured workers in the U.S. received narcotic painkillers
 - These include Opioids
 - Hydrocodone (such as Vicodin)
 - Oxycodone (such as Oxycontin)

Non- DOT Policies

- Court Decisions have held:

Government is allowed to conduct drug tests without “individual suspicion” when there is a “special need” that outweighs the individuals privacy interest

- Examples of Special Need

- Operating Equipment (non-CDL)
- Healthcare
- Public Safety

Non- DOT Policies

- Court Decisions have also held:

Testing of public sector employees in positions that are not “Special Need”, violate Constitutional Protections of Rights to Privacy and Unlawful Search

- Examples:

- Library Page
- Solid Waste Coordinator

Non- DOT Policies

- Should be Formally Adopted by the Board
- Negotiable for Union Covered Employees
- Distributed to all Employees with Signed Acknowledgement
- Training for both supervisors and employees

DOT Policies

- Update your policy to reflect new regulatory changes
- Date of adoption should be clearly stated on the policy
- Future revisions of a substantive nature also receive formal approval

Policy Dissemination

- Policy distribution
 - Every covered employee
 - New hires
- Employees should sign an acknowledgement of receipt
- Form should be placed in personnel file
- Make sure all employees have the most current version of the policy

Required Tests

- Pre-employment
- Random
- Post-Accident
- Reasonable Suspicion
- Return to Duty
- Follow-up

Previous Employer Background Checks

- Before you hire a covered driver, you must:
 - Ask the applicant whether he/she has tested positive, or refused to test on any pre-employment drug/alcohol test within the last three years
 - Contact previous employers -- written consent for the release must accompany the request

Pre-Employment Testing (Drug Only)

- Must test
 - All applicants for DOT covered positions
 - All appointment from Non-DOT covered positions to DOT covered positions
- Negative drug test result is required prior to the employee's performance of safety-sensitive duties

Random Testing

- 25% - Drug / 10% - Alcohol
- Employee selection and notification cannot be predictable
- Employees must not receive advance notice
- Employees must proceed immediately to the collection site upon notification of test
- Document the selection process including numbers drawn, date, and time of notification and collection

Reasonable Suspicion Testing

- Supervisors must be trained on the facts, signs and symptoms, or patterns of behavior associated with drug use and/or alcohol misuse
 - 60 minutes drug detection
 - 60 minutes alcohol use
 - Only have to be trained one time

Reasonable Suspicion Testing

- An employee can be sent for a reasonable drug or alcohol test when a trained supervisor:
 - Can substantiate specific behaviors that may indicate drug use or alcohol misuse
 - Can identify specific job performance problems that may indicate prohibited drug use or alcohol misuse
 - Actually observes physical indications that prohibited drug use or alcohol misuse may be occurring

Reasonable Suspicion Testing

- Drugs - anytime on duty
- Alcohol – Observations made during, just preceding, or immediately following the performance of safety-sensitive functions
- Employees must be transported immediately to a collection site following a reasonable suspicion determination

Post-Accident Testing

- Drug and Alcohol testing is required following an accident:
 - Accident involved loss of life
 - Employee receives a moving vehicle citation and:
 - Accident resulted in bodily injury to a person
 - Accident resulted in the vehicle incurring disabling damage

Return to Duty Testing

- Following a positive drug or alcohol test result or test refusal, the individual may not perform safety-sensitive duties until
 - Evaluated by SAP
 - Completed SAP recommended treatment program
 - Completed a return-to-duty test with a negative test result

Follow-up Testing

- SAP submits follow-up testing plan to the employer
 - Unannounced
 - Minimum: 6 tests within 12 months after return-to-duty
 - Up to 60 months
 - Frequency and duration dependant on SAP evaluation
- Dates scheduled by the employer
- Employees subject to follow-up testing are also included in the random testing pool

Substances for which Tests are Administered

- Marijuana
- Cocaine
- Amphetamines
- Opiates (Includes Heroin, Opioids)
- Phencyclidine
- Alcohol

Prescriptions and Over-the-Counter Drugs

- Prescription Drugs must be in the possession of the individual to whom the prescription was written
- Employees must inform their supervisors of any prescription or over-the-counter drugs they are currently taking that could impair their ability to perform safety-sensitive functions
- Use of prescription and over-the-counter drugs is permitted as long as it does not impair job safety or safety and well-being of others in the workplace

Prohibited Conduct

- Consumption of alcohol is prohibited. . .
 - On duty
 - 4 hours prior to duty
 - 8 hours following an accident
- Consumption of illegal drugs is prohibited at all times
- Refusing to submit to required testing

Test Refusal

- Refusing to provide specimen
 - Insufficient volume without valid medical explanation
- Tampering, adulterating, or substituting specimen
- Failing to appear within a reasonable time - defined by employer
- Leaving the scene of an accident without just cause prior to submitting to a test

Test Refusal

- Failing to permit an observed or monitored collection when required
- Failing to take a second test when required
- Failing to undergo a medical examination when required
- Failing to cooperate with any part of the testing process
- Once test is underway, failing to remain at site and provide a specimen

Consequences for Engaging in Prohibited Conduct

- Positive drug or alcohol (≥ 0.04) test result or test refusal
 - Remove employee from safety-sensitive position
 - Advise employee of available resources
 - Refer for evaluation by a Substance Abuse Professional
 - Apply employer disciplinary policy

Consequences for Engaging in Prohibited Conduct

- Alcohol test result of 0.02 or greater but less than 0.04
 - Remove from safety-sensitive position for a minimum of 24 hours unless subsequent test results in a concentration of less than 0.02
 - Apply employer disciplinary policy

MRO Responsibilities

- Inform employee of verified result and right to request split specimen
- Notify employer of verified test result
 - Notification can be made via TPA
- Notify employer of use of other performance altering substances

SAP Responsibilities

- SAP must always recommend education
- Education options include
 - Self help group
 - Community lectures
 - Drug and alcohol education courses
- Treatment options include
 - In-patient hospitalization
 - Partial in-patient treatment
 - Out-patient counseling programs

The Warning Signs of Substance Abuse

- Excessive absences and/or tardiness (especially after a weekend or holiday)
- Frequent requests for time off
- Numerous accidents without explanation
- Unsatisfactory work performance
- Non-work related visits from other employees or strangers.
- Secretive behavior, defensive attitude
- Drastic weight changes
- Marked change in mood, attitude and behavior
- Deterioration in personal grooming and hygiene

Q and A