

Employment Related Issues with Substance Abuse in the Workforce: A Legal Perspective

Updating Drug Testing Policies

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October 4, 2017



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Rules Regarding Drug Testing



Federal Law

- There is no federal statute that generally regulates employer drug testing.
- *Department of Transportation* regulations subject transportation employees who perform designated safety-sensitive functions to testing for drugs and alcohol.

Tests may be performed:

- + Before employment
- + Based on reasonable suspicion
- + On a random basis
- + When an employee returns after a positive test
- + On a follow-up basis after the return to duty,
- + Post-accident.

Federal Law cont.

- Federal laws and regulations also require drug testing in certain other industries and agencies, such as the nuclear industry, the defense industry, and NASA.
- The *Drug Free Workplace Act* applies to federal grant recipients and federal contractors (whose contracts are more than \$25,000.00).
 - Must have a written anti-drug policy, report drug convictions in the workplace and make a good faith effort to maintain a drug-free workplace. Testing is neither prohibited nor required.

The ADA's Protection of Recovering Drug Users

- The *Americans With Disabilities Act* prohibits employers from discriminating against “qualified individuals with disabilities,” as well as against individuals erroneously *regarded as* disabled.
- Applies to any employer of at least 15 persons.
- Recovering alcoholics and drug users are protected from discrimination under the ADA, provided that they are not drinking, intoxicated, or under the influence of drugs on the job.
- Addicted (recovering) employees may be held to the same performance standards as other employees, even if the unsatisfactory performance is related to their addiction.

Connecticut Law (Private Employers)

- Connecticut has a drug testing statute, Conn. Gen. Stat. §31-51t *et seq.*
- Applies to any individual, corporation, partnership or association except for the state or a subdivision thereof.



Pre-Employment Drug Testing

Permits employers to require pre-employment urinalysis alcohol and drug tests so long as:

- (1) Applicant consents in writing to the drug test at the time of the application;
- (2) The drug test is conducted using a reliable methodology and if positive, confirmed by a second test which is separate and utilizing a gas chromatography and mass spectrometry methodology
- (3) The prospective employee is given a copy of any positive drug test result.

*****Employer should keep results confidential*****

Drug Testing of Current Employees

Generally Not Permitted Unless:

(1) Employer Has Reasonable Suspicion that the Employee is under the influence of drugs or alcohol which adversely affects or could adversely affect such employees job performance.

OR

(2) If a Random Test is Authorized Under the Statute

Random Testing

Random Testing Permitted Only If:

(1) Employee Employed in DOL Approved Safety Sensitive Position See:

<http://www.ctdol.state.ct.us/wgwkstnd/highrisk.htm>

(2) the test is authorized by federal law (DOT Regulations, CDL);



(3) Conducted as Part of an Employee Assistance Program in which the employee voluntarily participates.

Drug Testing (Public Employers)

- Depends on Position
- Federal, State or Local Laws May Apply
- Collective Bargaining Agreements

How Can We Help?

- Make Sure Your Drug Testing Policy is Up to Date
- Make Sure You Are Testing as Permitted By Applicable Law
- Train Your Management and Supervisors
- Guide You Through the Discipline Process



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