

TECHNICAL INFORMATION PAPER SERIES: DRUG SCREENING AND TESTING IN CONSTRUCTION



EXAMINE HOW DRUG TESTING COULD HELP IMPROVE SAFETY AT YOUR CONSTRUCTION JOB SITES.

SUBSTANCE ABUSE AND EMPLOYEE BEHAVIOR



According to the [National Safety Council \(NSC\)](#), nearly 75% of all adult illicit drug users are employed, as are most binge and heavy alcohol users. Studies show that when compared with non-substance abusers, substance-abusing employees are more likely to:

- Change jobs frequently
- Be late to or absent from work
- Be less productive employees
- Be involved in a workplace accident
- File a workers' compensation claim

Employers who have implemented drug-free workplace programs have important experiences to share:

- Improvements in morale and productivity, and a decrease in absenteeism, accidents, downtime, turnover and theft.
- Better health status among employees and family members, and a decreased use of medical benefits by these same groups.

In this TIPS paper, The Hartford will summarize what you'll need to know to evaluate, develop and implement a drug testing program. This information is based on our experience with contractors, unions, medical professionals and our investigations of substance abuse accidents. Our program can help your business create a more productive workplace.

continued



According to the NSC, the hazards and strenuous activity that construction workers face on the job site make them more susceptible to substance abuse than more office-based employee groups.

Workers should be properly trained to lift and stretch to help reduce chance of injury. The trend of physicians prescribing opioids for chronic pain, instead of an anti-inflammatory like ibuprofen, can lead to addiction, since opioids are habit forming.

However, opioids aren't the only problem.

The list of dangerous drugs includes marijuana, cocaine, crack, phencyclidine (PCP), heroin and other stimulants, depressants, narcotics, hallucinogens and inhalants. The list of abused substances also includes alcohol, prescription and over-the-counter medications, such as cough syrup. When used improperly, these drugs and substances are as dangerous as illegal drugs. Additionally, even when used properly, the side effects of opioids and other drugs include sedation and dizziness—which are unsafe on job sites.

A DRUG TESTING PROGRAM CAN HELP

Construction work demands that an employee be able to make sound decisions. Employees who are under the influence of drugs pose safety risks to themselves or others. Substance abuse reduces coordination, slows reaction and decision-making time, and impacts an employee's memory and ability to concentrate. A well thought-out drug testing program can help create a safe working environment.

Before implementing any drug testing program, we recommend that you seek legal counsel. Although a testing program makes good business sense for many employers, it doesn't make sense for all. For example, the approach to public versus private employees may differ.

The issue of drug testing and screening also evokes strong public sentiment. There are many instances of employees challenging these programs under the U.S. Constitution and other laws related to wrongful termination or invasion of privacy.

DECIDING WHETHER TO TEST

When deciding whether to test, your company should examine its own circumstances and not arbitrarily adopt another employer's program. You'll need to consider the potential benefits and drawbacks, including the expense, employee reaction, the possible impact on the workforce if users are identified and/or removed and your company's potential liability for violating workers' rights. Other key considerations include:

- **Whether the employer is in the public or private sector.** Unlike private employees, public employees have a constitutional right to privacy and the right to be free of unreasonable search and seizure at work. This right is normally not afforded to non-union, private employees.
- **Unionized and non-unionized workforces.** Normally, unionized employers are required to establish an objective standard regarding employee testing. This standard is often part of a collective bargaining agreement.

- **Employee morale.** A drug testing program may generate the perception of mistrust. Often, perceptions that are not effectively addressed diminish an employee's loyalty and dedication.
- **Safety risk.** Generally, the higher the safety risk, the more comprehensive a drug testing program needs to be. The validity of this policy will hinge upon its reasonableness. In addition, employers may need to consider a hybrid policy – incorporating different approaches for different groups of employees.
- **Rampant drug problem.** A documented workplace problem will justify a more aggressive and comprehensive program than simply a desire to implement one based on ungrounded fear or perception.
- **State or local legislation.** The legislative climate is not stagnant and also differs from state to state. What worked in the past or in a neighboring state, may now be inappropriate.
- **Cost.** A useful, fully defensible drug-screening program can be costly. Once you make the decision to implement a program, do it properly. A program that cuts corners is flawed and may lead to successful employee challenges. In our experience though, drug testing programs often pay for themselves through increased productivity, lower turnover and reduced claim costs.

DRUG TESTING GUIDELINES AND CONSIDERATIONS

The overall goal of employee drug testing is to improve workplace safety, productivity and product integrity so the company will have an improved fiscal bottom line. When deciding whether or not to test, we suggest employers carefully consider the following:

State and federal statutes. In addition to complying with relevant federal statutes, you'll need to comply with state laws as well. As you might expect, the states do not uniformly approach drug testing. For example, some states have laws supporting drug testing, others opposing it and still others are neutral on testing. Even when the states agree on the issue of testing, they can differ in implementation. By understanding the differences, you can appropriately address them.



Demonstrated need. If a drug abuse problem exists in your workplace, demonstrate its need by documenting the relationship between job performance and substance abuse. Programs that are objectively established are generally more successful than those that are arbitrary.

Unions. If your firm works with unions, it is important to solicit their support early on in the process. Even for non-union programs, we suggest that management get employee input. In our experience, programs that are collaboratively developed are generally more effective.

How the policy is developed. You'll need to involve senior management, legal advisors, human resource managers, risk managers, security staff and possibly OSHA personnel. Once the policy has been agreed to, it should become part of your company's written rules and procedures. In developing the policy, carefully evaluate each position within the company to understand the potential safety hazards.

Communicating the policy. Before implementing the program, explain why you are testing for drugs. Clearly explain the policy, including the penalties. The objective is to solicit support for, not resistance to the program. Once implemented, occasionally remind employees about the program.

Job-specific testing. There may be different drug testing requirements, depending on the specific construction job. Maybe you generally conduct drug testing prior to employment, but on a large CIP job, you would need to follow the owner or general contractor's drug testing program.



ESTABLISH PROCEDURES FOR SUSPECTED DRUG USE

When you uncover an instance of drug abuse, you should:

- Document the physical signs that led to your suspicion (e.g., slurred speech, weaving, dilated pupils, disorientation).
- Require the employee to immediately undergo urinalysis or blood test to confirm drug use.
- Send a supervisor to accompany the suspected user to the lab to prevent a “friend” from taking the test.

BE PREPARED FOR LEGAL CHALLENGES

Employees may decide to challenge your decision, particularly if your program is flawed. However, there are many examples of well-thought out programs that have withstood a challenge. Again, the quality of the program is the key.

IMPLEMENTING THE PROGRAM

Once you’ve decided to implement a program, determine which employees will be tested and then establish a timetable for testing. Establish procedures for collecting urine samples and then

be certain that they’re adhered to. With regards to the initial testing, we recommend that you provide 60 days notice, then a reminder at 30 days and one week. Implementing a new program without notifying your employees is fraught with problems.

As part of the testing program, employers should:

- Train supervisors on policy implementation, chain-of custody and testing procedures, confidentiality and legal implications.
- Designate specific personnel to receive the processing results.
- Provide your employees with a procedure for contesting positive test results, and explaining a positive test result. All initial positive tests should be followed up with a confirming test.
- Mandate participation in an employee assistance program, if one is offered, as a condition on continued employment. Also establish random testing requirements for up to one year thereafter.
- Apply the rules consistently to eliminate any possibility of discrimination.

The National Institute of Drug Abuse has recommended three tiers of drug testing. The three tiers are:

1. Incident-related testing, in which employees are tested only after an accident or other incident.
2. Scheduled testing of high risk or safety sensitive occupations.
3. Random, unannounced sampling for screening within hazardous occupations.

Pre-employment testing. This is probably the most popular and effective type of drug testing, with the least liability to the employer. With this type of program, the intent is to avoid hiring potential employees with drug or alcohol problems. To withstand legal challenges on common law grounds, a pre-employment drug screening must be:

- Carried out under a carefully developed, written policy that is explained to all applicants at the time of application.
- Presented to the applicants in the context of job safety, employee health and public welfare, rather than profit and loss.
- Applied to all applicants in a non-discriminatory manner.

Probable cause testing. This program requires reasonable suspicion that a person is using or is affected by drugs. This is useful in proving the presumption of drug use when poor performance is observed, when evidence of intoxication is witnessed, or when accidents are thought to result from drug intoxication.

Random testing. This is the most comprehensive form of employee testing. It's also the least popular approach, and can increase tension between management and labor. One way to lessen tension, especially in a unionized workplace, is for the union delegate to work with management to develop periodic random name lists to ensure that the lists are developed without prejudice.

For more information, check out the CDC's website www.cdc.gov//opioids

Additionally, the National Safety Council has resources at nsc.org/home-safety/safety-topics/opioids/ and <https://safety.nsc.org/rxemployerkit>

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