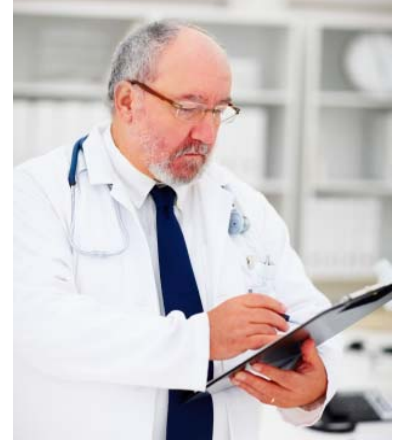


Drug and Alcohol Screen can be a Useful Tool. Is your Program in Compliance with the Law?



By Chuck Koch, Loss Control Consultant

Many employers have found drug and alcohol screening to be a useful tool to help maintain a safe workplace. While we encourage such efforts, it is important that employers establish their programs in accordance with state and federal regulations. Failure to do so may result in costly litigation or an invalid test.

States such as Minnesota and Iowa have enacted legislation specifying when testing is legal and how testing must be conducted. While it is impossible to specify all details in a brief article, we will use Minnesota as an example. Minnesota law defines when employees and job applicants can be tested and the types of testing allowed. Testing is permitted for job applicants, routine physicals, random testing of employees, reasonable suspicion testing and treatment program testing.

Before a Minnesota employer may conduct drug or alcohol testing, they must have a written program that outlines who can be tested, when testing can occur, disciplinary actions for a positive test, the consequences for refusal to take a test, and the employee's rights to explain a positive test. It must also explain the employee's rights to a confirmatory test. Employees must also give written notice to all affected employees at the time they become affected. Applicants must be given notice and testing must only take place after a conditional job offer is made.

There are also requirements on the laboratory that performs the analysis and the collection process.

An employer who has an employee who tests positive may not take disciplinary action against that employee if this is their first offense, unless the employer has offered the employee the opportunity to successfully complete a drug or alcohol treatment program. The employer, however, may not have to pay for this.

There are additional laws regarding the use and privacy of all test information.

The Federal Government has mandated drug testing for many occupations such as Airline Pilots,

Drivers of Commercial Motor Vehicles, and Schools Bus Drivers. This testing helps to ensure the safety of the operator and the general public.

Using Commercial Truck Drivers as an example, the statutes require employers to have a written policy and procedure. Employers must also educate employees on these policies. The substances that an employer can test for are defined, as is when employees must be tested. Collection sites must meet defined specifications to insure the integrity of the specimen and the chain of custody. Laboratories must be certified to protect the quality of the tests performed. A Medical Review Officer (MRO) must review and report the results. Your program must also contain rehabilitation provisions in the event of a positive test. Supervisors must receive training so they may properly make reasonable suspicion determinations. There are also requirements for record keeping and reporting to protect the employee's privacy.

There are many requirements in establishing a quality drug and alcohol-screening program. Our loss control staff can provide resource materials and identify quality vendors that can help ensure programs are in accordance with applicable regulations. Contact your underwriter or a member of our loss control staff should an insured need this assistance.

Last updated: 4/3/09