

STATE-BY-STATE LEGAL STATUS GUIDE

Workplace Drug and Alcohol Testing Laws

(January 2021)

The information contained in this guide is copyrighted by Current Consulting Group ("CCG") and all rights are reserved. CCG has made reasonable efforts to present accurate and reliable information, updated as of November 2020. However, CCG is not responsible for any errors or omissions in the information and this guide should not be used as a substitute for users' independent research and evaluation of any issue. This information is provided for informational and educational purposes only and not as legal advice or opinion. Individuals or organizations seeking a determination of legal rights or responsibilities should seek the counsel of an attorney or a designated official of an applicable regulating agency. Reader retains full responsibility for the use of the information contained herein.

ALABAMA

Legal status for workplace drug and alcohol testing

Alabama has voluntary drug testing laws. Companies that wish to qualify for a 5% discount on their workers' compensation premiums must comply with these laws; other companies are not mandated to comply with these statutes. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAWS.

ALABAMA CODE 25-5-300 TO -340
ALABAMA ADMINISTRATIVE CODE 480-5-6

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	The following types of testing are required with conditions: pre-employment, reasonable suspicion, post-accident, periodic exam, and follow-up. Return-to-duty and random testing are permitted, but not required.
Drugs tested (panel)	Defined	Amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines, propoxyphene, or a metabolite of any of the aforementioned substances.
Specimens permitted	Defined	Defined as a tissue, blood, breath, urine, or other product of the human body capable of revealing the presence of drugs or their metabolites or of alcohol. Urine is the preferred specimen for drug testing and breath is the preferred specimen for alcohol testing.
POCT screening devices	Prohibited	Under the voluntary law, all initial and confirmatory testing must take place in a laboratory. Employers that do not wish to receive the workers' compensation premium discount offered by the voluntary law are permitted to use POCT screening devices.
Alcohol testing	Permitted	Must comply with DOT standards found in 49 CFR Part 40. Breath is the preferred specimen for alcohol testing. For regular employees, a positive is 0.08, for safety-sensitive employees a positive is 0.04.
EAP	See comments	An employer must either provide an EAP or offer information on how to access EAP type services.
Certified laboratory	Required	CAP certification is required.
WC premium discount	Permitted	When compliant with law, employers qualify for up to a 5% discount.
WC claim denial or reduction	Permitted	See Alabama Code 25-5-51. Requires compliance with DOT 49 CFR Part 40.
Unemployment denial	Permitted	See Alabama code 25-4-78. Requires compliance with DOT 49 CFR Part 40 or standards shown by the employer to be otherwise reliable.

ALASKA

Legal status for workplace drug and alcohol testing

Alaska has a voluntary drug testing law. Companies that wish to qualify for limited legal protections must comply with this law; other companies are not mandated to comply with this statute. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW.

ALASKA STATUTES 23.10.600 TO .699

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Permitted in all instances. Post-accident testing must be performed on individual believed to have caused the accident. An employer must test all or part of the work force based on consideration of safety.
Drugs tested (panel)	Defined	See Alaska Statutes 11.71 for a full list of controlled substances included in the state's definition of drugs. At a minimum, employers must test for drugs with US DHHS-established cut-off levels. Notice of substances to be tested for must be provided to employees in advance. Employers must use US DHHS determined cutoff levels, for substances without US DHHS cutoff levels, the employer must establish and communicate cutoff levels.
Specimens permitted	Defined	Defined as urine or breath.
POCT screening devices	Permitted	Permitted, but with many conditions. FDA approved devices are required, as is operator training. Only certain individuals can perform testing using POCT devices. Written record of results must be kept on-site. Results must be confirmed via GC/MS
Alcohol testing	Permitted	Permitted for employees only. Applicants cannot be alcohol tested.
EAP	Not mentioned	
Certified laboratory	Required	When not using on-site kits, SAMHSA, CAP, or American Association of Clinical Chemists certification is permitted.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Alaska Statutes 23.30.235.
Unemployment denial	Permitted	See Alaska Statutes 23.20.379. Requires compliance with the voluntary law.

ARIZONA

Legal status for workplace drug and alcohol testing

Arizona has a voluntary drug testing law. Companies that wish to qualify for limited legal protections must comply with this law; other companies are not mandated to comply with this statute. Additionally, there is case law in the state that impacts drug testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW AND THE CASE LAW.

ARIZONA REVISED STATUTES
23-493 TO 493.11
WHITMIRE V. WAL-MART STORES, INC.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Permitted in all instances. For post-accident testing, may only test employees believed to have contributed to the accident and testing should take place as soon as practicable after the accident.
Drugs tested (panel)	Defined	Any substance considered unlawful under the schedules of the controlled substances section of the comprehensive drug abuse prevention and control act of 1970, as amended or pursuant to title 13, chapter 34, or the metabolite of the substance.
Specimens permitted	Defined	Urine, blood, breath, saliva, hair, or other substances from the person being tested.
POCT screening devices	See comments	Although the law requires testing take place in a certified lab, it specifically states that nothing in the statute discourages, restricts limits, prohibits, or requires on-site drug or alcohol testing. Case law dictates that in order to terminate a medical marijuana using employee, a drug test cannot be conducted by another non-expert employee. This may impact the use of POCT screening devices.
Alcohol testing	Permitted	
EAP	Not mentioned	
Certified laboratory	Required	When not using on-site kits, SAMHSA, CAP, or state certification is permitted.
WC premium discount	Not mentioned	
WC claim denial or reduction	Prohibited	Arizona Revised Statutes Annotated 23-1021 was ruled unconstitutional by the AZ Supreme Court in <i>Grammatico v. The Industrial Commission</i> .
Unemployment denial	Permitted	See Arizona Revised Statutes 23-601 et al. Requires compliance with the voluntary law.

ARKANSAS

Legal status for workplace drug and alcohol testing

Arizona has two voluntary drug testing laws. Companies that wish to qualify for a 5% discount on their workers' compensation premiums must comply with these laws; other companies are not mandated to comply with these statutes. Additionally, there is a mandatory law that applies only to public school employees. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAWS.

ARKANSAS CODE ANNOTATED
11-14-101 TO 112
ARKANSAS ADMINISTRATIVE RULES 0.99.36

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident, periodic exam, and follow-up testing are required. Random testing is permitted. Written documentation of observed behavior is required prior to performing reasonable suspicion testing.
Drugs tested (panel)	Defined	Any controlled substance subject to testing pursuant to DOT drug testing regulations. Amphetamines, marijuana, cocaine, opioids, PCP, and alcohol.
Specimens permitted	Defined	Tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites.
POCT screening devices	Prohibited	Compliance with DOT 49 CFR Part 40 is required.
Alcohol testing	Permitted	Alcohol testing occurring outside of those individuals in safety-sensitive positions can only be performed under reasonable suspicion circumstances. Specific requirements for alcohol testing are included in the statute.
EAP	Mentioned	Mentioned, but not specifically required. See law for specific details on what an EAP, if offered, should include.
Certified laboratory	Required	Licensed by the state for initial testing, licensed by SAMHSA for initial and confirmatory testing, licensed by CAP for initial and confirmatory (urine) testing. Must also comply with DOT procedures or other such program as recognized by the Director of the Workers' Health and Safety Division of the Workers' Compensation Commission.
WC premium discount	Mentioned	At least 5%.
WC claim denial or reduction	Permitted	See Arkansas Code Ann. 11-9-102.
Unemployment denial	Permitted	See Arkansas Code Ann. 11-10-514.

CALIFORNIA

Legal status for workplace drug and alcohol testing

California has case law and a laboratory licensing law that impact who can be tested and under what circumstances. Additionally, San Francisco has an ordinance that restricts drug testing in a number of ways. Employers should consider legal decisions related to drug testing and the laboratory licensing law prior to establishing a drug-free workplace program that includes any type of drug testing. Additionally, there is a mandatory law that applies only to taxicab drivers. THIS CHART REFLECTS THE REQUIREMENTS OF THE LABORATORY LICENSING LAW AND CASE LAWS.

CALIFORNIA BUSINESS & PROFESSIONS CODE
1206-1206.5
HILL V. NCAA
LODER V. CITY OF GLENDALE
PILKINGTON V. SUPERIOR COURT
KRASLAWSKY V. UPPER DECK, INC.
SMITH V. FRESNO IRRIGATION DISTRICT
 Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	See comments	California has a strict privacy law – case law dictates that the invasion of privacy by drug testing must be justified by a competing interest. Generally speaking, an employer should have reasonable suspicion before performing a drug test – reasonable suspicion testing is permitted. Pre-employment testing is permitted without individualized suspicion. Random testing is not generally recommended unless the individual in question is in a safety-sensitive position. All other circumstances are restricted.
Drugs tested (panel)	Not mentioned	
Specimens permitted	Not mentioned	
POCT screening devices	Restricted	Only certain qualified individuals may perform tests or operate POCT devices. The Department of Health does not actively seek to restrict POCT, but the laboratory licensing law requires all tests to take place in a certified laboratory. Compliance is highly advised due to the litigious nature of the state.
Alcohol testing	Not mentioned	
EAP	Not mentioned	
Certified laboratory	Required	Only certain qualified individuals may perform tests or operate POCT devices. See law for full details.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See California Labor Code 3600(1)(4).
Unemployment denial	Permitted	See California Unemployment Insurance Code sec. 1256.4.

CALIFORNIA, SAN FRANCISCO

Legal status for workplace drug and alcohol testing

San Francisco has a very restrictive drug testing law. Employers' rights are very limited when it comes to when drug testing can take place and who may be drug tested. Employers are advised to refer to the city's law very carefully before implementing a drug testing program. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY CITY ORDINANCE.

SAN FRANCISCO POLICE CODE 33A

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	See comments	Reasonable suspicion testing is permitted if there are reasonable grounds to believe that an employee is impaired on the job. Random testing is prohibited. Employers are permitted to comply with collective bargaining agreements, which could permit other types of testing depending on the agreement.
Drugs tested (panel)	Not mentioned	
Specimens permitted	Mentioned	Urine and blood are permitted.
POCT screening devices	Restricted	Only certain qualified individuals may perform tests or operate POCT devices. The Department of Health does not actively seek to restrict POCT, but the state laboratory licensing law requires all tests to take place in a certified laboratory.
Alcohol testing	Permitted	
EAP	Not mentioned	
Certified laboratory	Required	Only certain qualified individuals may perform tests or operate POCT devices. See laboratory licensing law for full details. State certification is required if an employer paid retest is requested.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See California Labor Code 3600(1)(4).
Unemployment denial	Permitted	See California Unemployment Insurance Code sec. 1256.4.

COLORADO

Legal status for workplace drug and alcohol testing

The city of Boulder has a drug testing ordinance that contains several restrictive elements. Employers in Boulder should consult the city ordinance. Colorado has a workers' compensation reduction law and an unemployment compensation denial law that may impact testing.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Colorado Rev. Stat. 8-42-112 to 112.5.
Unemployment denial	Permitted	See Colorado Rev. Stat. 8-73-108.

COLORADO, BOULDER

Legal status for workplace drug and alcohol testing

Boulder has a restrictive drug testing law that only applies to employers with business operations within the city. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY CITY ORDINANCE.

BOULDER HUMAN RIGHTS CODE
12-3-1 TO 6

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Restricted	Generally speaking, all testing circumstances are prohibited or restricted except for post-offer applicant testing, which is required. Reasonable suspicion testing is only permitted if the employer has specific, objective, clearly expressed facts that support a suspicion of intoxication. Post-accident testing is only permitted if it meets reasonable suspicion criteria. Return-to-duty and follow-up testing are only permitted if part of an EAP to which the employee has agreed. Periodic and random testing are prohibited.
Drugs tested (panel)	Not mentioned	
Specimens permitted	Not mentioned	The law mentions “bodily fluid or tissue” but does not restrict or define further. The law requires split-specimen confirmation, which may exclude some types of specimen.
POCT screening devices	Permitted	Positive test results must be confirmed via GC/MS or other method of equal sensitivity and accuracy.
Alcohol testing	Permitted	However, there must be reasonable suspicion to perform alcohol testing. Blood and urine are mentioned as specimens in the context of alcohol testing.
EAP	Not required	However, additional testing may be permitted as part of an EAP. No other details are provided in the law.
Certified laboratory	Not required	However, this is recommended. In the case of an employee requested retest, the law mentions using NIDA approved laboratories.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Colorado Rev. Stat. 8-42-112 to 112.5.
Unemployment denial	Permitted	See Colorado Rev. Stat. 8-73-108.

CONNECTICUT

Legal status for workplace drug and alcohol testing

Connecticut is a drug testing friendly state with a mandatory law that places certain restrictions on what employers can and cannot do. Employers should consider legal decisions related to drug testing prior to establishing a drug-free workplace program that includes any type of drug testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW AND CASE LAW.

CONNECTICUT GEN. STAT. 31-51T TO 51AA
DOYON V. HOME DEPOT USA, INC.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment testing is permitted; however, applicants must be notified prior to testing and provided a copy of test results. If an employer has reasonable suspicion, post-accident, periodic, return-to-duty, and follow-up testing are permitted. Case law dictates that an accident in and of itself does not provide reasonable suspicion to test. Random testing is limited to certain safety-sensitive positions or other positions if the employee in question is part of an EAP in which the employee participates willingly. Random testing must follow federal requirements. See law for full details.
Drugs tested (panel)	Not mentioned	
Specimens permitted	Mentioned	The law only mentions urine, but nothing prohibits the use of other specimens.
POCT screening devices	Permitted	Screening only. Must be confirmed in a laboratory using GC/MS or other reliable method.
Alcohol testing	Permitted	
EAP	Mentioned	Mentioned in conjunction with permitted random testing, but no further details are provided an EAP is not required.
Certified laboratory	Not mentioned	It is advisable to use a SAMHSA or other certified lab.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Connecticut Gen. Stat. 31-275.
Unemployment denial	Permitted	See Connecticut Gen. Stat. 31-236.

DELAWARE

Legal status for workplace drug and alcohol testing

Delaware is a drug testing friendly state with no general drug testing requirements. There exists a voluntary law in Delaware that is a workplace safety regulation – it contains drug and alcohol testing requirements that employers must comply with if they want to receive up to a 19% discount on their workers' compensation insurance premiums, in addition to many other requirements outside of workplace drug and alcohol testing that employees must comply with in order to receive the discount. Consult the law carefully in its entirety. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW.

802 DELAWARE WORKPLACE SAFETY REGULATION

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, and post-accident testing are permitted.
Drugs tested (panel)	Mentioned	May include, but is not limited to: amphetamines, cannabinoids, cocaine, opiates, phencyclidine (PCP), and chemical derivatives.
Specimens permitted	Mentioned	Testing can include (or may be limited to) urine testing.
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	Mentioned	Must provide either an EAP or a list of resources such as drug and alcohol counseling services, as well as treatment centers that are available to employees.
Certified laboratory	Mentioned	
WC premium discount	Permitted	A premium discount is available to qualifying employers who pay \$3,161 or more in annual Delaware Workers' Compensation premiums and establish both testing and inspection procedures according to the Workplace Safety Program. Up to a 19% discount is available for employers that comply.
WC claim denial or reduction	Permitted	See Delaware Code 19-23-2353.
Unemployment denial	Not mentioned	

DISTRICT OF COLUMBIA

Legal status for workplace drug and alcohol testing

The District of Columbia does not have a drug testing statute. However, case law exists that may limit an employer's ability to test, as does marijuana law.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	However, a marijuana law limits applicant testing for marijuana to post-offer circumstances.
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See D.C. Code 32-1503.
Unemployment denial	Permitted	See D.C. Code 51-110 and D.C. Municipal Regulations 7-312.4.

FLORIDA

Legal status for workplace drug and alcohol testing

Florida has two voluntary drug testing laws. Companies that wish to qualify for a 5% discount on their workers' compensation premiums must comply with these laws; other companies are not mandated to comply. Florida also has case law that may impact workplace drug testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAWS.

FLORIDA WC CODE 440.102
FLORIDA ADMIN. CODE 59A-24 ET AL.
JONES V. GRACE HEALTHCARE CTR.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	Pre-employment, post-accident, follow-up, periodic (if part of a required routine medical exam), and reasonable suspicion testing are required. Return-to-duty and random testing are permitted but not required.
Drugs tested (panel)	Defined	Amphetamines, cannabinoids, cocaine, phencyclidine, hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, methadone, propoxyphene, synthetic narcotics, designer drugs, or metabolite of any of these substances.
Specimens permitted	Defined	One voluntary law defines a specimen as "bodily specimen" The other only permits urine for drugs and blood for alcohol and provides strict cut-off levels and collection requirements for these two specimens that employers must follow. The second, more restrictive law also makes mention of hair testing and provides cut-off levels and collection procedures, however, hair is not specifically permitted.
POCT screening devices	Permitted	FDA approved devices (or devices approved by the Agency for Health Care Administration) and confirmatory testing are required.
Alcohol testing	Permitted	Urine testing is prohibited for alcohol, law specifically mentions that blood must be used for alcohol testing.
EAP	Not required	An employer must provide information about EAPs to employers.
Certified laboratory	Required	Must be state or SAMHSA licensed.
WC premium discount	Permitted	5% upon approval by the state.
WC claim denial or reduction	Permitted	See Florida Stat. Ann. 440.09.
Unemployment denial	Permitted	See Florida Stat. Ann. 443.101.

GEORGIA

Legal status for workplace drug and alcohol testing

Georgia has a voluntary drug testing law. Companies that wish to qualify for a 7.5% discount on their workers' compensation premiums must comply with this law; other companies are not mandated to comply with this statute.

GEORGIA CODE ANN. 34-9-410 TO 421

THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident, periodic, and follow-up testing are required. Return-to-duty and random testing are permitted, but not required.
Drugs tested (panel)	Defined	Amphetamines, cannabinoids, cocaine, phencyclidine, methadone, methaqualone, opiates, barbiturates, benzodiazepines, propoxyphene, or a metabolite thereof.
Specimens permitted	Defined	Tissue, blood, breath, urine, or other product of the human body capable of revealing the presence of drugs or their metabolites or of alcohol.
POCT screening devices	Permitted	Permitted for pre-employment purposes only.
Alcohol testing	Required	Must follow SAMHSA/DOT regulations. Testing can be performed via blood, breath, saliva, or urine.
EAP	Not required	If an employer has an EAP, benefits must be communicated to employees. If the employer doesn't have an EAP, they must maintain a resource file of available programs and inform employees of the file.
Certified laboratory	Required	Must be SAMHSA or CAP certified.
WC premium discount	Permitted	7.5% upon approval.
WC claim denial or reduction	Permitted	See Georgia Code Ann. 34-9-17. If an individual refuses to submit to a drug or alcohol test "performed in the manner set forth in Code Section 34-9-415" then a "rebuttable presumption that the accident and injury or death were caused by the consumption of alcohol or the ingestion of marijuana or a controlled substance."
Unemployment denial	Permitted	See Georgia Code ann. 34-8-194. Requires compliance with voluntary law.

HAWAII

Legal status for workplace drug and alcohol testing

Hawaii places no restriction on drug testing circumstances but has very specific requirements on how drug testing is conducted. The law requires that written notice be given prior to the collection of a sample every time a drug test is conducted. Employers are required to comply with Hawaii's two mandatory laws. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAWS.

HAWAII REV. STAT. 329B-1 to 8
HAWAII ADMIN. RULES 11-113

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	All types of testing are permitted.
Drugs tested (panel)	Defined	Marijuana, cocaine, amphetamines, opiates, phencyclidine, barbiturates, methaqualone, benzodiazepines, propoxyphene, methadone, alcohol, or any other controlled substance that is approved by the Director of Health.
=Specimens permitted	Defined	The law includes extensive provisions for urine collections and testing. Blood may be tested, but only under limited circumstances and by individuals outlined in the law. The State Director of Health can approve other testing specimens.
POCT screening devices	Permitted	Must use FDA approved devices, lab confirmation is required, operator training is required, MRO review is required.
Alcohol testing	Permitted	Blood and urine are permitted testing specimens. Other specimens may be tested if approved by the State Director of Health. 0.02 BAC is considered positive.
EAP	Not mentioned	
Certified laboratory	Required	SAMHSA or state certified laboratory. A state certified lab is required, but any SAMHSA certified lab may apply for state certification.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Hawaii Rev. Stat. 386-3.
Unemployment denial	Permitted	See Hawaii Rev. Stat. 383-30.

IDAHO

Legal status for workplace drug and alcohol testing

Idaho has a voluntary drug testing law. Companies that wish to qualify for limited legal protections and/or a reduction in workers' compensation premiums must comply with this law; other companies are not mandated to comply with this law. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW.

IDAHO CODE 72-1701 TO 1716

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	All types of testing are permitted. Baseline testing is specifically permitted.
Drugs tested (panel)	Not defined	
Specimens permitted	Not defined	
POCT screening devices	Permitted	
Alcohol testing	Permitted	Breath must be confirmed by a second breath test no earlier than 15 minutes after the first test. Saliva tests must be confirmed by a different testing methodology. A positive test is not less than 0.02 BAC.
EAP	Not mentioned	
Certified laboratory	Not mentioned	However, lab confirmation is required.
WC premium discount	Permitted	No details provided. Qualification and rate are determined by the insurer.
WC claim denial or reduction	Permitted	See Idaho Code 72-208.
Unemployment denial	Permitted	See Idaho Code 72-1701 to 1716.

ILLINOIS

Legal status for workplace drug and alcohol testing

Illinois does not have a general drug testing statute, although it has workers' compensation and unemployment compensation denial laws that may include testing requirements. The workers' compensation denial law requires compliance with DOT 49 CFR Part 40. Separate laws exist that regulate drug and alcohol testing in specific industries, such as public works and law enforcement. Additionally, the state recreational marijuana law may impact workplace drug testing.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	However, specific industries may require testing under certain circumstances.
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See 820 Illinois Comp. Stat. 305/11. Compliance with DOT 49 CFR Part 40 is required.
Unemployment denial	Permitted	See 820 Illinois Comp. Stat. 405/602. Law defines misconduct as including violation of a known rule or policy. Illinois Department of Employment Security Unemployment Insurance Law Handbook states that the violation of a drug-free workplace policy constitutes misconduct under this law.

INDIANA

Legal status for workplace drug and alcohol testing

Indiana does not have a general drug testing statute, although it has workers' compensation and unemployment compensation denial laws that may include testing requirements. Separate laws exist that regulate drug and alcohol testing in specific industries, such as childcare, home health care, and more. Drug testing may be required under certain circumstances.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	However, specific industries may require testing under certain circumstances.
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Indiana Code 22-3-2-8.
Unemployment denial	Permitted	See Indiana Code 22-4-15-1.

IOWA

Legal status for workplace drug and alcohol testing

Iowa is a drug testing friendly state though some restrictions apply. Virtually all testing circumstances are permitted, the drug panel is widely defined, and instant testing is permitted. No burdensome restrictions are placed on how drug testing may be conducted. The state has two mandatory laws and applicable case law. THIS CHART REFLECTS THE REQUIREMENTS OF THE CASE LAW AND MANDATORY LAWS.

IOWA CODE ANN. 730.5
IOWA ADMIN CODE 641-12.1 TO 12.21
SIMS V. NCI HOLDING COMPANY

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident (for accidents totaling \$1000 or more in property damage or an injury where a claim is filed), random (within the confines of the written policy), return-to-duty, and follow-up testing are permitted.
Drugs tested (panel)	Defined	A substance considered a controlled substance and included in Schedules I, II, III, IV, or V under the federal Controlled Substances Act.
Specimens permitted	Defined	Urine, blood, breath, hair, and oral fluid. Blood is only permitted for post-accident circumstances, when administered by an individual providing treatment, and not at the request of the employer. Oral fluid samples must be of a sufficient quantity to fulfill the law's split specimen requirement. Hair testing can be performed on prospective employees only.
POCT screening devices	No requirements or restrictions	Neither prohibited nor expressly permitted. All tests must undergo confirmatory testing at a certified lab.
Alcohol testing	Permitted	Must comply with DOT regulations. Employers may not terminate an employee for a first-time positive test unless s/he refuses rehab or fails to complete rehab. Restrictions apply for specimen types and circumstances. 0.02 BAC is the minimum positive cut-off level.
EAP	Mentioned	If an employer has an EAP, employees must be made aware of the EAP services provided. At a minimum, employers must provide information about available local services.
Certified laboratory	Required	Specifically required for confirmation testing. Either SAMHSA or state certification is required.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Iowa Code Ann. 85.16.
Unemployment denial	Permitted	See Iowa Code Ann. 96.5.

KANSAS

Legal status for workplace drug and alcohol testing

Kansas has two laboratory licensing laws that employers are required to comply with. Additionally, there are workers' compensation reduction and unemployment compensation denial laws that contain specific drug testing requirements. THIS CHART REFLECTS THE REQUIREMENTS OF THE LABORATORY LICENSING LAWS.

KANSAS REV. STAT. 65-1,108
KANSAS ADMIN. REG. 28-33-12

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	
Drugs tested (panel)	Defined	Amphetamines, cannabinoids or tetrahydrocannabinoids, cocaine, opiates, and phencyclidine. Other drugs are permitted only for diagnosis and treatment purposes (not drug testing).
Specimens permitted	Not defined	
POCT screening devices	Prohibited	All testing must be performed in a certified laboratory.
Alcohol testing	Not mentioned	
EAP	Not mentioned	
Certified laboratory	Required	SAMHSA certified lab required. Federal cut-off levels must be used. The law contains very specific personnel and certification requirements. If an employer wishes to use an out-of-state laboratory, the lab must be certified with the state of Kansas.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Kansas Stat. Ann. 44-501. See law for full details - very specific drug testing requirements are outlined.
Unemployment denial	Permitted	See Kansas Stat. Ann. 44-706. See law for full details - very specific drug testing requirements are outlined.

KENTUCKY

Legal status for workplace drug and alcohol testing

Kentucky has a voluntary law that offers a workers' compensation premium discount to qualifying companies. Companies that wish to qualify for a workers' compensation premium discount must comply with this law; other companies are not mandated to comply with this law. Additionally, Kentucky has mandatory industry-specific laws not reflected in this chart. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW.

803 KAR 25:280

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident, random, and follow-up testing are required. Periodic and return-to-duty testing are not mentioned.
Drugs tested (panel)	Defined	11 drug panel including amphetamines, cannabinoids, cocaine, opiates, phencyclidine, benzodiazepines, propoxyphene, methaqualone, methadone, barbiturates, and synthetic narcotics.
Specimens permitted	Defined	The law only mentions urine for drug testing and breath for alcohol testing. Programs using other types of testing specimens may be approved by the Office of Workers' Claims if the specimens tested are as accurate as and equivalent to breath and/or urine.
POCT screening devices	Prohibited	All testing must take place in a certified lab.
Alcohol testing	Required	Breath alcohol testing is required. Programs using other types of testing specimens may be approved by the Office of Workers' Claims if the specimen test is as accurate as and equivalent to breath. A positive alcohol test is considered 0.04 BAC.
EAP	Required	Must either be provided internally or contracted externally.
Certified laboratory	Required	Either SAMHSA or National Laboratory Certification Program.
WC premium discount	Permitted	5%
WC claim denial or reduction	Permitted	See Kentucky Rev. Stat. 342.610.
Unemployment denial	Permitted	See Kentucky Rev. Stat. 341.370.

LOUISIANA

Legal status for workplace drug and alcohol testing

Louisiana has a mandatory law that employers must comply with. Employers may qualify for liability protection when in compliance. Exclusion language exists for the oil and gas industry. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW.

LOUISIANA REV. STAT. 49-1001 TO 1012

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	
Drugs tested (panel)	Defined	Specifically mentions testing for marijuana, opioids, cocaine, amphetamines, and phencyclidine. It does not preclude testing for substances found in federal Schedules I, II, III, IV, and alcohol.
Specimens permitted	Defined	Blood, urine, saliva, and hair.
POCT screening devices	Permitted	Must use an FDA approved device that meets “generally accepted cutoff levels such as those in the mandatory federal guidelines for workplace drug testing.” Confirmatory testing is required.
Alcohol testing	Mentioned	Mentioned but not required – alcohol is listed as an approved substance for which employers can test. Compliance with SAMHSA guidelines is required.
EAP	Not mentioned	
Certified laboratory	Required	Either SAMHSA or CAP-FUDT/CAP-FDT certification is required.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Louisiana Rev. Stat. Ann. 23:1081 and Louisiana Admin. Code 40-1503 to 1507. Contain specific drug testing requirements.
Unemployment denial	Permitted	See Louisiana Rev. Stat. Ann. 23:1601. Contains specific drug testing requirements.

MAINE

Legal status for workplace drug and alcohol testing

While drug testing is permitted in Maine, its three mandatory laws place many restrictions on employers. This chart provides only a relatively brief overview. It is strongly recommended that readers review the state's statutes before implementing or revising any drug testing policies. **THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAWS.**

26 MRSA 681 TO 690
12-170 CMR CH. 7
10-144 CMR CH. 265

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	All types of testing are permitted, but with restrictions (e.g. safety-sensitive positions only, post-offer, etc.). See statutes for specific language.
Drugs tested (panel)	Defined	Any scheduled drug, alcohol, or other drug, or any of their metabolites. Amphetamines, methamphetamines, barbiturates, cannabinoids, benzodiazepines, cocaine or its metabolite, phencyclidine, opiates, methaqualone, methadone, and alcohol.
Specimens permitted	Defined	The law refers vaguely to specimen types and permits blood (when requested by the employee), urine, oral fluid, and "body materials". Breath is specifically prohibited. The law provides extremely specific cut-off levels for urine, oral fluid/saliva, hair, and sweat.
POCT screening devices	Restricted	FDA approved devices are required, as is operator training and confirmatory testing. Employers are prohibited from performing drug tests upon their employees but may be permitted to perform testing on applicants if the facility they are testing in is certified as a laboratory.
Alcohol testing	Permitted	Must follow the same requirements as drug testing. Breath alcohol testing is prohibited.
EAP	Required	Employers with 20 or more employees must establish an EAP and could potentially join a cooperative EAP that services multiple employers. Must be certified by the Department of Health and Human Services.
Certified laboratory	Required	CAP, state (certified by DHHS), NIDA, or American Association for Clinical Chemistry.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Maine 39-A MRSA 202.
Unemployment denial	Permitted	See 26 MRSA 1043.

MARYLAND

Legal status for workplace drug and alcohol testing

Maryland has two mandatory laws that permit all type of employee testing and job applicant testing. On-site testing is permitted for pre-employment testing only. Very specific requirements apply to laboratories performing tests. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAWS.

**MARYLAND CODE HEALTH GEN.
17-214 TO 217
MARYLAND REG. CODE 10.10.10.01 TO .09**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	
Drugs tested (panel)	Defined	A drug, substance, or immediate precursor as set forth in Schedules I to V, Criminal Law Article, Title 5, Subtitle 4, Annotated Code of Maryland.
Specimens permitted	Defined	Specimen is defined as a material derived from the human body and intended for laboratory testing. Blood, urine, and oral fluid/saliva are permitted for applicants and employees. Hair is permitted for applicants only, and strict requirements exist for collections. Breath is prohibited.
POCT screening devices	Restricted	Pre-employment testing only. Must meet SAMHSA cut-off levels and follow chain of custody protocols. FDA approved devices are required, as is operator training, details of which are outlined in the law. Confirmatory testing and MRO verification are required for positives.
Alcohol testing	Permitted	Blood, saliva, and urine testing are permitted. Must follow DOT cut-off levels. Hair is permitted for pre-employment testing only. Breath testing is strictly prohibited
EAP	Not mentioned	
Certified laboratory	Required	State certification only. As part of state certification, labs may be required to comply with CAP, CMMS, or other government agency or program requirements. At the time of testing, the employer must supply the name and address of the lab at the donor's request.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Maryland Code Labor and Employment 9-506.
Unemployment denial	Permitted	See Maryland Code Labor and Employment 8-1002.

MASSACHUSETTS

Legal status for workplace drug and alcohol testing

Massachusetts does not have a drug testing statute, though there have been landmark legal decisions that have shaped how drug testing can be conducted. The state's narrow privacy law also impacts workplace drug testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE CASE LAWS.

**FOLMSBEE V. TECH TOOL
GRINDING & SUPPLY, INC.
WEBSTER V. MOTOROLA, INC.**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	However, it is recommended that testing be limited to safety-sensitive employees and/or instances where there is reasonable suspicion per privacy law and case law.
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	However, urine is permitted re case law.
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Massachusetts Gen. Laws 1-XXI-152-27.
Unemployment denial	Permitted	See Massachusetts Gen. Laws 1-XXI-151A-25.

MICHIGAN

Legal status for workplace drug and alcohol testing

THIS STATE DOES NOT HAVE A DRUG TESTING STATUTE

Michigan does not have a state drug testing law; however, it does have workers' compensation and unemployment compensation denial laws.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Michigan Comp. Laws Ann. 418.305.
Unemployment denial	Permitted	See Michigan Comp. Laws Ann. 421.29.

MINNESOTA

Legal status for workplace drug and alcohol testing

Minnesota has a restrictive mandatory drug testing law with many detailed requirements. It is strongly recommended that employers and others refer directly to the state's statutory language to ensure compliance. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW.

MINNESOTA STAT. ANN. 181.950 TO 957

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	All types of testing are permitted with restrictions (e.g. post-offer only for applicants, random testing for safety-sensitive employees only, etc.).
Drugs tested (panel)	Defined	A controlled substance as defined in 152.01(4): "a drug, substance, or immediate precursor in Schedule I through V of Section 152.05. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquors, or tobacco."
Specimens permitted	Defined	Body component sample.
POCT screening devices	Restricted	All testing must take place in a certified laboratory.
Alcohol testing	Permitted	Must take place in a certified laboratory on a body component sample.
EAP	Not mentioned	
Certified laboratory	Required	CAP or New York state certification is permitted for drug and alcohol testing. SAMHSA certification is permitted for drug testing only.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Minnesota Stat. Ann. 176.021.
Unemployment denial	Permitted	See Minnesota Stat. Ann. 268.095.

MISSISSIPPI

Legal status for workplace drug and alcohol testing

Mississippi has voluntary drug testing laws that provide limited legal protections to employers that conduct drug and alcohol testing in compliance with the guidelines contained in the statute. A 5% workers' compensation discount program is also available and administered directly by insurers. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAWS.

MISSISSIPPI CODE 71-3-201 TO 225
MISSISSIPPI CODE 71-7-1 TO 33
MISSISSIPPI ADMIN. CODE TITLE 15, PART 16,
SUBCHAPTERS 5 TO 9

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	All types of testing are permitted with restrictions (e.g. written notice for applicant, etc.). See statute for full details.
Drugs tested (panel)	Defined	An illegal drug or a prescription or nonprescription medication. May include marijuana, cocaine, opiates, amphetamines, phencyclidine, alcohol, and other controlled substances. Testing for other drugs is permitted if a federal agency has established guidelines for testing for said substance.
Specimens permitted	Defined	A tissue or product of the human body chemically capable of revealing the presence of drugs in the human body. Urine is permitted for initial and confirmatory testing for drugs. Breath and saliva are permitted for initial alcohol testing, and blood is permitted for confirmatory alcohol testing.
POCT screening devices	Permitted	Confirmation testing and chain of custody procedures are required.
Alcohol testing	Permitted	Breath or saliva for initial testing, positive must be confirmed with blood.
EAP	Mentioned	Must provide resources of employee assistance providers or other rehab resources. If the employer chooses to provide an EAP, s/he must notify all employees of the program.
Certified laboratory	Required	SAMHSA, CAP, state, CLIA, accreditation by a federal agency or organization, or out-of-state laboratory certifications are permitted. A certified lab is required for confirmatory testing.
WC premium discount	Permitted	A 5% discount is offered if an employer is compliant with Mississippi Code 71-3-201 to 225.
WC claim denial or reduction	Permitted	See Mississippi Code 71-3-7 and 121.
Unemployment denial	Permitted	See Mississippi Code 71-5-513. Citation: 71-5-513, which classifies misconduct as means for denial or benefits, has been repealed effective July 1, 2014. As of that date, the statutory language may change. 71-3-13, which classifies discharge for drug/alcohol abuse as misconduct, has not been repealed.

MISSOURI

Legal status for workplace drug and alcohol testing

Missouri does not have a general drug testing statute. However, employers must meet certain drug and alcohol testing requirements in order to challenge workers' and unemployment compensation claims.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	Except for in workers'/unemployment comp cases. In which case types of testing must be clearly stated in the written policy. Pre-employment, reasonable suspicion, post-accident, and random testing are permitted for unemployment compensation denial. Post-accident testing is permitted for workers' compensation denial.
Drugs tested (panel)	No requirements or restrictions	For unemployment compensation denial can test for a controlled substance as defined in Missouri Rev. Stat. 195.010.
Specimens permitted	No requirements or restrictions	For unemployment compensation denial, a tissue, fluid, or product of the human body capable of revealing the presence of alcohol or drugs or their metabolites.
POCT screening devices	No requirements or restrictions	Lab analysis required for programs that wish to challenge workers' or unemployment compensation claims.
Alcohol testing	No requirements or restrictions	Permitted for unemployment compensation denial, SAMHSA/DOT compliance is required. For workers' compensation denial, alcohol testing is permitted with a 0.08 BAC cut-off level.
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	Except in workers'/unemployment compensation cases.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Missouri Rev. Stat. 287.120.
Unemployment denial	Permitted	See Missouri Rev. Stat. 288.045.

MONTANA

Legal status for workplace drug and alcohol testing

Montana has a mandatory drug testing law that places detailed restrictions regarding the circumstances under which drug testing can be conducted. References to federal drug testing requirements are found throughout the Montana law. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW.

MONTANA CODE ANN. 39-2-205 TO 211

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	All types of testing are permitted with restrictions (e.g. reasonable suspicion and damages over \$1,500 for post-accident, etc.). Employers must meet several conditions in order to conduct random testing. See law for full details.
Drugs tested (panel)	Defined	A dangerous drug as defined in 49 CFR Part 40, excluding a drug used pursuant to a valid prescription.
Specimens permitted	Defined	Urine, breath, or oral fluid. Must use procedures as stringent as Part 40 for breath and oral fluid, must follow 49 CFR Part 40 for urine.
POCT screening devices	Not mentioned	
Alcohol testing	Permitted	Compliance with SAMHSA/DOT regulations is required. Only a certified BAT can perform testing. Must use a device that appears on the conforming products list published in the Federal Register. BAC of 0.04 or greater is considered a positive.
EAP	Mentioned	Must provide a description of available assistance programs, including drug and alcohol counseling, treatment, or rehab programs that are available to employees.
Certified laboratory	Required	Requires compliance with 49 CFR Part 40.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Montana Code Ann. 39-71-407.
Unemployment denial	Permitted	See Montana Code Ann. 39-51-2303.

NEBRASKA

Legal status for workplace drug and alcohol testing

Nebraska has a very open mandatory drug testing law. All types of testing are permitted. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW.

NEBRASKA REV. STAT. 48-1901 TO 1910

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	
Drugs tested (panel)	Defined	Any substance, chemical, or compound as described, defined, or delineated in NRS 28-405 and 28-419 or any metabolite or conjugated form thereof, or alcohol.
Specimens permitted	Defined	Body fluid or breath.
POCT screening devices	Not mentioned	
Alcohol testing	Permitted	Breathalyzer required (strict device requirements listed in law). The employee may request confirmatory testing via blood.
EAP	Not mentioned	
Certified laboratory	Required	Required for all confirmatory tests excluding breath alcohol tests.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Nebraska Rev. Stat. 48-102 & 127 and <i>Johnson v. Hahn Bros. Const. Inc.</i>
Unemployment denial	Permitted	See Nebraska Rev. Stat. 48-628.

NEVADA

Legal status for workplace drug and alcohol testing

Nevada has a mandatory law that places restrictions on when an employer can test, as well as what actions can be taken. There exist other laws in the state that impact how and where an employer can perform testing. The state Attorney General has determined that drug tests must take place at a laboratory. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW AND THE LABORATORY LICENSING LAW.

NEVADA REV. STAT. 613
NEVADA ADMIN. CODE 652.115 TO 348

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	However, an employer cannot fail or refuse to hire an applicant because their drug test results indicate the presence of marijuana (a safety-sensitive carve out applies). Additionally, testing can occur within the individual's first 30 days of employment, however, special testing circumstances exist. This law is effective as of January 1, 2020.
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	Restricted	POCT devices can only be used in a medical facility that is licensed pursuant to NRS 449 and has a laboratory licensed pursuant to NRS 652. FDA cleared devices are required. Strict requirements exist around who can perform testing. See law for full details.
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	Recommended.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Nevada Rev. Stat. Stat. 616C.230.
Unemployment denial	Permitted	See Nevada Rev. Stat. 612.385 and <i>Nevada Employment Security Department et. Al. v. Cynthia Holmes</i> .

NEW HAMPSHIRE

Legal status for workplace drug and alcohol testing

New Hampshire does not have a general drug testing statute. However, industry specific laws exist that restrict testing in certain industries, such as residential care employees.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See New Hampshire Stat. 281-A:14.
Unemployment denial	Permitted	See New Hampshire Stat. 282-A:34.

NEW JERSEY

Legal status for workplace drug and alcohol testing

New Jersey's state constitution contains privacy language that limits drug testing to situations where there is reasonable cause. Case law has further defined conditions that should exist in a workplace drug testing program. Additionally, New Jersey has laboratory licensing and drug test cheating laws. Industry specific laws also exist in the state. THIS CHART REFLECTS THE REQUIREMENTS OF THE LABORATORY LICENSING LAW, THE PRIVACY LAW, THE DRUG TEST CHEATING LAW, AND CASE LAW.

HENNESSEY V. COASTAL EAGLE POINT OIL
NEW JERSEY REV. STAT. 2C:36-10
NEW JERSEY REV. STAT. 45:9-42.28
NEW JERSEY STATE CONSTITUTION 1947 ART. 1 SEC. 7

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Restricted	Case law dictates that random testing is required for employees in highly safety-sensitive positions. The concern for safety must outweigh an individual's expectation of privacy. Due to the state constitution's privacy language, testing in general is restricted to situations where there is reasonable suspicion.
Drugs tested (panel)	Not defined	
Specimens permitted	Not defined	
POCT screening devices	Restricted	An April 2017 memo exempts facilities that perform ONLY POCT from the requirements for laboratory licensing. However, there are four additional requirements that must be met by POCT facilities. Information can be found at https://www.nj.gov/health/phel/documents/doh_guidance_%20memo.pdf .
Alcohol testing	Permitted	
EAP	Not defined	However, case law underscores the importance of educating workers. As such, an EAP is recommended.
Certified laboratory	Required	The state laboratory licensing law applies to drug testing. State certification is required.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See New Jersey Rev. Stat. 34:15-1.
Unemployment denial	Permitted	See New Jersey Rev. Stat. 43:21-5.

NEW MEXICO

Legal status for workplace drug and alcohol testing

New Mexico does not have a drug testing statute. However, there is a workers' compensation law in New Mexico that contains its own drug testing requirements. Employers are not required to comply unless they wish to deny workers' compensation claims.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE.**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	DOT drug and alcohol testing procedures must be observed in workers' compensation denial cases.
Specimens permitted	No requirements or restrictions	DOT drug and alcohol testing procedures must be observed in workers' compensation denial cases.
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	DOT drug and alcohol testing procedures must be observed in workers' compensation denial cases.
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	DOT drug and alcohol testing procedures must be observed in workers' compensation denial cases.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See New Mexico Stat. Ann. 52-1-11 to 12.1.
Unemployment denial	Permitted	See New Mexico Stat. Ann. 51-1-7.

NEW YORK

Legal status for workplace drug and alcohol testing

New York does not have a drug testing statute. However, there are a handful of other laws and regulations that indirectly impact drug testing. New York Department of Health laboratory standards apply to forensic laboratories and may impact workplace drug testing. Code Rule 60 is a voluntary program that permits employers to put certain safety-related programs in place that qualify them for workers' compensation credits. This chart does not reflect the requirements of Code Rule 60. THIS CHART REFLECTS THE REQUIREMENTS OF THE LABORATORY LICENSING LAW.

NEW YORK DEPARTMENT OF HEALTH LABORATORY STANDARDS – FORENSIC TOXICOLOGY

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	
Drugs tested (panel)	Not defined	
Specimens permitted	Mentioned	Urine, oral fluid, hair, and sweat patch.
POCT screening devices	Restricted	On-site testing facilities are subject to the same standards as a clinical laboratory.
Alcohol testing	Not defined	
EAP	Not mentioned	
Certified laboratory	Required	See law for full details.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See New York Workers' Compensation Law 2-10 & 21.
Unemployment denial	Permitted	See New York Labor Law 18-7-593. See "misconduct" – the law does not provide a definition of misconduct.

NEW YORK, NEW YORK CITY

Legal status for workplace drug and alcohol testing

New York City does not have a drug testing statute. However, there is a separate law that prohibits testing for THC or marijuana for pre-employment purposes. Employers should refer to New York state laws for further guidance. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY CITY ORDINANCE.

CITY OF NEW YORK ADMIN CODE 8-107

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Restricted	Employers and employment agencies cannot require prospective employees to be tested for THC or marijuana as a condition of employment. A safety-sensitive carve out exists. This ordinance does not apply to DOT-regulated employees and is effective as of May 2020.
Drugs tested (panel)	Not defined	
Specimens permitted	Not defined	
POCT screening devices	Not defined	
Alcohol testing	Not mentioned	
EAP	Not mentioned	
Certified laboratory	Not mentioned	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See New York Workers' Compensation Law 2-10 & 21.
Unemployment denial	Permitted	See New York Labor Law 18-7-593. See "misconduct" – the law does not provide a definition of misconduct.

NORTH CAROLINA

Legal status for workplace drug and alcohol testing

North Carolina is a drug testing friendly state. Few restrictions exist in North Carolina's two mandatory testing laws. There is a workers' compensation law in North Carolina that contains its own drug testing requirements, in addition to two workers' compensation denial case laws. Employers are not required to comply, unless they wish to deny workers' compensation claims. Additionally, drug test cheating and industry specific laws exist. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAWS.

NORTH CAROLINA GEN. STAT. 95-230 TO 235
13 NORTH CAROLINA ADMIN.
CODE 20.0100 TO 0602
NORTH CAROLINA GEN. STAT. 14-401.20

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	
Drugs tested (panel)	Defined	A controlled substance as defined in North Carolina Gen. Stat. 90-87(5) or a metabolite thereof.
Specimens permitted	Defined	Blood, urine, oral fluid, or hair.
POCT screening devices	Restricted	Permitted for pre-employment testing only. All current employee testing must take place at a laboratory. Confirmatory testing and FDA approved devices are required.
Alcohol testing	Permitted	
EAP	Not mentioned	
Certified laboratory	Required	SAMHSA or CAP certification.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See North Carolina Gen. Stat. 97-12, Moore v. Sullbark Builders, Inc., and Wiley v. Williamson Produce.
Unemployment denial	Permitted	See North Carolina Gen. Stat. 96-14.6.

NORTH DAKOTA

Legal status for workplace drug and alcohol testing

North Dakota does not have a drug testing statute per se, however, there exists a cheating law as well as a workers' compensation denial law that requires compliance with certain drug and alcohol testing standards, some of which require compliance with aspects of the U.S. DOT regulations. Employers are not required to comply unless they wish to deny workers' compensation claims. THIS CHART REFLECTS THE REQUIREMENTS OF THE DRUG TESTING CHEATING LAW AND THE MANDATORY LAW.

NORTH DAKOTA CENTURY CODE 12.1-11-07
NORTH DAKOTA CENTURY CODE 34-01-15

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See North Dakota Century Code 65-01-02 & 11. Refusal to submit to a drug test is also grounds for denial of benefits.
Unemployment denial	Permitted	See North Dakota Century Code 52-06-02. According to the North Dakota Job Services Unemployment Insurance Claim Guide, violation of a posted or known company rule is means for disqualification.

OHIO

Legal status for workplace drug and alcohol testing

Ohio has a voluntary drug testing law. Companies that wish to qualify for a discount on their workers' compensation premiums are required to comply. Other companies are not mandated to comply. Additionally, the state's workers' compensation law contains very specific requirements relative to drug/alcohol testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW.

DRUG-FREE SAFETY PROGRAM GUIDE

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	All types of testing are required, and certain conditions apply (applicant, reasonable suspicion, post-accident, return-to-duty, random, and follow-up). Exceptions: periodic exam is not required and sometimes alcohol testing is not required.
Drugs tested (panel)	Defined	Drug panel used by the federal government is recommended. Amphetamines, cocaine, marijuana, opiates, and phencyclidine. Nothing prohibits an employer from testing outside of this panel.
Specimens permitted	Defined	Urine for drug testing, Breath or saliva for alcohol testing.
POCT screening devices	Prohibited	Must use a SAMHSA certified lab.
Alcohol testing	Permitted	Only permitted under certain circumstances – see law for full details. 0.04 BAC cut-off is recommended.
EAP	Required	Requirements vary by level of participation. See law for full details.
Certified laboratory	Required	SAMHSA certified lab only.
WC premium discount	Mentioned	Basic level – 4%. Advanced level – 7%. See Bureau of Workers' Compensation for full details.
WC claim denial or reduction	Permitted	See Ohio Rev. Code Ann. 4123.54. See statute for exact details, many restrictions apply. These include DHHS cutoff levels for some substances and DHHS lab certification at a minimum.
Unemployment denial	Permitted	See Ohio Rev. Code Ann. 4141.29.

OKLAHOMA

Legal status for workplace drug and alcohol testing

Oklahoma is a drug testing friendly state. The mandatory laws apply to public and private sector employees. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAWS.

OKLAHOMA STAT. 40-15-551 TO 563
OKLAHOMA ADMIN. CODE 310:638

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	All types of testing are permitted, but some restrictions apply (e.g. pre-employment testing can only be performed post-offer, etc.).
Drugs tested (panel)	Defined	Amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, marijuana, methaqualone, opiates, barbiturates, benzodiazepines, semi-synthetic and synthetic narcotics, designer drugs, or a metabolite of any of these substances. A separate list of approved substances exists for hair testing.
Specimens permitted	Defined	Bodily tissue, fluids products. Split specimen requirements may limit drug testing specimens. Blood, urine, and saliva are specifically mentioned in the context of confirmation testing. Hair is permitted but is not specifically mentioned in the context of confirmation testing.
POCT screening devices	Permitted	Nothing in the law is meant to prohibit the use of POCT.
Alcohol testing	Permitted	Breath is specifically mentioned in the context of confirmation testing. Confirmation via split specimen is required. Blood and saliva are permitted for initial tests only. Urine is permitted for rehab or post-rehab. 0.02 BAC is considered positive.
EAP	Not mentioned	
Certified laboratory	Required	For urine testing, SAMHSA, CAP, or another organization recognized by the State Board of Health is required. For confirmatory testing on urine or saliva, CAP-FUDT is required. All labs performing confirmation of hair testing must be state certified or out of state certified.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Oklahoma Stat. 85A-2-208(2)(9)(b)(1)(4) and <i>Rose v. Berry Plastics Corp.</i>
Unemployment denial	Permitted	See Oklahoma Stat. 40-2-406.1.

OREGON

Legal status for workplace drug and alcohol testing

**OREGON REV. STAT. 438.010,
OREGON REV. STAT. 483.435
OREGON ADMIN. RULES 333-024-0305 TO 0365**

Oregon has two laws that regulated laboratory-related issues; however, some components of those laws directly impact workplace drug testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAWS.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Not defined	
Drugs tested (panel)	Defined	Substances of abuse, meaning ethanol and controlled substances.
Specimens permitted	Defined	Body fluids obtained from a live person or materials derived from the human body.
POCT screening devices	Permitted	Employers conducting on-site tests must be registered as a substance of abuse on-site screening facility and must pay a yearly fee, not to exceed \$50, as well as file a registration form provided by a state. Must use FDA-cleared devices and test results that will be used for adverse employment action must be confirmed via a lab. Devices must meet Part 40 standards. Operator training is required.
Alcohol testing	Permitted	Alcohol screening tests must meet the requirements of the NHTSA conforming products list and meet Part 40 standards.
EAP	Not mentioned	
Certified laboratory	Required	State certification required.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Oregon Rev. Stat. 656.005.
Unemployment denial	Permitted	See Oregon Rev. Stat. 657.176.

PENNSYLVANIA

Legal status for workplace drug and alcohol testing

Pennsylvania is a drug testing friendly state with no restrictive statute in place. There is a drug test cheating law that employers should be aware of, however, it does not greatly impact workplace drug testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE DRUG TEST CHEATING LAW.

**18 PENNSYLVANIA
CONSOLIDATED STAT. ANN. 7509**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See 77 Pennsylvania Consolidated Stat. Ann. 431.
Unemployment denial	Permitted	See 43 Pennsylvania Consolidated Stat. Ann. 802.

PUERTO RICO

Legal status for workplace drug and alcohol testing

Puerto Rico has a relatively restrictive drug and alcohol testing statute that employers are required to comply with. It is recommended that employers consult the statutory language to be sure of compliance. Testing regulations apply to public sector employers. THIS CHART DETAILS THE REQUIREMENTS OF THE MANDATORY LAW.

LAWS OF PUERTO RICO 29-8-161 TO 161H

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident, random, and follow-up testing are generally permitted. Some restrictions apply. Pre-employment testing must be performed as part of a medical exam required of all candidates for employment. Reasonable suspicion testing must be performed within 24 hours of the event or observation triggering reasonable suspicion. Post-accident testing is prohibited if the employee is not in full control of his/her mental faculties because of the accident, unless a medical order provides otherwise.
Drugs tested (panel)	Defined	Schedules I and II as defined in Laws of Puerto Rico 24-2202.
Specimens permitted	Defined	Urine or “any other bodily fluid or tissue obtained in a non-invasive manner.” Specimens must comply with the Mandatory Guidelines for Federal Workplace Drug Testing Program; however, the law may need modified before lab-based oral fluid is permitted. See law for full details.
POCT screening devices	Prohibited	Testing must follow the Mandatory Guidelines for Federal Workplace Drug Testing.
Alcohol testing	No requirements or restrictions	Not mentioned in the law, but not expressly prohibited.
EAP	Required	EAP details must be included in the written policy.
Certified laboratory	Required	NIDA certification is required (replaced by SAMHSA).
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Laws of Puerto Rico 11-5 et al.
Unemployment denial	Permitted	See Laws of Puerto Rico 29-704.

RHODE ISLAND

Legal status for workplace drug and alcohol testing

Rhode Island has a mandatory drug testing law that restricts drug testing of employees to circumstances in which there is suspicion of drug use or impairment. First-time positives may not result in termination. Other restrictions apply. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW.

RHODE ISLAND GEN. LAWS 28-6.5-1 TO 2

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, and follow-up testing are generally permitted with some restrictions. Periodic exam and random testing are prohibited, as employers must have reasonable suspicion prior to performing a drug test. For pre-employment testing, the same privacy and confirmation requirements apply as do for employee testing, and testing should be limited to post-offer situations. Follow-up testing is permitted as part of a referral to a SAP, such as an EAP. Other types of testing may be permitted if an employer has reasonable suspicion.
Drugs tested (panel)	Not defined	
Specimens permitted	Defined	Blood, urine, or “other bodily fluid or tissue” are permitted.
POCT screening devices	Not mentioned	However, all tests must be confirmed in a lab via GC/MS or another as scientifically accurate method.
Alcohol testing	No requirements or restrictions	Not mentioned in the law, but not expressly prohibited.
EAP	Mentioned	All employees testing positive for the first time must be referred to a SAP. The SAP must be a licensed physician with knowledge and clinical experience diagnosing and treating drug related disorders, a licensed and certified psychologist, a social worker, an EAP professional with like knowledge, or a NAADA counselor.
Certified laboratory	Required	A “federally certified laboratory” is required for confirmatory testing. SAMHSA certification is permitted.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Rhode Island Gen. Laws 28-33-2.
Unemployment denial	Permitted	See Rhode Island Gen. Laws 28-44-18. Law does not mention drugs, alcohol, intoxication, or drug testing. It does state that the violation of a company rule or policy does not constitute misconduct.

SOUTH CAROLINA

Legal status for workplace drug and alcohol testing

South Carolina has two voluntary drug testing laws. Companies that wish to qualify for a 5% discount on their workers' compensation premiums must comply with these laws. Other companies are not mandated to comply with these statutes. Employers have wide latitude in the development of their programs. Additionally, there is an unemployment compensation denial law that contains its own drug testing requirements. Employers are not required to comply unless they wish to deny unemployment compensation claims. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAWS.

SOUTH CAROLINA CODE ANN. 41-1-15
SOUTH CAROLINA CODE ANN. 38-73-500

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Random testing is required for all workers that receive wages or compensation in any form.
Drugs tested (panel)	Not defined	
Specimens permitted	Not defined	
POCT screening devices	Not mentioned	
Alcohol testing	Permitted	
EAP	Not mentioned	
Certified laboratory	Not mentioned	
WC premium discount	Permitted	5% discount.
WC claim denial or reduction	Permitted	See South Carolina Code Ann. 42-9-60.
Unemployment denial	Permitted	See South Carolina Code Ann. 41-35-120. Blood, urine, oral fluid, and hair are permitted. A certified laboratory is required, as is confirmatory testing. Collection personnel must meet federal or state guidelines.

SOUTH DAKOTA

Legal status for workplace drug and alcohol testing

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

South Dakota does not restrict how or when drug testing is conducted or whom employers can require to be drug tested.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	Not mentioned	
Certified laboratory	Not mentioned	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See South Dakota Codified Laws Ann. 62-4-37.
Unemployment denial	Permitted	See South Dakota Codified Laws Ann. 61-6-14 to 14.1. Law defines misconduct as breaking a company rule or standard but does not mention drug testing or intoxication as part of definition.

TENNESSEE

Legal status for workplace drug and alcohol testing

Tennessee has two voluntary drug testing laws. Companies that wish to qualify for a 5% discount on their workers' compensation premiums must comply with these laws. Other companies are not required to comply. Self-insured companies may also qualify for the discount. As well, there are workers' and unemployment compensation denial laws in Tennessee that contain their own drug testing requirements. Employers are not required to comply unless they wish to deny workers' or unemployment compensation claims. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAWS.

**TENNESSEE CODE ANN. 50-9-101 TO 115
TENN. COMP. RULES & REG.
0800-02-12-.01 ET SEQ.**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment/post-offer, reasonable suspicion, post-accident, periodic exam, and follow-up testing are required. Return-to-duty, random, and other types of testing are permitted.
Drugs tested (panel)	Defined	Any controlled substance subject to testing pursuant to DOT regulations. This includes, but may not be limited to, marijuana, cocaine, amphetamines, opiates, and phencyclidine. All tests must be limited to specific substances expressly identified by the Bureau of Workers' Compensation website unless prior written consent is obtained from the employee for other tests.
Specimens permitted	Defined	Tissue, fluid, or product of the human body capable of revealing the presence of alcohol or drugs or their metabolites. Oral fluid is specifically permitted as an alternative testing specimen if an employee is unable to provide a urine specimen when requested. See law for full details.
POCT screening devices	Restricted	POCT is permitted only for pre-employment testing purposes. Devices must be listed on the Bureau of Workers' Compensation website as approved and must meet US DOT/DHHS methodology requirements. Confirmation in a certified laboratory is required.
Alcohol testing	Permitted	Tests must be confirmed with a device on the NHTSA conforming products list. Non-safety-sensitive employees can only be alcohol tested when there is reasonable suspicion. Blood samples can only be obtained by law enforcement personnel. Breath is generally permitted. Cut-off levels should match those provided in Part 40.
EAP	Mentioned	Employers must provide a sampling of names, addresses, and telephone numbers of EAPs and local drug or alcohol rehab programs in their policy. Employers are not required to provide or pay for assistance.
Certified laboratory	Required	SAMHSA and CAP certification are permitted for initial and confirmatory tests. State and other certification are permitted for initial tests only. All testing <i>except</i> pre-employment testing must take place in a US DHHS certified laboratory.
WC premium discount	Permitted	5% discount unless the commissioner of commerce and insurance deems it actuarially unsound.
WC claim denial or reduction	Permitted	See Tennessee Code Ann. 50-6-110.
Unemployment denial	Permitted	See Tennessee Code Ann. 50-7-303.

TEXAS

Legal status for workplace drug and alcohol testing

Texas has a general drug test cheating law but no general drug testing law. There is also a law that requires certain employers to report positive drug test results to the state Department of Transportation. As well, there are workers' and unemployment compensation denial laws in Texas. Employers are not required to comply unless they wish to deny workers' or unemployment compensation claims.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	No requirements or restrictions	
WC claim denial or reduction	Permitted	See Texas Labor Code Ann. 401.013 and 406.032. Includes specifics for alcohol testing, including cut-off levels.
Unemployment denial	Permitted	See Texas Labor Code Ann, 207.044 and TWC Appeal No. 97-003744-10-040997. Includes specifics pertaining to policy notice, consent forms, cut-off levels, chain of custody protocols, and confirmatory testing.

UTAH

Legal status for workplace drug and alcohol testing

Utah has a voluntary drug testing law. Companies that wish to qualify for limited legal protection must comply with this law; other companies are not mandated to comply with this statute. Additionally, Utah has a drug test cheating law. There are workers' and unemployment compensation laws in Utah that contain their own drug testing requirements in addition to requiring compliance with the voluntary law. Employers are not required to comply unless they wish to deny workers' or unemployment compensation claims. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW AND THE DRUG TEST CHEATING LAW.

UTAH CODE ANN. 34-38-1 TO 15
UTAH CODE ANN. 76-10-2203

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident, periodic exam, return-to-duty, random, follow-up, and other forms of testing are permitted. If testing is conducted, all employees must be subject to testing, including management. Testing is required for facilities that operate storage or transfer facilities or transport nuclear waste.
Drugs tested (panel)	Defined	Substances recognized as drugs in the U.S. Pharmacopoeia, the National Formulary, the Homeopathic Pharmacopoeia, or other drug compendia, or any supplement to any of those compendia.
Specimens permitted	Defined	Blood, breath, urine, oral fluid, and hair are permitted.
POCT screening devices	Permitted	However, urine testing must take place in a certified laboratory. Positive tests must be confirmed via GC/MS.
Alcohol testing	Permitted	Testing via blood, breath, saliva, or urine is permitted.
EAP	Not mentioned	
Certified laboratory	Required	Urine samples must be tested in a laboratory that is certified by the U.S. HHS under the National Laboratory Certification Program.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Utah Code Ann. 34A-2-302. Employers must comply with requirements found in Utah Code Ann. 34-38-1 to 15 as outlined in this chart in order to qualify to deny benefits.
Unemployment denial	Permitted	See Utah Admin Code R994-405-208. Employers must comply with requirements found in Utah Code Ann. 34-38-1 to 15 as outlined in this chart in order to qualify to deny benefits.

VERMONT

Legal status for workplace drug and alcohol testing

Vermont’s mandatory drug testing laws are some of the most restrictive in the nation. Random testing is prohibited. Some type of EAP or referral service is required in order to conduct drug testing. This law also applies to public sector workplace drug testing. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAWS.

VERMONT STAT. ANN. 21-511 TO 520
VERMONT ADMIN. CODE 13-140-003

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, post-offer testing is required. Reasonable suspicion and follow-up testing are permitted. Random testing is prohibited.
Drugs tested (panel)	Defined	Amitriptyline, amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine, doxepin, glutethimide, hydromorphone, imipramine, meperidine, methadone, methaqualone, opiates, oxycodone, pentazocine, phenytoin, phencyclidine, phenothiazines, and propoxyphene. Other drugs may be added through regulation.
Specimens permitted	Defined	Body fluids or materials taken from the body. Urine is required, blood is prohibited.
POCT screening devices	Prohibited	
Alcohol testing	Permitted	Urine is required, breath is permitted, blood is prohibited. Analyses must use GC. Very precise regulations apply, see law for full details.
EAP	Required	Employers must have a bona fide rehabilitation program available to the extent provided by a policy of health insurance or under contract by a nonprofit hospital service corporation.
Certified laboratory	Required	State certification is required.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Vermont Stat. Ann. 21-649. Refers to intoxication only.
Unemployment denial	Permitted	See Vermont Stat. Ann. 21-1344. Concerning “gross misconduct” and “intoxication.”

VIRGINIA

Legal status for workplace drug and alcohol testing

Virginia has a voluntary law that offers a 5% discount on workers' compensation premiums for companies that institute and maintain a drug-free workplace program satisfying criteria that each insurer establishes. Companies in the mining industry are required to comply with the provisions of the mining drug-free workplace law (§45.1-161.87). As well, there are workers' and unemployment compensation laws in Virginia that contain their own drug testing requirements. Employers are not required to comply unless they wish to deny workers' or unemployment compensation claims. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAW.

VIRGINIA CODE ANN. 65.2-813.2

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Permitted	A discount of up to 5% for each employer instituting and maintaining a drug-free workplace program satisfying such criteria as each insurer may establish.
WC claim denial or reduction	Permitted	See Virginia Code Ann. 65.2-306.
Unemployment denial	Permitted	See Virginia Code Ann. 60.2-618.

WASHINGTON

Legal status for workplace drug and alcohol testing

Washington does not have a drug testing statute; therefore, no statutory restrictions apply. However, there is a separate law that requires DOT employers to report certain information to the state DOT.

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	No requirements or restrictions	
WC claim denial or reduction	No requirements or restrictions	
Unemployment denial	Permitted	See Revised Code of Washington 50-20-060 to 066.

WEST VIRGINIA

Legal status for workplace drug and alcohol testing

reasonable suspicion or safety-sensitive workplaces in order to conduct drug testing. However, there is case law that limits drug testing to safety-sensitive and reasonable suspicion circumstances. The drug testing statute specifically establishes public policy allowing drug testing and may override existing case law to the contrary. It is strongly recommended to consult a legal expert before implementing drug testing in the state of West Virginia. Additionally, the state mandates drug and alcohol testing of certain workers involved in Public Works improvement projects. The mandatory drug testing law allows employers to deny workers' compensation and unemployment compensation benefits for employees who fail a drug test. However, there are workers' and unemployment compensation laws in West Virginia that contain their own drug testing requirements. THIS CHART REFLECTS THE REQUIREMENTS OF THE MANDATORY LAW AND CASE LAW.

**WEST VIRGINIA CODE 21-3E-1 ET AL.
TWIGG V. HERCULES CORP.**

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident, random, and follow-up testing are permitted under the mandatory law. However, case law limits testing to reasonable suspicion and safety-sensitive testing.
Drugs tested (panel)	Defined	Any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act.
Specimens permitted	Defined	Sample of the human body capable of revealing the presence of alcohol or other drugs or other metabolites.
POCT screening devices	Permitted	All testing must be confirmed in a laboratory.
Alcohol testing	Permitted	Testing can occur via a sample of the human body capable of revealing the presence of alcohol or other drugs or other metabolites.
EAP	Mentioned	Employers must provide information as requested or as appropriate pertaining to counseling, assistance, rehabilitation, or other drug abuse treatment when offered. Employers are not required to offer any of the benefits listed above.
Certified laboratory	Required	SAMHSA, CAP, or CLIA certification required for confirmation testing only.
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See West Virginia Code 23-4-2.
Unemployment denial	Permitted	See West Virginia Code 21A-6-3.

WISCONSIN

Legal status for workplace drug and alcohol testing

**THIS STATE DOES NOT HAVE
A DRUG TESTING STATUTE**

Wisconsin is a drug testing friendly state with no restrictions on workplace drug testing. An industry specific law exists for public works employers.

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	No requirements or restrictions	
Drugs tested (panel)	No requirements or restrictions	
Specimens permitted	No requirements or restrictions	
POCT screening devices	No requirements or restrictions	
Alcohol testing	No requirements or restrictions	
EAP	No requirements or restrictions	
Certified laboratory	No requirements or restrictions	
WC premium discount	Not mentioned	
WC claim denial or reduction	Permitted	See Wisconsin Stat. 102.58. 15% discount not exceeding \$15,000.
Unemployment denial	Permitted	See Wisconsin Stat. 108.04.

WYOMING

Legal status for workplace drug and alcohol testing

Wyoming has voluntary drug testing laws. Companies that wish to qualify for up to a 10% discount on their workers' compensation premiums must comply with these laws. Other companies are not mandated to comply with these statutes. WS §27-14-201 only establishes the discount and does not give any regulations on drug and alcohol testing procedures besides requiring an EAP. WCD Rules Ch. 1, 2, & 10 establish the bulk of the regulations dictating how drug testing is conducted. THIS CHART REFLECTS THE REQUIREMENTS OF THE VOLUNTARY LAWS.

WYOMING CODE ANN. 27-14-201
RULES WYOMING WORKERS' COMPENSATION
DIVISION CH. 1, 2, & 10

Updated January 2021

AREA OF FOCUS	STATUS	COMMENTS
Setting/circumstance	Defined	Pre-employment, reasonable suspicion, post-accident, and random testing are required. Each testing type has conditions that apply; see law for full details.
Drugs tested (panel)	Defined	Marijuana, cocaine, amphetamines, opiates, phencyclidine, a metabolite thereof, or any other controlled substance subject to testing pursuant to USDOT drug testing procedures.
Specimens permitted	Defined	Tissue, fluid, or a product of the human body capable of revealing the presence of alcohol, drugs, or their metabolites. Urine or hair should be used for random and reasonable suspicion purposes. Blood is recommended for post-accident purposes.
POCT screening devices	Permitted	Permitted for pre-employment, random, and reasonable suspicion testing, but not post-accident testing. Confirmation is required.
Alcohol testing	Permitted	Generally complies with DOT regulations. Breath, oral fluid, or any other analysis which determines the presence and level of alcohol is permitted. A positive alcohol test is at or above 0.08 BAC.
EAP	Mentioned	Employers must either include a statement in their policy advising employees of an EAP, or a resource file of assistance programs to assist with personal or behavior problems.
Certified laboratory	Required	SAMHSA certified lab required.
WC premium discount	Permitted	Up to 10%.
WC claim denial or reduction	Permitted	See Wyoming Code Ann. 27-14-102.
Unemployment denial	Permitted	See Wyoming Code Ann. 27-3-311.

