

For private employers

| State | Drug Free Workplace | Effects on WC | Drug Free Workplace Law |
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| Federal | <p>Covered Employers:</p> <ul style="list-style-type: none"> All direct recipients of federal grants and most federal contractors holding a single contract under the federal acquisition regulations that exceeds \$100,000, not for the acquisition of commercial goods, and performed in part (or in whole) in the United States must comply with the federal Drug-Free Workplace Act. The act applies to employees and facilities engaged in directly performing work under such contracts and grants. It does not apply to subcontractors or second-tier recipients of pass-through grants, nor does it apply to companies that hold multiple small contracts totaling more than \$100,000. A company would be subject to the act only if the value of a single contract is more than \$100,000. A company that has several contracts which, when combined, total more than \$100,000, is not subject to the act. <p>Covered Employers are required to have a written policy and drug-free awareness programs</p> <p>See the Federal Drug-Free Workplace advisor and Comply for more details</p> <ul style="list-style-type: none"> | <p>N/A</p> | <p>Federal Drug-Free Workplace Advisor</p> |
| Alabama | <ul style="list-style-type: none"> All employers are covered, <i>but no employer is required to implement a policy.</i> Before drug or alcohol testing, employers must give all employees or job applicants a onetime notice of testing and a written policy statement. Employers without testing programs in place on July 1, 1996 must ensure that there is no more that 60- day lapse between a general one-time to all employees that a testing program is being implemented and the day the testing will begin. Employers who had testing programs in place before July 1, 1996 are not required to provide this notification period. Employers must post a notice of the testing policy in an appropriate and conspicuous location on the premises. | <ul style="list-style-type: none"> Employees proven drugs use may negate a WC claims Employers implementing a drug-free workplace program in accordance with the requirements set forth in the workers' compensation law qualify for 5% premium discount under the employer's workers' compensation insurance policy. Employers choosing to do so and who wish to receive the premium discount previously mentioned or to obtain the disqualifications under the workers' compensation and unemployment compensation acts must comply with the standards and procedures established in | <p>Ala. Code §§ 25-5-330 – 25-5-340</p> |

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| | | <p>Alabama’s drug-free workplace program law and all applicable rules adopted by the state Department of Labor.</p> <ul style="list-style-type: none"> • The discount applies to all workers’ compensation policies issued and renewed in Alabama on or after July 1, 1996. • To obtain the 5-percent premium discount under the employer’s workers’ compensation insurance policy, the employer’s drug-free workplace program must be implemented in compliance with the confidentiality standards in Alabama’s drug-free workplace law. • The program must contain the following elements: <ul style="list-style-type: none"> ○ A written policy statement. ○ Substance abuse testing. ○ Resources of employee assistance providers. ○ Employee education. ○ Supervisor training. | |
| <p>Alaska</p> | <ul style="list-style-type: none"> • Compliance with the law is voluntary; however, compliance provides an employer with certain benefits • Employers must inform prospective employees that they must undergo drug testing. • Policies must be in writing, must be distributed in the same manner as all other employment policies, and must include the following: <ul style="list-style-type: none"> ○ A statement of the employer’s drug and alcohol use policy ○ A description of those employees or applicant subject to testing. ○ The circumstances requiring testing. ○ The substances the required testing screen ○ A description of the testing methods and collection procedures, including an | <ul style="list-style-type: none"> • Benefits may not be payable for an injury caused by an employee’s being intoxicated or under the influence of drugs, unless the drugs were taken as prescribed by the employee’s physician as the result of a work place injury per Alaska Stat. § 23.30.235 | <p>Alaska Stat. §§ 23.10.600 – 23.10.699</p> |

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| | <p>employee's right to a confirmation test after an initial positive result.</p> <ul style="list-style-type: none"> ○ The consequences of a refusal to participate in the testing. ○ Any adverse personnel action that may be taken based on the testing results. ○ The right of an employer, on request, to obtain the written test results and the obligation of the employer to provide written test results within five days of the request. The written request must be made within six months after the date of the test. ○ The right of an employee, on request, to explain a positive result. If the employee requests this opportunity in writing 10 working days of result notification. ○ A statement of the employer's policy regarding the confidentiality of test results. | | |
| <p>Arizona</p> | <ul style="list-style-type: none"> ● Compliance is voluntary, however in order for employees to fully taken advantage of the benefits provided under the drug testing law, the following criteria needs to be met: <ul style="list-style-type: none"> ○ Scheduling & Cost of Testing <ul style="list-style-type: none"> ▪ Any drug or alcohol impairment testing by an employer normally must occur during or after a regular work period. Testing during normal work hours should be compensable for employees. ▪ An employer must pay all actual cost for drug and alcohol impairment testing required of employees by the employer. Additionally, an employer may, at its discretion, pay the cost for drug testing of prospective employees. ▪ An employee must pay reasonable transportation costs to current employee if their required test is conducted at a location other than the employee's normal worksite. ○ Testing and retesting must be carried out in accordance with a written policy that is | <p>N/A</p> | <p>Ariz. Rev. Stat. §§ 23-493</p> |

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| | <p>distributed to every employee subject to testing or that has been made available to employees in the same manner as the employer informs its employees of other personnel practices, including inclusion in the handbook, or manual, or posting in a place accessible to employees. The written policy must include the following:</p> <ul style="list-style-type: none"> ▪ A statement of the employer’s policy respecting drug and alcohol use by employees ▪ A description of those employees or prospective employees who are subject to testing ▪ The circumstances under which testing may be required. ▪ The substances included in testing ▪ Testing methods ▪ Consequences in refusing a test ▪ Adverse personal action that may be taken if a test is positive ▪ The right of an employee, upon request, to explain a positive test result ▪ The right of an employee, upon request, to obtain test results ▪ A statement of the employer’s policy regarding confidentiality. <p>○ Collection & Testing Procedures</p> <ul style="list-style-type: none"> ▪ The collection of samples must be performed under reasonable and sanitary conditions ▪ Sample collection must be documented to include: <ul style="list-style-type: none"> • Labeling of sample • An opportunity for the person being tested to provide notification of any information that may be considered relevant to the test. • Sample collection, storage, and transportation to the | | |

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| | <p>place of testing must be performed in a manner reasonable designed to precluded the possibility of sample contamination, adulteration, or misidentification.</p> <ul style="list-style-type: none"> ▪ Sample testing must comply with scientifically accepted methods and procedures. Testing may be conducted at a lab approved or certified by the US Dept. of Health & Human Services, the College of American Pathologists, or the Department of Health Services. ▪ Drug testing must include confirmation of any positive drug-testing results for employees. Confirmation of positive results for employees must be by us of chromatography-mass spectrometry or comparable method. | | |
| <p>Arkansas</p> | <p>The Arkansas drug-free workplace law applies to any individual or entity that meets the following requirements:</p> <ul style="list-style-type: none"> • Employers a person • Covered by workers’ compensation • Maintains a drug-free workplace following Arkansas’ drug-testing law • Includes on the posting requirements a statement that the policy is being implemented according to the law. <p>If an employer implements a drug-free workplace program it must include:</p> <ul style="list-style-type: none"> • Notice: One time only, prior to testing, a covered employer must give all employees and job applicants a written policy statement that contains: <ul style="list-style-type: none"> ○ A general statement of the covered employer’s policy on employee drug or alcohol use, which must identify: <ul style="list-style-type: none"> ▪ The type of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable suspicion drug or | <ul style="list-style-type: none"> • Arkansas law provides that the Arkansas Insurance Commissioner will approve rating plans for workers’ compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program. | <p>Ark. Code Ann. §§ 11-14-101 – 11-14-112</p> |

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| | <p>alcohol testing or drug or alcohol testing conducted on any other basis; and</p> <ul style="list-style-type: none"> ▪ The actions the covered employer may take against an employee or job applicant on the basis of a positive confirmed test result. <ul style="list-style-type: none"> ○ A statement advising the employer or job applicant of the existence of this requirement. ○ A general statement concerning confidentiality ○ Procedures for employees and job applicants to confidentially report to a drug testing officer the use of prescription or nonprescription medication to a drug testing review office after being tested, but only if the testing process has revealed a positive result for the presence of alcohol or drug use. ○ The consequence of refusing to submit to drug or alcohol test. ○ A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug or alcohol rehab programs; within five working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to rules adopted by the Workers' Health and Safety Division of Workers' Comp Commission. ○ A statement informing the employee or job applicant of the employee's responsibility to notify the lab of any of administrative or civil action brought. ○ A list of all drug classes for which the employer may test ○ A statement regarding any applicable collective bargaining agreement or contract | | |

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| | <p>and any right to appeal to the applicable court.</p> <ul style="list-style-type: none"> ○ A statement notifying employees and job applicants of their right to consult with a drug testing review officer for technical information regarding prescription or nonprescription medication; and ○ A statement complying with the requirement with the requirements for notice under § 11-14-101 <ul style="list-style-type: none"> ● Education <ul style="list-style-type: none"> ○ Educational materials must explain the employer’s policies and procedures. ○ The identity of person who can answer questions about the policy should be designated. ○ Sufficient information about safety-sensitive functions performed by employees to make clear what period of the work day the employee is required to be in compliance with this rule: ○ Specific information concerning employee conduct that is prohibited by this rule; ○ The circumstances under which an employee will be tested for alcohol and/or drugs under this part; ○ The procedures that will be used to test for the presence of alcohol and drugs, protect the employee and integrity of the testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee, including post-accident information, procedures, and instructions required by this part. ○ The requirement that an employee submit to alcohol and drug tests administered in accordance with this rule; ○ An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences; | | |

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| | <ul style="list-style-type: none"> ○ The consequences for employees found to have violated the employer’s drug-free workplace program, including the requirement that the employee be removed immediately from safety sensitive functions. ○ The consequences for employees in safety-sensitive positions found to have an alcohol concentration above the cut-off limits defined by this rule. ○ Information concerning the effects of alcohol and drug use on an individual’s health, work, and persona; life; signs and symptoms of an alcohol or drug problem; and the methods of intervening when an alcohol or drug problem is suspected, including confrontation, referral to an EAP. ○ Certificate of receipt of policy ○ Training for supervisors of reasonable suspicion. <ul style="list-style-type: none"> ▪ Training shall include the physical, behavioral, speech, and performance indicators or probably alcohol misuse and use of drugs. ● Procedural requirements for testing for drugs and alcohol, in accordance with this rule. Covered employers may test a job applicant for alcohol and for any controlled substance subject to testing by the US DOT. Employers may test under the following conditions per the Arkansas WC law: <ul style="list-style-type: none"> ○ Testing is based on reasonable suspicion ○ Routing fitness for duty testing ○ Follow-up testing ○ Post-accident testing ○ Any other lawful means of testing ○ An employee in a safety-sensitive position may be tested for alcohol use in accordance with the employee’s written policy. Any employee who is not in a safety-sensitive position may only be tested for alcohol when the test is based upon reasonable suspicion | | |

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| California | <p><i>Before adopting any drug or alcohol testing policies, an employer should consult with legal counsel.</i></p> <ul style="list-style-type: none"> • Drug testing is allowed but may be justified only in very limited and strictly defined circumstances. • While there are no state laws specifically addressing drug and alcohol testing by private employers in California, the California Supreme Court has interpreted the right to privacy set forth in the California Constitution (Cal. Const. Art. 1, § 1) to place restrictions on employers. The California Supreme Court has created a balancing test to determine whether employers may lawfully test applicants and employees for drugs. The test balances the employer’s interest in the test against the individual’s reasonable expectations of privacy. <p>Should your organization with the assistance of legal counsel determine that drug testing is warranted for your business needs, here are some common forms of drug testing:</p> <ul style="list-style-type: none"> • Pre-employment screenings (where employers test applicants before they even start working). • Testing based on “reasonable suspicion” (testing based on specific facts and circumstances that lead the employer to believe an employee is using drugs). • Random testing (selecting employees for testing without suspicion). • Post-accident testing (triggered when injuries occur or based on other criteria). <p>With some restrictions, California courts have generally allowed employers to test applicants for drugs. To avoid claims of discrimination an employer should be consistent when testing applicants entering the same job classification. An employer should not selectively test only certain applicants in a job class.</p> | <ul style="list-style-type: none"> • Where injury is caused by intoxication resulting from alcohol or unlawful use of a controlled substance it may negate an employee’s WC claim. | <p>The California Drug-Free Workplace Act of 1990 is located in the California Government Code (Cal. Govt. Code §§ 8351 and 8355 – 8357) only applies to persons or organizations awarded a contract or grant for the procurement of any property or services from a state agency.</p> |

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| Colorado | Colorado does not have any laws addressing drug testing in employment. However, Boulder, CO does (please see Comply page for details on the Boulder, CO law). | <ul style="list-style-type: none"> • Presence, during working hours, of controlled substances that are not medically prescribed or a blood alcohol level at or above 0.10 percent or exceeding another appropriate level, may negate or reduce an employee's WC claim or benefits. | N/A |
| Connecticut | <p>The law covers private employers.</p> <ul style="list-style-type: none"> • Pursuant to the law, no employer may determine an employee's eligibility for promotion, additional compensation, transfer, termination, disciplinary, or other adverse personnel action solely on the basis of a positive urinalysis drug-test result unless: <ul style="list-style-type: none"> ○ The employer has given the employee a urinalysis drug test, utilizing a reliable methodology, which produced a positive result. ○ Such positive test result was confirmed by a second urinalysis drug test, which was separate and independent from the initial test, utilizing a gas chromatography and mass spectrometry methodology or a methodology which has been determined by the Commissioner of Public Health to be as reliable or more reliable than the gas chromatography and mass spectrometry methodology • Reasonable Suspicion & Random Testing: An employer may not require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol that adversely affects or could adversely affect such employee's job performance. However, an employer may require employees to submit to a urinalysis drug test on a random basis in any of the following situations: <ul style="list-style-type: none"> ○ The test is authorized under federal law. ○ The employee serves in a designated high-risk or safety-sensitive occupation pursuant to regulations adopted by the Labor | <ul style="list-style-type: none"> • The employee's intoxication from alcohol or use of illegal drugs may negate the employee's WC claims. | Conn. Gen. Stat. §§ 31-51t – 31-51bb |

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| | <p>Commissioner, or is employed to operate a school bus or a student transportation vehicle.</p> <ul style="list-style-type: none"> ○ The urinalysis is conducted as part of an employee-assistance program sponsored or authorized by the employer in which the employee voluntarily participates. ● Prospective Employees: An employer may not require a prospective employee to submit to a urinalysis drug test as part of the application procedure for employment with such employer unless: <ul style="list-style-type: none"> ○ The prospective employee is informed in writing at the time of application of the employer's intent to conduct such a drug test. ○ The test is conducted in accordance with the requirements set forth in the previous paragraph. ○ The prospective employee is given a copy of any positive urinalysis drug test result. | | |
| <p>Delaware</p> | <p>Delaware drug and alcohol testing law apply to the following:</p> <ul style="list-style-type: none"> ● School bus drivers ● Department of Corrections employees and Department of Education Employees working in the prison education program. ● Nursing home agency employees ● Department of Services for Children, Youth, and Their Families employees. | <ul style="list-style-type: none"> ● Employees proven drugs use may negate a WC claims | <p>http://kids.delaware.gov/ http://www.dhss.delaware.gov/dhss/</p> |
| <p>District of Columbia</p> | <p>The District of Columbia has no specific regulation governing drug or alcohol testing for private employers. However, there is mandatory testing for the following positions:</p> <ul style="list-style-type: none"> ● Drivers of commercial motor vehicles D.C. Code Ann. § 1-620.11 ● Certain employees of the Department of Human Services and Commissions of Mental Health Services D.C. Code Ann. §§ 1-620.21 – 1-620.25 ● Certain employees who serve children D.C. Code Ann. §§ 1-620.31 – 1-620.37 | <ul style="list-style-type: none"> ● When the accident was caused by the employee's intoxication it may negate the employee's WC claim. | |

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| | <ul style="list-style-type: none"> Department of Corrections employees D.C. Code Ann. §§ 24-211.21 – 24-211.24 <p>Pursuant to the Prohibition of Pre-Employment Marijuana Testing Act of 2015, employers are prohibited from testing a prospective employee for marijuana use until after a conditional offer of employment has been extended, unless otherwise required by law. Prospective employee means any individual applying for employment with an employer.</p> | | |
| Florida | <p>Pursuant to the law an employers are not required to ask an employee or a prospective employee to take a drug or alcohol test, but if an employer establishes a policy and maintains a drug-free workplace program, the employer may qualify for a workers' compensation discount.</p> <ul style="list-style-type: none"> Employers may test for any substance defined as a drug by Florida law including: <ul style="list-style-type: none"> Alcohol <ul style="list-style-type: none"> Distilled spirits Wine Malt beverages Amphetamines Cannabinoids. Cocaine. Phencyclidine (PCP). Hallucinogens. Methaqualones. Opiates. Barbiturates. Benzodiazepine. Synthetic narcotics. Designer drugs. Metabolites of any of these substances. Employers must conduct the following types of drug tests to qualify for the workers' compensation law: <ul style="list-style-type: none"> Applicant Testing. Employers may use a refusal to submit or a positive drug test as a basis for not hiring an applicant. Reasonable-Suspicion Testing. If drug testing is conducted based on reasonable suspicion, | <ul style="list-style-type: none"> Pursuant to the law an employers are not required to ask an employee or a prospective employee to take a drug or alcohol test, but if an employer establishes a policy and maintains a drug-free workplace program, the employer may qualify for a workers' compensation discount Employees proven drugs use may negate a WC claims | Fla. Stat. § 440.102 |

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| | <p>employers must promptly detail in writing the circumstances that they feel warranted testing. A copy of this documentation must be given to the employee upon request. The original documentation must be kept confidential by the employer and retained for at least one year.</p> <ul style="list-style-type: none"> ○ Routine Fitness-for-Duty Drug Testing. This testing must be part of the employer’s established policy or scheduled routinely for all members of an employment classification or group. ○ Follow-Up Drug Testing. If an employee enters an assistance program for drug-related problems, the employer must require follow-up testing unless the employee voluntarily entered the program. If follow-up testing is required, it must be conducted at least once a year for a two-year period after completion of the program. The employee being tested may not have advance notice of the follow-up testing date. <p>Under Florida’s workers’ compensation law, a drug-free workplace program must require employers to notify all employees that it is a condition of employment for employees to refrain from reporting to work or working with the presence of drugs or alcohol in the body. Employees must also be notified that if an employee is injured and refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for medical and indemnity benefits.</p> <p>One time only, prior to testing, an employer must give all employees and job applicants for employment a written policy statement that contains the following:</p> <ul style="list-style-type: none"> • A general statement of the employer’s policy on employee drug use, which must identify the following: <ul style="list-style-type: none"> ○ The types of drug testing an employee or job applicant may be required to submit. ○ The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug-test result. | | |

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| | <ul style="list-style-type: none"> • A statement advising the employee or job applicant of the existence of the drug-free workplace provisions of Florida’s workers’ compensation law. • A general statement concerning confidentiality. • Procedures for employees and job applicants to report confidentially to a MRO the use of prescription or nonprescription medications both before and after being tested. • A list of the most common medications that may alter or affect a drug test (such a list is available to employers through the state Department of Insurance). • The consequences of refusing to submit to a drug test. • A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs. • A statement that an employee or job applicant who receives a positive confirmed test may contest or explain the result to the MRO within five working days after receiving written notification of the test result; that if an employee’s or job applicant’s explanation or challenge is unsatisfactory to the MRO, the MRO will report a positive test result back to the employer; and that a person may contest the drug-test result pursuant to law or to rules adopted by the state Agency for Health Care Administration. • A statement informing the employee or job applicant of the responsibility to notify the lab of any administrative or civil action brought pursuant to the drug-free workplace provisions of Florida’s workers’ compensation law. • A list of all drugs for which the employer will test. • A statement regarding any applicable collective-bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court. • A statement notifying employees and job applicants of their right to consult with a MRO for technical information regarding prescription or nonprescription medication. | | |

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| Georgia | <p>Not require but upon implementation of a certified drug-free workplace program with the specific legal requirements an employer will qualify for a premium certification under the employer’s workers’ compensation insurance policy. Georgia statutes regarding a drug-free workplace are found at O.C.G.A. §§ 33-9-40.2, 34-8-194, 34-9-410 – 34-9-421, 45-23-1 – 45-23-9, and 50-24-1 – 50-24-6.</p> <p>The following elements must be included in an employer’s drug-free workplace program in order to qualify for the workers’ compensation discount:</p> <ul style="list-style-type: none"> • A written policy statement: <ul style="list-style-type: none"> ○ Identifies the types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis used to determine when such testing would be required. ○ Identifies the actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result. ○ Advises employees or job applicants of the existence of statutes relating to drug use and Georgia law. ○ Provides a general statement concerning confidentiality. ○ Describes the consequences of refusing to submit to a drug test. ○ Advises employees of the employee assistance program, if the employer offers the program, or advising the individual regarding the employer’s resource file of assistance programs and other persons, entities, or organizations designed to provide assistance with personal or behavioral problems. ○ Provides a statement that an employee or job applicant receiving a positive confirmed test result may contest or explain the result | <ul style="list-style-type: none"> • Upon implementation of a certified drug-free workplace program with the specific legal requirements will qualify for a premium certification under the employer’s workers’ compensation insurance policy. • For certification: A self-insured employer or an employer member of a group self-insurance fund who implements a drug-free workplace program in accordance with the statute and who complies with all other provisions to qualify for insurance premium discounts will be certified by the State Board of Workers’ Compensation as having a drug-free workplace program in compliance with Georgia law. • Employees proven drugs use may negate a WC claims | <p>O.C.G.A. §§ 33-9-40.2, 34-8-194, 34-9-410 – 34-9-421, 45-23-1 – 45-23-9, and 50-24-1 – 50-24-6</p> |

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| | <p>to the employer within five working days after written notification of the result.</p> <ul style="list-style-type: none"> ○ Provides a statement informing employees of the provisions of the federal Drug-Free Workplace Act or Ch. 23 of Title 45, the Drug-Free Public Workforce Act of 1990, if applicable to the employer. ● Substance abuse testing <ul style="list-style-type: none"> ○ A substance abuse test after extending an offer of employment. Limited testing of job applicants by an employer may qualify if the testing is conducted on the basis of reasonable classifications of job positions. ○ Reasonable suspicion substance abuse testing. Reasonable suspicion includes, but is not limited to, observable phenomena while at work, such as the following: <ul style="list-style-type: none"> ▪ Direct observation of substance abuse or physical symptoms of being impaired, such as abnormal conduct, erratic behavior, or a significant deterioration in work performance. ▪ A report of substance abuse provided by a reliable source. ▪ Evidence that an individual has tampered with a substance abuse test. ▪ Information that an employee has caused or contributed to an accident. ▪ Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working on the employer's premises or operating machinery. ○ A substance abuse test, if conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is | | |

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| | <p>scheduled routinely for all members of an employment classification or group.</p> <ul style="list-style-type: none"> ○ A substance abuse test as a follow-up to participation in a rehabilitation program or Employee Assistance Program resulting from a positive drug test. However, if an employee voluntarily entered the program, follow-up testing is not required. If follow-up testing is conducted, the frequency of testing must be at least once a year for a two-year period after completion of the program, and advance notice of the testing date must not be given to the employee. ○ A substance abuse test resulting from an employee causing or contributing to an on-the-job injury resulting in a loss of work time. <ul style="list-style-type: none"> ● Resources of employee assistance providers <ul style="list-style-type: none"> ○ If an employer has an employee assistance program (EAP), the employer must inform the employee of the benefits and services of the program. In addition, the employer must provide the employee with a notice of the policies and procedures regarding access to and utilization of the program. ○ If an employer does not have an EAP, the employer must maintain and update annually a resource file of providers of other employee assistance, including drug- and alcohol-abuse programs, mental health providers, and other persons, entities, or organizations available to help employees with personal or behavioral problems. The employer must notify the employee of the availability of this resource file. In addition, the employer must post a list of providers of employee assistance in a conspicuous place. ● Employee education <ul style="list-style-type: none"> ○ The explanation of the disease model of addiction for alcohol and drugs. | | |

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| | <ul style="list-style-type: none"> ○ The effects and dangers of the commonly abused substances in the workplace. ○ The company’s policies and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so. ● Supervisor training <ul style="list-style-type: none"> ○ How to recognize signs of employee substance abuse. ○ How to document and corroborate signs of employee substance abuse. ○ How to refer substance-abusing employees to the proper treatment providers. ● Confidentiality standards: Employers must maintain all drug and alcohol test results and the following types of related information as confidential records separate from other personnel records, including, but not limited to: <ul style="list-style-type: none"> ○ Interviews. ○ Reports. ○ Statements. ○ Memoranda. | | |
| Hawaii | <p>The law covers all private employers and was enacted to ensure that appropriate and uniform substance abuse test procedures are employed throughout the state, to protect the privacy rights of persons tested, and to achieve reliable and accurate results. Failure to adopt or follow procedures required by Hawaii’s substance abuse testing law makes the test results invalid. Third parties may not require, request, or suggest that any individual submit to a substance abuse test that does not meet all the requirements of Hawaii’s substance abuse testing law. This excludes third parties that are covered by any drug-testing regulation of the Hawaii Department of Transportation, the U.S. Department of Transportation, or any other federal agencies.</p> <p>Procedures:</p> <ul style="list-style-type: none"> ● Prior to the collection of any sample for substance abuse testing, the individual to be tested must receive a written statement of the specific substances to be tested for and a statement that over-the-counter | N/A | Haw. Rev. Stat. §§ 329B-1 – 329B-8 |

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| | <p>medications or prescribed drugs may result in a positive test result.</p> <ul style="list-style-type: none"> • Testing <ul style="list-style-type: none"> ○ On-site (must be properly certified by the state) ○ Off-site Labs (must be properly certified by the state) • Confidentiality of any chosen testing type must be ensured. | | |
| <p>Idaho</p> | <p>The Idaho Employer Alcohol and Drug-Free Workplace Act establishes voluntary alcohol and drug testing guidelines for all employers. For each policy of workers’ compensation insurance issued or renewed in Idaho on or after July 1, 1999, a reduction in the premium for the policy may be granted if the insurer determines the insured has established and maintains an alcohol- and drug-free workplace program complying with the requirements of the act.</p> <p>Requirements</p> <ul style="list-style-type: none"> • Written policy on drug and/or alcohol testing that is consistent with the requirements of the act, including a statement that violation of the policy may result in termination due to misconduct. The policy must be available for review by prospective employee and must list the types of tests an employee may be subject to, which may include the following: <ul style="list-style-type: none"> ○ Baseline ○ Pre-employment ○ Post-accident ○ Random ○ Return to duty ○ Follow up ○ Reasonable suspicion • All sample collection and testing for drugs and alcohol under the act must be performed in accordance with the following conditions: <ul style="list-style-type: none"> ○ The collection of samples must be performed under reasonable and sanitary conditions. | <ul style="list-style-type: none"> • For each policy of workers’ compensation insurance issued or renewed in Idaho on or after July 1, 1999, a reduction in the premium for the policy may be granted if the insurer determines the insured has established and maintains an alcohol- and drug-free workplace program complying with the requirements of the act. • If intoxication is a reasonable and substantial cause of an injury, no income benefits will be paid, except where the intoxicants causing the employee’s intoxication were furnished by the employer or where the employer permits the employee to remain at work with knowledge by the employer or the supervising agent that the employee is intoxicated. Idaho Code §§ 72-1366 | <p>Idaho Code §§ 72-1701 – 72-1716</p> |

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| | <ul style="list-style-type: none"> ○ The employer or the employer’s agent who is responsible for collecting the sample will be instructed as to the proper methods of collection. ○ Samples must be collected and tested with regard to the privacy of the tested individual and in a manner calculated to prevent substitutions or interference with the collection or testing of samples. ○ Sample collection must be documented. ○ The documentation procedures must include the following: <ul style="list-style-type: none"> ▪ Labeling of samples to prevent misidentification of the person tested. ▪ Handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures. ○ Sample collection, storage, and transportation to the place of testing must be performed to prevent the possibility of sample contamination or adulteration. ○ Sample testing must conform to scientifically accepted analytical methods and procedures. ○ Drug testing must include a confirmatory test before an employer can use the results of any test as a basis for action. A confirmatory test refers to the mandatory second or additional test of the same sample that is conducted by a lab, to substantiate the results of the initial test. A confirmatory test uses a different technique or chemical principle than the initial test. ○ Positive alcohol tests from an initial saliva test must be followed by a confirmatory test using a different method that is more reliable. ○ Positive alcohol tests from a breath test must be followed by a confirmatory breath | | |

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| | <p>test at least 15 minutes after the initial breath test or through any other confirmatory test that is more reliable.</p> <ul style="list-style-type: none"> • Rights of an employee or prospective employee <ul style="list-style-type: none"> ○ Any employee or prospective employee who tests positive for drugs or alcohol must be given written notice of that test result, including the type of substance involved, by the employer. The employee must be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person. ○ Any employee or prospective employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be done within seven (7) working days from the date of the first confirmed positive test notification and may be paid for by the employee or prospective employee requesting the test. If the retest results in a negative test outcome, the employer will reimburse the cost of the retest, compensate the employee for his time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay. • Privacy- All information, interviews, reports, statements, memoranda, or test results $\frac{3}{4}$ written or otherwise $\frac{3}{4}$ received through a substance abuse testing program is the property of the employer and must be kept confidential. It is intended to be used only in the following situations: <ul style="list-style-type: none"> ○ For an employer’s internal business use. ○ In a proceeding related to actions taken by or against an employer under the act. ○ In other disputes between the employer and the employee or applicant. ○ When the information is required to be disclosed by the U.S. Department of | | |

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| | <p>Transportation (DOT) law, by regulation, by another federal law, or as required by service of legal process.</p> <ul style="list-style-type: none"> • Entities that receive or have access to information concerning test results must keep the information confidential. This includes the following: <ul style="list-style-type: none"> ○ Employers. ○ Laboratories. ○ Medical review officers. ○ Employee assistance programs (EAPs). ○ Drug- or alcohol-rehabilitation programs and their agents. • Employer Protections- No cause of action against an employer may be based on an employer’s decision not to establish a drug or alcohol-testing program. Furthermore, no cause of action may be brought against any person or employer for any of the following reasons: <ul style="list-style-type: none"> ○ Failure to test for drugs or alcohol or failure to test for a specific drug or other substance. ○ Failure to test for or to detect any specific drug or other physical abnormality, problem, or defect of any kind ○ Termination or suspension of any drug- or alcohol-testing program or policy. | | |
| <p>Illinois</p> | <p>The Illinois Drug-Free Workplace Act requires that grantees and contractors provide a drug-free workplace.</p> | <ul style="list-style-type: none"> • Aggravated driving under the influence of alcohol, other drug(s), intoxicating compound(s), or any combination thereof may negate a WC claims | <p>The Illinois Drug-Free Workplace Act 30 Ill. Comp. Stat. §§ 580/1 – 580/11</p> |
| <p>Indiana</p> | <p>Pursuant to Ind. Code § 22-9-5-6, an employer, employment agency, labor organization, or joint labor-management committee may adopt or administer reasonable drug-testing policies or procedures designed to ensure that an individual who has successfully completed a supervised drug rehabilitation program or who has otherwise been rehabilitated successfully or</p> | <ul style="list-style-type: none"> • Intoxication may negate an employee’s WC claim. | <p>Ind. Code § 22-9-5-6</p> <p>Ind. Code § 22-9-5-24</p> <p>Ind. Code § 12-17.2-3.5-12.1</p> |

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| | <p>who is participating in a supervised rehabilitation program is no longer engaging in the illegal use of drugs. Furthermore, under Ind. Code § 22-9-5-24, an employer, employment agency, labor organization, or joint labor-management committee may:</p> <ul style="list-style-type: none"> • Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees. • Require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace. • Require that employees behave in conformance with the requirements established under the federal Drug-Free Workplace Act of 1988. • Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if the unsatisfactory job performance or behavior is related to the drug use or alcoholism of the employee. • Require compliance with the standards established in the regulations of the U.S. Department of Defense, Nuclear Regulatory Commission, or Department of Transportation if applicable. <p>For Child Care Providers Under Ind. Code § 12-17.2-3.5-12.1, a child care provider that is not a child care ministry or a child care center must maintain a written policy specifying that:</p> <ul style="list-style-type: none"> • The use of tobacco, alcohol, or a potentially toxic substance in a manner other than the intended purpose of the substance and use or possession of an illegal substance is prohibited in the facility where the provider operates a child care program when child care is being provided. • Drug testing of individuals who serve as caregivers will be | | |

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| | <ul style="list-style-type: none"> ○ Performed based on a protocol established or approved by the Division of Family Resources. ○ Required if an individual is suspected of noncompliance with the requirements previously specified. <p>A child care provider must, at no expense to the state, maintain and make available to the division upon request a copy of drug-testing results for an individual who is employed or volunteers as a caregiver at the facility where the provider operates a child care program. The drug-testing results must be obtained before the individual is employed or allowed to volunteer as a caregiver.</p> <p>This provision also applies to child care centers and child care homes.</p> | | |
| Iowa | <p>Iowa's private sector drug-free workplace law is located at Iowa Code § 730.5. Iowa's drug-free workplace law is voluntary.</p> <p>If an employer chooses to establish a drug- and alcohol-testing program, the testing and retesting must be performed within the terms of an employer-provided written policy. An employer's written policy must meet the following requirements:</p> <ul style="list-style-type: none"> • Be distributed to every employee and be available for review by every employee and prospective employee • If the employee or prospective employee is a minor (an individual under 18 and not legally classified as an adult), the policy must be delivered to the parent or guardian of the minor. Additionally, the employer must obtain a receipt or written acknowledgement from the parent or guardian that a copy of the policy has been received. Providing a copy of the policy to a parent or guardian by certified mail satisfies this requirement. | <ul style="list-style-type: none"> • The employee's intoxication not arising out of and in the course of employment but due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury may negate the employee's WC claim. | Iowa Code § 730.5 |

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| | <ul style="list-style-type: none"> • Provide uniform requirements for what disciplinary or rehabilitative actions an employer will take against an employee or applicant upon receipt of a confirmed positive test result for drugs or alcohol or upon an employee's or applicant's refusal to provide a testing sample. • Provide the following statements: <ul style="list-style-type: none"> ○ Any action taken against an employee or applicant may only be based on the results of the drug or alcohol test. ○ If rehabilitation is required, the employer will not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation. • If the written policy provides for alcohol testing, the policy must state the alcohol concentration that will violate the policy. Iowa law mandates that this standard may not be less than .04 grams of alcohol per 210 liters of breath, or the equivalent. <p>In regards to drug and alcohol testing, employers may perform any of the following:</p> <ul style="list-style-type: none"> • Conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees: <ul style="list-style-type: none"> ○ The entire employee population at a particular worksite of the employer except for employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees. ○ The entire full-time active employee population at a particular worksite except for | | |

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| | <p>employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee or who have been excused from work pursuant to the employer's working policy.</p> <ul style="list-style-type: none"> ○ All employees at a particular worksite who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees not subject to testing pursuant to a collective bargaining agreement, or employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees. • Conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation. • Conduct reasonable suspicion drug or alcohol testing. • Conduct drug or alcohol testing of prospective employees. • Conduct drug or alcohol testing as required by federal law or regulation or by law enforcement. • Conduct drug or alcohol testing in investigating accidents in the workplace in which the accident resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under Iowa's OSHA law, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed \$1,000. | | |
| <p>Kansas</p> | <p>Kansas' drug-testing law is located at Kan. Stat. § 75-4362. The law relates to establishment and implementation of a drug-screening program for public officers and certain state employees in safety-sensitive positions, as well as for employees of certain state institutions.</p> | <ul style="list-style-type: none"> • Employees proven drugs use may negate a WC claims | <p>Kan. Stat. § 75-4362</p> |

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| Kentucky | <p>According to Ky. Rev. Stat. §304.13-167(6), the commissioner of the Department of Insurance will approve rating plans for workers’ compensation insurance that give specific identifiable consideration in the setting of rates to employers who implement a drug-free workplace program pursuant to administrative regulations adopted by the Department of Workers’ Claims in the Labor Cabinet. The credit will be at least 5 percent unless the commissioner determines that 5 percent is actuarially unsound.</p> <p>The commissioner is also authorized to develop a schedule of premium credits for workers’ compensation insurance for employers who have safety programs that contain certain criteria for safety programs. The commissioner will consult with the commissioner of the Department of Workers’ Claims in the Labor Cabinet in setting such criteria. A drug-free workplace credit under this subsection is not available to employers who receive a credit under Ky. Rev. Stat. § 304.13-412 (drug-free workplace programs at coal mines) or Chapter 351 (Department for Natural Resources).</p> <p>Requirements to obtain Drug-Free Workplace Certification for an employer (non-mining):</p> <ul style="list-style-type: none"> • Alcohol and substance abuse education and awareness training for employee and supervisors which provides the following: <ul style="list-style-type: none"> ○ Written materials explaining policies and procedures with respect to the drug-free workplace program; ○ Provides each employee with at least one hour of initial and at least 30 minutes of refresher each year thereafter of alcohol and substance abuse education and awareness training which shall include, at a minimum, information concerning: <ul style="list-style-type: none"> ○ Alcohol and drug testing ○ The effects of alcohol or drug addition ○ The disease of alcohol or drug problem | <ul style="list-style-type: none"> • The credit will be at least 5 percent unless the commissioner determines that 5 percent is actuarially unsound. • Any employer who is also a licensee of a coalmine that has implemented a drug-free workplace program certified by the Office of Mine Safety and Licensing — including an employee assistance program — is eligible to obtain a credit on the licensee’s premium for workers’ compensation insurance. | Ky. Rev. Stat. §304.13-167(6) |

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| | <ul style="list-style-type: none"> ○ Signs and symptoms of an alcohol or drug problem ○ Roles of coworkers and supervisors in addressing alcohol or substance abuse; and ○ Referrals to an employee assistance program; ● Provide all supervisory staff with training, 30 minutes each year on alcohol and substance abuse. Training shall include: <ul style="list-style-type: none"> ○ Recognizing signs of alcohol or drug addiction ○ How to document signs of employee alcohol and drug abuse; ○ How to refer employees to an EAP or other assistance program; ○ Legal and practical aspects of reasonable suspicion testing for the presence of drugs and alcohol. ● Reasonable suspicion testing shall be based on a belief that an employee is using or has used drugs or alcohol in violation of the employer’s policy, drawn from specific objective and articulate facts and reasonable inferences drawn from those facts in light of experience, training, or education. The reasonable testing shall be based on: <ul style="list-style-type: none"> ○ While at work, direct observation of drug or alcohol use or of physical symptoms or manifestations of being under the influence of a drug or alcohol. ○ While at work, abnormal conduct, erratic behavior, or a significant deterioration in work performance: ○ A report of drug or alcohol use provided by a reliable and credible source: ○ Evidence that an employee has used, possessed, sold, solicited, or transferred illegal or illicit drugs or used alcohol while on the covered employer’s premises or while operating the covered | | |

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| | <p>employer's vehicle, machinery, or equipment:</p> | | |
| <p>Louisiana</p> | <p>Louisiana's drug-testing law is located at La. Stat. Ann. §§ 49:1001 – 49:1021.</p> <ul style="list-style-type: none"> • Testable substances <ul style="list-style-type: none"> ○ Marijuana ○ Opioids ○ Amphetamines ○ Phencyclidine ○ The law does not preclude or regulate the testing of any Schedule I, II, III, IV substances and Alcohol. • Drug testing procedures <ul style="list-style-type: none"> ○ Must be performed in a Substance Abuse and Mental Health Services Administration (SAMHA)-certified, College of American Pathologists Forensic Urine Drug Test (CAP-FUDT)-certified, or College of American Pathologist Forensic Drug Testing (CAP-FDT)-certified-laboratories, if both of the following apply: <ul style="list-style-type: none"> ▪ If, as a result of such testing, mandatory or discretionary negative employment consequences will be rendered to the individual. ▪ Drug testing is performed for any or all of the following classes of drugs: <ul style="list-style-type: none"> ○ Marijuana ○ Opioids ○ Amphetamines ○ Phencyclidine | <ul style="list-style-type: none"> • If the employee refuses to submit to drug and alcohol testing immediately after the alleged job accident, it will be presumed that the employee was intoxicated at the time of the accident, and the claim may therefore be negated. | <p>La. Stat. Ann. §§ 49:1001 – 49:1021</p> |

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| Maine | <p>Maine’s substance abuse testing law, found at 26 Me. Rev. Stat. Ann. §§ 681 – 690, generally supports federal law regarding drug and alcohol testing in the workplace and imposes specific restrictions. The law applies to all public and private employers.</p> <p>Maine law mandates certain requirements for written drug- and alcohol-testing policies, payment for tests, use of testing laboratories, and enforcement regulations.</p> <p>Before establishing a substance abuse-testing program, an employer must develop or appoint an employee committee to develop a written policy and include the following minimum requirements:</p> <ul style="list-style-type: none"> • The procedure and consequences of an employee’s voluntary admission of a substance abuse problem and available assistance, including the availability and procedure of the employer’s employee assistance program (EAP). • When substance abuse testing may occur. The written policy must describe the following: <ul style="list-style-type: none"> ◦ The positions that will be subject to testing, including positions subject to random or arbitrary testing. For applicant testing and probable cause testing of employees, an employer may designate that all positions are subject to testing. ◦ The procedure to be followed in selecting employees to be tested on a random or arbitrary basis. • Requirements regarding the collection of samples: <ul style="list-style-type: none"> ◦ The collection of samples for use in a substance abuse test must be conducted in a medical facility and supervised by a licensed physician or nurse. A medical facility includes a first aid station located at the worksite. ◦ An employer may not require an employee or applicant to remove any clothing for the purpose of collecting a urine sample, except that: | <p>N/A</p> | <p>26 Me. Rev. Stat. Ann. §§ 681 – 690</p> |

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| | <ul style="list-style-type: none"> • An employer may require that an employee or applicant leave personal belongings other than clothing, an unnecessary coat, jacket, or similar outer garments outside the collection area. ▪ If it is the standard practice of an off-site medical facility to require the removal of clothing when collecting a urine sample for any purpose, the physician or nurse supervising the collection of the sample in that facility may require the employee or applicant to remove their clothing. ◦ No employee or applicant may be required to provide a urine sample while being observed — directly or indirectly — by another individual. ◦ The employer may take additional actions necessary to ensure the integrity of a urine sample if the sample collector or testing laboratory determines that the sample may have been substituted, adulterated, diluted, or otherwise tampered with in an attempt to influence test results. However, the employer may not directly or indirectly observe of the collection of a urine sample. If an employee or applicant is found to have twice substituted, adulterated, diluted, or otherwise tampered with the employee’s or applicant’s urine sample, the employee or applicant will be considered to have refused to submit to a substance abuse test. • The storage of samples before testing sufficient to inhibit deterioration of the sample. • The chain of custody of samples sufficient to protect the sample from tampering and to verify the identity of each sample and test re The substances of abuse for which the tests are to be conducted | | |

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| | <ul style="list-style-type: none"> • The cutoff levels for both screening and confirmation tests at which the presence of a substance of abuse in a sample is considered a positive test result: <ul style="list-style-type: none"> ◦ Cutoff levels for confirmation tests for marijuana may not be lower than 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples. ◦ The state Department of Health and Human Services must adopt rules regulating screening and confirmation cutoff levels for other substances of abuse, including substances tested for in blood samples, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the department establish a cutoff level for any substance of abuse for which the department has not established a cutoff level. ◦ If the Department of Health and Human Services does not have established cutoff levels or procedures for any specific federally recognized substance abuse test, the minimum cutoff levels are procedures that apply are those set forth in the Federal Register, Volume 69, No. 71, sections 3.4 to 3.7 on pages 19697 and 19698. • The employer must provide each employee with a copy of the approved written policy at least 30 days before the written policy takes effect. The employer must provide each employee with a copy of changes in a written policy approved by the Maine Department of Labor at least 60 days before changes take effect. The department may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with the law or if, in the judgment of the department, the amendment promotes the purpose of the law and | | |

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| | <p>does not lessen the protection of an individual employee.</p> <ul style="list-style-type: none"> • Before establishing a substance abuse testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program (EAP) in compliance. A full-time employee is an employee who customarily works 30 hours or more each week. • The employer may meet this requirement by participating in a cooperative employee assistance program that services the employees of more than one employer. The employee assistance program must be certified by the Office of Substance Abuse in conjunction with the state Department of Labor and the Department of Human Services. • No employer may require, request, or suggest that an employee or applicant sign or agree to a form or agreement that attempts to: <ul style="list-style-type: none"> ○ Absolve the employer from potential liability arising out of the imposition of a substance abuse test. ○ Waive an employee or applicant's rights or eliminate or diminish an employer's obligations established by law. | | |
| Maryland | <p>Maryland law regarding the controlled substance testing by an employer is located at Md. Health-Gen. Code Ann. § 17-214. Additional provisions are located at Md. Health-Gen. Code Ann. § 19-1903 (alcohol or controlled dangerous substance testing for employees of adult dependent care programs). Maryland's controlled substance testing law applies to job-related alcohol and controlled, dangerous substance testing of any person. Job-related means any alcohol or controlled dangerous substance testing used by an employer for a legitimate business purpose. Maryland also has provisions for certain motor vehicle drivers and employees in marine facilities.</p> | <ul style="list-style-type: none"> • Employees proven drugs use may negate a WC claims | <p>Md. Health-Gen. Code Ann. § 17-214</p> <p>Md. Health-Gen. Code Ann. § 19-1903</p> |

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| | <p>Employers requiring drug testing may use the following as a specimen:</p> <ul style="list-style-type: none"> • Urine. • Blood. • Human hair measuring no longer than 1½ inches from the body. • Saliva. | | |
| Massachusetts | <p>Massachusetts has no law regarding drug and alcohol testing in employment.</p> | <p>N/A</p> | |
| Michigan | <p>Michigan has no law regarding drug and alcohol testing in employment; therefore, Michigan employers should be familiar with the federal Drug-Free Workplace Act.</p> | <p>N/A</p> | |
| Minnesota | <p>Minnesota law governing drug testing are found at Minn. Stat. §§ 181.950 – 181.957. Drug testing is optional and the law places restrictions on drug and alcohol testing:</p> <p>Testing limits:</p> <ul style="list-style-type: none"> • Job applicant testing — provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If the job offer is withdrawn, the employer must inform the job applicant of the reason for the withdrawal. • Routine physical examination testing — provided the drug or alcohol test is requested or required no more than once annually, and the employee has been given at least two weeks’ written notice that a drug or alcohol test may be requested or required as part of the physical examination. • Random testing — an employer may request or require employees to undergo drug and alcohol testing on a random selection basis only if either of the following apply to the employees: <ul style="list-style-type: none"> ○ They are employed in safety-sensitive positions. | | <p>Minn. Stat. §§ 181.950 – 181.957</p> |

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| | <ul style="list-style-type: none"> ○ They are employed as professional athletes, but only if the professional athletes are subject to a collective-bargaining agreement permitting random testing and only to the extent consistent with the collective-bargaining agreement. • Reasonable suspicion testing — an employer may request or require an employee to undergo drug and alcohol testing if the employer has a reasonable suspicion that the employee: <ul style="list-style-type: none"> ○ Is under the influence of drugs or alcohol. ○ Has violated the employer’s written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the employer’s premises or operating the employer’s vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer’s written drug- and alcohol-testing policy. ○ Has sustained a personal injury or has caused another employee to sustain a personal injury. ○ Has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident. • Treatment program testing — if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan. In such cases, the employer may request or require the employee to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of a prescribed chemical dependency treatment program • No legal duty to test — employers do not have a legal duty to request or require an employee or job | | |

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| | <p>applicant to undergo drug or alcohol testing as authorized in this chapter.</p> <p>Minnesota law mandates certain requirements for written drug- and alcohol-testing policies, use of testing laboratories, and the testing, reporting, and retention of samples.</p> <p>Drug- and alcohol-testing policies must be written and must include the following information:</p> <ul style="list-style-type: none"> • The employees or job applicants subject to testing under the policy. • The circumstances under which drug or alcohol testing may be requested or required. • The right of an employee or job applicant to refuse to undergo drug and alcohol testing and the consequences of refusal. • Any disciplinary or other adverse personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test • The right of an employee or job applicant to explain a positive test result on a confirmatory test or request and pay for a confirmatory retest. • Any other appeal procedures available. <p>An employer must provide written notice of its drug- and alcohol-testing policy to all affected employees upon adoption of the policy, including newly transferred employees previously unaffected, job applicants upon hire, and applicants for which the job offer is made contingent on test results. An employer must also post notice in a conspicuous location on the employer’s premises the adopted drug- and alcohol-testing policy and make copies of the policy available for inspection during regular business hours by its employees or job applicants.</p> <p>Before an employee or job applicant undergoes drug or alcohol testing, the employer must provide a form for the employee or job applicant to sign stating they have read the employer’s drug- and alcohol-testing policy.</p> | | |

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| | <p>Minnesota Statutes mandate use of a licensed, accredited, or certified laboratory. An employer who requests or requires an employee or job applicant to undergo drug or alcohol testing must use the services of a testing laboratory that meets one of the following criteria for drug testing:</p> <ul style="list-style-type: none"> • Is certified by the National Institute on Drug Abuse as meeting the mandatory guidelines published at 53 Federal Register 11970 to 11989, April 11, 1988. • Is accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, under the forensic urine drug testing laboratory program. • Is licensed to test for drugs by the state of New York, Department of Health, under Public Health Law, article 5, title V, and rules adopted under that law. <p>For alcohol testing, the laboratory must be either of the following:</p> <ul style="list-style-type: none"> • Licensed to test for drugs and alcohol by the state of New York, Department of Health, under Public Health Law, article 5, title V, and the rules adopted under that law. • Accredited by the College of American Pathologists, 325 Waukegan Road, Northfield, Illinois, 60093-2750, in the laboratory accreditation program. <p>An employer may not conduct drug or alcohol testing of its own employees and job applicants using a testing laboratory owned and operated by the employer; but one agency of the state may test the employees of another agency of the state. Except for</p> | | |

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| | <p>confirmatory tests, an employer may not request or require an employee or job applicant to contribute to, or pay the cost of, drug or alcohol testing.</p> <p>A laboratory may only disclose to the employer test result data regarding the presence or absence of drugs, alcohol, or their metabolites in a sample tested.</p> <p>Test result reports and other information acquired in the drug- or alcohol-testing process are, with respect to private sector employees and job applicants, private and confidential information, and, with respect to public sector employees and job applicants, private data on individuals as defined by federal law and may not be disclosed by an employer or laboratory to another employer, third-party individual, governmental agency, or private organization without the written consent of the employee or job applicant tested. Positive test results from an employer's drug- or alcohol-testing program may not be used as evidence in a criminal action against the employee or job applicant tested.</p> <p>An employer must establish its own reliable chain-of-custody procedures to ensure proper recordkeeping, handling, labeling, and identification of the samples to be tested.</p> <p>The following procedures must be included:</p> <ul style="list-style-type: none"> • Possession of a sample must be traceable to the employee from whom the sample is collected from the time the sample is collected through the time the sample is delivered to the laboratory. • The sample must always be in possession of, in view of, or must be placed in a secured area by a person authorized to handle the sample • A sample must be accompanied by a written chain-of-custody record • Individuals relinquishing or accepting possession of the sample must record the time the possession of the | | |

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| | <p>sample was transferred and must sign and date the chain-of-custody record at the time of transfer.</p> <p>Within three working days after notification of positive test results on a confirmatory test and notice of rights from the employer, employees or job applicants may submit information to the employer to explain the result of the test. Employees and applicants may also request and receive from the employer a copy of the test result report.</p> <p>Within five working days after notice of the confirmatory test result, the employee or job applicant must notify the employer in writing of the employee's or job applicant's intention to obtain a confirmatory retest at the employee's or job applicant's own expense. Within three working days after receipt of the notice, the employer must notify the original testing laboratory that the employee or job applicant has requested the laboratory to conduct the confirmatory retest or transfer the sample to another laboratory that fits the criteria defined in this chapter to conduct the confirmatory retest.</p> <p>The original testing laboratory must ensure that the chain-of-custody procedures outlined in this chapter are followed during transfer of the sample to the other laboratory. The confirmatory retest must use the same drug or alcohol threshold detection levels as used in the original confirmatory test. If the confirmatory retest does not confirm the original positive test result, no adverse personnel action based on the original confirmatory test may be taken against the employee or job applicant.</p> <p>Minnesota law places the following limitations on employee discharge, discipline, or discrimination due to positive test results:</p> <ul style="list-style-type: none"> An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee because of a positive | | |

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| | <p>test result from an initial screening test that has not been verified by a confirmatory test.</p> <ul style="list-style-type: none"> • An employer may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the employer unless the following conditions have been met: <ul style="list-style-type: none"> ○ The employer has first given the employee an opportunity to participate in, at the employee’s own expense or covered under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is determined as appropriate by the employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency. ○ The employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program. • An employer may temporarily suspend the tested employee or transfer that employee to another position at the same rate of pay pending the outcome of the confirmatory test (and, if requested, the confirmatory retest) provided the employer believes that it is reasonably necessary to protect the health or safety of the employee, co-employees, or the public. An employee who has been suspended without pay must be reinstated with backpay if the outcome of the confirmatory test or requested confirmatory retest is negative. • An employer may not discharge, discipline, discriminate against, or request or require rehabilitation of an employee on the basis of medical history information revealed to the employer, unless | | |

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| | <p>the employee was under an affirmative duty to provide the information before, upon, or after hire.</p> <ul style="list-style-type: none"> • An employee must be given access to information in the employee’s own personnel file relating to positive test result reports and other information acquired in the drug- and alcohol-testing process and conclusions drawn from and actions taken based on the reports or other acquired information. • If a job applicant has received a job offer made contingent on the applicant’s passing drug and alcohol testing, the employer may not withdraw the offer based on a positive test result from an initial screening test that has not been verified by a confirmatory test. • An employer may not retaliate against an employee for asserting rights and remedies provided for in Minnesota law and in conjunction with violations in this chapter. | | |
| Mississippi | <p>Private and public employers are covered by Mississippi’s Voluntary Employee Drug and Alcohol Testing Act. This voluntary statute specifically absolves from civil liability any employer choosing to comply with its provisions. Mississippi’s voluntary Drug-Free Workers’ Compensation Premium Reduction Act applies to employers’ subject to the Mississippi Workers’ Compensation Law.</p> <p>Requirements for discount:</p> <ul style="list-style-type: none"> • Written Policy Statement <ul style="list-style-type: none"> ○ A general statement of the employer’s policy on substance abuse. ○ A statement advising an employee or job applicant of Mississippi’s Drug-Free Workplace Workers’ Compensation Premium Reduction Act. | <ul style="list-style-type: none"> • Employers who participate may receive a 5-percent discount on their workers’ compensation insurance premium. • Employees proven drugs use may negate a WC claims | <p>Mississippi’s Voluntary Employee Drug and Alcohol Testing Act Miss. Code Ann. §§ 71-7-1 – 71-7-33</p> <p>Drug-Free Workers’ Compensation Premium Reduction Act Miss. Code Ann. §§ 71-3-201 – 71-3-225</p> |

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| | <ul style="list-style-type: none"> ○ A general statement concerning confidentiality. ○ A statement advising an employee of the EAP and other employer resources. ○ A statement informing an employee of the provisions of the federal Drug-Free Workplace Act if applicable. • Compliance with the substance abuse testing procedures if testing is initiated by the employer. <ul style="list-style-type: none"> ○ Mississippi law requires that specimen collection be performed under reasonable and sanitary conditions. Individual dignity must be preserved to the extent practicable. ○ Specimens must be collected so as to prevent substitutions of specimens and interference with the collection or testing of specimens. Specimen collection must be documented and the documentation procedures must include labeling of specimen containers to preclude erroneous identification of test results. The employee or applicant must be given the opportunity to provide information that the employee or applicant considers relevant to the test, including identification of recently used prescription drugs or other relevant medical information. Information provided by the employee will not preclude the administration of the drug and alcohol test, but will be taken into account when interpreting any positive confirmed result. ○ Drug-and-alcohol test specimens must be collected by physicians, registered nurses, or licensed practical nurses; qualified persons employed by certified laboratories; or any person deemed qualified by the state Board of Health, which trains and certifies persons to collect specimens and collect on-site drug and alcohol tests in the workplace. Confirmation tests conducted under the | | |

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| | <p>state's drug-testing law must be conducted by a certified laboratory.</p> <ul style="list-style-type: none"> ◦ Specimens collected must be sufficient for two drug and alcohol tests. The testing laboratory and its director must be certified by the state Board of Health or be licensed or certified by an agency of another state to conduct such tests. ◦ Specimens producing positive confirmed results must be frozen by the certified laboratory that conducts the confirmation test and preserved for 90 days from the time the results are delivered to the employer. During the 90-day storage period, the employee must be permitted to have a portion of the specimen retested, at the employee's expense. ◦ Employers that perform on-site testing must establish chain-of-custody procedures to ensure proper recordkeeping, handling, labeling, and identification of all specimens to be tested. <ul style="list-style-type: none"> • Resources of employee assistance providers or other rehabilitation resources. <ul style="list-style-type: none"> ◦ For an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the workers' compensation discount, the employer must have an EAP and inform employees of the program's policies and procedures. Employers without such programs must maintain resource files of employee assistance service providers, alcohol and other drug abuse programs, mental health providers, and other sources of help. • Employee education. <ul style="list-style-type: none"> ◦ Employers that wish to qualify for a workers' compensation discount must provide all employees with an education program on alcohol and other drug-abuse before | | |

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| | <p>instituting a private-sector drug-free workplace program. Employers must provide all employees with an annual program on alcohol and other drug abuse in general and its specific effects on the workplace. The education program, lasting for at least one hour, must explain addiction, the effects and dangers of the commonly abused drugs in the workplace, and the company's policies and procedures regarding alcohol and drug-use in the workplace, including how employees that wish to obtain substance abuse treatment can do so.</p> <ul style="list-style-type: none"> • Supervisor training. <ul style="list-style-type: none"> ◦ Private-sector drug-free workplace programs must provide all supervisory personnel with at least two hours of training before instituting the program and each year thereafter. The training should include recognizing alcohol and other drug abuse, documenting and corroborating employee alcohol and other drug abuse, and recognizing the benefits of referring employees to treatment programs and techniques of so doing. | | |
| <p>Missouri</p> | <p>Missouri has no clear laws governing Drug-Free Workplace programs. However; most employers are discouraged from taking adverse employment action against employees for the consumption of alcohol or tobacco outside of work hours or off of work premises according to Mo. Rev. Stat. § 290.145.</p> | <p>Where the employee fails to obey any rule or policy adopted by the employer relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the workplace, the compensation and death benefit will be reduced 50 percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs. In addition:</p> <ul style="list-style-type: none"> ◦ If, however, the use of alcohol or nonprescribed controlled drugs in violation of the employer's rule or policy is the proximate cause of the injury, the benefits | |

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| | | <p>or compensation otherwise payable for death or disability will be forfeited.</p> <ul style="list-style-type: none"> ○ The voluntary use of alcohol to the percentage of blood alcohol sufficient under Missouri law to constitute legal intoxication will give rise to a rebuttable presumption that the voluntary use of alcohol under such circumstances was the proximate cause of the injury. A preponderance of the evidence standard will apply to rebut such presumption. An employee's refusal to take a qualified test for alcohol or a nonprescribed controlled substance at the request of the employer will result in the forfeiture of benefits if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the employer's policy clearly authorizes post-injury testing. | |
| <p>Montana</p> | <p>Montana's Workforce Drug and Alcohol Testing Act is located at Mont. Code Ann. §§ 39-2-205 – 39-2-211. The law does not mandate drug and alcohol testing but requires all employers using drug and alcohol testing to adopt procedures developed by the federal Department of Transportation (49 C.F.R. 40). The law also restricts testing to ensure only employees involved in certain hazardous, security, safety, or fiduciary positions are subject to testing.</p> <p>For additional information, employers can examine An Employer's Guide to Drug Testing in Montana provided by the Montana Department of Labor and Industry.</p> <p>Employers covered by the act are persons or entities located in or doing business in Montana with one or more employees. An</p> | <ul style="list-style-type: none"> • If the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident, provided the employer did not have knowledge of and failed to attempt to stop the employee's use of alcohol or drugs; then the employees proven drugs use may negate a WC claims | <p>Mont. Code Ann. §§ 39-2-205 – 39-2-211</p> <p>An Employer's Guide to Drug Testing in Montana</p> |

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| | <p>employer also includes the legislative authority of a city, town, county, or consolidated city-county.</p> <p>Employees covered by the act are individuals engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety or public health in which driving a motor vehicle is necessary for any part of the individual’s work duties or involving a fiduciary responsibility for an employer. Hazardous work environments include the following:</p> <ul style="list-style-type: none"> • Positions for which substance-abuse testing is required under federal law or regulations, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees. • Positions involving the operation of or work improvements to construction equipment, industrial machinery and mining activities. • Jobs that involve the handling of, or proximity to, flammables, explosives, toxic chemicals, or similar substances. <p>Qualified testing programs must meet the procedural requirements imposed by Montana’s Workforce Drug and Alcohol Testing Act. As used in the act, the term sample includes a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol.</p> <p>Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol-testing procedures</p> | | |

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| | <p>must conform to 49 C.F.R. 40. For samples not covered by 49 C.F.R. 40, the qualified testing program must contain chain of custody and other procedural requirements that are at least as stringent as those contained in 49 C.F.R. 40, and the testing methodology must be cleared by the U.S. Food and Drug Administration (FDA). At a minimum, the policies and procedures must require the following:</p> <ul style="list-style-type: none"> • A description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance. • The employer’s program for regularly educating or providing information to employees on the health and workplace safety risks associated with controlled substance and alcohol use • The employer’s standards of conduct regulating the use of controlled substances and alcohol by employees. • A description of available employee assistance programs (EAPs), including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees. • A description of the sanctions that the employer may impose on an employee if the employee has violated the employer’s standards of conduct regulating the use of controlled substances and alcohol or if the employee tests positive for the presence of a controlled substance or alcohol • Identification of the types of controlled substance and alcohol tests to be used. • A list of controlled substances for which the employer intends to test. • A stated alcohol concentration level above which a tested employee must be sanctioned. • A description of the employer’s hiring policy with respect to applicants testing positive. | | |

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| | <ul style="list-style-type: none"> • A detailed description of the procedures used to conduct the testing program, including the resolution of a dispute concerning test results. • A provision that all information, interviews, reports, statements, memoranda, and results obtained through tests are confidential communications. These communications may not be disclosed to anyone or used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in the following situations: <ul style="list-style-type: none"> ○ Disclosure to the tested employee. ○ Disclosure to designated representatives of the employer. ○ Disclosure to anyone in connection with any legal or administrative claim rising from the employer’s implementation of Montana’s Workforce Drug and Alcohol Testing Act ○ Disclosure in response to questions relating to workplace accidents involving death, physical injury, or property damage in excess of \$1,500 if the tested employee may have caused or contributed to the accident. ○ Disclosure required to be reported to state or federal licensing authorities. ○ A provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be confidential to the medical review officer. This information may not be released to the employer. <p>Employers must pay the costs of testing. Employees must be compensated at their regular rate, including benefits, for time spent in a testing program.</p> <p>The collection, transport, and confirmation testing of urine samples must be performed in accordance with 49 C.F.R. 40. Additionally, the collection, transport, and confirmation testing of nonurine samples must be as stringent as the requirements of</p> | | |

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| | <p>49 C.F.R. 40, in requiring split specimens as defined by the U.S. Department of Health and Human Services, requiring transport to a testing facility under the chain of custody, and confirmation of all screened positive results using mass-spectrometry technology</p> <p>Before employers may take any action based on positive test results, they must have the results reviewed and certified by a medical review officer trained in the field of substance abuse. An employee or applicant must have the opportunity to notify the medical review officer of any medical information relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs. Employees must have the right to have a split sample retested by an independent laboratory selected by the employee.</p> <p>Before employers may take any action based on positive test results, they must have the results reviewed and certified by a medical review officer trained in the field of substance abuse. An employee or applicant must have the opportunity to notify the medical review officer of any medical information relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs. Employees must have the right to have a split sample retested by an independent laboratory selected by the employee.</p> <p>Breath alcohol tests must follow the following criteria:</p> <ul style="list-style-type: none"> • Tests must be administered by certified breath alcohol technicians. • Tests may only be conducted using testing equipment appearing on the list of conforming products published in the federal register. • Test results must indicate an alcohol concentration over 0.04 for a person to be considered as having alcohol in the body. | | |

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| | <p>Allowable Procedures</p> <p>The following activities are permissible in the implementation of a qualified testing program.</p> <ul style="list-style-type: none"> • Applicant testing-Employers may test any applicant for jobs in covered employment as a condition of hire. • Employers may use random testing if it covers all wage-earning safety sensitive employees, including all supervisors and managers, and the employers' controlled substance and alcohol policies include one or both of the following: <ul style="list-style-type: none"> ○ A date when all employees will be required to undergo controlled substance or alcohol tests. ○ A third-party contract to establish and administer a random testing process. This process must include the following <ul style="list-style-type: none"> ▪ An established calendar period for testing. ▪ An established testing rate within that period. ▪ A random selection process determining who will be tested during that period ▪ A list of all supervisory and managerial employees in the random selection and testing process. ▪ A procedure requiring the employer to obtain a signed statement from each employee confirming that the employee received a written description of the random selection process. The employer must maintain the statement in the employee's personnel file. | | |

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| | <ul style="list-style-type: none"> ○ The selection of employees in a random testing procedure must be made by a scientifically valid method, such as a random number table or a computer-based random number generator table. ● Follow-Up Testing- Employers may require an employee to submit to follow-up tests if the employee has had a verified positive test for a controlled substance or for alcohol. The follow-up tests must be described in the employer’s controlled substance and alcohol policy. The test may be conducted for up to one year from the time that the employer requires the first such test. ● Reasonable Suspicion Testing- Employers may require an employee to submit to follow-up tests if the employee has had a verified positive test for a controlled substance or for alcohol. The follow-up tests must be described in the employer’s controlled substance and alcohol policy. The test may be conducted for up to one year from the time that the employer requires the first such test. ● Post-Accident Testing-Employers may require employees to be tested for controlled substances or alcohol if the employer has reason to believe that the employee’s act or failure to act caused a work-related accident causing any of the following: <ul style="list-style-type: none"> ○ Death. ○ Personal injury. ○ Property damage in excess of \$1,500. | | |
| Nebraska | <p>Nebraska’s drug and alcohol-testing law is located at Neb. Rev. Stat. §§ 48-1901 – 48-1910. The law covers employers with six or more full- and part-time employees. The law does not require employers to conduct testing, nor does the law determine cases or circumstances where testing may be given.</p> | <ul style="list-style-type: none"> ● The employees proven drug use may negate a WC claims | <p>Neb. Rev. Stat. §§ 48-1901 – 48-1910</p> |

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| Nevada | <p>Nevada’s drug- and alcohol-testing law is located at Nev. Rev. Stat. §§ 284.406 – 284.407. The law only covers public employers and employees. The law does not apply to employees who consume alcohol in the course of employment while hosting or attending a special event.</p> | <ul style="list-style-type: none"> • When an accident was primarily caused by the employee’s intoxication. If the employee was intoxicated at the time of injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary, this may negate the employee’s WC claims. • When an accident was primarily caused by the employee’s use of a controlled substance, this may negate the employee’s WC claims. | Nev. Rev. Stat. §§ 284.406 – 284.407 |
| New Hampshire | <p>New Hampshire has no general law dealing with drug testing in employment.</p> | <ul style="list-style-type: none"> • When the accident is caused by the employee’s intoxication, unless the employer knew the employee was intoxicated, this may negate the employee’s WC claim. | |
| New Jersey | <p>New Jersey Statutes (Ch. 16 Officers, Employees, General Provisions; Title 18A Education; Title 30 and 38A psychiatric facilities of the state and veterans’ memorial home) support federal laws regarding drug and alcohol testing in the workplace and impose specific restrictions for educators and employees of state psychiatric hospitals.</p> | <ul style="list-style-type: none"> • When the employee was intoxicated or made unlawful use of a controlled dangerous substance this may negate the employee’s WC claim. | |
| New Mexico | <p>New Mexico has drug testing laws and regulations regarding employees of state agencies, motor carriers, and health care providers.</p> <p>Pursuant to N.M. Stat. Ann. § 9-7-18, a health care provider hired to provide direct care to patients in a state health care facility must be tested for illicit and prescription drug and alcohol abuse prior to employment and subject to random drug testing thereafter. A health care provider providing direct care to patients in a state health care facility who is reasonably suspected of abusing illicit or prescription drugs or alcohol while working must undergo drug testing without prior notice to the health care provider</p> <p>As used in this section:</p> | <ul style="list-style-type: none"> • When the accident is caused by the employee’s intoxication from alcohol or use of illegal drugs. If the employee was under the influence, but the intoxicated condition was not the cause of the accident, the employee’s indemnity benefits may be reduced by 10 percent, leaving the medical benefits intact. To meet this standard, the law requires that testing be done by a laboratory that is certified by the U.S. Department of Transportation. | <p>N.M. Stat. Ann. § 9-7-18</p> <p>N.M. Stat. Ann. § 65-3-14</p> |

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| | <ul style="list-style-type: none"> • Health care provider means any health care staff member who is licensed, certified, or otherwise authorized or permitted by law to provide direct unsupervised health care to a patient. • State health care facility means a hospital, an entity providing services for the developmentally disabled, a shelter care home, a free-standing hospice, or a home health agency that is operated by the Department of Health. <p>The Department of Health will promulgate rules to establish:</p> <ul style="list-style-type: none"> • When a health care provider is reasonably suspected of abusing illicit or prescription drugs or alcohol while working. • The protocol governing testing for illicit and prescription drugs and alcohol. • What persons will be considered reliable reporting parties. • Any disciplinary action, addiction interventions, or fines. • The definition of “direct care.” <p>Results of drug tests must be treated as confidential medical information, and only aggregate test data will be subject to review by the Department of Health</p> <p>A person who in good faith reports that a health care provider has been abusing illicit or prescription drugs or alcohol while working will not be held liable for civil damages as a result of the report; provided that the health care provider reported as abusing illicit or prescription drugs or alcohol will have the right to sue for damages sustained as a result of negligent or intentional reporting of inaccurate information or the disclosure of information to an unauthorized person.</p> <p>Pursuant to N.M. Stat. Ann. § 65-3-14, motor carriers must have an in-house drug- and alcohol-testing program that meets the requirements of 49 C.F.R. part 382 or be a member of a consortium that provides testing that meets the requirements of 49 C.F.R. part 382. At the time of registration or renewal of</p> | | |

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| | <p>registration of a commercial motor vehicle, a motor carrier must certify to both the Department of Public Safety and the Motor Vehicle Division of the New Mexico Taxation and Revenue Department that the motor carrier is in compliance with the preceding requirements. If the motor carrier is a member of a consortium, the motor carrier must provide the names of the persons who operate the consortium.</p> <p>When a medical review officer of a motor carrier’s testing program or of the consortium to which the motor carrier belongs determines that a positive test result is valid, the officer must report the findings to the Motor Vehicle Division of the Taxation and Revenue Department. The division will enter the positive test results in the commercial driver’s license information system pursuant to the New Mexico Commercial Driver’s License Act.</p> | | |
| <p>New York</p> | <p>New York has no drug- and alcohol-testing law; however, New York employers have an obligation to make sure they are in compliance with federal drug- and alcohol-testing laws such as the Drug-Free Workplace Act of 1988 and the Federal Omnibus Transportation Employee Testing Act of 1991. In addition, New York employers should be aware that certain testing may raise issues of disability discrimination under the state Human Rights Law.</p> | <ul style="list-style-type: none"> When the accident is caused solely by the employee’s intoxication from drugs or alcohol it may negate an employee’s claim for benefits | <p>Federal Drug-Free Workplace Advisor</p> <p>Federal Omnibus Transportation Employee Testing Act of 1991</p> |
| <p>North Carolina</p> | <p>North Carolina’s drug-testing law, located at N.C. Gen. Stat. §§ 95-230 – 95-235 and 13 N.C. Admin. Code 20.0101 – 20.0602, covers private and public employers. Employers are not required to formulate or conduct controlled substance examinations, but examiners who request or require testing must comply with the law’s procedural requirements. Note: The law does not apply to a controlled substance examination required by the U.S. Department of Transportation or the U.S. Nuclear Regulatory Commission.</p> | <ul style="list-style-type: none"> When the employee was under the influence of a controlled substance not by the prescription by a medical practitioner, this may negate the employee’s WC claim. | <p>N.C. Gen. Stat. §§ 95-230 – 95-235 and 13 N.C. Admin. Code 20.0101 – 20.0602</p> |

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| | <p>Examiners must provide notices to examinees in the following two instances:</p> <ul style="list-style-type: none"> • Examiners may perform the screening test on-site for prospective employees. Samples that demonstrate a positive drug test result must be sent to an approved laboratory for confirmation. • Examiners may have an approved laboratory perform both the screening and confirmation tests. <p>If the examiner contracts with a third party for collection, screening, or confirmation testing, the examiner must ensure that the contractor's procedures comply with the drug-testing statute and regulations.</p> <p>The collection of samples for examination or screening must be performed in the following manner:</p> <ul style="list-style-type: none"> • Conditions must be reasonable and sanitary. • Individual dignity must be preserved. • Samples must be collected in a manner reasonably calculated to prevent substitution and interference with the collection, examination, or screening of samples. <p>Confirmation Tests- If a screening test for a prospective employee produces a positive result, then an approved laboratory must confirm any sample that produces a positive result by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method, unless the examinee signs a</p> | | |

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| | <p>written waiver at the time or after they receive the preliminary test results.</p> <p>All screening tests for current employees that produce a positive result must be confirmed by a second examination of the sample utilizing gas chromatography with mass spectrometry or an equivalent scientifically accepted method.</p> <p>Storage of Specimen- A portion of every sample that produces a confirmed positive result must be preserved by the laboratory that conducts the confirmatory test for at least 90 days from the time the results are mailed or otherwise delivered to the examiner.</p> <p>Chain of Custody- The examiner or examiner’s agent must establish procedures regarding chain of custody for sample collection and examination to ensure proper recordkeeping, handling, labeling, and identification of examination samples.</p> <p>Retesting- The examinee has the right to retest a confirmed positive sample at the same or another approved laboratory. The examiner, through the approved laboratory, must make confirmed positive samples available to the affected examinee, or a designated agent, during the time the sample is required to be retained. The examinee must request release of the sample in writing specifying to which approved laboratory the sample is to be sent. The examinee must pay all reasonable expenses for chain-of-custody procedures, shipping, and retesting of positive samples related to this request. Reasonable expenses for retesting means the following:</p> <ul style="list-style-type: none"> • The actual cost of the retest charged by the laboratory. • Fees (such as shipping and chain of custody procedures) charged by the laboratory for expenses associated with the retest. • A maximum of \$15 for the examiner’s expenses, unless it can be proven they are greater. | | |

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| | <ul style="list-style-type: none"> The actual cost of the examiner’s shipping expenses related to the retest. <p>Examiners must keep information confidential relating to examinees’ controlled substance examinations. Confidential information includes controlled substance examination results and information provided by examinees regarding their medical histories and lawful prescription drug use.</p> <p>Examiners and their agents may release confidential information in the following circumstances:</p> <ul style="list-style-type: none"> To the examinee or any other person upon written authorization signed by the examinee. To laboratories performing screening, confirmation tests, or retests of confirmed positive samples. For employment-related reasons, including performance evaluations, discipline, and provision of references. To a government agency, court, or other tribunal having jurisdiction over any claim or proceeding that involves the examinee and examiner. | | |
| North Dakota | <p>North Dakota’s voluntary drug- and alcohol-testing law is found in the N.D. Cent. Code § 65-01-11.</p> <p>North Dakota’s drug-testing law applies only to employers’ subject to the state’s workers’ compensation law.</p> <p>Under North Dakota law, employers, employment agencies, or joint labor management committees may adopt reasonable policies and procedures that:</p> | <ul style="list-style-type: none"> Any injury caused by the use of intoxicants or the illegal use of controlled substances may negate an employee’s claim for benefits. | <p>N.D. Cent. Code § 65-01-11</p> |

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| | <ul style="list-style-type: none"> • Prohibit the illegal use of controlled substances and alcohol at the workplace by any employee. • Require that employees not be under the influence of alcohol or engaged in the illegal use of controlled substances in the workplace. • Require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988. • Test for illegal use of controlled substances to ensure individuals are no longer engaged in the illegal use of any controlled substance. • Hold employees that illegally use controlled substances or that have alcoholism to the same standards for employment and job performance and the same behavior to which they hold other employees. <p>If an employer or doctor has reasonable grounds to suspect an employee's alleged work injury was caused by impairment resulting from the employee's use of alcohol or the illegal use of a controlled substance, the employer or doctor may request that the employee undergo testing to determine if the employee had levels of alcohol or controlled substances in the employee's system at the time of the injury greater than those set by the U.S. Department of Transportation.</p> <p>Employees that refuse to submit to reasonable requests to undergo tests to determine if they were impaired forfeit all entitlement to workers' compensation benefits arising out of that injury.</p> <p>Employers that require employees or prospective employees to take medical examinations or furnish medical records as a condition of retaining or obtaining employment must bear the cost of the examinations or of furnishing the medical records. Under North Dakota law, the term medical examination includes any test for the presence of drugs or alcohol. Employers violating these provisions are guilty of infractions.</p> | | |

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| Ohio | <p>Ohio law regarding drug testing is located in the Ohio Human Rights Act at Ohio Rev. Code Ann. § 4112.02.</p> <p>The law covers public and private employers. Pursuant to the law, employers may adopt or administer reasonable policies or procedures, including, but not limited to, testing for the illegal use of any controlled substance, that are designed to ensure that an individual who has been successfully rehabilitated or who is participating in a supervised drug rehabilitation program is no longer engaging in the illegal use of a controlled substance. “Test to determine the illegal use of any controlled substance” does not include a medical examination.</p> <p>Employers should note that Ohio’s drug-testing law does not encourage, prohibit, or authorize, and must not be construed as encouraging, prohibiting, or authorizing, the conduct of testing for the illegal use of any controlled substance by employees, applicants, or other persons, or the making of employment decisions based on the results of that type of testing.</p> | <ul style="list-style-type: none"> When the accident or injury is caused by the employee being intoxicated or under the influence of a controlled substance not prescribed by a physician where the intoxication or being under the influence of the controlled substance not prescribed by a physician was the proximate cause of the injury, may negate the employees WC claim. | <p>Ohio Rev. Code Ann. § 4112.02.</p> |
| Oklahoma | <p>The Oklahoma Standards for Workplace Drug and Alcohol Testing Act is located at 40 Okla. Stat. §§ 551 – 563. A drug or alcohol test is a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person’s bodily tissue, fluids, or products. Under the act, adulteration of a specimen or of a drug or alcohol test will be considered as a refusal to test.</p> <p>Employers covered by the act are any person, firm, corporation, partnership, association, nonprofit organization, or public employer, with one or more employees within Oklahoma, or which has offered or may offer employment to one or more individuals in Oklahoma</p> <p>The act applies to applicants and employees. An applicant is a person who has applied for a position with an employer and received a conditional offer of employment. An employee is any person who supplies labor for remuneration to their employer in Oklahoma. For purposes of the act, independent contractors, subcontractors, or employees of an independent contractor are</p> | <ul style="list-style-type: none"> Injury where the accident was caused by the use of alcohol, illegal drugs, or prescription drugs not used according to physician’s orders may negate an employee’s WC claims. | <p>40 Okla. Stat. §§ 551 – 563</p> |

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| | <p>not considered employees. However, an independent contractor, subcontractor, or employees of an independent contractor, may be subject to a workplace drug- or alcohol-testing policy under the terms of the contractual agreement when the drug or alcohol testing policy applies to other workers at the job site or workers who are in the same or similar classification or group.</p> <p>An employer may only request or require an employee or job applicant to undergo drug and alcohol testing under the following circumstances:</p> <ul style="list-style-type: none"> • Job Application and Transfer/Reassignment. A public or private employer may request or require an applicant to undergo drug or alcohol testing and may use a refusal to undergo testing or a positive test result as a basis for refusal to hire. A public or private employer may also request or require an employee who transfers to a different position or job, or who is reassigned to a different position or job, to undergo drug or alcohol testing. • For-Cause. A public or private employer may request or require an employee to undergo drug or alcohol testing at any time the employer reasonably believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances: <ul style="list-style-type: none"> ○ Drugs or alcohol on or about the employee’s person or in the employee’s vicinity. ○ Conduct on the employee’s part that suggests impairment or influence of drugs or alcohol. ○ A report of drug or alcohol use while at work or on duty. ○ Information that an employee has tampered with drug or alcohol testing at any time. ○ Negative performance patterns. ○ Excessive or unexplained absenteeism or tardiness • Post Accident. A public or private employer may require an employee to undergo drug or alcohol testing if employee or another person has sustained an | | |

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| | <p>injury while at work or property has been damaged while at work, including damage to equipment. For purposes of workers' compensation or unemployment compensation, an employee who tests positive for alcohol, illegal drugs, or illegally used chemicals, or who refuses to take a drug or alcohol test required by the employer, will not be eligible for compensation.</p> <ul style="list-style-type: none"> • Random. A public or private employer may request or require an employee or all members of an employment classification or group to undergo drug or alcohol testing at random and may limit its random testing programs to particular employment classifications or groups, except that a public employer may require random testing only of the following employees: <ul style="list-style-type: none"> ○ Employees that are police or peace officers. ○ Employees that have drug interdiction responsibilities. ○ Employees that are authorized to carry firearms. ○ Employees that are authorized to carry firearms. ○ Employees that are working for a public hospital including any hospital owned or operated by a municipality, county, or public trust. ○ Employees that work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services. • Scheduled, Fitness-for-Duty, Return from Leave, and Other Periodic. A public or private employer may request or require an employee to undergo drug or alcohol testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or is requested or required by the employer in connection with an employee's return to duty from leave of absence, or which is scheduled | | |

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| | <p>routinely as part of the employer’s written policy, except that a public employer may require scheduled, periodic testing only of the following employees:</p> <ul style="list-style-type: none"> ○ Employees that are police or peace officers ○ Employees that have drug interdiction responsibilities. ○ Employees that are authorized to carry firearms. ○ Employees that are engaged in activities that directly affect the safety of others. ○ Employees that are working for a public hospital including any hospital owned or operated by a municipality, county, or public trust. ○ Employees that work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services. <ul style="list-style-type: none"> • Post-Rehabilitation. An employer may request or require an employee to undergo drug or alcohol testing for a period of up to two years commencing with the employee’s return to work, following a positive test or following participation in a drug or alcohol dependency treatment program. • Oklahoma law mandates certain requirements for written drug- and alcohol-testing policies, time and payment for tests, enforcement regulations, use of testing laboratories, and the testing, reporting, and retention of samples. <p>Any employer that requests or requires an applicant or employee to undergo drug or alcohol testing must first adopt a written policy setting forth the specifics of its drug- or alcohol-testing program, which may include, but is not limited to, the following information:</p> <ul style="list-style-type: none"> • A statement of the employer’s policy regarding drug or alcohol use by employees. | | |

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| | <ul style="list-style-type: none"> • Which applicants and employees are subject to testing • The circumstances under which drug or alcohol testing may be requested or required. • Substances that may be tested. However, it is sufficient for an employer to state in the written policy that the substances tested will be for drugs and alcohol. • Testing methods and collection procedures to be used. • Consequences for refusing to undergo drug and alcohol testing. • Potential adverse personnel action that may be taken as a result of a positive test. • The ability of an employee or job applicant to explain the test results in confidence. • The ability of an applicant and employee to obtain copies of all information and records related to that individual's testing. • Confidentiality requirements. • The available appeal procedures. <p>An employer who implements a drug- or alcohol-testing policy or changes its policy must provide at least 10 days' notice to its employees and must provide a copy of the policy to each applicant upon their acceptance of employment by any of the following methods:</p> <ul style="list-style-type: none"> • Hand-delivery of a paper copy of the policy or changes to the policy. • Mailing a paper copy of the policy or changes to the policy through the U.S. Postal Service or a parcel delivery service to the last address given by the employee or applicant. • Electronically transmitting a copy of the policy through an email or by posting on the employer's website or intranet site. • Posting a copy in a prominent employee access area. | | |

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| | <p>Any drug or alcohol testing by an employer must be deemed work time for purposes of compensation and benefits for current employees.</p> <p>An employer must pay all costs of testing for drugs or alcohol required by the employer. However, if an employee or applicant requests a confirmation test of a sample within 24 hours of receiving notice of a positive test in order to challenge the results of the positive test, the employee or applicant must pay all costs of the confirmation test, unless the confirmation test reverses the findings of the challenged positive test. In such cases, the employer must reimburse the individual for the costs of the confirmation test.</p> | | |
| <p>Oregon</p> | <p>Oregon’s drug-testing law is located at Or. Rev. Stat. § 438.435. The law simply sets forth standards for laboratories authorized to conduct testing; it does not list any requirements for employers</p> | <ul style="list-style-type: none"> • Injury, the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured worker’s consumption of alcoholic beverages or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged, or had actual knowledge of such consumption, may negate the employee’s WC claims. | <p>Or. Rev. Stat. § 438.435.</p> |
| <p>Pennsylvania</p> | <p>Pennsylvania appears to have no law which speak drug/alcohol testing and employment.</p> | <ul style="list-style-type: none"> • When the injury is caused by an employee’s willful violation of the law. For example, the illegal use of drugs may negate an employee’s WC claim. | |
| <p>Rhode Island</p> | <p>Rhode Island’s drug-testing law is located at R.I. Gen. Laws §§ 28-6.5-1 – 28-6.5-3</p> <p>Private and public employers are covered by Rhode Island’s drug-testing law.</p> <p>Rhode Island’s drug-testing law does not apply to members of the International Association of Bridge, Structural, Ornamental</p> | <ul style="list-style-type: none"> • When the accident is caused by the employee’s intoxication from alcohol or use of illegal drugs may negate an employee’s WC claim. | <p>R.I. Gen. Laws §§ 28-6.5-1 – 28-6.5-3</p> |

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| | <p>and Reinforcing Iron Workers and its signatory contractors jointly participating in the IMPACT National Substance Abuse Program for purposes of prequalifying workers for employment on and ensuring the maintenance of designated drug free work sites; provided, however, that:</p> <ul style="list-style-type: none"> • Participation by each worker is voluntary. • Workers who refuse to participate may not be subjected to any adverse employment action other than an inability to work on a designated drug free work site. • The penalty for a first “positive” test may not exceed a 30-day suspension from work on designated drug free work sites. <p>No employer or agent of any employer may request, require, or subject employees to submit a sample of urine, blood, or other bodily fluid or tissue for testing as a condition of continued employment, unless the test is administered in accordance with the following requirements:</p> <ul style="list-style-type: none"> • The employer has reasonable grounds to believe the employee’s use of controlled substances is impairing the employee’s ability to perform the job, based on specific aspects of the employee’s job performance and on specific contemporaneous observations concerning the employee’s appearance, behavior, or speech. • The employee provides the test sample in private, outside the presence of another person. • Employees testing positive are not terminated on that basis, but are instead referred to a substance abuse professional for assistance. The substance abuse professional must be certified by the National Association of Alcohol and Drug Abuse Counselors and licensed in Rhode Island. Additional testing may be required by the employer, and an employee whose testing indicates continued use of controlled substances despite treatment may be terminated. | | |

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| | <p>Positive test results are confirmed by a federally certified laboratory by means of gas chromatography/mass spectrometry or technology recognized as at least as scientifically accurate.</p> <p>Employers, at their expense, provide employees the opportunity to have the sample tested or evaluated by an independent testing facility.</p> <p>Employers provide employees with a reasonable opportunity to rebut or explain test results.</p> <p>Employers have a drug abuse prevention policy complying with requirements of Rhode Island’s drug-testing law.</p> <p>Employers keep the results of tests confidential, except for disclosing the results of a positive test to other employees with a job related need-to-know.</p> <p>Employers may also use results to defend against any legal action brought by the employee against the employer.</p> <p>An employer may require a job applicant to submit to testing of his or her blood, urine or any other bodily fluid or tissue if:</p> <ul style="list-style-type: none"> • The job applicant was given an offer of employment conditioned on the applicant’s receiving a negative test result. • The applicant provides the test sample in private. • Positive test results are confirmed by a federally certified laboratory by means of a gas chromatography/mass spectrometry or technology recognized as at least as scientifically accurate | | |
| <p>South Carolina</p> | <p>Pursuant to S.C. Code Ann. § 38-73-500, an employer may establish a drug-prevention program in order to obtain a 5-percent workers’ compensation premium reduction.</p> <p>Employers establishing drug prevention programs to obtain the premium reduction must establish a substance abuse prevention program that includes the following:</p> <ul style="list-style-type: none"> • A policy statement balancing the employer’s respect for individuals with the need to maintain a safe, | <ul style="list-style-type: none"> • Pursuant to S.C. Code Ann. § 38-73-500, an employer may establish a drug-prevention program in order to obtain a 5-percent workers’ compensation premium reduction. • When the accident is caused by the employee’s intoxication from alcohol or use of illegal drugs this may negate the employee’s WC claim. | <p>S.C. Code Ann. § 38-73-500</p> |

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| | <p>productive, and drug-free environment. The intent of the policy must be to help employees while sending a message that the workplace does not condone the illegal use of nonprescription controlled substances or the abuse of alcoholic beverages.</p> <ul style="list-style-type: none"> • Notification to all employees of the drug prevention program and its policies at the time the program is established by the employer or at the time an employee is hired — whichever is earlier. <p>Certification- The merit rating system establishes drug-prevention program certification. Regulations include the establishment of guidelines or a plan defining a qualified employer drug-prevention program eligible for the credit which must be used by the insurer unless the insurer establishes its own guidelines or plan. These guidelines must include the policy statement and employee notification requirement.</p> <p>Testing- The testing procedure established by the insurer, employer, or his designee, or, approved by the director, must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer. If a second test is administered, the testing procedure may allow for a single sample to be split for use in the first and second tests. Positive test results must be provided in writing to the employee within 24 hours of the time the employer receives the test results. Employers must keep records of each test for up to one year.</p> <p>Confidential Communications- According to S.C. Code Ann. § 41-1-15, all information, interviews, reports, statements, memoranda, and test results received by the employer through a substance abuse testing program are confidential but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding.</p> <p>Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug-</p> | | |

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| | <p>prevention programs and their agents must keep all information confidential. The information may only be used if the employee or the employee’s designee voluntarily signs a written consent form. If the release occurs through disclosure by a state agency in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding, the consent form is not needed.</p> <p>Consent forms must contain the following:</p> <ul style="list-style-type: none"> • The name of the person authorized to obtain the information. • The purpose of the disclosure. • The precise information disclosed. • The duration of the consent. • The signature of the person authorizing release of the information. <p>Information on test results cannot be released for, used in, or be admissible in any criminal proceeding against the employee.</p> | | |
| <p>South Dakota</p> | <p>South Dakota does not have any drug- and alcohol-testing provisions regarding private employers.</p> | <ul style="list-style-type: none"> • The employee’s intoxication from alcohol or illegal use of any Schedule I or Schedule II drug may negate the employee’s WC claim. | |
| <p>Tennessee</p> | <p>The Drug-Free Workplace Programs law, located at Tenn. Comp. R. & Regs. 0800-2-12-.01 – 0800-2-12-.15 and Tenn. Code Ann. §§ 50-9-101 – 50-9-114, allows certain employers to receive workers’ compensation premium discounts and other benefits upon the implementation of a drug-free workplace program.</p> <p>The Tennessee Drug-Free Workplace Programs law was enacted to promote drug-free workplaces so that employers in Tennessee are afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without</p> | <ul style="list-style-type: none"> • The Drug-Free Workplace Programs law, located at Tenn. Comp. R. & Regs. 0800-2-12-.01 – 0800-2-12-.15 and Tenn. Code Ann. §§ 50-9-101 – 50-9-114, allows certain employers to receive workers’ compensation premium discounts upon the implementation of a drug-free workplace program. • When the accident was caused by the employee’s intoxication or illegal drug usage may negate an employee’s WC claim | <p>Tenn. Comp. R. & Regs. 0800-2-12-.01 – 0800-2-12-.15 and Tenn. Code Ann. §§ 50-9-101 – 50-9-114</p> |

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| | <p>experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug or alcohol abuse by employees. Additionally, Tennessee discourages drug and alcohol use in the workplace and employees who choose to engage in drug or alcohol abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.</p> <p>If an employer implements a drug-free workplace program, which includes notice, education, and procedural requirements for testing for drugs and alcohol, the covered employer may require the employee to submit to a test for the presence of drugs or alcohol.</p> <p>If a drug or alcohol is found to be present in the employee's system at a level prescribed by statute or by rule, the employee may be terminated and forfeits eligibility for workers' compensation medical and indemnity benefits. However, a drug-free workplace program must require the covered employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in the employee's body and, if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for workers' compensation medical and indemnity benefits.</p> <p>Employers covered by the Tennessee Drug-Free Workplace Programs law are all employers in Tennessee subject to provisions of the Workers' Compensation Act who maintain a drug-free workplace (pursuant to the law) and include on the required posting a specific statement that the policy is being implemented.</p> <p>However, the following stipulations apply:</p> <ul style="list-style-type: none"> • Implementation of a drug-free workplace program remains subject to the provisions of any applicable collective-bargaining agreement. • The law does not authorize any employer to test any applicant or employee for alcohol or drugs in any | | |

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| | <p>manner inconsistent with federal constitutional or statutory requirements, including those imposed by the Americans with Disabilities Act (ADA) and the National Labor Relations Act (NLRA).</p> <p>In order to qualify as having established a drug-free workplace program all drug or alcohol testing conducted by covered employers must be in conformity with the standards and procedures established by the Tennessee Drug-Free Workplace Programs law and all applicable rules.</p> <p>If a covered employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established by the Tennessee Drug-Free Workplace Programs law and in applicable rules, the covered employer will not be eligible for any of the following:</p> <ul style="list-style-type: none"> • Workers' compensation discounts. • A shift in the burden of proof to the employee where the employee engaged in misconduct or intentional self-inflicted injury. • Ability to deny workers' compensation medical and indemnity benefits. <p>Covered Employees is any persons who works for a salary, wages, or other remuneration for a covered employer.</p> <p>Job applicants may also be tested. A job applicant is a person who has applied for a position with a covered employer and who has been offered employment conditioned upon successfully passing a drug or alcohol test. Job applicants may have begun work pending the results of the drug or alcohol test.</p> <p>An employee who is not in a safety-sensitive position may be tested for alcohol only when the test is based upon a reasonable suspicion.</p> | | |

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| | <p>A safety-sensitive position is a position involving a safety-sensitive function pursuant to regulations governing drug or alcohol testing adopted by the U.S. DOT. For drug-free workplaces, the commissioner may expand the scope of safety-sensitive position to cases where impairment may present a clear and present risk to co-workers or other persons.</p> <p>With respect to any employer, a safety-sensitive position is a position in which a drug or alcohol impairment constitutes an immediate and direct threat to public health or safety, such as a position in which a momentary lapse in attention could result in injury or death to another person or a position that requires the employee to:</p> <ul style="list-style-type: none"> • Carry a firearm. • Perform life-threatening procedures. • Work with confidential information or documents pertaining to criminal investigations. • Work with controlled substances. <p>An employee in a safety-sensitive position may be tested for alcohol use at any required drug test occasion. An employee who is not in a safety-sensitive position may be tested for alcohol only when the test is based upon reasonable suspicion.</p> <p>Reasonable suspicion drug testing is drug or alcohol testing based on a belief that an employee is using or has used drugs or alcohol in violation of the covered employer’s policy drawn from specific, objective, and articulable facts and reasonable inferences drawn from those facts in light of experience.</p> <p>Among other things, such facts and inferences may be based upon any of the following:</p> <ul style="list-style-type: none"> • Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol. | | |

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| | <ul style="list-style-type: none"> • Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance. • A report of drug or alcohol use, provided by a reliable and credible source. • Evidence that an individual has tampered with a drug or alcohol test during employment with the current covered employer. • Information that an employee has caused, contributed to, or has been involved in an accident while at work. • Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or used alcohol while working or while on the covered employer’s premises or while operating the covered employer’s vehicle, machinery, or equipment. <p>To the extent permitted by law, a covered employer who establishes a drug-free workplace is required to conduct all of the following types of drug or alcohol tests:</p> <ul style="list-style-type: none"> • Job applicant drug and alcohol testing. • Reasonable suspicion drug and alcohol testing. • Routine fitness-for-duty drug testing. • Post-accident testing. • Follow-up drug testing. <p>According to Tenn. Comp. R. & Regs. 0800-2-12-.07, a covered employer is required to test employees and job applicants for all of the following drugs:</p> <ul style="list-style-type: none"> • Alcohol. However, alcohol testing is not required for job applicant testing. • Amphetamines. • Cannabinoids (THC). • Cocaine. • Opiates. • Phencyclidine | | |

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| | <p>Specimen Collection and Chain of Custody- All specimen collection and testing for drugs and alcohol must be performed in accordance with the procedures provided for by the U.S. DOT rules for workplace drug and alcohol testing. A specimen is tissue, fluid or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites.</p> <p>Covered employers that perform drug testing or specimen collection must use chain-of-custody procedures established by regulations of the U.S. DOT or such other recognized authority. Chain of custody refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances, and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.</p> <p>Lab Standards- A laboratory may not analyze test specimens unless the lab is licensed and approved by the Tennessee Department of Health using criteria established by the U.S. Department of Health and Human Services (DHHS) or the lab is certified by the DHHS, the College of American Pathologists, or other such recognized authority. The lab must comply with the procedures established by the U.S. DOT for a workplace drug-testing program.</p> <p>Covered employers must pay the cost of all employer-required drug and alcohol tests, initial and confirmation. An employee or job applicant must pay the costs of any additional drug or alcohol tests not required by the covered employer.</p> <p>Substance Abuse Awareness and Education- According to Tenn. Comp. R. & Regs. 0800-2-12-.13, covered employers are annually required to provide at least one hour of an education/awareness program to all employees about substance abuse in the workplace.</p> | | |

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| | <p>Additionally, employers must annually provide all supervisory personnel with a minimum of two hours of workplace substance abuse recognition training, which should include the following:</p> <ul style="list-style-type: none"> • Recognizing the signs of substance abuse in the workplace. • How to document and collaborate signs of employee substance abuse. • How to refer substance-abusing employees to proper providers for treatment. <p>The supervisor training may take place in a single two-hour session or in two one-hour sessions. Combined with the required one hour of mandatory employee substance abuse education/awareness, supervisors are required to receive a total of three hours of substance abuse education awareness and recognition training per year.</p> <p>Prohibited Discrimination and EAPs- Covered employers may not discharge, discipline, refuse to hire, discriminate against or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer. Confirmation tests, confirmed tests, or confirmed drug or alcohol tests are a second analytical procedure used to identify the presence of a specific drug or alcohol or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy. A medical review officer is a licensed physician, employed with or contracted with a covered employer, who:</p> <ul style="list-style-type: none"> • Has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures. • Verifies positive, confirmed test results. • Verifies positive, confirmed test results. | | |

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| | <p>Covered employers may not discharge, discipline, or discriminate against an employee solely upon the employee’s voluntarily seeking treatment, while under the employ of the covered employer, for a drug-related or alcohol-related problem if the employee has not:</p> <ul style="list-style-type: none"> • Previously tested positive for drug or alcohol use. • Entered an employee assistance program for drug-related or alcohol-related problems. • Entered a drug or alcohol rehabilitation program. <p>An employee assistance program (EAP) is an established program capable of providing all of the following:</p> <ul style="list-style-type: none"> • Expert assessment of employee personal concerns. • Confidential and timely identification services with regard to employee drug or alcohol abuse. • Referrals of employees for appropriate diagnosis, treatment, and assistance. • Follow-up services for employees who participate in the program or require monitoring after returning to work. <p>Unless otherwise provided by a collective-bargaining agreement, covered employers may select the EAP or drug or alcohol rehabilitation program if the covered employer pays the cost of the employee’s participation in the program. However, employers are not required to permit or provide such a rehabilitation program.</p> <p>Prior to testing and only once, a covered employer must provide all employees and job applicants a written policy statement that contains all of the following information:</p> <ul style="list-style-type: none"> • A general statement of the covered employer’s policy on employee drug or alcohol use, which must identify both of the following: <ul style="list-style-type: none"> ○ The types of drug or alcohol testing an employee or job applicant may be required to submit to, including reasonable suspicion drug or alcohol testing or drug or alcohol testing conducted on any other basis. ○ The actions the covered employer may take against an employee or job applicant on the | | |

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| | <p>basis of a positive confirmed drug or alcohol test result.</p> <ul style="list-style-type: none"> • A statement advising the employee or job applicant of the existence of the law requiring employers to provide a policy statement. • A general statement concerning confidentiality. • Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications after being tested, but only if the testing process has revealed a positive result for the presence of alcohol or drug use. • The consequences of refusing to submit to a drug or alcohol test. • A representative sampling of names, addresses, and telephone numbers of EAPs and local drug or alcohol rehabilitation programs. • A statement that an employee or job applicant who receives a positive confirmed test result: <ul style="list-style-type: none"> ○ May contest or explain the result to the medical review officer within five working days after receiving written notification of the test result. ○ That if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer will report a positive test result back to the covered employer. ○ That a person may contest the drug or alcohol test result. • A statement informing the employee or job applicant of the employee's responsibility to notify the laboratory of any administrative or civil action. • A list of all drug classes for which the employer may test. • statement regarding any applicable collective-bargaining agreement or contract and any right to appeal to the applicable court. • A statement notifying employees and job applicants of their right to consult with a medical review officer for | | |

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| | <p>technical information regarding prescription or nonprescription medication.</p> <ul style="list-style-type: none"> • A statement complying with the notice requirements. <p><i>Temporary employment agencies are not required to implement a drug-free workplace.</i></p> | | |
| <p>Texas</p> | <p>According to the Texas Workforce Commission, under Texas law, there is almost no limitation on the right of private employers to adopt drug- and alcohol-testing policies for their workers. However, public employers and contractors are more limited by law and judicial decisions.</p> <p>A private employer should only implement a drug-testing policy after careful consideration of many factors including, but not limited to:</p> <ul style="list-style-type: none"> • Applicable statutes and regulations. • Contract or insurance requirements. • The need to combat some perceived problem with substance abuse among workers. <p>Employees must be provided with written notification before being required to submit to an alcohol or drug testing.</p> <p>A final applicant must pass a drug test before being hired for a position that involves driving for the department. The department will notify a final applicant of the results of a pre-employment drug test if the applicant requests those results in writing within 60 calendar days after being notified of the disposition of the employment application. The department will also inform the applicant which drugs, if any, were verified as positive.</p> <p>Testing for cause- Any employee who is reasonably suspected of using alcohol or drugs in the workplace will be required to undergo an alcohol or drug test. The decision to test must be based on the reasonable belief of a supervisor who has been</p> | <ul style="list-style-type: none"> • The employee was injured while in a state of intoxication, this may negate the employee’s WC claim. | |

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| | <p>trained on the signs and symptoms of alcohol and drug use. The decision must be based on specific, contemporaneous, articulable observations concerning appearance, behavior, speech, body odor, performance, or other indications of probable use. These observations may include indications of chronic use and withdrawal symptoms.</p> <p>When a supervisor reasonably suspects an employee of using alcohol or drugs in the workplace, the supervisor will contact the substance control officer immediately. The supervisor will make an immediate inquiry into all relevant surrounding circumstances and may confer with the employee. The substance control officer will document whether testing is justified based on the supervisor’s observations and the substance control officer’s independent analysis. Within 24 hours, the supervisor or substance control officer will submit that person’s observations in writing to the substance abuse program staff in the Human Resources Division.</p> <p>Testing for cause must be approved by the Director of the Human Resources Division or designee and by the relevant district engineer, division director, office director, or designee not below the level of deputy district engineer, deputy division director, deputy office director, director of administration, or division administrative manager.</p> <p>Pending a decision to test or if testing is not available, the employee will be removed from critical duties. The employee will be reassigned to temporary modified duties or will be required to take sick leave, vacation leave, compensatory time, or leave without pay. The employee will only be required to take leave without pay if the employee has exhausted all accrued leave. This will continue until any of the following occurs:</p> <ul style="list-style-type: none"> • An alcohol test indicates a result of less than 0.02. • A negative drug test result is reported. • 24 hours elapse after the decision to test. | | |

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| | <p>Before making a decision to test, a supervisor or substance control officer must have been trained in the indications of drug and alcohol use and on the department's policy and procedures related to testing for cause.</p> | | |
| <p>Utah</p> | <p>Utah's general drug- and alcohol-testing law is located at Utah Code §§ 34-38-1 – 34-38-15. Pursuant to the law, if an employer tests an employee or prospective employee for the presence of drugs or alcohol as a condition of hiring or continued employment, the employer is protected from liability if the employer complies with the law. However, employers and management in general must also submit to testing on a periodic basis.</p> <p>Testing or retesting for the presence of drugs or alcohol by an employer must be carried out within the terms of a written policy, which must be distributed to employees and made available for review by prospective employees.</p> <p>Within the terms of the written policy, an employer may require the collection and testing of samples for the following purposes:</p> <ul style="list-style-type: none"> • Investigation of possible individual employee impairment. • Investigation of accidents in the workplace or incidents of workplace theft. • Maintenance of safety for employees or the general public. • Maintenance of productivity, quality of products or services, or security of property or information. <p>The collection and testing of samples must be conducted in accordance with the procedures outlined in the following sections and need not be limited to circumstances where there</p> | <p>Disability compensation related to WC may not be awarded to an employee when the major contributing cause of the employee's injury is among other factors:</p> <ul style="list-style-type: none"> • The knowing use of a controlled substance that the employee did not obtain under a valid prescription. • The intentional abuse of a controlled substance that the employee obtained under a valid prescription if the employee uses the controlled substance intentionally: <ul style="list-style-type: none"> ○ In excess of prescribed therapeutic amounts; or ○ In an otherwise abusive manner. ○ Intoxication from alcohol with a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test. | <p>Utah Code §§ 34-38-1 – 34-38-15</p> |

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| | <p>are indications of individual, job-related impairment of an employee or prospective employee.</p> <p>Time and Cost of Testing-For current employees, any drug or alcohol testing by an employer must occur during or immediately after the regular work period and is considered work time for purposes of compensation and benefits.</p> <p>An employer must pay all costs of any required testing for drugs or alcohol, including the cost of transportation if the testing of a current employee is conducted at a place other than the workplace.</p> <p>Collection of Specimen- Employers may require samples from employees and applicants. Employers may require presentation of reliable identification to the person collecting the samples. Local governmental entities may also require samples from volunteers and prospective volunteers. Employers may designate the type of sample to be used for testing.</p> <p>All sample collection and testing for drugs and alcohol must be performed in accordance with the following conditions:</p> <ul style="list-style-type: none"> • Collection must be performed under reasonable and sanitary conditions. • Samples must be collected and tested in a manner respecting the privacy of the individual and in a manner reasonably calculated to prevent substitutions or interference. • Sample collection must be documented, and the documentation procedures must include the following: <ul style="list-style-type: none"> ○ Labeling of samples so as to reasonably prevent the probability of erroneous identification of test results. ○ An opportunity for the employee or prospective employee to provide notification of any information which the individual considers relevant to the test, including | | |

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| | <p>identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information.</p> <ul style="list-style-type: none"> • Sample collection, storage, and transportation to the place of testing must be performed to reasonably prevent sample misidentification, contamination, or adulteration. • Sample testing must conform to scientifically accepted analytical methods and procedures. Before a test of a sample may be considered a failed test and used as a basis for an action by an employer, testing of the sample must include a confirmation test by: <ul style="list-style-type: none"> ○ Gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method. ○ If the sample used for a test is a urine sample, by a laboratory that is certified by the U.S. Department of Health and Human Services under the National Laboratory Certification Program. <p>A failed test is a confirmed drug or alcohol test that indicates that the sample test is positive, adulterated, or substituted.</p> <p>Confidentiality-Test related information is the property of the employer. Test related information means information received by the employer through the employer’s drug- or alcohol-testing program, including the following:</p> <ul style="list-style-type: none"> • Information. • Interviews. • Reports. • Statements • Memoranda. • Test Results | | |

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| | <p>An employer may take disciplinary or rehabilitative action if either of the following applies:</p> <ul style="list-style-type: none"> • The employer receives a test result that indicates a failed test, which is confirmed and indicates a violation of the employer’s written policy. • An employee or prospective employee refuses to provide a sample. <p>An employer may use a test result or a refusal as the basis for disciplinary or rehabilitative actions, which may include the following:</p> <ul style="list-style-type: none"> • Suspension of the employee with or without pay. • Termination of employment • Refusal to hire an applicant. • Other disciplinary measures in conformance with the employer’s usual procedures, including any collective-bargaining agreement. <p>A cause of action may not be brought against an employer with a drug- or alcohol-testing program if the employer takes disciplinary or rehabilitative action against an employee unless the action was based on an inaccurate test result. An <i>inaccurate test result</i> is a test result that is treated as a positive test result, when the sample should not have resulted in a positive test result.</p> <p>In claims that an employer’s action was based on inaccurate test results, there is a rebuttable presumption that the test results are valid if the employer complied with the drug- and alcohol-testing provisions of Utah law. Additionally, the employer is not liable for monetary damages if the employer’s reliance on the inaccurate test result was reasonable and in good faith.</p> <p>There is a rebuttable presumption that the employer complies with the drug- and alcohol-testing law if as part of the employer’s drug- and alcohol-testing program a licensed</p> | | |

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| | <p>physician who is trained in the interpretation of drug- and alcohol-test results does all of the following:</p> <ul style="list-style-type: none"> • Provides medical assessment of a result that indicates a failed test. • Requests re-analysis of a test result if necessary. • Makes a determination whether or not alcohol or other drug use has occurred. <p>However, a court may also find that an employer complies with the law notwithstanding that the employer’s drug- and alcohol-testing program does not include a licensed physician’s interpretation of the results.</p> | | |
| <p>Vermont</p> | <p>Vermont’s drug-testing law is found at 21 Vt. Stat. Ann. §§ 511 – 520.</p> <p>Public and private employers are covered by Vermont’s drug-testing law.</p> <p>Employers cannot require applicants to submit to drug testing, administer such a test, or ask an applicant to consent to any practice prohibited under Vermont’s drug-testing law unless all of the following conditions are met:</p> <ul style="list-style-type: none"> • The applicant has been given an offer of employment on the condition that the applicant receives a negative test result. • The applicant received written notice of the drug-testing procedure and a list of the drugs to be tested and must also state that therapeutic levels of medically-prescribed drugs tested will not be reported. Applicants may not waive the notice. • The drug test is administered in accordance with various statutorily required procedures (set forth in 21 Vt. Stat. Ann. § 514) for such testing, including, among other things, a written policy describing the drug testing to be conducted. <p>Employers may not require employees to submit to drug tests as a condition of employment or promotion or require employees</p> | <ul style="list-style-type: none"> • When the accident is caused by the employee’s intoxication from alcohol or use of illegal drugs it may negate the employee’s WC claim. | <p>21 Vt. Stat. Ann. §§ 511 – 520</p> |

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| | <p>to consent to any practice prohibited under Vermont’s drug-testing law unless all of the following conditions are met:</p> <ul style="list-style-type: none"> • The employer or agent has probable cause to believe the employee is using or is under the influence of a drug on the job. • The employer has available for the employee a bona fide rehabilitation program for alcohol or drug abuse and the program is provided by the employer or is available under a health insurance policy or under contract by a nonprofit hospital service corporation. • The employee may not be terminated if the test result is positive and the employee agrees to complete the employee assistance program. The employee may be suspended for up to three months to complete the program. If a test administered after the employee completes a rehabilitation program is positive, the employee may be terminated. • The test is administered in accordance with specified Vermont procedures for such testing, including, among other things, a written policy describing the drug testing to be conducted. <p>Employers cannot request, require, or conduct random or company-wide drug tests except when such testing is required by federal law or regulation.</p> <p>Testing Requirements-Drug testing may be administered only to detect the presence of alcohol or drugs at nontherapeutic levels. Employers cannot request or require that blood samples be drawn for administering drug tests.</p> <p>Urinalysis procedures used to screen for drugs must require that samples testing positive must be confirmed by gas chromatography with mass spectrometry or an equivalent scientifically accepted method that provides quantitative data about the detected drug or drug metabolites. The laboratory must also offer the individual, at individual’s expense, a chance</p> | | |

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| | <p>to have a blood sample taken at the same time the urine sample is provided for later testing for the presence of drugs.</p> <p>Employers must contract with or employ a certified medical review officer, who must be a licensed physician with knowledge of the medical use of prescription drugs and the pharmacology and toxicology of illicit drugs. The medical review officer must review and evaluate all drug test results, assure compliance with the testing procedures, retesting procedures, and confidentiality provision, report the results of all tests to the individual tested, and report only confirmed drug test results to the employer.</p> <p>Employers must also designate a collector to collect specimens from job applicants and employees. The collector may be an employee for the purposes of collecting specimens from job applicants, but may not be an employee for the purposes of collecting specimens from employees for drug testing based on probable cause.</p> <p>Collectors of samples must establish a chain-of-custody procedure for sample collection and testing that will assure the anonymity of the individual being tested and verify the identity of each sample and test result. Employers must ensure that a portion of any positive sample is preserved in a condition that will permit accurate retesting for at least 90 days after the person tested receives the result.</p> <p>Reports-A laboratory may report that a urine sample is positive only if both the initial test and the confirmation test are positive for the particular drug. Test results may only be provided by written reports, which must be provided to medical review officer. Reports must state the following:</p> <ul style="list-style-type: none"> • The unique identifier code of the person tested. • The type of test conducted for initial screening and confirmation. • The results of each test. | | |

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| | <ul style="list-style-type: none"> • The detection level, that is, the cut-off or measure used to distinguish positive and negative samples on both the initial screening and confirmation tests. • The name and address of the laboratory. • Any other information provided by the laboratory concerning that person’s test. <p>The medical review officer must review the report and discuss the results and options available with the individual tested after personally contacting the individual.</p> <p>Vermont’s drug-testing law does not restrict an employer’s authority to prohibit the nonprescribed use of drugs or alcohol during work hours or restrict an employer’s authority to discipline, suspend, or dismiss an employee for being under the influence of drugs or alcohol during work hours.</p> <p>The medical review officer must provide employees and applicants who have positive test results with an informal meeting to explain the results. The medical review officer must provide applicants and employees who have positive tests an opportunity to retest a portion of the sample at the expense of the person tested. The employer must consider the results of the retest.</p> <p>Any health care information about an individual to be tested under Vermont’s drug-testing law may be taken only by a medical review officer and must be kept confidential and cannot be released to anyone except the applicant or employee, and may not be obtained by court order or process unless released by the signed consent of the individual tested or where the release is compelled by a court of competent jurisdiction in connection with an action brought under Vermont’s drug-testing law. Drug-testing information released unlawfully will be considered inadmissible as evidence.</p> <p>Employers, medical review officers, laboratories, and their agents who receive or have access to information about drug</p> | | |

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| | <p>test results must keep all information confidential. Information can be released only on written consent by the person tested, unless the release of the information is compelled by a court of competent jurisdiction in connection with an action brought under Vermont’s drug-testing law.</p> <p>Applicants or employees aggrieved by violations of Vermont’s drug-testing law may bring a civil action for injunctive relief, damages, court costs, and attorney fees. Employers found in violation of any provision of Vermont’s drug-testing law will be subject to a civil penalty ranging from \$500 to \$2,000. Individuals also may be subject to criminal penalties ranging from \$500 to \$1,000 and/or imprisonment for up to six months.</p> | | |
| Virginia | <p>Virginia has no general law regarding drug testing in employment.</p> | <ul style="list-style-type: none"> When the accident is caused by the employee’s intoxication from alcohol it may negate the employee’s WC claim. | |
| Washington | <p>Washington’s Drug-Free Workplace Programs, previously located at Wash. Rev. Code §§ 49.82.010 – 49.82.901, expired under a sunset provision on January 1, 2001 (including the workers’ compensation premium reduction program) and at this time has not been re-enacted. Washington does have a drug-testing law related to commercial drivers, which is explained on Comply.</p> | <p>N/A</p> | |
| West Virginia | <p>The West Virginia state constitution protects citizens from unreasonable searches and seizures, except upon probable cause. The Supreme Court of Appeals of West Virginia has held that required random drug testing by a private sector employer violates the right of privacy assured to employees by the state constitution and is against public policy, except in two narrow exceptions. The first exception is when a particular employee’s job responsibility involves public safety or the safety of others, and the second exception is where an employer has a reasonable good faith objective suspicion of an employee’s drug use. Employers must not engage in random drug testing unless they fall under one of these two exceptions.</p> | <ul style="list-style-type: none"> When the accident is caused by the employee’s intoxication from alcohol or use of illegal drugs it may negate the employee’s WC claim. | |
| Wisconsin | <p>Wisconsin’s Substance Abuse Prevention laws cover employers and employees involved with public works projects.</p> | <ul style="list-style-type: none"> When the accident is caused by the employee’s intoxication from alcohol or use | <p>Wis. Stat. § 103.503</p> |

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| | | of illegal drugs it may negate the employee's WC claim. | |
| Wyoming | <p>Pursuant to Wyo. Stat. § 27-14-201(o), the Workers' Compensation Division within the Department of Workforce Services may grant a discount to workers' compensation rates otherwise established by law in the following amounts:</p> <ul style="list-style-type: none"> • Up to 10 percent of the base rate for the employment classification of any employer if the employer complies with a safety program approved by the division. • Up to 5 percent of the base rate for the employment classification if the employer complies with a drug- and alcohol-testing program approved by the division. <p>In determining safety program approval, drug- and alcohol-testing program approval, and the total discount granted, the division will consider the following:</p> <ul style="list-style-type: none"> • The probability that the program will reduce the number of accidents and the probable savings that may be realized from the reduction. • Relevant experience, if any, depicting actual reduction in accidents and actual savings, which is compared to an industry standard. • The adequacy and accuracy of determining participation in the program and the eligibility for a discount by individual employers. • The administrative costs incurred by the division in implementing a rate discount for an applicable employment classification. • Whether the employer adopts and enforces policies establishing a drug-free workplace, which may include an employee assistance program (EAP) to assist employees with alcohol or other drug problems. | <p>Pursuant to Wyo. Stat. § 27-14-201(o), the Workers' Compensation Division within the Department of Workforce Services may grant a discount to workers' compensation rates otherwise established by law in the following amounts:</p> <ul style="list-style-type: none"> • Up to 10 percent of the base rate for the employment classification of any employer if the employer complies with a safety program approved by the division. • Up to 5 percent of the base rate for the employment classification if the employer complies with a drug- and alcohol-testing program approved by the division. <p>Injury caused by the fact the employee is intoxicated or under the influence of a controlled substance, or both, except any prescribed drug taken as directed by an authorized health care provider, may negate the employee's WC claim.</p> | <p>Wyo. Stat. § 27-14-201(o)</p> |