



Congratulations to the following individual on their renewal certification in Q1 2023:



CSAPA Renewal of Certification:

Roxanne LePre



wikiHow has a detailed post on how to pass a drug test. A good amount of the information is incorrect “..make a thorough list of all your medications and provide the list to your employer” but it does give a bit of decent advice: “By far the best way to pass a drug test is to refrain from all use of drugs.”

Being aware of the information available on the Internet and providing accurate information in training, may help deter substance use.

<https://www.wikihow.com/Pass-a-Drug-Test>

What happens to the brain when a person takes drugs?

Most drugs affect the brain's "reward circuit," causing euphoria as well as flooding it with the chemical messenger dopamine. A properly functioning reward system motivates a person to repeat behaviors needed to thrive, such as eating and spending time with loved ones. Surges of dopamine in the reward circuit cause the reinforcement of pleasurable but unhealthy behaviors like taking drugs, leading people to repeat the behavior again and again.

As a person continues to use drugs, the brain adapts by reducing the ability of cells in the reward circuit to respond to it. This reduces the high that the person feels compared to the high they felt when first taking the drug—an effect known as tolerance. They might take more of the drug to try and achieve the same high. These brain adaptations often lead to the person becoming less and less able to derive pleasure from other things they once enjoyed, like food, sex, or social activities.

Long-term use also causes changes in other brain chemical systems and circuits as well, affecting functions that include:

- learning
- judgment
- decision-making
- stress
- memory
- behavior

Despite being aware of these harmful outcomes, many people who use drugs continue to take them, which is the nature of addiction.

Read more at <https://nida.nih.gov/publications/drugfacts/understanding-drug-use-addiction>

Training Corner

Current Consulting Group

Webinars on a variety of drug and alcohol related topics

www.currentconsultinggroup.com

NDASA

Webinars on a variety of drug and alcohol related topics

<https://www.ndasa.com>

SAPAA

Annual Conference
October 15-18, 2023
Orlando, FL.

<https://www.sapaa.com>

USDTL

Presentations and newsletters on a variety of drug and alcohol related topics

<http://www.usdtl.com>



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Part 40 Final Rule - DOT Summary of Changes – Oral Fluid

When is the final rule effective?

The final rule is effective June 1, 2023.

Can anyone implement DOT-regulated oral fluid testing on the effective date?

Not yet!

DOT oral fluid testing cannot be implemented until the Department of Health and Human Services (HHS) certifies at least two laboratories (one to serve as a primary laboratory, and a second to serve as a split specimen laboratory).

Check here for the listing of HHS certified laboratories <https://www.transportation.gov/odapc/labs>.

What does this mean for employees?

You could be subject to either an oral fluid collection or a urine collection for any DOT-regulated test [i.e., pre-employment, random, reasonable suspicion/ cause, post-accident (other than FRA, return-to-duty, or follow-up)].

If there is a reason a second collection is needed during the testing event, (e.g., initial temperature out-of-range urine specimen, or insufficient quantity for either an oral fluid or a urine specimen), the employer may choose to change to the other type of collection to finish the testing event.

The choice of whether to conduct an oral fluid or a urine test is up to the employer. Substance Abuse Professional (SAP) evaluations may be conducted remotely (additional detail under the SAP section below).

What does this mean for employers?

You, not the employee, choose the collection methodology for the test reason (e.g., randoms will start with urine; follow-ups will use oral fluid).

You, not the employee, choose the collection methodology for the subsequent collection following a shy bladder, dry mouth, or other test that requires a directly observed collection. Ensure you have business relationships with the oral fluid collectors and labs, whether directly or through your service agents.

It is a best business practice to have a standing order in place with each of your collection sites, so they know what kind of collection you want performed (i.e., urine or oral fluid) and when. Designated Employer Representatives have always been required to be available to the collectors 24-7, but that is even more important now.

Ensure your phone number is correct on the CCF so the collector can reach you. You need to be available to the collector to discuss if there are problem collections. You should always be available to discuss standing orders on what type of test you want administered if problem collection scenarios arise (e.g., if an employee does not provide a sufficient urine specimen, do you want the collector to switch to an oral fluid collection?).

Continued on next page

Part 40 Final Rule - DOT Summary of Changes – Oral Fluid (Continued)

It is the employer's duty to determine whether a refusal has occurred at the collection site. Employers have never been able to delegate this duty. So, a collector can tell you something appears to be a refusal, but the final determination is yours.

Remember, if an employee does not appear for a pre-employment drug test or leaves the collection site before receiving a cup (for a urine collection) or unwrapping the device (for an oral fluid collection) it is not a refusal.

What are some of the other changes to Part 40?

For directly observed collections, if the same gender collector cannot be found:

If the employer has a standing order to allow oral fluid testing in such situations, the collector will follow that order.

If there is no standing order from the employer, the collector must contact the DER and either conduct an oral fluid test if the collection site is able to do so or send the employee to a collection site acceptable to the employer for the oral fluid test.

For direct observation collections involving transgender or nonbinary individuals, an oral fluid collection must be conducted.

Beginning with Subpart C of Part 40, new sections have been added and numerous sections have been redesignated (i.e., renumbered and reordered), including the Appendices, to provide a more easily followed flow for users of the regulatory provisions specific to oral fluid drug testing (see the Table provided in the "Background" section of the final rule).

Where can I find a copy of the final rule?

You can view the final rule on [ODAPC's web site](#).

NOTE: This document informally summarizes some of the important effects of the rule, but it is not a substitute for the rule and should not be relied upon to determine legal compliance with the rule. ODAPC encourages affected entities, including employers and service agents, to review the final rule.

Read more at: https://www.transportation.gov/odapc/Notice_Summary_May_2023



The Clearinghouse is Not Enough

David Perlman, NCAC II, EAP

Employers are getting in the groove now for making annual Clearinghouse queries. But local record's check requirements remain in force per 49 CFR 391.25. There are a myriad of problems that prevent a driver from operating a CMV that do not appear in the Clearinghouse. I recently had a 2021 client call who had been told by their DER that their CDL was suspended. All of my required submissions had been made. I called the DER and was told that the suspension was from the Washington Department of Licensing.

Washington is one of six states that require US DOT drug tests to be reported to their office. I verified that my work has been recorded with WA DOL. I had the client then go online and purchase a complete driving abstract. It turned out that the client had been in an accident five months ago and the court required them to get additional insurance. When they did not comply, the court suspended their personal driver's license and CDL.

Courts will suspend a personal driver's license for most DUI cases, unpaid tickets, failure to appear, failure to pay child support and/or other ordered Court requirements. As in most States, Washington only issues a Driver's License, the "Commercial Driver's License" is only an endorsement on their personnel license.

When a driver has their personal driver's license suspended or revoked, they have no authorization to operate a Commercial Motor Vehicle. Even with the advent of the FMCSA Clearinghouse; annual queries must also include State DOL/DMV.

David Perlman is a US DOT Qualified Substance Professional in private practice serving Western Washington since 2005 and may be contacted at david@dotsap.net.

WHAT IS FENTANYL?



Fentanyl is a synthetic opioid that is approximately **50X MORE POTENT THAN MORPHINE¹**

Many people are exposed to fentanyl without knowledge while others use it intentionally because of its potency.

HOW TO RECOGNIZE THE SIGNS OF AN OVERDOSE.



UNRESPONSIVE



IRREGULAR
BREATHING



GRAY, BLUE,
OR PALE
SKIN COLOR



VERY SMALL
PUPILS

Which Specimen Can You Use for Workplace Drug Testing?

By David Gonçalves, DrugPak LLC/Bill Current, Current Consulting Group, LLC

This information is provided for educational purposes only. Reader retains full responsibility for the use of the information contained herein.

Who and when you test are very important aspects of a drug-free workplace program. But equally important is how you test. A top consideration in how to test is what specimen to use.

Urine, oral fluid, and hair dominate the drug testing industry. Which specimen should you use? That may, on the surface, appear to be a very straightforward question with a simple answer. However, as with most drug testing questions, getting to the right answer can be complicated. It's not just a matter of choosing between urine, oral fluid or hair, you must use a specimen that meets all the other conditions a state law may require.

Consider these questions:

- 1. In what state or states do you have business operations?** Every state has its own unique laws, case law decisions, and workers' compensation regulations and each can regulate drug testing differently. Further, many state laws are very specific when it comes to permitted specimens.
- 2. Are you planning to conduct lab-based or point-of-collection testing (POCT)?** Every state permits lab-based testing but not all states permit POCT. Additionally, there is no lab-based testing methodology for some bodily specimens and no POCT devices for other specimens.
- 3. If you are planning to use a POCT device, does an FDA-cleared product exist for the specimen you're considering?** The U.S. Food & Drug Administration gives clearance to products that meet very stringent requirements and most states that permit the use of POCT devices only allow the use of FDA-cleared devices. Outside of workplace drug testing, an FDA-cleared device is usually not required.
- 4. How will specimen collections take place?** Most states have very strict guidelines for how specimens must be collected. Complying with those guidelines will have a profound impact on the legal defensibility of your overall program and the integrity of each drug test result. Also, it is not unusual for a state to defer to the federal guidelines for collection procedures, but the federal guidelines do not cover all specimen types.
- 5. Who will conduct the specimen collection?** Some states require specific professional qualifications of those who are permitted to collect a specimen.
- 6. Does your state require that a split specimen be collected?** This means being able to collect enough of a specimen for it to be divided into two specimens, so the second half of the specimen can be used for a re-test if the original test result is being disputed. Not all bodily specimens can be split into two specimens.
- 7. Are you in a state that requires lab-based confirmation testing of initial screen positives?** Many states not only require confirmation testing, but they also even stipulate what technology that must be used (e.g., gas chromatography/mass spectrometry, often referred to as GC/MS, or an equivalent advanced technology). Yet not all labs offer that technology, and not all specimen types can be tested via GC/MS.

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Which Specimen Can You Use for Workplace Drug Testing? **(Continued)**

- 8. Are you in a state that requires confirmation testing of the same sample that was used for the initial screen?** Urine, oral fluid and hair samples used for initial screens can typically be used for confirmation testing.
- 9. Does your state require the use of a lab certified by the Substance Abuse and Mental Health Services Administration (SAMHSA)?** Many states have this requirement. But beware that SAMHSA does not certify labs for the testing of all specimen types. Depending on the specimen you're testing, just using a SAMHSA-certified lab may not entirely fulfill a state's requirement.
- 10. Does your state require adherence to the SAMHSA drug testing regulations found in 49 CFR Part 40?** If so, you can only use a specimen approved by SAMHSA. Currently, the only specimen permitted by Part 40 is urine analyzed at a SAMHSA certified lab, though final guidelines for lab-based oral fluid testing have been issued and guidelines for hair testing have been proposed. No other bodily specimens are permitted or contemplated under Part 40.

Another key issue has to do with the U.S. Department of Transportation regulations (DOT). If your company is covered under the DOT regulations, you may only test DOT-approved specimens, which right now means lab-based urine (and in the near future lab-based oral fluid).

Okay, that's a lot to consider. There are others, but that's 10 state-law-related questions you must be able to answer regarding drug test specimens. Let's simplify:

1. Urine is permitted in all 50 states and meets the state law requirements in virtually every instance, especially regarding lab-based testing.
2. Oral fluid is permitted in nearly every state (there are three possible exceptions) and meets most of the state law requirements in virtually every instance, especially regarding lab-based testing.
3. Hair is permitted in most states, meets most state law requirements, but is only available as a lab-based test.

Avoid This Mistake

One mistake employers should avoid is assuming very general language in a state law means anything goes. It usually does not. For example, many state laws define a permitted specimen as "a bodily specimen capable of revealing the presence of alcohol or drugs or their metabolites." However, not all specimens meet all the requirements in every state, especially regarding collections and confirmation testing. Hence, even if a statute includes the very broad "bodily specimen" type of language, it may not be possible to comply with every aspect of a law with some bodily specimens.

Keep in mind that when many state drug testing laws were originally written, the only drug testing method widely available was urine testing, and for alcohol screening it was breath and saliva. Many of those old statutes, some of which are still in use today, refer to various specimen types in the same sentence as if they are interchangeable for both drug and alcohol testing. They usually are not.

The key to legal defensibility is to review the entirety of a state's drug testing law in order to correctly conclude that a particular specimen is permitted and that compliance with every aspect of a law is possible (refer to the list of 10 questions above). When considering a specimen for drug testing first determine if you can collect it, test it, confirm it, and store it in complete compliance with all aspects of all applicable laws.

Continued on next page

Which Specimen Can You Use for Workplace Drug Testing? (Continued)

Also, multi-state employers must remember that they must comply with all applicable state laws and not just the law of the state where their company is headquartered. This means that a particular specimen may be allowed in some applicable states but not others.

Conclusion

In the early days of drug testing, way back in the 1980s and early 1990s, there was a popular motto that many sellers and buyers of drug testing lived by: "If in doubt, throw it out." That same philosophy applies today. An accurate drug test result obtained from a legally compliant process, including the specimen used and how it is collected and tested, is an employer's best legal defense if ever challenged.

If you're in doubt, check it out first to ensure complete compliance.

<https://www.clearstar.net/which-specimen-can-you-use-for-workplace-drug-testing/>



The number of **drug overdose deaths at work is rising.**

The top 3 industries with the **highest numbers of drug overdose deaths at work** from 2011-2016*



Transportation & Warehousing
116 deaths



Construction
114 deaths



Healthcare & Social Assistance
96 deaths



Centers for Disease Control and Prevention
National Institute for Occupational Safety and Health

* Tiesman H, Konda S, Cimineri L, Castillo D [2019]. Drug overdose deaths at work, 2011-2016. Inj Prev. <https://doi.org/10.1136/injuryprev-2018-043104>

<https://www.cdc.gov/niosh/topics/opioids/infographics.html>



Due to the high stress of numerous industries, many people resort to drug and/or alcohol use to **cope with their jobs.**

The Importance of Educating Employees About Workplace Cannabis Policies

Tricia O'Connor, Director of Content at Hound Labs, Inc.

You may have heard the old saying, “If a tree falls in a forest and no one is around to hear it, does it make a sound?”

This same question holds true for an organization’s cannabis testing policy. If you have a policy, but it hasn’t been effectively communicated to your employees, will they know it exists and how to follow it? If not, this lack of education could be risky and lead to costly consequences for your employees and your business.

POLICY + PROGRAM

Let’s start with the basics. If you’re unfamiliar with the difference between a cannabis testing policy and a cannabis testing program, here’s a quick breakdown.

A cannabis testing policy is a set of instructions, guidance, and rules an organization uses as part of its cannabis testing program.

A cannabis testing program comprises the method(s) an organization uses to test employees for marijuana. The **HOUND® CANNABIS BREATHALYZER** falls into this category.

Many employers are reevaluating their drug testing programs now that employees can legally use cannabis in most states. The need to balance workplace safety, employee fairness, and a competitive hiring environment has companies considering the appropriate course of action for employees who test non-negative (positive) for THC, the principal psychoactive compound found in cannabis. Best practices indicate discussing these topics with legal counsel before making any changes to existing drug testing policies.

COMMUNICATION IS KEY

As our original question posits, “Can your cannabis testing policy and program really exist if your employees don’t know about them?” A recent National Safety Council (NSC) survey of 500 employers and 1000 employees shows just over 60% of employees know their company has a policy around cannabis use.

The results of poor employee education surrounding workplace cannabis policies are clear. Without a well-communicated policy, your employees may not know what behavior is acceptable, what substances are prohibited surrounding the workday, under what circumstances a cannabis test may be performed, and if they’re confidentiality will be protected. In that same survey, less than 20% of employees report their company is doing a good job informing employees about their workplace cannabis policy.

“We support employers’ rights to have an impairment-free workplace, including drug testing employees for pre-employment, in reasonable suspicion cases or post-incident circumstances, and/or random drug testing programs to include cannabis,” says Katie Mueller, National Safety Council Senior Program Manager. “Our members are eager for support around how to create workplace policies on cannabis use as states legalize its use.”

Other key findings from the NSC survey include:

- 14% want clear communication via in-person meetings
- 11% would prefer more printed education materials

These findings are troubling enough on their own. But they’re even more concerning when you examine how employees feel about their organizations’ existing policies and programs.

The Importance of Educating Employees About Workplace Cannabis Policies (Continued)

CAN YOU HAVE A FAIR CANNABIS TESTING POLICY?

Some NSC survey respondents also report feeling their organizations current cannabis testing policy is not fair.

Here are their reasons why:

- Limitations of testing
- Perceived inequity compared to policies for other substances
- Zero-tolerance policies
- Restrictions on personal use

“Surprisingly, some employers are not following the actions of policymakers on decriminalization of cannabis. NSC encourages all employers to be aware of the actions your state and federal policymakers may consider and to have workplace policies, developed along with input from your employees, to address any changes,” says the NSC’s Mueller.

We’ve established it’s critical to have a cannabis testing policy and program, especially during the era of cannabis legalization. And that this policy needs to be routinely communicated to your employees to be effective. It’s precisely because of cannabis legalization that organizations need to re-evaluate the purpose of their policy and the solutions used within their program to ensure they meet the needs of the modern workforce. Consulting with a Medical Review Officer (MRO) and your legal counsel to best determine how to incorporate recent cannabis use into your company’s drug testing program is a critical step.

HOW TO REFINE YOUR POLICY

Workplace cannabis testing has long supported the deterrence of marijuana use in the workplace. But as Mueller indicates, the usefulness of conventional cannabis policies is increasingly limited as legalization continues to spread. Not only are we seeing states like California limit the timeframes and methods used to perform cannabis tests, so too are we seeing acceptance of use outside of work as a growing trend among both employers and employees.

She recommends organizations take three steps to improve their cannabis testing policies, programs, and employee education efforts:

1. Establish clear, fair policies on cannabis to prevent workday use that may have an impact on safety and performance.
2. Build a safety-focused culture that includes testing the use of cannabis.
3. Advocate for increased access to Employee Assistance Programs.

Hound Labs, Inc. encourages customers to discuss these topics with legal counsel and your company’s MRO before making any changes to existing drug testing policies. However, overhauling your workplace cannabis testing policy and employee education efforts doesn’t have to be overwhelming. And remember, employers with the most effective drug testing programs have invested time to ensure employees are fully aware of policies that will impact them – in other words, they make sure that tree is heard.

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