

The background features a warm orange gradient with several white and yellow pills scattered throughout. On the left side, there are two petri dishes containing a mixture of pills and a clear liquid, suggesting a laboratory or medical setting.

DRUG TESTING:

A Supervisor's Guide

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PRESENTED BY



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What is the law?

Federal Laws

- **Controlled Substances Act**

- Non-Enforcement Memo
- OSHA
- DOT
- ADA
- Title VII



Relevant State Laws

- Virginia

- no relevant laws

- Maryland

- drug testing
- medical marijuana



Drug Testing for Maryland Employees

- ER may require EE to take drug tests for legitimate business purposes only
- ER who requires drug tests must test samples at a certified laboratory
 - EE may request name and address of lab
 - State law dictates procedure for testing, confidentiality, and more
- **If EE tests positive, must be given*:**
 - Written notice of test results
 - ER's drug testing policy
 - Written notice of any adverse action, if any
 - Statement of EE's right to independent confirmation test at EE's expense

***This is handled by a third-party testing facility**

Do We Allow Marijuana Use?

- Maryland

- Legal medical use
- No personal or recreational use
- Note - effective 26 February 2015, legal for personal use in DC
- Not permitted at work

- Virginia

- No





Testing/Use Policies

When Can We Test?

1. Pre-employment testing
2. Reasonable suspicion testing
3. Post-accident testing
4. Periodic and unannounced testing
5. Random testing
6. Rehabilitative testing



Reasonable Suspicion Testing

- **Supervisor must have**
 - SPECIFIC
 - CONTEMPORANEOUS
 - ARTICULABLE
 - OBSERVATIONS

A “hunch” or “gut feeling”
is NOT ENOUGH!



Reasonable Suspicion: Physical Signs

- **Eyes:** bloodshot, glassy/glazed over, dilated or constricted pupils
- **Speech:** slurring, drastic changes in rate of speech (Slow or Fast)
- **Body:** stumbling, fumbling, shaking, fidgeting, sweating, shivering, unusual breath or body odor



Reasonable Suspicion: Behavioral Signs

- Difficulty staying awake or sleeping on the job
- Inappropriate laughing or crying
- Decline in appearance, lack of grooming
- Worsening job performance, attendance, unexplained breaks
- Theft, borrowing money, damaging company property



Reasonable Suspicion: Psychological Signs

- Irritability, outbursts, withdrawn
- Sudden or unexplained changes in personality
- Unexplained fear or paranoia
- Inability to focus

Hypothetical

- **Company has a privacy breach. HR is on scene and ready to handle. HR is talking to IT EE, his hands are shaking. He is stuttering.**
- **Does HR have a reasonable suspicion?**
- **Should all IT EEs be tested?**

Post-Accident Testing

- To evaluate “how” (root cause of accident)
- EEs w/ a reasonable basis to believe drugs or alcohol contributed
- Investigation - all EEs who could have contributed to incident, not just EEs w/ injuries



Hypothetical

EE is driving a forklift and gets stung by a bee, crashes and knocks over some boxes, hurting a bystander EE.

A witnessing EE reports the accident to you.

What do you do?



What Can We Test For?

- Marijuana
- Cocaine
- Opiates
- Amphetamines (Amphetamine and Methamphetamine)
- Phencyclidine (PCP)
- Ecstasy
- Muscle Relaxers
- Benzodiazepines/Anti-anxiety meds
- Methadone
- Anti-depressants
- Chemical Derivatives



How Can We Test?

- **Secure Collection Site - Third-party provider**
 - Urine sample; Initial + Screen confirmed by GC/MS (gas chromatography/mass spectrometry)
- **Refusal to Test = Positive Result**
- **Adulteration/Interference = Positive Result**
- **Maintenance of Chain of Custody**
- **Other Issues**
 - Prescription?
 - Re-test
 - Right to dispute

Confidentiality

- Drug Test Results

- Maintained w. third-party

- Records Regarding Drug Tests

- EE Medical File (Separate from Personnel File)

- What Can We Talk About?



Documentation: What to Include

- ALL observations
- Time
- Place
- EEs involved
- EE statements/admissions
- Any safety violations, other policy violations
- Witness statements/observations
- Photographs
- HR notified



What if EE is in recovery?

Americans with Disabilities Act (ADA)

- EEs w/ disability & are “qualified” to do their job
- “Qualified individuals” under the ADA:
 - Successfully rehabilitated & not using drugs illegally
 - Currently in a rehab. program & are not using drugs illegally
 - Regarded as illegally using drugs



What if EE is in recovery?

Current illegal drug use not protected, but recovering/ed addicts are protected via ADA

- EE who casually used drugs illegally, but not addicted not disabled due to past drug use
- Protected? EE may be entitled to accommodation
- E.g., leave for AA, NA, methadone



EEOC v. Steel Painters, LLC

(6/29/18)

- EE Kimball was dependent on opioid medication in the past but was in recovery treatment
- At the time Steel Painters hired Kimball, he had been in a treatment program for over a year taking a dose of prescribed methadone at night after the work day
- Kimball took the pre-employment drug and alcohol test required by Steel Painters; it came back "positive" but lab cleared him since he had methadone prescription

"Opioid addiction is a disability that is affecting millions across the United States, yet many are regaining control over their lives by participating in supervised rehabilitation programs," said EEOC Houston District Director Rayford O. Irvin

What Happens If...

- A. EE says "I last used meth 3 weeks ago. But I'm in recovery now and wont use again."
- B. A contractor comes up to you and says, "Hey, I think that guy over there is on drugs. He is sweaty and shaky. You should get him tested."
- C. You find a baggy of little blue pills laying on the factory floor under some equipment. There are 8 EEs working within the immediate area, but over 24 that have worked there over the last 3 shifts.





Step-by-Step Guide

***Handout**

Thank you.

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