

Employment Law Summary

Drug and Alcohol Testing Laws



Because You're Different

The Alabama Drug-Free Workplace Program provides voluntary guidelines for employers that institute drug and alcohol testing programs and policies in the state. Employers that implement these programs may be eligible for a discount on their workers' compensation insurance premiums. Alabama's workers' compensation and unemployment laws also allow employers to deny an employee's claim for benefits based on positive drug or alcohol tests under certain circumstances.

DRUG-FREE WORKPLACE PROGRAM

An employer may qualify for a 5% discount on its workers' compensation insurance premiums if it establishes a drug-free program that has been certified by the Workers' Compensation Division of the Alabama Department of Labor.

To obtain certification for a new program, an employer must submit a [Drug-Free Application](#) for first year's certification. Employers that already have a certified program must apply for recertification each year, using the [Drug-Free Application for subsequent year certifications](#). These applicants must be accompanied by additional information and documents demonstrating that the program complies with all Drug-Free Workplace Program requirements.

WRITTEN POLICY REQUIREMENTS

The Drug-Free Workplace Program requires employers to have a written policy regarding their workplace testing programs. A written policy must include information about:

- The types of testing an employee or applicant may be required to take;
- Actions the employer may take based on a positive confirmed test result;
- Confidentiality of test results;
- Consequences for refusing to submit to a test;
- The employer's Employee Assistance Program or other resources available to assist employees with personal or behavioral problems;
- The right to contest or explain a positive confirmation test result to the employer within five working days after receiving notice of the result; and
- The federal Drug-Free Workplace Act, if applicable to the employer.

NOTICE REQUIREMENTS

Prior to testing any employees or applicants, employers must provide a one-time notice to employees to inform them that a substance abuse program is being implemented and that testing will commence. This notice must include a copy of the employer's written policy. An employer must not begin testing until at least **60 days** after it provides the one-time notice. In addition, an employer must:

- Include a notice of substance abuse testing in all job announcements for positions for which testing is required;
- Post notice of its substance abuse policy in conspicuous locations within its employees' workplaces; and
- Make copies of the policy available for inspection by employees and job applicants during regular business hours.

TRAINING REQUIREMENTS

Employers with certified testing programs are required to provide:

- Semiannual education programs on substance abuse to all employees; and
- At least two hours of training to all supervisory employees.

The semiannual employee education program should be at least one hour long and include:

- An explanation of the disease model of addiction for alcohol and drugs;
- Information about the effects and dangers of the commonly abused substances in the workplace; and
- The employer's policies and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

The training for supervisory personnel must include information about how to:

- Recognize signs of employee substance abuse;
- Document and corroborate signs of employee substance abuse; and
- Refer a substance-abusing employee to the proper treatment.

TESTING REQUIREMENTS

Under a certified drug-free program, an employer is required to conduct the following types of tests:

- Testing of job applicants after an offer of employment is extended;
- Reasonable suspicion testing;
- Routine fitness-for-duty testing;
- Post-rehabilitation testing; and
- Post-accident testing.

If testing is based on reasonable suspicion, employers must promptly make a written, detailed record of the circumstances that formed the basis of the suspicion and retain the record for at least one year. The employer must keep this document confidential and provide a copy of it to the affected employee upon his or her request.

Employers must pay the costs of all initial and confirmation tests that they require employees or applicants to take. Employees and applicants may be required to pay for any additional tests.

Employers must also follow certain procedures for all sample collections and testing in order to prevent substitution, contamination, adulteration or misidentification. For example, samples may only be collected by a physician or other specified health care provider, and the laboratories an employer uses for testing must have written procedures to ensure a sample's chain of custody.

After receiving a sample for testing, an employer's designated testing laboratory has **seven working days** to test the sample and send the results to the employer. If an initial test is positive, the employer must have a confirmation test performed on the same sample. Employers may also choose to have a confirmation test completed on a sample that initially tests negative.

If a confirmation test is positive, the employer must inform the tested individual of the result, in writing, within **five working days**. This written notice must include information about the consequences of the result and any options that are available to the individual. In addition, employers must allow tested individuals to disclose information that may be relevant to their tests, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. Regardless of any test result, employers must also provide a tested individual with a copy of his or her results upon his or her request.

CONFIDENTIALITY

All interviews, reports, statements, memoranda and test results received by an employer through a substance abuse program must be kept confidential. Information received through an employer's substance abuse program may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding. However, information and test results may not be released for use in any criminal proceedings against an employee or applicant.

Release of test information under any other circumstance must occur pursuant to a written consent form signed voluntarily by the individual who was tested, unless the release is compelled by state agency or court. Test information may also be released by employers without a signed consent form if deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding.

WORKERS' COMPENSATION AND UNEMPLOYMENT BENEFITS

Employees and former employees may be disqualified from receiving workers' compensation or unemployment benefits based on positive drug or alcohol tests under certain circumstances. Specifically:

- Workers' compensation benefits may be denied if an employee's injury is due to intoxication from the use of alcohol or illegal drugs, as shown through a positive test performed in accordance with the U.S. Department of Transportation's testing regulations; and
- Unemployment benefits may be denied if an employee is dismissed for failing a drug test, as long as the employer provided advance warning that a positive test could result in dismissal under its policy and the testing is conducted in accordance with the U.S. Department of Transportation's testing standards or other standards that the employer can demonstrate to be reliable.

Employees may also be ineligible for these benefits if they refuse to submit to or cooperate with a test.

MORE INFORMATION

For more information on Alabama's Drug-Free Workplace Program, please visit the Alabama Department of Labor's [website](#).

Provided By Heffernan Insurance Brokers

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