

# EMPLOYMENT LAW SUMMARY

## Arizona: Drug and Alcohol Test Laws



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Under Arizona law, most employers in the state are not required to implement drug or alcohol testing policies. However, employers that choose to test employees or applicants may gain protection against lawsuits if they comply with requirements under the state's drug testing law. Employers that choose to perform testing are also subject to restrictions under Arizona's medical marijuana law.

For employers that operate livery vehicles, taxis or limousines in Arizona, state law imposes mandatory testing requirements. Employers in the commercial transportation industry must also comply with drug and alcohol testing requirements under federal regulations.

## ARIZONA MEDICAL MARIJUANA ACT

The Arizona Medical Marijuana Act (AMMA), enacted in 2010, allows individuals who have a debilitating medical condition to obtain the state's authorization to use marijuana for medical purposes. The AMMA does **not** restrict an employer's rights to:

- Administer drug tests to its employees or applicants;
- Prohibit marijuana use on its premises; or
- Prohibit its employees from using or being under the influence of marijuana during their work hours.

Nevertheless, the AMMA does include certain employment-related protections for authorized marijuana users. The law specifies that, unless compliance would result in a loss of any monetary- or licensing-related benefit under federal law or regulations, employers are prohibited from taking any adverse employment action against:

- Any individual based on the fact that he or she is an authorized medical marijuana user; or
- An authorized medical marijuana user based on the fact that he or she tests positive for marijuana components or metabolites (unless the employer had reason to believe that the authorized marijuana user who tested positive had been using or was under the influence of marijuana at work).

Employers may not consider an authorized marijuana user to be "under the influence" of marijuana solely because a drug test shows the presence of metabolites or components of marijuana, if the concentration is not sufficient to cause impairment. Because the AMMA does specify any concentration levels that would or would not be considered sufficient to cause impairment, employers should be prepared to present more than just a positive test result (regardless of the marijuana concentration level it shows) any time they take adverse employment actions based on a belief that an RQP was under the influence of marijuana.

The U.S. District Court for the District of Arizona confirmed that this is necessary in a decision issued on Feb. 7, 2019. In [Whitmire v. Wal-Mart Stores](#), the court ruled that a result showing "the maximum reading the test can measure for marijuana" was not sufficient to prove that an RQP was impaired by marijuana. This was because the employer failed to present any expert testimony regarding the test result's concentration level or any other evidence of impairment. The court also ruled that RQPs have a right to sue their employers in court for violating the AMMA's employment protections, even though the law itself does not explicitly address how RQPs may enforce those provisions.

# ARIZONA DRUG TESTING LAW

Employers that implement drug or alcohol testing programs are protected from certain lawsuits related to the testing as long as their programs meet all requirements under Arizona's drug testing law. In general, employers with programs that comply with this law may not be sued for testing-related issues unless they:

- Take action based on a false positive test result;
- Know or clearly should know that the test result is in error; and
- Ignore the true test result because of reckless or malicious disregard for the truth or because of a willful intent to deceive.

## WRITTEN POLICY REQUIREMENTS

To comply with Arizona's drug testing law, an employer must first establish a detailed, written policy that applies to all employees uniformly and provide a copy to every employee and prospective employee. All testing and disciplinary actions must be carried out within the terms of the written policy. At minimum, the policy must include:

- A statement of the employer's policy regarding 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;
- A list of the substances that may be tested for;
- A description of the testing methods and collection procedures; • The consequences of a refusal to participate in the testing;
- Any adverse personnel action that may be taken based on the testing procedure or results;
- The right of an employee, on request, to obtain the written test results; • The right of an employee, on request, to an explanation of a positive test result in a confidential setting; and
- A statement of the employer's policy regarding the confidentiality of the test results.

Within the terms of its written policy, an employer may require the collection and testing of samples for any job-related purpose consistent with business necessity, including:

- To maintain productivity, safety, quality or security within the workplace;
- As part of an accident or employee impairment investigation; and
- On reasonable suspicion of drug or alcohol use.

The law also allows employers to test employees or groups of employees on a random or chance basis.

## TESTING REQUIREMENTS

Under Arizona's drug testing law, employers must cover all expenses associated with their workplace drug and alcohol testing. Employers must also ensure that:

- Samples are collected under reasonable and sanitary conditions;
- Samples are labeled in order to prevent the possibility of misidentification;
- The person being tested is provided the opportunity to disclose relevant information, including identification of currently or recently used prescription or nonprescription drugs or other relevant medical information;
- Sample collection, storage and transportation is performed in a manner designed to prevent contamination, adulteration or misidentification;
- Sample testing complies with scientifically accepted analytical methods and procedures. Drug testing must be conducted at a laboratory approved or certified by the U.S. Department of Health and Human Services, the College of American Pathologists or the Department of Health Services; and
- Drug testing includes confirmation of any positive drug test results for employees. Confirmation tests must use a different chemical process than was used in the initial drug screen.

## DISCIPLINARY PROCEDURES

Except under certain circumstances, such as those noted above involving authorized marijuana users, Arizona employers that comply with the state's drug testing law may use positive drug or alcohol impairment test results, or an individual's refusal to take a test, as the basis for disciplinary or rehabilitative actions. Permitted actions include:

- A requirement that an employee enroll in an employer-provided or approved rehabilitation, treatment or counseling program;
- Suspension of an employee for a designated period of time;
- Termination of employment; and
- Refusal to hire a prospective employee.

## LIVERY VEHICLES, TAXIS AND LIMOUSINES

In response to the growing popularity of ride-sharing services, Arizona has adopted **mandatory** drug testing requirements for operators of livery vehicles, taxis and limousines. An employer operating these services must:

- Implement a zero-tolerance policy on the use of drugs and alcohol while a driver is providing passenger transportation or is available to provide passenger transportation;
- Provide notice of the zero-tolerance policy, which must include procedures for passengers who want to file a complaint about a driver whom the passenger reasonably suspects was under the influence of drugs or alcohol during the passenger's use of the driving service, on the employer's website or in each of its taxis, livery vehicles or limousines; and
- Perform pre-employment drug tests on any prospective driver.

If the employer receives a passenger complaint alleging a violation of its zero-tolerance policy, it must:

- Immediately suspend the driver's access to the employer's taxi, livery vehicle or limousine;
- Conduct an investigation into the filed complaint;
- Continue the driver's suspension for the duration of the employer's investigation.

If the investigation confirms that the driver violated the zero-tolerance policy, the employer must **permanently** prohibit the driver's access to the employer's taxi, livery vehicle or limousine. For each of these investigations or enforcement actions, employers must maintain records for **at least two years** after the date it received the passenger complaint. The employer must also make these records available to the state upon request.

## MORE INFORMATION

Please contact Heffernan Insurance Brokers for more information on drug testing laws in Arizona.

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