

Electronic Alert

Volume 23, Issue 49

August 24, 2020

Workplace Drug & Alcohol Policies in the Era of COVID-19

By Wilson Jarrell

With COVID-19 continuing to impact business operations for the foreseeable future, now is a good time to review your drug and alcohol policy.

Changing Logistics for Pre-Employment Drug Tests

Employers who conduct pre-employment drug testing are reporting delays in obtaining results as they try to onboard new employees.

Many facilities that offer drug testing are now being used for COVID-19 testing. Employers should be careful to not unnecessarily put potential employees at risk by sending them to a location used for COVID-19 testing.

In response, some employers are temporarily suspending pre-employment tests, informing employees that they will be required to pass a drug screen at a later date when it is safer, but noting that successfully passing the drug test is still a condition of employment. Others are employing mobile testing services as an alternative of sending employees to a clinic or purchasing more instantaneous tests that can be administered by company personnel. However, employers should be aware that different states have varying regulations around drug testing, and advice of counsel is advisable before implementing any such practice. For example, Oregon requires that employers who wish to conduct on-site drug testing register with the state, pay an annual fee, and confirm any positive tests with a licensed laboratory.

Employers who are subject to DOT testing and regulations are currently still required to have drivers subject to the regulations pass a pre-employment drug test. Such employers should review and keep abreast of changing DOT guidance about how COVID-19 has affected drug and alcohol testing requirements, and are directed to review the applicable DOT Agency requirements for testing to determine whether flexibilities allow for collection and testing at a later date. Further DOT guidance can be found [here](#).

What About Marijuana?

With changing attitudes and legal framework around marijuana use, many employers are moving away from pre-employment testing for marijuana and focusing instead on monitoring for on-the-job impairment.

As our economy finds ways to reopen, employers will call back employees and hire new staff. Some employers may face some trouble finding applicants who can pass a pre-employment screen for marijuana. In Oregon, as well as other states, recreational marijuana use is permitted and marijuana dispensaries have remained open during the coronavirus pandemic.

Employers that opt to eliminate pre-employment testing for marijuana should retain the ability to test for marijuana when actual impairment at work is suspected. The policy should be clear that a positive drug test for marijuana due to reasonable suspicion of impairment while at work is still a violation of company policy. This is especially important for safety sensitive positions.

How Does a Drug & Alcohol Policy Apply to Telework?

With many employees working from home and internet memes poking fun at the increased alcohol consumption during the pandemic, it is easy to see that drug and alcohol use during work hours may be more prevalent. While it is extremely difficult to monitor actual use or impairment of employees working from home, the policy should be clear that using illegal drugs or alcohol while working (even when working from home) is not permitted. Perhaps more importantly, employers should review their policy to see whether it addresses employees asking for assistance with a drug or alcohol problem.

If you have questions about reviewing your company's drug and alcohol policies, please contact Wilson Jarrell at 503-276-2181 or wjarrell@barran.com.

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