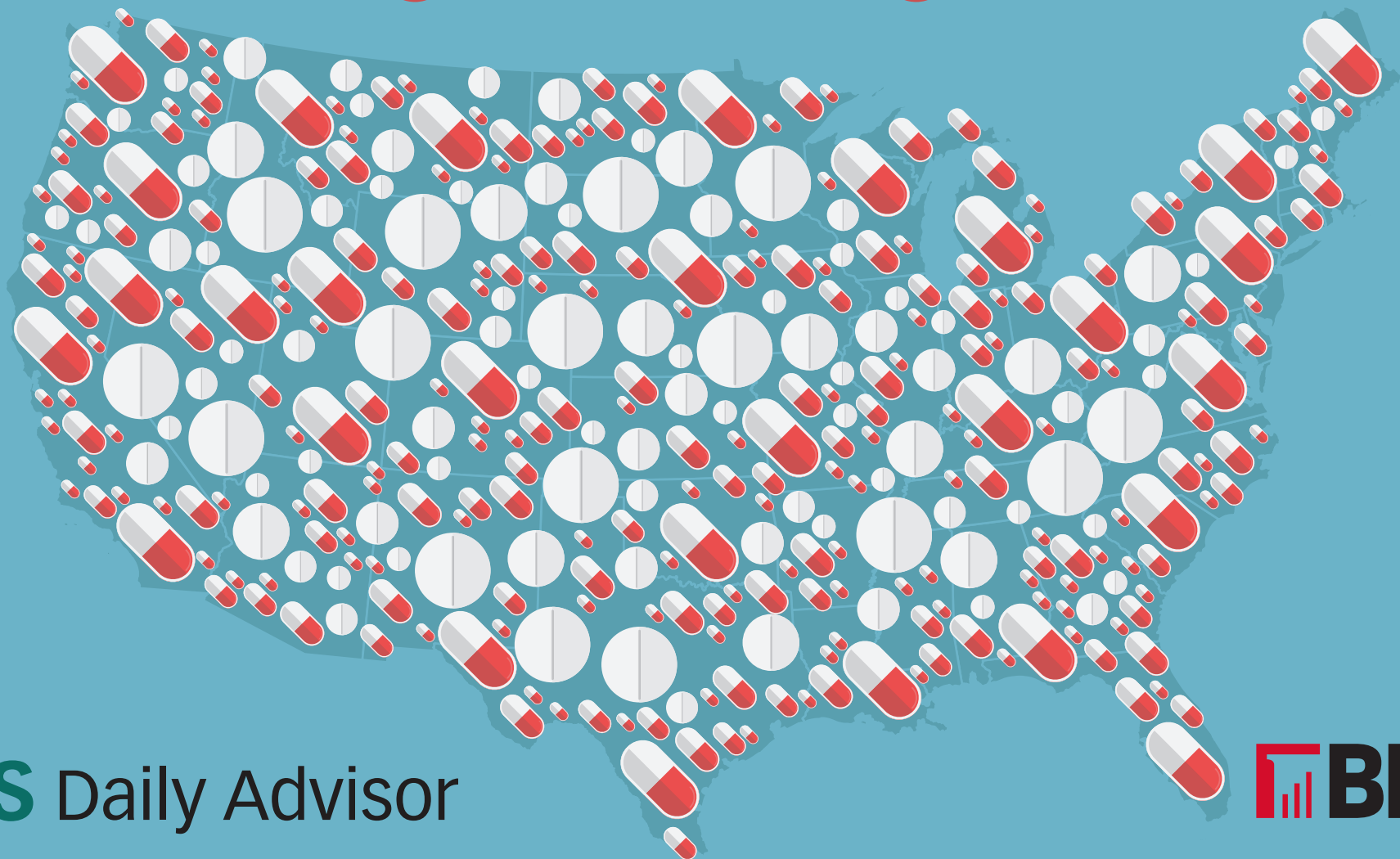


# DRUG AND ALCOHOL TESTING LAWS BY STATE



# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
US	<p>There is no comprehensive federal law that regulates drug testing in the private sector. The Drug-Free Workplace Act does impose certain employee education requirements on companies that do business with the government, but it does not require testing, nor does it restrict testing in any way. Drug testing is allowed under the Americans with Disabilities Act (ADA) because the ADA does consider drug abuse a disability—but the law does not regulate or prohibit testing. Instead of a comprehensive regulatory system, federal law provides for specific agencies to adopt drug testing regulations for employers under their jurisdiction.</p> <p>The Department of Defense requires defense contractors to set up procedures for identifying drug users, including random testing. The Department of Transportation requires the industries it regulate to conduct random drug and alcohol testing for workers in safety sensitive jobs, as well as testing after accidents and when there is “reasonable suspicion” of employee substance abuse. The federal Omnibus Transportation Employee Testing Act (OTETA) requires tests for all operators of aircraft, railroad equipment, mass transportation vehicles, and commercial motor vehicles.</p> <p>Since there is no comprehensive federal drug-testing law, this leaves the field open to state regulation, and many states have enacted provisions imposing drug-testing restrictions of various kinds.</p>				
AL	<p>To qualify for the workers' compensation discount, notice of any required testing must be included on each job vacancy announcement. Testing is authorized after the applicant is given notice of the drug-testing policy and a conditional offer of employment.  <i>Citation: Ala. Code § 25-5-330 et seq.</i></p>	<p>Testing is authorized, including random testing and testing on reasonable suspicion, as part of a fitness-for-duty exam, after an on-the-job injury, or as a follow-up to a rehabilitation program. Employees must receive 60 days' advance notice of the testing policy, which must be conspicuously posted. An employee may be partially disqualified from receiving unemployment benefits if he or she is discharged for work misconduct, including use of illegal drugs or failing to cooperate with a drug test after a previous warning has been given.  <i>Citation: Ala. Code § 25-5-330 et seq.</i></p>	<p>The employer's testing policy must be posted in a conspicuous location on the employer's premises. A confirming test is required in cases of positive test results. Opportunity to contest or explain positive test results must be given within five days of receiving results.</p>	<p>All employers subject to state workers' compensation law who desire to take advantage of the premium discount.</p>	<p>Incentives: Employers implementing a drug-free workplace program can qualify for a five percent premium discount on workers' compensation insurance policies. Requirements: Employers must submit an application to the Department of Industrial Relations for certification that they are in compliance with provisions of the statute. Covered employers: All employers subject to the state workers' compensation law, not individual self-insurers or members of group self-insurance funds.  <i>Citation: Ala. Code §§ 25-5-330 through 25-5-340.</i></p>

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
AK	An employer may require an applicant to submit to a urine or breath test for any job-related purpose consistent with business necessity and the terms of the employer's policy. Employers can decline to hire applicants who refuse to submit to drug-testing or who test positive. Public employers may only conduct preemployment drug testing for safety-sensitive positions that involve work posing a great danger to the public. <i>Citation: AS 23.10.600 et seq., 14.09.025, and 17.37 et seq.</i>	Testing, including random testing and reasonable suspicion, is authorized for job-related purposes, consistent with business necessity. Thirty days' notice and a written policy statement must be given to employees. Testing time is work time for purposes of compensation and benefits. Discipline or discharge is permissible for positive test results or refusal to submit to test. School bus drivers are subject to random testing and discipline under separate provisions. <i>Citation: AS 23.10.600 et seq., 14.09.025, and 17.37 et seq.</i>	Confidentiality of test results is required. The employer may designate the type of sample required for testing. The employer must pay the entire actual cost for testing and reasonable transportation costs to an employee if location is other than work site. On-site testing is permitted if tests are administered by certified test administrator and test approved by FDA. Confirming test is required in case of positive result. Opportunity to obtain results must be given within five days and opportunity to explain positive result must be given within 10 days. The use, possession, and cultivation of medical marijuana is allowed by patients who enroll in the state patient registry and possess a	All employers with employees under a contract of hire, express or implied, oral or written.	Incentives: Employers are granted limited immunity from liability for drug testing as long as the testing is done in compliance with the law and employer acts in good faith. Requirements: Employers must establish and implement a testing program, and any actions taken as a result of a positive test must be made in good faith. Covered employers: All employers. <i>Citation: AS 23.10.600-.699</i>

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			valid identification card. Patients (or their primary caregivers) may legally possess no more than one ounce of usable marijuana. The law does not address drug use or testing in an employment setting.		

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
AZ	<p>Testing is authorized if the applicant is informed in writing beforehand. The applicant's refusal to submit to a drug test may be used as basis for not hiring. Testing is required to certify school bus drivers.</p> <p><i>Citation: A.R.S. §§ 15-513, 23-493 et seq.</i></p>	<p>Arizona law does not prohibit workplace drug or alcohol testing. However, state law offers certain legal incentives to employers that, if they choose to conduct workplace testing, comply with certain statutory procedures and protocols when doing so. Those incentives include certain legal protection from claims that might arise from the testing process. The law also expressly permits employers who comply with those protocols to impose a variety of disciplinary measures in the event of a positive test or a refusal to test. The best practice for employers who wish to conduct workplace testing is to follow the procedures and protocols laid out in the state law. If the employer complies with those protocols, the employer may test for any job-related purpose consistent with business necessity, including: (a) the investigation of possible individual employee impairment; (b) the investigation of accidents in the workplace; (c) maintaining safety, productivity, quality, or security; (d) upon reasonable suspicion that an employee may be affected by the use of drugs or alcohol and that the use may adversely affect the job performance or the work environment; and (e) random or chance testing. The employer also may impose discipline or other corrective action at its discretion for a positive test or a refusal to test, including rehabilitation, treatment, or counseling, suspension, termination of employment, or "other adverse employment action." School district transportation employees must submit to testing in the event of an accident or if based on probable cause.</p> <p><i>Citation: A.R.S. §§ 23-493; school district transportation employees: A.R.S. §§ 15-513, 28-3228.</i></p>	<p>Arizona law offers certain legal incentives to employers that, if they choose to conduct workplace testing, comply with certain statutory procedures and protocols when doing so. Those include: (a) testing only pursuant to a written policy that contains certain prescribed minimum content and that has been distributed or otherwise made available to all employees; (b) the collection of samples only under reasonable and sanitary conditions; (c) chemical analysis of samples in compliance with scientifically accepted analytical methods and procedures, including the use of a licensed or certified laboratory and confirmatory testing of any positive test results; (d) the employer's</p>	All employers.	<p>The State Personnel System substance-free workplace, pursuant to the employee handbook applicable to all employees. State employees prohibited from the unlawful manufacture, distribution, dispensing, possession, and use of unauthorized controlled substances on state premises worksites, including state vehicles. State employees not be impaired by alcohol drugs while on duty. Drug alcohol testing programs are established at the agency level specific to its mission.</p>

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			<p>payment of all costs associated with employee testing, including any costs associated with transportation to the collection site; and (e) the employer's compliance with certain confidentiality obligations.</p> <p>Under the Arizona Medical Marijuana Act, employers may not discriminate against patients registered for the legal use of medical marijuana unless the employer would lose money or licensing under federal law.</p> <p>Employers also may not penalize registered patients solely for testing positive for marijuana in drug tests. The law does not authorize patients to use, possess, or be impaired by marijuana on the employment premises or during the hours of employment. Therefore, employers should</p>		

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			<p>document signs of impairment when there is a reasonable suspicion of impairment, as employers cannot act based solely on a failed drug test that detects marijuana in a cardholder at levels insufficient to cause impairment.</p> <p><i>Citation:</i> A.R.S. §§ 23-493.03, 23-493.04, 36-2813.</p>		

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
AR	<p>Testing is authorized after the applicant is given notice of drug and alcohol testing policy and a conditional offer of employment is made. Job ads must include notice of drug testing. Positive results or refusal to submit to testing may be grounds for not hiring. The drug test must be provided at no cost to the employee or applicant for employment. If an employee tests positive for an illegal drug, the employer and employee may agree in writing who will bear the cost of future drug tests or screens required as a condition of continued employment. If the cost of the test is withheld from the employee's pay or otherwise reimbursed to the employer by the employee, the employer must keep records of the actual cost of the test and the related withholding or reimbursement and provide these to the DOL upon request.</p> <p><i>Citation:</i> Ark. Code</p>	<p>An employer that voluntarily establishes a drug-free workplace must conduct certain drug and alcohol tests. Reasonable suspicion testing: the employer must make a written record of the observations that led to the reasonable suspicion test, and such records must be made available to the employee. Routine fitness-for-duty test: if it is part of the employer's policy, the employee shall take a drug test as part of a routine fitness-for-duty medical examination for all members of an employment classification or group. Follow-up drug testing: employers should conduct a drug test as a follow-up to a rehabilitation program. Post-accident drug test: given after an on-the-job injury. Written notice of testing must be given and must also be conspicuously posted.</p> <p>The drug test must be provided at no cost to the employee.</p> <p><i>Citation:</i> Ark. Code Ann. § 11-14-101 <i>et seq.</i></p>	<p>Confidentiality of test results is required. Confirming test must be provided in case of positive result. Subject must have the opportunity to contest or explain a positive result within five days of receiving test results.</p> <p>Employers subject to testing for motor carriers are required to report positive test results to the state Office of Driver Service (ODS) and to submit a request for information from the testing database for each employee to be tested. "Illegal drugs" are defined as any controlled substance that is unlawful for a particular employee or applicant to possess or use, including prescription medication for which an employee or applicant does not have a current or valid prescription.</p>	<p>All employers subject to state workers' compensation law.</p>	<p>Incentives: Employers implementing a drug-free workplace program qualify workers' compensation discounts.</p> <p>Requirements: At least 60 days before the policy's effective date, employers must post notice that the policy is being implemented. Also, employers are required to conduct the following: (1) testing of job applicants, (2) reasonable-suspicion drug/alcohol testing, (3) routine fitness-for-duty testing for certain employees (police and employees with interdiction responsibilities), (4) testing for employees who are authorized to carry firearms, etc., (5) follow-up drug testing for employees who receive rehab involuntarily, and (6) post-accident testing. The law doesn't stop employers from lawful testing in addition to the minimum testing required. Records associated with drug tests are confidential.</p> <p>Covered employers: Employers covered by the workers' compensation law who maintain a drug-free workplace and a statement that the policy is being implemented.</p> <p><i>Citation:</i> Ark. Code Ann. §§ 11-14-101 through 11-14-103</p>



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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	Ann. § 11-14-101 et seq.		Marijuana is included. Alcohol is considered "illegal" if, at the time of the test, the employer had a written policy that prohibited alcohol use in the circumstances at issue, the employer established an alcohol-testing procedure, and the policy established a concentration of alcohol that would be considered a "positive" test.		

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
CA	<p>The constitutionality of drug/alcohol tests is determined on a case by case basis. The primary focus of a state constitutional privacy claim in the employee drug/alcohol testing context is a reasonable balancing test that balances the drug/alcohol test's intrusion on the reasonable expectations of the applicant against the test's promotion of the employer's legitimate interests. Requiring applicants for city jobs to pass a drug test has been held unconstitutional as an unreasonable search. On the other hand, drug/alcohol testing of applicants by private employers may be valid as part of a pre-placement medical examination applied to all new job applicants. The requirements for "medical exams" under the California Fair Employment and Housing Act must be satisfied. Any drug/alcohol test must be job related and</p>	<p>Drug/alcohol tests of an existing employee without any individualized suspicion is generally considered an unreasonable search, unless the employee is in a highly safety or security sensitive position or covered by federal laws requiring random drug testing. Testing authorized of state employees in positions of "sensitivity." Employees who test positive may be referred for treatment or may be suspended or removed from job. Postaccident testing allowed where employer has reasonable suspicion that employee in accident was under the influence. Private sector and public employers of 25 or more must "reasonably accommodate" employees who want to enter drug treatment programs. Some local ordinances, like the San Francisco Police Code § 3300A.5, may also restrict drug/alcohol testing.</p> <p><i>Citation:</i> State Pers. Bd Rules Tit. 2 § 213; Lab. Code § 1025 <i>et seq.</i>; San Francisco, Mun. Code Part II Ch. 7 Art. 3300A.1; Cal. Bus. &amp; Prof. Code § 1206; Ross v. Raging Wire Telecommunications, No. 138130, (Calif. S. Ct. 2008); Loder v. City of Glendale, 14 Cal. 4th 846 (1997); Lanier v. City of Woodburn, 518 F.3d 1137 (9th Cir. 2008); Cal. Gov't Code § 12940(e).</p>	<p>In state agencies, advance notification to the employee or applicant, documentation showing chain of custody of the test specimen, and confirming test in case of positive findings are required. The California Department of Health interprets the state's laboratory licensing law to prohibit any drug test not performed in a certified laboratory or by a licensed physician. San Francisco has its own alcohol and drug-testing statute that provides guidelines for testing in the workplace. California law does not require employers to accommodate the use of medical marijuana, which is otherwise permitted under California's Compassionate Use Act.</p>	<p>Private and public employers.</p>	<p>Incentives: The ability to be awarded contracts or grants from state agencies. Requirements: Every employer awarded a contract or grant from a state agency must certify that it will (1) provide a drug-free workplace by notifying employees in writing that using, manufacturing, distributing, possessing drugs in the workplace is prohibited and subject to punitive measures; and (2) set up a drug-free awareness program to inform employees about the dangers and the penalties for drug use and availability of drug counseling; and require that each employee engaged in performance of the contract grant agree to the terms of drug-free workplace policy. Covered employers: Employers awarded state contracts or grants.</p> <p><i>Citation:</i> Cal. Gov't. Code § 8355.</p>

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	<p>consistent with business necessity. A drug/alcohol test may only be given to an applicant after a real job offer has been made (i.e., the employer has evaluated all non-medical matters, such as, background checks and reference checks) and before the commencement of job duties, and it must be required of all applicants in the same job classification. Testing authorized of applicants to state agency positions of "sensitivity" if testing is job related. Public employers may only conduct preemployment drug testing for safety-sensitive positions that involve work posing a great danger to the public. Private employers can require an applicant, as a condition of hiring, to successfully pass a preemployment examination that includes a drug screening.</p> <p><i>Citation:</i> State Pers. Bd Rules Tit. 2 § 213; Lab. Code §</p>				

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State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	1025 <i>et seq.</i> ; San Francisco, Mun. Code Part II Ch. 7 Art. 3300A.1; Cal. Bus. & Prof. Code § 1206; Ross v. Raging Wire Telecommunications, No. 138130, (Calif. S. Ct. 2008); Loder v. City of Glendale, 14 Cal. 4th 846 (1997); Lanier v. City of Woodburn, 518 F.3d 1137 (9th Cir. 2008); Cal. Gov't Code § 12940(e).				

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
CO	<p>Amendments to the Colorado Constitution legalized the use of marijuana for medical and recreational purposes. Colorado marijuana regulations do not restrict an employer’s ability to conduct employment-related drug tests. In addition, terminating an employee for testing positive for marijuana when the employee used marijuana pursuant to a medical marijuana license does not violate Colorado’s lawful activities statute or constitute disability discrimination under Colorado’s anti-discrimination statute. <i>Coats v. Dish Network, LLC</i>, 2015 CO 44; <i>Curry v. MillerCoors, Inc.</i>, No. 12-cv-02471 (D.Colo. Aug. 21, 2013).</p> <p><b>Private sector:</b> No state law specifically governs drug/alcohol testing by private employers, but <i>Mares v. Conagra Poultry Co.</i> held that no state law supports an</p>	<p>Amendments to the Colorado Constitution legalized the use of marijuana for medical and recreational purposes. Colorado marijuana regulations do not restrict an employer’s ability to conduct employment-related drug tests. In addition, terminating an employee for testing positive for marijuana when the employee used marijuana pursuant to a medical marijuana license does not violate Colorado’s lawful activities statute or constitute disability discrimination under Colorado’s anti-discrimination statute. <i>Coats v. Dish Network, LLC</i>, 2015 CO 44; <i>Curry v. MillerCoors, Inc.</i>, No. 12-cv-02471 (D.Colo. Aug. 21, 2013).</p> <p><b>Private sector:</b> No state law specifically governs drug/alcohol testing by private employers, but <i>Mares v. Conagra Poultry Co.</i> held that no state law supports an exception to the employment-at-will doctrine based on an employer’s request for medical information pursuant to a drug-testing policy.</p> <p><b>Public sector:</b> The Tenth Circuit has held that drug testing of government employees requires either “special needs” or “reasonable suspicion.” In <i>Benavidez v. Albuquerque</i>, the court stated that “special needs” drug testing is permitted when the employee is in a safety-sensitive position and the test is pursuant to a random or uniform selection process. In such situations, probable cause or reasonable suspicion that an employee might be impaired isn’t required. But <i>City and County of Denver v. Casados</i> held that requiring testing of public employees who didn’t hold public safety or security-sensitive positions wasn’t facially invalid.</p> <p><b>Boulder:</b> The City of Boulder has its own ordinance related to drug and alcohol testing. The employer must notify applicants that a drug and alcohol test is part of the employment screening process or pre-employment physical. Drug and alcohol testing is limited to the single finalist for the position, if a Colorado resident, or to out-of-state resident finalists who come to Colorado to interview.</p> <p><i>Citation:</i> Private sector: <i>Mares v. Conagra Poultry Co.</i>, 971 F.2d 492, 496 (10th Cir. 1992). <b>Public sector:</b> <i>Benavidez v. Albuquerque</i>, 101 F.3d 620, 624 (10th Cir. 1996) and <i>City and County of Denver v. Casados</i>, 862 P.2d 908 (Colo. 1993). <b>Boulder:</b> Boulder Rev. Code § 12-3-1 to 5.</p>	<p><b>Medical marijuana:</b> The use of marijuana to alleviate certain debilitating medical conditions is authorized; however, the employer is not required to accommodate the medical use of marijuana in any workplace. State law prohibits registered users from undertaking any task while under the influence of medical marijuana when doing so would constitute negligence or professional malpractice.</p> <p><b>Recreational marijuana:</b> The possession and use of small amounts of marijuana by adults age 21 or older is legal in Colorado. Employers may prohibit the use and possession of marijuana in the workplace and on their property, may prohibit employees from</p>	<p>Boulder: Boulder’s city ordinance applies to testing of individuals assigned to an immediate supervisor located in the city of Boulder, or working at least one-third time on a job in the city for more than three months. Federal, state, and local government employees are exempt.</p>	<p>No program.</p>

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
	<p>exception to the employment-at-will doctrine based on an employer's request for medical information pursuant to a drug-testing policy.</p> <p><b>Public sector:</b> The Tenth Circuit has held that drug testing of government employees requires either "special needs" or "reasonable suspicion." In <i>Benavidez v. Albuquerque</i>, the court stated that "special needs" drug testing is permitted when the employee is in a safety-sensitive position and the test is pursuant to a random or uniform selection process. In such situations, probable cause or reasonable suspicion that an employee might be impaired isn't required. But <i>City and County of Denver v. Casados</i> held that requiring testing of public employees who didn't hold public safety or security-sensitive positions wasn't facially invalid.</p>		<p>being under the influence, and may have policies restricting the use of marijuana by employees.</p> <p><b>Boulder:</b> Testing is permitted under individualized reasonable suspicion based on specific, objective, clearly expressed facts demonstrating that the employee is under the influence of drugs on the job or that the employee's job performance is adversely affected. For rehabilitation, testing is permitted only if the employee agreed to the test as part of an EAP after a finding of or an admission of prior drug use. Random testing is prohibited.</p> <p><b>Citation: Medical marijuana:</b> Colo. Const. amend. 20. <b>Recreational marijuana:</b> Colo. Const. amend. 64. <b>Boulder:</b> Boulder Rev. Code § 12-3-1 to 5.</p>		

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	<p><b>Boulder:</b> The City of Boulder has its own ordinance related to drug and alcohol testing. The employer must notify applicants that a drug and alcohol test is part of the employment screening process or pre-employment physical. Drug and alcohol testing is limited to the single finalist for the position, if a Colorado resident, or to out-of-state resident finalists who come to Colorado to interview.</p> <p><i>Citation: <b>Private sector:</b> Mares v. Conagra Poultry Co., 971 F.2d 492, 496 (10th Cir. 1992).</i></p> <p><b>Public sector:</b> <i>Benavidez v. Albuquerque</i>, 101 F.3d 620, 624 (10th Cir. 1996) and <i>City and County of Denver v. Casados</i>, 862 P.2d 908 (Colo. 1993).</p> <p><b>Boulder:</b> Boulder Rev. Code § 12-3-1 to 5.</p>				

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
CT	Testing is authorized if the applicant is informed in writing beforehand. Former employees may not be tested unless they have been away from the job for at least 12 months. Testing is required to certify school bus drivers. No urinalysis drug test is permitted unless the applicant is first notified in writing of the test, the test follows specific procedures, and the applicant is given results of positive test results. Test results are confidential and may not be disclosed to any person other than the applicant. <i>Citation:</i> Conn. Gen. Stat. § 31-51t et seq., § 14-261a et seq., § 14-276a.	Testing is authorized on the reasonable suspicion that the employee is under the influence of drugs or alcohol, which adversely affects or could adversely affect such employee's job performance. Employees must be notified in writing of the employer's intent to test and must be given a copy of any positive drug test result. Results must be kept confidential. Without reasonable suspicion, employees may only be subjected to random testing if the position is designated as high risk or safety-sensitive or if federal law requires testing. Testing is permitted for voluntary EAPs. <i>Citation:</i> Conn. Gen. Stat. § 31-51t et seq., § 14-261a et seq., § 14-276a.	A confirming test is required in case of positive findings. Employee privacy in collection of specimen and confidentiality of test results must be preserved. Testing is required for intrastate truck drivers after a reportable accident, upon reasonable cause, or at random under federal law. Discipline or discharge is authorized for employees with a confirmed positive test result. To apply to have a particular job defined as high-risk or safety-sensitive, an employer must send a written request to the Labor Department with evidence supporting the application.	All private employers, entities that employ commercial drivers, entities that furnish transportation services to schools.	No program.



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- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
DE	Testing is required to certify applicants for school bus drivers, as well as positions in nursing home facilities and home health agencies. Testing is also required for security-sensitive positions with the Department of Corrections. All public works contracts must include provisions requiring the contractor, its agents, and its employees to implement a mandatory drug testing program for all its employees or agents working on the job site in nonclerical positions. <i>Citation:</i> 21 Del. C. § 2708; 29 Del. C. § 8920 <i>et seq.</i> ; 16 Del. C. § 1142; 29 Del. C. § 6908; 16 Del. C. Ch 49A.	Employee testing is not subject to restriction. Implementation of Delaware's medical marijuana statute has been suspended, so there are no regulations governing an employee who tests positive for marijuana use. <i>Citation:</i> 21 Del. C. § 2708; 29 Del. C. § 8920 <i>et seq.</i> ; 16 Del. C. § 1142; 29 Del. C. § 6908; 16 Del. C. Ch 49A.	Further analysis is required in case of positive findings. A registered qualifying patient will not be subject to penalty for the use of medical marijuana if he or she possesses a valid registry identification card. An employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon the person's status as a cardholder; or a registered qualifying patient's positive drug test for marijuana components or metabolites unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment. An exception	Entities that furnish transportation services to schools; nursing home facilities; home health agencies; and Department of Corrections. Public works contractors.	No program.

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			applies if an employer's failure to act would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations. Employers are not required to allow employees to ingest marijuana in any workplace or to allow any employee to work while under the influence of marijuana. The law does not protect the use of medical marijuana when doing so would constitute negligence or professional malpractice, when in a school bus, when on the grounds of any preschool or primary or secondary school, or in any correctional facility.		

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- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
DC	An applicant may be offered employment contingent upon receipt of a satisfactory drug test result. An applicant may work in a position that is not safety-sensitive prior to receiving test results.	Random testing for drugs and alcohol is permitted. Each employee must be given one opportunity to seek treatment if needed. Motor vehicle operators are subject to urine and breath tests, with the employee's consent.	<p>The District will give notice of any testing program at least 30 days prior to testing. No employee may be tested prior to receiving the required notice. Drug or alcohol testing is allowed whenever the supervisor has probable cause or when a police officer arrests the person and has reasonable grounds to believe that the employee has been operating a motor vehicle within the District while under the influence of alcohol or drugs.</p> <p>Medical marijuana is permitted for a qualifying patient with a signed, written recommendation from a physician to possess and administer medical marijuana and to possess and use paraphernalia. Medical marijuana may not be consumed anywhere other than the</p>	Applicants and employees of the District government. Private contractors to the District, and private entities that provide employees to work in safety-sensitive positions. District employees who provide direct services to children. Separately, in connection with its laws decriminalizing the use of marijuana, the District has adopted legislation providing that private employers may only test a prospective employee for marijuana use after a conditional offer of employment has been extended, unless otherwise required by law. The statute does not prohibit employers from withdrawing an offer based on a	No program.

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			<p>qualifying patient's residence, if permitted, or at a medical treatment facility when receiving medical care for a qualifying medical condition. Medical marijuana must be transported in a labeled container or sealed package. Individuals may not undertake any task under the influence of medical marijuana when doing so would constitute negligence or professional malpractice. Individuals may not "operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat" while under the influence of medical marijuana.</p> <p>The law does not discuss the issue of employment-related drug testing.</p>	<p>positive test.</p> <p><i>Citation:</i> D.C. Code § 32-931.</p>	

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
FL	Testing is authorized with advance notice to applicant; the applicant's refusal to submit to testing may be used as basis for not hiring. Public employers may test persons applying for positions who have been offered employment conditioned upon successfully passing a drug test. <i>Citation: FSA §§ 440.101 et seq., 112.0455.</i>	Testing is authorized on the reasonable suspicion of substance abuse, as part of a routine fitness-for-duty exam, or as a follow-up to an employee's participation in counseling or rehabilitation. Written notice of the testing program must be given. Discipline or discharge is authorized for employees who test positive. Public employers may test employees on the basis of reasonable suspicion, as part of a routinely scheduled fitness-for-duty medical exam, or as a follow-up to a rehabilitation program. State agencies are authorized to conduct random drug testing of employees at specified intervals. Employees are randomly selected by a computer-generated sample administered by an independent third party. No more than 10 percent of each agency's workforce may be tested every three months. <i>Citation: FSA §§ 440.101 et seq., 112.0455.</i>	The law requires a confirming test in case of positive test findings, privacy for the employee in the collection of test specimen, methods of collection, storage, and transportation that preclude contamination of specimen, and confidentiality of results. A positive test result must be confirmed by a licensed or certified laboratory. If testing is performed as a follow-up to a rehabilitation program, it must be conducted at least once a year for a two-year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested. An employer must pay the cost of all drug tests, initial and confirmation, that the employer requires of employees. An employee or job	Private employers; public employers with safety-sensitive and law enforcement positions; certain state contractors.	Incentives: Employers implementing a drug-free workplace program under t workers' compensation law receive a deduction in work compensation premiums. Requirements: Employers r implement a program allow for preemployment, random and postaccident drug test. Employers must use approv labs, keep records of the ch of custody of samples, and adhere to other strictly enf components. <i>Citation: FSA § 112.0455.</i>

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			applicant must pay the costs of any additional drug tests not required by the employer (e.g., for retesting after a positive result).		

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
GA	<p>Testing is authorized for applicants for state government employment, public school employment, and private employment. Substance abuse tests are allowed after an employment offer is extended if testing is required of all applicants as a condition of employment. Limited testing of job applicants is permitted as long as testing is conducted on the basis of reasonable classification of job positions. An applicant who refuses to be tested or who tests positive may be barred from state and public school employment for two years.</p> <p><i>Citation:</i> O.C.G.A. § 45-23-1 et seq. § 45-20-110 et seq., 34-9-410 et seq.</p>	<p>Testing, including random testing, is authorized on reasonable suspicion, as part of a routine fitness-for-duty exam, after an on-the-job injury, and as a follow-up to rehabilitation, or employee assistance program (EAP) participation resulting from a positive test result. Follow-up testing must be conducted at least once a year for a two-year period after completion of an EAP or rehabilitation program. If the employee voluntarily entered a rehabilitation program, follow-up testing is not required. The testing policy must be distributed to employees and posted, and it must advise employees of Georgia's drug-free workplace statute.</p> <p>Random testing of "high risk" state government and public school employees, including school bus drivers, is authorized under separate provisions.</p> <p><i>Citation:</i> O.C.G.A. § 45-23-1 et seq., § 45-20-110 et seq., 34-9-410 et seq., 45-20-90.</p>	<p>If testing is conducted based on reasonable suspicion, the employer must record the circumstances that formed the reasonable suspicion; a copy of the test results must be given to the employee upon request; and the original results must be kept confidential by the employer and retained for at least one year. Urinalysis conducted by approved laboratories, testing at the employer's work site with an on-site testing kit, or use of oral testing that satisfies legal testing criteria are acceptable. Methods to assure privacy for employee in collection of specimen, methods of collection, storage, and transportation that ensure noncontamination of specimen, and confidentiality of test results are</p>	<p>State government employers, public schools, and entities that furnish transportation services to school systems; private employers.</p>	<p>Incentives: Workers' compensation: Georgia has voluntary workers' compensation premium reduction statute that provides minimum 7.5 percent discount on workers' compensation insurance premiums for employers that implement and maintain a certified program. Contractors program: Contractors who receive state contracts of \$25,000 or more and meet requirements of the Drug-Free Workplace Act qualify to do business with the state. Requirements: Workers' compensation discount: Employers must implement a program containing the following five elements: (1) written policy statement, (2) substance abuse testing, (3) resources of employee assistance providers, (4) employee education, and (5) supervisor training. Contractors: The program requires contractors to publish statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of drugs is prohibited. They also must establish a drug-free awareness program.</p> <p>Covered employers: Workers' compensation: Private employers except those who are self-insured. Contractors: Contractors who receive state contracts of \$25,000 or more.</p> <p><i>Citation:</i> O.C.G.A. §§ 50-24-50-24-6; Workers' compensation discount: O.C.G.A. §§ 34-9-410 through 34-9-415; O.C.G.A. 33-9-40.2</p>

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			required. A confirming test is required after a positive result. Test information may be released only when a written, voluntary consent form is signed by the person tested or if the release is compelled by an agency or court. Within five working days after receipt of the results, the employer must inform the employee or applicant in writing of a positive test result, the consequences of such results, and any options available. Upon request, the employer must also provide a copy of the test results. Employer must pay for all tests that it requires; the employee or job applicant must pay the cost of any additional tests not required by the employer. Testing confers eligibility for certain discounts and other		



# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
			benefits under workers' compensation law.		

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
HI	<p>Testing is authorized if the applicant receives advance notice in writing of substances to be tested for and has the opportunity to disclose current prescription and nonprescription medications. Public employers may only conduct preemployment drug testing for safety-sensitive positions that involve work posing a great danger to the public.</p> <p><i>Citation:</i> HRS § 329B-1 <i>et seq.</i>; HRS § 329-121 <i>et seq.</i></p>	<p>Employers must have a written policy that details substances for which the employee will be tested. The policy must list prescription and nonprescription medications that may cause a positive test result. State citizens have the right to obtain and use marijuana for medical purposes when the medical use is deemed appropriate and has been certified as such by a physician. This does not apply to workplace medical use.</p> <p><i>Citation:</i> HRS § 329B-1 <i>et seq.</i>; HRS § 329-121 <i>et seq.</i></p>	<p>Methods must assure privacy for employee in collection of specimen and reliability of results. A confirming test is required in case of positive findings. On-site testing is prohibited for employees, but allowed for applicants. Portable substance abuse tests used for preemployment purposes must meet the requirements of the U.S. Food and Drug Administration for commercial distribution. An operator who administers a substance abuse on-site screening test must have been trained in the use and administering of the on-site screening test by the test manufacturer or the manufacturer's designee. Employers must pay all testing costs.</p>	All employers.	<p>Incentives: Hawaii doesn't require employers to establish a drug-free workplace, but the Hawaii Insurance Code provides that employers certified as having an effective safety and health program receive at least a five percent discount on workers' compensation insurance premiums.</p> <p>Requirements: Employers are required to maintain an effective safety and health program throughout the policy period.</p> <p>Covered employers: All employers.</p> <p><i>Citation:</i> HRS § 431:14-103</p>

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace programs
ID	Testing is authorized as a condition of employment. Public employers may only conduct preemployment drug testing for safety-sensitive positions that involve work posing a great danger to the public. <i>Citation:</i> Idaho Code § 72-1701 <i>et seq.</i>	Testing is authorized, including random testing and reasonable suspicion testing, after notice is provided to employees. Testing policy must be in writing and must list types of tests and must state that violation of the policy is grounds for misconduct discharge. Time spent undergoing drug and alcohol testing is compensable as work time. <i>Citation:</i> Idaho Code § 72-1701 <i>et seq.</i>	After a positive on-site test result, the employer must send the employee or applicant to a licensed laboratory within four hours to be retested. Confirming test after positive results; confidentiality of test; and methods of collection, storage, and transportation that ensure noncontamination of specimen are required. The use of portable substance abuse tests that meet the requirements of the U.S. Food and Drug Administration for commercial distribution is permitted for applicants and employees. The person who administers these tests must be trained and must administer the substance abuse on-site screening test according to the package insert that accompanies the	All employers.	Incentives: Employers implementing alcohol and drug-free workplace programs in compliance with the Idaho Employer Alcohol and Drug Workplace Act may be eligible for reduced workers' compensation premiums. Requirements: Employers must adhere to voluntary drug/alcohol testing guidelines. The Act permits drug/alcohol testing as a condition of hiring or continuing employment. Employers must compensate current employees for time spent testing, and employers must pay testing costs. Employers must implement written testing policies, and provide employees or applicants with written notice of results. Employees must be given the opportunity to explain positive results and may request that a sample be retested. Covered employers: All employers. <i>Citation:</i> Idaho Code § 72-1701

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
			test.		
IL	Covered employers must inform applicants of drug-free workplace policy. <i>Citation: 30 ILCS 580/1 et seq.</i>	Covered employers must establish a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the grantee's or contractor's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations. It is a Class 4 felony to defraud a drug or alcohol screening test. <i>Citation: 30 ILCS 580/1 et seq.</i>	The employer must take specific steps to prevent employees from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including posting and dissemination of a statement notifying employees of employer's policy and actions taken for violation. It is a criminal violation to defraud a drug or alcohol screening test by adulterating or substituting a sample or by manufacturing an adulterant to be used to alter a test sample.	Employers with a state grant or contract of \$5,000 or more.	Incentives: Only employers meeting the law's requirements qualify for state grants or contracts of \$5,000 or more. Requirements: Prospective grantees or contractors must certify that they will provide a drug-free workplace by (1) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance at work is prohibited, specifying actions that will be taken for violations, and notifying employees that they must notify the employer of any criminal drug statute conviction for a violation in the workplace within five days; (2) establishing a drug-free awareness program; (3) providing copies of the statement to all employees engaged in the performance of the grant/contract and posting it in a prominent place; (4) notifying the state agency 10 days after receiving notice of an employee's criminal drug conviction; (5) imposing a sanction on or requiring rehabilitation of an employee who receives a criminal drug conviction; and (6) assisting employees in obtaining treatment. Covered employers: Applies to employers with 25 or more employees applying for state contracts or grants of \$5,000 or more. <i>Citation: Illinois Drug Free Workplace Act: 30 ILCS 580/1 et seq.</i>

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
IN	<p>Childcare industry: Drug tests shall be administered to all employees and volunteers of childcare centers, childcare providers, and childcare homes before employment or volunteer activities begin.</p> <p><i>Citation:</i> I.C. §§ 12-17.2-4-3.5, 12-17.2-3.5-12.1, 12-17.2-5-3.5</p>	<p>Childcare industry: Childcare providers and employees or volunteers of childcare centers and childcare ministries must have a written policy explaining that drug testing of individuals who serve as caregivers will be performed based on a protocol established or approved by the Family and Social Services Administration. Drug testing may also be required if an individual is suspected to be under the influence of illegal substances.</p> <p>Public works contractors: Each of a contractor's employees must take a drug test at least one time each year. Drug tests must be random and must cover at least two percent of the contractor's employees each month.</p> <p><i>Citation: Childcare industry:</i> I.C. § 12-17.2-3.5-12.1. <b>Public works contractors:</b> I.C. § 4-13-18-6.</p>	<p><b>Public works contractors:</b> A contractor's drug testing program must impose progressive discipline on an employee who fails a drug test.</p> <p><b>All:</b> It is illegal to interfere with or attempt to interfere with a drug or alcohol screening test by using a device or substance, substituting a human bodily substance that is tested in a drug or alcohol screening test, or adulterating a substance used in a drug or alcohol screening test.</p> <p><i>Citation: Public works contractors:</i> I.C. § 4-13-18-6. <b>All:</b> I.C. §§ 35-43-5-18, 35-43-5-19.</p>	<p>Child care providers, public works contractors.</p>	<p><b>Incentives:</b> Private employer must certify their drug-free status, including submission of a written plan for an employee drug testing program, to qualify to receive state government grants or contracts. <i>Citation:</i> I.C. § 4-13-18-5.</p> <p><b>Requirements:</b> Any private legal entity that receives a grant or contract funds from state government must certify that it will provide a drug-free workplace by (1) publishing a statement notifying all employees that the unlawful manufacture, sale, distribution or possession of a controlled substance is prohibited; (2) establishing a drug-free awareness program that informs employees about the dangers of drugs in the workplace, the availability of treatment programs, and the company's antidrug policy and penalties; (3) providing each employee with a copy of the drug-free workplace statement; and (4) notifying each employee that compliance is a condition of employment. To remain in compliance, employees must notify the employer within 10 days of any conviction for a violation in the workplace. If the employer has 10 days to notify the contracting government agency. Upon receipt of notice, the company has 30 days to take disciplinary action or send the employee for treatment.</p> <p><b>Covered employers:</b> Private employers receiving grant or contract funds from state government.</p>

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
IA	<p>Testing is authorized as a condition of employment and according to terms of a written policy that must be made available for review.</p> <p><i>Citation:</i> Iowa Code § 730.5.</p>	<p>Testing is authorized, including when there is probable cause to suspect substance abuse and as part of an investigation into an accident that resulted in significant injury or property damage. Unannounced testing is allowed for the entire employee population at a worksite, unless otherwise prohibited by a collective bargaining agreement. Unannounced testing is also permitted for all employees in safety-sensitive positions scheduled to work at the time of testing, unless prohibited by a collective bargaining agreement. Employees not scheduled to work or excused pursuant to employer policy will not be subject to testing. Substance abuse evaluation and opportunity for treatment must be provided for first positive test result. Discipline or discharge is authorized for a subsequent positive result or failure to complete treatment.</p> <p><i>Citation:</i> Iowa Code § 730.5.</p>	<p>A written testing policy that satisfies certain requirements laid out in Iowa Code § 730.5 is required. Employers must reimburse their employees for time and expenses related to drug or alcohol testing. Test subjects must be given the opportunity to explain or rebut positive findings and to request confirmation through retesting. Confidentiality of test results must be preserved. Employers may conduct hair testing of prospective employees only.</p>	<p>Private employers with employees under any contract of hire, express or implied, oral or written. This does not apply to testing done under DOT regulations.</p> <p><i>Citation:</i> Iowa Code § 730.5(1)(e).</p>	<p><i>Citation:</i> Executive Order 9</p> <p>Governor's Office of Drug Control Policy, Drug-Free Workplace Programs: <a href="https://odcp.iowa.gov/creatingdrv">https://odcp.iowa.gov/creatingdrv</a></p>
KS	<p>Testing is authorized for applicants for safety-sensitive jobs in state government, but only after a conditional job offer has been made. Advertisements for safety-sensitive jobs must include notice of drug-testing requirement.</p> <p><i>Citation:</i> Kan. Stat. Ann. § 75-4362.</p>	<p>Testing is authorized for state employees holding safety-sensitive jobs and for individuals taking office as governor, lieutenant governor, or attorney general, members of the Kansas senate or house of representatives, any position in an institution of mental health, any position in the Kansas state school for the deaf or school for the blind, and any employee of a state veteran's home operated by the director of the Kansas Commission on Veterans Affairs. However, testing can only be based on a reasonable suspicion of illegal drug use. Except for employees with access to a secured biological laboratory in the office of laboratory services of the Department of Health and Environment, employees testing positive for the first time must have the opportunity to undergo drug evaluation and recommended treatment.</p> <p><i>Citation:</i> Kan. Stat. Ann. § 75-4362.</p>	<p>Confidentiality of test results is required, except in hearings before the state civil service board regarding disciplinary action taken against the employee.</p> <p><i>Citation:</i> Kan. Stat. Ann. § 75-4362(e).</p>	<p>State government.</p>	<p>No program.</p>

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
KY	<p>Kentucky only has provisions regulating drug and alcohol testing in relation to a few limited professions, including: horse racing, mining operations, the operation of aircraft, law enforcement, teachers, and those who operate commercial motor vehicles.</p> <p><b>Law enforcement officers:</b> Applicants for positions as law enforcement officers must pass a drug screening test. Mining operations: All applicants for certification as new miners and any other certifications under KRS ch. 351 must provide proof of drug and alcohol free status prior to certification.</p> <p><b>School bus drivers:</b> Controlled substance and alcohol testing is a condition of employment for school bus drivers, mechanics, and other jobs that require a CDL license. Drivers must submit to pre-employment testing, post-accident testing, random</p>	<p><b>Horse racing:</b> Any licensee of the Kentucky Horse Racing Commission must submit to drug or alcohol testing upon request by the Commission, a steward, judge, or any other authorized employee of the Commission.</p> <p><b>Operation of aircraft:</b> Any operator or crewmember of an aircraft, or person acting as an operator or crewmember, has statutorily been deemed to have consented to drug or alcohol testing if arrested for violating KRS § 183.061.</p> <p><b>Teachers:</b> Kentucky authorizes random or periodic drug testing only following an administrative or judicial proceeding that has determined that the teacher engaged in misconduct involving the illegal use of controlled substances. There must be at least three random tests within a period of 12 months from the date of the proceeding.</p> <p><b>Commercial motor vehicle operators:</b> An operator of a commercial motor vehicle has statutorily been deemed to have consented to drug or alcohol tests, in accordance with KRS § 189A.103, if stopped by a law enforcement officer who has reasonable cause to believe the driver was operating the vehicle with drugs or alcohol in his system. Commercial motor vehicle operator training schools must require a drug test for each person who enrolls as a student at a training school.</p> <p><i>Citation: Horse racing:</i> 811 KAR § 1:225. <i>Operation of aircraft:</i> KRS § 183.061. <i>Teachers:</i> KRS § 161.175; 701 KAR § 5:130.</p>	There is no provision for this topic in this state.	There is no provision for this topic in this state.	<p>The Energy and Environment Cabinet allows a mine employer who is also a licensee and has implemented a drug-free workplace program certified by the Office of Mine Safety and Health Licensing to obtain a credit for the premium paid on workers' compensation insurance. These programs are voluntary but once undertaken, drug and alcohol testing must be in accordance with federal and state requirements. The program must also meet the minimum requirements under 805 KAR § 11:020 to be certified as a drug-free workplace.</p> <p><b>Commercial motor vehicle operators:</b> KRS §§ 281A.23, 332.095.</p>

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	<p>testing, and reasonable suspicion testing.</p> <p><b>Pipeline workers:</b> Kentucky law requires an anti-drug program according to the requirements of the administrative regulation and the United States Department of Transportation procedures. Each person hired must submit to pre-employment testing, post-accident testing, random testing spread reasonably through a 12-month period, and return to duty testing.</p> <p><i>Citation: <b>Law enforcement officer:</b> KRS § 15.382. <b>Mining operations:</b> KRS §§ 351.182, 351.184. <b>School bus drivers:</b> 702 KAR § 5:080. <b>Pipeline workers:</b> 807 KAR § 5:023. <b>Mine Drug-free Workplace Program:</b> KRS § 351.186; 805 KAR §§ 11:010, 11:020.</i></p>				



# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
LA	Drug-testing of applicants as a condition of hire is permitted. Confirmation testing is not required for applicants who test positive, but the employer must give the applicant an opportunity to have the specimen confirmed and reviewed by a medical review officer at the applicant's expense. <i>Citation:</i> La. Rev. Stat. Ann. §§ 49:1001 <i>et seq.</i> , 23:1601(1).	Employee testing is authorized. A confirming retest using a different testing method is required. An employee who tests positive must have access to records relating to the drug test or disciplinary proceedings within seven working days. Employees of state contractors are subject to random testing. The initial state-established cut-off level for marijuana testing (50 ng/ml) may be reduced or modified by any employer engaged in construction, maintenance, or manufacturing at any refining or chemical manufacturing facility. <i>Citation:</i> La. Rev. Stat. Ann. §§ 49:1001 <i>et seq.</i> , 23:1601(1).	Methods to assure employee privacy must be used in collection of specimen, but a witness may be present for post-accident testing and testing performed on suspicion of substance abuse, or when there is reason to doubt the integrity of the specimen. USFDA-cleared specimen testing methods are approved for urine, blood, saliva, or hair sample tests, provided that the sample is processed in a laboratory with a SAMHSA or CAP-FUDT certification and using generally accepted cutoff levels as established by the USFDA. Testing that may result in negative employment consequences must be performed in a certified laboratory.	Public and private employers not subject to a federally mandated testing program.	No program.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
ME	Employers may not drug test applicants unless they have in place a drug testing policy approved by the Maine Department of Labor and provide a copy of that policy to the applicant. Applicants may only be tested if they have been offered employment or offered a position on a roster of eligibility. Employers may refuse to hire an applicant who will not submit to a test or tests positive. <i>Citation: 26 M.R.S.A. §§ 681 et seq.</i>	Probable cause testing is allowed. Random testing is only allowed 1) if authorized by a collective bargaining agreement; 2) the employee works in a position that would create an unreasonable threat to health or safety; or 3) the employer has 50 or more employees who are not covered by a collective bargaining agreement, the policy was developed in conjunction with an employee committee, and the employees chosen for testing are selected by an outside person. Employer may test employee with a previous positive test between 90 days and one year after his return to work from leave. Employees can be terminated for refusing to test. Employees who test positive once must be offered up to 6 months of rehabilitation. Employer with more than 20 employees must split cost of rehabilitation with employee. Employees with second positive test may be terminated. <i>Citation: 26 M.R.S.A. §§ 681 et seq.</i>	Employers may not drug test employees unless they have in place a drug testing policy approved by the Maine Department of Labor. The policy must be provided to all employees at least 30 days before the policy takes effect. Employers with more than 20 employees must also have in place an employee assistance program certified by the Maine Department of Health and Human Services. Various requirements for testing procedures, laboratory reports, etc. <i>Citation: 26 M.R.S.A. §§ 681 et seq.</i>	All public and private employers, regardless of size, as well as employment agencies. Does not apply to nuclear electrical generating facilities or employers who are subject to a federally mandated drug and alcohol testing program. <i>Citation: 26 M.R.S.A. §§ 681 et seq.</i>	No program.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
MD	Applicant testing is not subject to restriction. Employers may use preliminary screening procedures to test an applicant, unless collective bargaining agreement prohibits. If the test result is positive, the employer must submit the specimen for laboratory testing. <i>Citation:</i> Md. Code Ann., Health Gen. § 17-214.	Employee testing is authorized if supported by legitimate business reason. <i>Citation:</i> Md. Code Ann., Health Gen. § 17-214.	Testing may only be performed by a certified laboratory of blood, urine, hair or saliva. Confirming test after positive result must be provided at employee's expense. Results must be provided in person or by certified mail within 30 days of the testing.	All employers.	Incentives: Certain state contractors must certify that they maintain drug-free workplaces in order to participate in the government contracting program. Requirements: Certain state contractors must certify that they maintain a drug-free workplace. Covered employers: State contractors.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
MA	There is no provision for this topic in this state.	Massachusetts law protects individual privacy from “unreasonable, substantial or serious” interference. Mass. Gen. Laws ch 214, § 1B. To determine whether an employer’s drug testing policy violates its employees’ privacy rights, courts balance the employee’s interest in privacy against the employer’s competing interest in determining whether its employees are using drugs. <i>Webster v. Motorola, Inc.</i> , 637 N.E.2d 203 (Mass. 1994). Relevant factors include the nature of the employer’s business, the nature of the employee’s duties, and any safety risk to the employer, the employee, or the public. A random drug-testing policy may also compete with an individual’s right to privacy under Article 14 of the State Constitution, which protects against unreasonable search and seizure. <i>Guiney v. Police Comm’r of Boston</i> , 582 N.E.2d 523 (Mass. 1991).	<p>An employer’s random drug testing program was held to be in violation of the state privacy law because it did not distinguish between those employees who hold safety-sensitive positions and those who do not. <i>Webster v. Motorola, Inc.</i>, 637 N.E.2d 203 (Mass. 1994). A drug testing program may be “unreasonably intrusive” if the individual being tested is observed while urinating, or otherwise visually inspected during the procedure. <i>Webster</i>, 637 N.E.2d at 208.</p> <p>An employer may perform random drug testing for individuals who hold safety-sensitive positions. Employers may also perform post-offer, pre-employment drug and alcohol testing of applicants. However, employers should</p>	There is no provision for this topic in this state.	No program.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			<p>be aware that a trial court recently allowed a plaintiff's claim for invasion of privacy to proceed after she tested positive for medical mairjuana after a pre-employment test. The court found that because the woman was not in a safety sensitive position, it could be an invasion of her privacy to require a drug test. Employers should be aware of this decision. <i>Barbuto v. Advantage Sales &amp; Marketing</i>. Employers may also perform "reasonable suspicion" drug testing when the employer has objective evidence to suggest that an employee is under the influence of drugs or alcohol at work.</p>		

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
MI	There is no provision for this topic in this state.	Use of medical marijuana is not permitted when doing so would constitute negligence or professional malpractice. Individuals may not possess marijuana or otherwise engage in the medical use of marijuana in a school bus, on the grounds of any preschool or primary or secondary school, or in any correctional facility. Employers are not required to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana. <i>Citation:</i> MCL § 333.26421.	The medical use of marijuana is permitted for qualifying patients who have registered with the state and possess a valid registry identification card. Qualifying patients may not be punished for their lawful possession or use medical marijuana. Individuals may not smoke marijuana on any form of public transportation; or in any public place, and may not operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana.	There is no provision for this topic in this state.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
MN	Applicant testing is authorized, pursuant to employer's written policy and with advance notification of applicant, but only after offer of employment has been made and only if all candidates for job are tested. <i>Citation:</i> Minn. Stat. § 181.951.	Routine physical examination testing: Acceptable as part of an annual, routine physical examination provided the employee has at least two weeks' written notice. Random testing: Only if employees are (1) in a safety-sensitive position, or (2) professional athletes subject to a collective bargaining agreement allowing testing. Reasonable suspicion testing: Permissible if employer has a reasonable suspicion that the employee: (1) is under the influence of drugs or alcohol; (2) has violated the employer's written work rules while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer's written drug and alcohol testing policy; (3) has sustained or caused another's personal injury, or (4) has caused a work-related accident or was operating machinery, equipment, or vehicles involved in a work-related accident. Treatment program testing: Testing allowed for a period of up to two years following completion of any prescribed chemical dependency treatment program. Testing allowed without notice during treatment if referred by the employer for treatment or evaluation or the employee is participating in treatment under an employee benefit plan. <i>Citation:</i> Minn. Stat. § 181.951.	Testing may be conducted only by certified laboratory. Documentation showing chain of custody and confirming test in case of positive findings are required. Employee must be given written notice of the right to explain the positive test. Employers may not take adverse employment action or discriminate against employee for positive test result from an initial screening test that has not been verified by a confirmatory test. Additionally, the employer must meet statutory conditions before discharging an employee after a first positive confirmatory test result. <i>Citation:</i> Minn. Stat. § 181.953.	Public and private employers.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
MS	Applicant testing is authorized, pursuant to written notice. An employer may refuse to hire an employee who refuses to test or who tests positive. <i>Citation:</i> Miss. Code Ann. § 71-7-1 <i>et seq.</i>	Employee testing is authorized in the following circumstances: on reasonable suspicion of substance abuse, in connection with rehabilitation or treatment, as part of a routine physical exam, on a neutral selection basis, if the employee had a confirmed positive within the past 12 months, or if a collective bargaining agreement authorizes random testing. Discharge is authorized if the employee has a confirmed positive test or refuses to test. <i>Citation:</i> Miss. Code Ann. § 71-7-1 <i>et seq.</i>	Employer must provide advance written notice of test, documentation showing chain of custody, and opportunity for employee to explain positive findings. Testing must conform to scientifically accepted analytical procedures. All positive results must be confirmed using a different testing method of equal or greater sensitivity than the positive test method. Confidentiality of test results is mandatory.	Each test must be paid for by the individual who requested it. Public and private employers.	No program.



# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
MO	Applicants convicted of a criminal offense involving the use of controlled substances, marijuana, or other dangerous drugs within three years prior to applying for public employment are ineligible for any public employment without proof of completion or continued successful participation in a state-certified drug abuse treatment program. <i>Citation: RSMo. § 105.1100 et seq.</i>	Employees convicted or pleading guilty to a criminal offense involving use of a controlled substance, marijuana, or other dangerous drug must complete a drug abuse treatment and education program certified by the state. Second conviction or plea will result in the employee's dismissal. <i>Citation: RSMo. § 105.1100 et seq.</i>	Individuals may be disqualified from receipt of unemployment when discharged for having a "detectable amount of alcohol or a controlled substance" in violation of the employer's substance abuse prevention policy. Notice and testing restrictions apply for unemployment disqualification.	Employees of executive branch state government, excluding peace officers and employees in safety-sensitive positions.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
MT	Post offer, pre-employment testing is authorized for intrastate motor carrier jobs, for jobs in hazardous environments, or jobs that primarily involve security, public safety, or fiduciary responsibility. Public employers may only conduct preemployment drug testing for safety-sensitive positions that involve work posing a great danger to the public. <i>Citation:</i> Mont. Code Ann. §§ 39-2-205 <i>et seq.</i>	An employer may randomly test if the testing policy includes one or both procedures: (1) a date of testing of all employees; (2) a random testing process that includes an established calendar period for testing, an established testing rate within the calendar period, a random selection process, all supervisory and managerial employees in the random selection and testing process, and a signed statement from each employee that says that he or she has received a written description of the entire testing process. Specific, individual employee testing only permitted under reasonable belief of job impairment, belief that the employee contributed to accident, or in cases of property damage greater than \$1,500. Follow-up tests to positive results are allowed in specified circumstances. <i>Citation:</i> Mont. Code Ann. §§ 39-2-205 <i>et seq.</i>	Before testing, employers must establish a written procedure protecting privacy in compliance with testing procedure in 49 CFR 40. A signed statement from each employee acknowledging receipt of policy and procedures for testing is required. Advance written notice of testing procedures, confirming test in case of positive findings, and opportunity for employee to rebut positive findings are all required. Disciplinary action is authorized if the employee presents no reasonable explanation for positive findings. The law does not require an employer to accommodate the medical use of marijuana in any workplace.	Public and private employers.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
NE	Applicant testing is not subject to restriction. <i>Citation:</i> Neb. Rev. Stat. § 48-1901 <i>et seq.</i>	Employee testing is authorized without restriction. Discipline or discharge is authorized after a confirming positive test, refusal to submit to test, or tampering with a test specimen. <i>Citation:</i> Neb. Rev. Stat. § 48-1901 <i>et seq.</i>	Employers must provide a confirming test in case of positive findings, the option for blood test after positive breath test, and methods to ensure confidentiality of test findings.	Private employers with six or more employees; public employers.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
NV	Applicant testing is authorized for jobs involving public safety. Public employers may only conduct preemployment drug testing for safety-sensitive positions that involve work posing a great danger to the public. <i>Citation: NRS 284.406 et seq.</i>	Employee testing is authorized for jobs involving public safety. Referral for counseling or treatment is authorized for employees testing positive. Discipline or discharge is authorized for subsequent positive findings, for workplace use, or for working under the influence. <i>Citation: NRS 284.406 et seq.</i>	Testing may only be conducted by an independent laboratory. If the results are positive, the "laboratory shall conduct another test of the same sample of urine to ascertain the specific substances and concentration of those substances in the sample." Employer must provide a confirming test in case of positive findings. Use of medical marijuana is allowed when deemed appropriate and certified by attending physician. Medical marijuana exception applies only to persons holding a valid registry identification card and does not require work site use as an accommodation. <i>Citation: NRS 284.4067 and 453A.010 et seq.</i>	State agencies.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
NH	Employers may not require applicants or employees to pay the costs of nonrequired drug/ alcohol tests as a condition of employment. School bus drivers must submit to drug/ alcohol testing. Governmental entities requiring employees to produce urine samples for drug testing are considered to be conducting a search and must meet the reasonableness requirements of the Fourth Amendment. <i>Citation:</i> Costs: N.H. Rev. Stat. Ann. § 275:3; N.H. Code Admin. R., Lab 803.02. School bus drivers: N.H. Code Admin. R., Saf-C 1304.01.	See Applicant testing column.	There is no provision for this topic in this state.	There is no provision for this topic in this state.	No program.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
NJ	Employer may require preemployment drug testing. Job offers may be conditioned on applicant's passing a drug test, regardless of whether the position is safety-sensitive. <i>Citation:</i> Vargo v. Nat'l Exch. Carriers Ass'n, 376 N.J. Super 364 (App. Div. 2005).	Benefits of random drug testing must be balanced against privacy rights of the individual, and random drug testing is permitted only for employees in safety-sensitive positions. Hennessey v. Coastal Eagle Point Oil, 609 A.2d 11 (N.J. 1992). Employers only required to reinstate an employee once after positive test and completing rehabilitation. <i>Citation:</i> In the Matter of Henry Jackson, 294 N.J. Super. 233 (App. Div. 1996).	Employer should use the least intrusive testing measures, maintain confidentiality of results, give employees notice of drug-testing program implementation, detail employee selection methods, warn employees of the lingering effect of drug use, explain how samples will be analyzed, and notify employees of the consequences of testing positive or refusing to submit to a drug test. Hennessey, 609 A.2d 11. The Compassionate Use Medical Marijuana Act decriminalizes medical use of marijuana under state law for patients who legally use medical marijuana to alleviate symptoms or side effects of treatment relating to certain "debilitating medical conditions." Patients must	All employers.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			have identification cards and their names on a confidential registry. Employers have no obligation to accommodate medical use of marijuana in the workplace; however, it is unclear what an employer's obligation may be to accommodate an employee who tests positive for legal consumption of marijuana. <i>Citation:</i> N.J.S.A. 24:6I-2.		

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
NM	Public sector applicants in safety-sensitive positions must be tested after receiving a job offer, but before an appointment is made. <i>Citation:</i> NM Personnel Board Rules 8.8, 11, 17.3.	Testing is allowed for employees for whom drug/alcohol impairment would constitute an immediate, direct threat to public health or safety. At least 10% of employees must be subjected to random drug testing each year. Reasonable-suspicion drug/alcohol testing of employees is permitted only when there is a direct observation of: (1) drug/alcohol use, (2) drug or drug paraphernalia possession, or (3) physical symptoms or manifestations of drug/alcohol impairment. <i>Citation:</i> NM Personnel Board Rules 8.8, 11, 17.3.	Before collecting a specimen, the supervisor must obtain approval from the next highest supervisor. Specific facts supporting reasonable-suspicion testing must be included in a written memo within 24 hours of collecting a specimen and must be submitted to the employer-agency's drug abuse coordinator. Other procedures must be followed before, during, and after testing. Applicants and employees must receive their test results in writing. Test results and related information are confidential. Positive initial drug testing must be confirmed. Use of marijuana to treat specific medical conditions is permitted. Qualified patients receive medical certification and have a registry	Public sector employers.	No program.



# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			identification card after registering with the state. Employers may still prohibit use of medical marijuana in the workplace.		
NY	If an employer chooses to conduct drug testing, it must be done by a refutable drug testing laboratory. New York courts have deemed it unconstitutional and discriminatory to reject a potential employee based solely on a positive drug test. The employer must be able to demonstrate that the potential employee's substance abuse will prevent him from doing his job.	An employee who tests positive for a drug test could request for a retest from a laboratory of his choice. Further, the decision to fire an employee based solely on a positive test report, without regard to the employee's actual job performance is illegal, unless it is required by law, or the employee holds a safety sensitive position.	There is no provision for this topic in this state.	There is no provision for this topic in this state.	No program.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
NC	Applicant testing is subject to procedural restrictions described in Conditions/methods column. If a screening test for a prospective employee is positive, an approved laboratory must confirm the result with a second test, utilizing GC/MS or an equivalent scientifically accepted method, unless the prospective employee signs a written waiver at the time or after they receive the preliminary test result. <i>Citation:</i> N.C. Gen. Stat. § 95-230 <i>et seq.</i> ; N.C. Gen. Stat. § 20-37.19.	The examiner must provide the employee with written notice of his or her rights and responsibilities when sample is taken. The employee must be given notice of positive result within 30 days, along with rights regarding retesting. Employees have right to retest and confirm positive samples at approved laboratory. Employers must report positive drug or alcohol tests conducted under federal regulations to the Division of Motor Vehicles in writing within five business days of receiving positive test. Specific requirements for public transit officers and operators of commercial vehicles apply. All positive screening tests for current employees must be confirmed by a second examination of the sample utilizing GC/MS or an equivalent scientifically accepted method. <i>Citation:</i> N.C. Gen. Stat. § 95-230 <i>et seq.</i> ; N.C. Gen. Stat. § 20-37.19.	Testing must be performed under reasonable and sanitary conditions. Employer must provide documentation showing chain of custody of samples, as well as a confirming test by a certified laboratory in case of positive findings. A portion of every sample that produces a positive result must be preserved for at least 90 days from the time the test results are mailed or otherwise confirmed and delivered. All positive tests must be confirmed by gas chromatography with mass spectrometry (GC/MS) or an equivalent methodology.	Public and private employers.	No program.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
ND	Applicants for driving positions with passenger contract carriers are required to undergo alcohol and controlled substance testing before performing any duties for the contract carrier. If an employer requires an applicant to take a drug or alcohol test as a condition of obtaining employment, the employer must pay for the test and for the furnishing of any medical records. <i>Citation:</i> N.D.C.C. § 34-01-15, § 12.1-11-07; N.D.A.C. 38-09-01-06.	See Applicant testing column.	A person is guilty of a class A misdemeanor if that person willfully defrauds a urine test and the test is designed to detect the presence of a chemical substance or a controlled substance. A person is guilty of a class A misdemeanor if that person knowingly possesses, distributes, or assists in the use of a device, chemical, or real or artificial urine advertised or intended to be used to alter the outcome of a urine test.	Passenger contract carriers: Passenger contract carriers as defined by N.D.C.C. § 8-02-08.	Employees of all state agencies that receive federal grants are required to certify that they understand the requirements regarding the maintenance of a drug-free workplace. <i>Citation:</i> SFN 16769.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
OH	<p>Applicant testing for designated positions for the state service is authorized with advance notice to applicant and after offer of employment has been made. Required for those employers in the workers' compensation premium reduction program.</p> <p><i>Citation:</i> Ohio Admin. Code § 123:1-76 <i>et seq.</i></p>	<p>Employee testing is authorized on reasonable suspicion of substance abuse, for new hires, after an accident, randomly, and as follow-up to a treatment program. For the workers' compensation premium reduction program, testing is required for pre-employment, random, reasonable suspicion, post-accident, and as follow-up to a treatment program.</p> <p><i>Citation:</i> Ohio Admin. Code § 4123-17-58 <i>et seq.</i></p>	<p>Employers must provide documentation showing chain of custody of test samples and a confirming test in case of positive findings. A written policy statement is required. Testing confers eligibility for certain discounts and other benefits under workers' compensation law. Workers' compensation benefits may be denied for employees who are injured while under the influence of illicit drugs or alcohol where the intoxication was proximate cause of the injury.</p> <p><i>Citation:</i> Ohio Rev. Code §§ 4123.54 and 4123.54(G); Ohio Admin. Code § 4123-17-58.</p>	<p>Unrestricted drug testing is permitted for public and private employers. Requirements listed are voluntary if workers' compensation premium reduction is desired. Voluntary workers' compensation premium reduction program only for state fund employers, not self-insured. State employees are also subject to drug testing. Contractors and subcontractors bidding on state construction projects are required to establish a drug-free workplace program identical to that required for the workers' compensation premium reduction program.</p> <p><i>Citation:</i> Ohio Rev. Code § 153.03; Ohio</p>	<p>Incentives: Employers who establish a drug-free workplace program are given workers' compensation incentives. Requirements: The Drug Free Workplace Act of 1988 offers a premium discount to eligible employers for implementing a loss-prevention strategy addressing workplace use of alcohol and other drugs, especially illegal drugs. Covered employers: All state workers' compensation fund employers. Other employers eligible for technical support from the program but no premium discounts.</p> <p><i>Citation:</i> Ohio Admin. Code § 4123-17-58.</p>

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
				Admin. Code. § 123:1-76.	
OK	Applicant testing is authorized with advance notice to applicant and after offer of employment has been made. Notice must be in writing and must describe methods, procedures, and policies in detail. <i>Citation:</i> Okla. Stat. Tit. 40 § 551-563 revised (2011).	The Oklahoma Standards for Workplace Drug and Alcohol Testing Act provides for the testing of applicants, employees, and, in some cases, independent contractors who are not subject to federal drug and alcohol testing requirements. Testing may only be performed if the employer has a written policy distributed to employees as provided by the Act at least 10 days in advance of the policy's effective date. The Act permits the following types of testing: 1) pre-employment after a conditional offer of employment; 2) for-cause; 3) post accident; 4) random; 5) scheduled or periodic; 6) transfer or reassignment; 7) fitness for duty/return to work; and 8) post rehabilitation. The Act permits the use of reliable single-use test devices. Special rules apply for public employers. Employees are entitled to request confirmation tests within 24 hours of receiving results of a positive drug or alcohol test. <i>Citation:</i> Okla. Stat. Tit. 40 § 551-563 revised (2011).	Testing procedures must ensure privacy and confidentiality of results. Employers must maintain a written test policy specifying individuals to be tested, testing methods, consequences of refusing a test, consequences of a positive test result, rights of applicant/ employee to explain test results, and available appeals/ sanctions. All drug and alcohol test results and related information must be kept separate from other personnel records. No disciplinary actions may be taken without adequate confirmation testing.	Public and private employers.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
OR	Alcohol testing is authorized if there is reasonable suspicion that an applicant is under the influence of alcohol. Drug testing by private employers is not regulated. Public employers may only conduct preemployment drug testing for safety-sensitive positions that involve work posing a great danger to the public. <i>Citation:</i> ORS § 438.435 <i>et seq.</i> ; 659A.300; 659.840; 279.312; 475.300; 825.955.	Alcohol testing is authorized if there is reasonable suspicion that an employee is under the influence of alcohol while on the job. All public contracts must include a condition that the contractor demonstrate an employee drug-testing program. Motor carriers must have drug testing programs. Positive test results must be entered into employee's driving record. <i>Citation:</i> ORS § 438.435 <i>et seq.</i> ; 659A.300; 659.840; 279.312; 475.300; 825.955.	Testing must be done by a third party. All positive test results must be confirmed by a state licensed laboratory. State law allows individuals with chronic pain conditions to take medical marijuana, as long as the treatment is recommended by a physician and the patient has registered with the state. The employer is not required to accommodate the medical use of marijuana in the workplace. An employer may also still prohibit the possession of marijuana or paraphernalia at work. An individual is "under the influence of intoxicating liquor" when blood alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount prescribed in the employer's work	All employers. State contractors. Motor carriers.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
			rules, if there is no applicable collective bargaining provision.		
PA	No statute regulates drug/alcohol testing. If testing is done, however, it's important to maintain an individual's privacy. The Third Circuit has held that an employer's drug testing program may violate public policy and give rise to a wrongful discharge claim if a reasonable person would find the program highly offensive balancing two factors: (1) the employee's privacy interests; and (2) the employer's interest in maintaining a substance-free workplace. <i>Borse v. Piece Goods Shop, Inc.</i> , 963 F.2d 611, 625 (3d Cir. 1992).	No statute regulates drug/alcohol testing. If testing is done, however, it's important to maintain an individual's privacy. 52 Pa. Code § 37.201-206 incorporates the U.S. Department of Transportation Drug and Alcohol testing requirements for transportation employers.	There is no provision for this topic in this state.	There is no provision for this topic in this state.	No program.

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
RI	Applicant testing is authorized in the private sector after an offer of employment has been made. In the public sector, testing is authorized only for jobs involving public safety or when required by federal law. <i>Citation:</i> R.I. Gen. Laws § 28-6.5-1 <i>et seq.</i>	Employee testing is authorized on reasonable suspicion of substance abuse, based on "documented observations, concerning the employee's appearance, behavior or speech," and in conjunction with rehabilitation program. <i>Citation:</i> R.I. Gen. Laws § 28-6.5-1 <i>et seq.</i>	Confirming test is required in case of positive findings, privacy for employee must be maintained in collection of specimen, and employee must have the opportunity to rebut test findings. A written abuse prevention policy is required. Employees who test positive can't be terminated; they must be referred to substance abuse professionals for assistance. If testing shows continued use despite treatment, then they may be terminated. The state medical marijuana law protects patients with debilitating medical conditions, and their physicians and primary caregivers, from arrest and prosecution. Employers may not refuse to employ a qualifying patient who has a	Public and private employers.	No program.



# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			medical marijuana registry identification card, solely based on his or her status as a registered qualifying patient. Nothing in the state medical marijuana law may be construed to require an employer to accommodate the medical use of marijuana in any workplace.		

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
SC	Applicant testing is not subject to restriction. <i>Citation:</i> S.C. Code Ann. § 38-73-500, § 41-1-15; 41-107-10 <i>et seq.</i> ; 42-90-60; 42-11-100.	Testing is authorized, including random testing, with follow-up tests within 30 minutes of initial test. Covered state contractors must certify they will have a drug-free environment. Any employer who is a grantee or state contractor must take appropriate personnel action against an employee convicted of a drug-related offense, up to and including termination within 30 days of receiving notice of the employee's conviction. The employer may require the employee to participate satisfactorily in drug abuse assistance or rehabilitation. <i>Citation:</i> S.C. Code Ann. § 38-73-500, § 41-1-15; 41-107-10 <i>et seq.</i> ; 42-90-60; 42-11-100.	Positive test results must be provided in writing to the employee within 24 hours. Written notification of testing program must be provided when implemented or upon hire.	All employers subject to state workers' compensation law. State contractors with contracts of \$50,000 or more.	Incentives: Employers establishing a drug-free workplace get a deduction from their workers' compensation premiums provided their policy meets certain requirements. Discount is at least five percent. Requirements: Employers with four or more employees (the size employer required to cover workers' compensation insurance) may receive a premium reduction provided the substance-abuse policy includes a statement that the policy balances the employer's respect for individuals with the need to maintain a safe, productive, and drug-free environment; (2) the policy explains that the intent is to help those who need it while sending a message that the illegal use of nonprescription controlled substances or the abuse of alcohol is incompatible with employment; (3) all employees are notified of the drug prevention program and policies at the time it's established or at the time of hire, whichever is earlier; (4) the policy includes random drug testing; (5) the policy requires a second test within 30 minutes after the first test; and (6) the policy dictates that positive results must be provided to the employee within 24 hours. Covered employers: Employers with four or more employees. <i>Citation:</i> S.C. Code Ann. § 38-73-500. Also, §§ 44-107- <i>et seq.</i>

# State Law Chart Builder

Customizable employment law answers for HR

## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
SD	Testing is required of government employee applicants for certain safety-sensitive state jobs, patient/resident care or supervision jobs at the Human Services Center, SD Development Center, and state Veterans' Home, community support provider for the developmentally disabled, and fire fighting jobs with Dept. of Agriculture, but public announcements and advertisements must carry notice of drug-testing requirements. <i>Citation:</i> SDCL § 3-6F-1, § 3-6F-2, § 27B-1-19.	Government employee testing is authorized in the same job categories as applicant testing if there is reasonable suspicion of substance abuse. <i>Citation:</i> SDCL § 3-6F-1(4). Reasonable suspicion for patient and resident care for developmentally disabled employees. n Citation: § 27B-1-19.	Individual test results and medical information collected for drug testing are confidential. This information may be revealed only as authorized by the commissioner of the Bureau of Human Resources. An applicant or employee may have access to the information or test results upon written request to the commissioner. <i>Citation:</i> SDCL § 3-6F-3.	State government.	No program.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
TN	<p>For employers that have opted into the Drug-Free Workplace Program, testing is authorized after applicant is given written notice of the drug-testing policy and a conditional offer of employment is made. Job ads must include notice of testing. Positive results or refusal to test may be grounds for not hiring an applicant.</p> <p>Drivers for child care agencies must be tested for illegal drug use before being allowed to provide transportation services for compensation.</p> <p><i>Citation:</i> Tenn. Code Ann. 50-9-101 <i>et seq.</i>, § 71-3-502(d)(7)(C).</p>	<p>For covered employers opting into the Drug-Free Workplace Program, testing is authorized, including testing on reasonable suspicion, as part of a fitness-for-duty exam, after an on-the-job injury, or as follow-up to a rehabilitation program. Employees must receive 60 days' advance written notice of testing policy, which also must be conspicuously posted.</p> <p>Employers that provide for-hire motor carrier transportation for eight or more passengers or to individuals eligible for TennCare transportation services must conduct mandatory random drug testing of the operators of its motor vehicles in accordance with regulations promulgated by federal DOT. All childcare employers must establish drug-testing policies for employees, directors, licensees, and operators providing services under contract or for remuneration and who have direct contact with a child in the care of the agency. The policy must specify how testing will be completed and must provide for immediate and effective enforcement action in the event of a positive drug test.</p> <p><i>Citation:</i> Tenn. Code Ann. §§ 50-9-101 <i>et seq.</i>, § 65-15-116, § 71-3-502(d)(7)(C).</p>	<p>Confidentiality of test results is required as is a confirming test in case of positive result. Test subjects must have an opportunity to contest or explain positive results within five days of receiving results.</p>	<p>Drug-Free Workplace Program: All employers subject to state workers' compensation law that opt in to the program.</p> <p>Drivers of child care: All persons or entities operating a childcare agency.</p> <p>Motor carrier transportation: All employers that provide for-hire motor carrier transportation for eight or more passengers or to individuals eligible for TennCare transportation services.</p>	<p>Incentives: Employers follow requirements for drug testing are entitled to a reduction in workers' compensation premiums and a presumption that an employee testing positive on a drug test after work-related injury was "intoxicated" at the time of injury and not entitled to workers' compensation benefits.</p> <p>Requirements: The Department of Labor and Workforce Development provides employers wishing to take in the program a kit for following the terms of the statute and then certifies employers' compliance.</p> <p>Covered employers: Employers covered by the workers' compensation law who maintain a drug-free workplace and a statement that the policy is being implemented.</p> <p><i>Citation:</i> Tenn. Code Ann. §§ 50-9-101 through 50-9-114</p>

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
TX	Pursuant to Labor Code § 21.120, employers may adopt policies prohibiting the employment of individuals who currently use or possess a controlled substance other than as authorized by federal or state law. An employer who is required, under the federal safety regulations, to conduct alcohol and controlled-substance testing of employees must report valid positive results of an employee who holds a commercial driver's license issued under the Texas Transportation Code within 10 days to the Texas Department of Public Safety. Residential childcare facilities must implement drug-testing policies. The model policy includes mandatory pre-employment testing, random testing, and testing of employees alleged to have abused drugs. <i>Citation:</i> Tex. Labor Code 21.120, 37 Tex. Admin. Code § 4.21, and Tex.	See Applicant testing column.	There is no provision for this topic in this state.	All employers as to Tex. Labor Code § 21.120. Employers who employ holders of commercial driver's licenses as to 37 Tex. Admin. Code § 4.21. Residential childcare facility employers as to Tex. Human Res. Code § 42.057.	Incentives: None. 28 Texas Administrative Code 169.1 169.2 (the Drug Free Workplace Program), which required covered employers with workers' compensation insurance to adopt policies designed to eliminate drug abuse, has been repealed.

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace program
	Human Res. Code § 42.057.				
UT	No restriction on applicant testing in the private sector. Positive results and/or refusal to test may be grounds for not hiring an applicant. <i>Citation:</i> Utah Code § 34-38-1 <i>et seq.</i>	Employee testing is authorized pursuant to employer's written policy. Testing is also permissible in cases of possible employee impairment; workplace accidents or theft; and safety, maintenance, or productivity/ quality/security maintenance. Employees who test positive or refuse to be tested are subject to referral for rehabilitation or disciplinary action, including discharge. Employers must pay all associated costs. <i>Citation:</i> Utah Code § 34-38-1 <i>et seq.</i>	Documentation showing chain of custody from time of collection is required. Confirming test must be obtained in case of positive findings. Drug or alcohol testing must occur during or immediately after the regular work period of current employees and must be deemed work time for purposes of compensation and benefits for current employees.	Private employers.	Incentives: No statutory incentives, per se, but the drug and alcohol testing statute provides protections against various claims and causes of action if a testing program is implemented in accordance with its provisions. Requirements: To qualify for statutory protection, employer must establish and implement a testing program, and any actions taken as a result of a positive test must be made in good faith. Covered employers: Private employers. <i>Citation:</i> Utah Code § 34-38-1 <i>et seq.</i>

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
VT	<p>Applicant testing is authorized with advance written notice to the applicant, but only after conditional offer of employment has been made. The employer must give applicants a list of drugs to be tested for and must state that therapeutic levels of prescribed drugs won't be reported.</p> <p><i>Citation: 21 V.S.A. § 512.</i></p>	<p>Generally prohibited. Employee testing is authorized as part of an employee assistance program or when there is probable cause for suspicion of substance abuse. Random testing is prohibited. An employer may suspend an employee who tests positive for a period of rehabilitation (up to three months), but the employer may not discharge an employee who agrees to rehabilitation after first positive test. An employee can be terminated if, after completing the program, he or she fails a drug test.</p> <p><i>Citation: 21 V.S.A. § 513.</i></p>	<p>Testing is only permissible when performed by a certified laboratory. Documentation showing chain of custody, confirming test with part of original sample in case of positive findings, opportunity to have the results explained to the employee or applicant, and an opportunity to retest a portion of the sample at an independent laboratory are required. A written testing policy is required. Any individual healthcare information must be taken only by a medical review officer and must be confidential.</p> <p><i>Citation: 21 V.S.A. §§ 514, 515, 516.</i></p> <p>Medical use of marijuana is protected if the patient has a valid registration card. Nothing in the state medical marijuana law may be construed to require an employer to accommodate</p>	Public and private employers.	No program.

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
			the medical use of marijuana in any workplace. <i>Citation:</i> 18 V.S.A. §§ 4472 <i>et. seq.</i>		
VA	No specific provisions for job applicants, but licensed home care organizations and public contractors are required to maintain drug-free workplaces. <i>Citation:</i> VA Code § 32.1-162.9:1; VA Code § 2.2-4312.	Licensed home care organizations, or any home care organization exempt from licensure, must establish policies for maintaining a drug-free workplace. Contractors must agree to provide a drug-free workplace for the duration of the contract and to comply with notice and contract clause requirements. <i>Citation:</i> VA Code § 32.1-162.9:1; VA Code § 2.2-4312.	All positive results from drug testing must be reported to the home healthcare regulatory boards responsible for licensing, certifying, or registering the person to practice. <i>Citation:</i> VA Code § 32.1-162.9:1(B).	Home healthcare organizations. State contractors with over \$10,000 in contracts. <i>Citation:</i> VA Code § 32.1-162.9:1; § 2.2-4312.	Incentives: No incentives program, but a drug-free workplace is required in all contracts with public bodies worth more than \$10,000. Requirements: Public bodies must include in every contract of over \$10,000 the following provisions: Contractors must provide a drug-free workplace (2) post notice to employee that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that be taken against employee violations of such prohibitions state in all solicitations or advertisements for employment that the contractor maintain drug-free workplace, and (4) include the provisions of the foregoing clauses in every subcontract or purchase over \$10,000, so that the provisions will be binding on each subcontractor or vendor. Covered employers: Public contractors. <i>Citation:</i> VA Code § 2.2-4312 <i>et. seq.</i>



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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
WA	Medical Use of Marijuana Act (MUMA) does not create liability for refusing to hire applicant who fails a post-offer, preemployment drug test allegedly due to medical use of marijuana. <i>Citation:</i> Roe v. TeleTech Customer Care Management, 171 Wash. 2d 736 (2011).	The MUMA and Washington Initiative I-502 do not require "any accommodation of any on-site medical use of cannabis in any place of employment" and that "employers may establish drug-free work policies. Nothing in this chapter requires an accommodation for the medical use of cannabis if an employer has a drug-free work place." <i>Citation:</i> RCW 69.51A.060. See also Rhodes v. URN Stores, Inc., 95 Wn App. 974 (1999) (drug-free workplace policy as BFOQ). Public employers: Wash. Admin. Code § 357-37-200.	Public employers: Wash. Admin. Code § 357-37-200.	Public employers: Wash. Admin. Code § 357-37-200.	N/A.

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace prog
WV	<p>Yes.</p> <p><i>Citation: W. Va. Code § 21-3E-1 et. seq.</i></p>	<p>The Safer Workplaces Act passed in 2017 (W. Va. Code § 21-3E-1 et seq.), significantly expanded the circumstances under which private employers may conduct drug and alcohol testing, but still contains some important limitations. Under the Act, employees and job applicants may be tested for the presence of drugs and alcohol as a condition of continued employment or hiring, and authorizes drug testing for the following reasons:</p> <ul style="list-style-type: none"> <li>• Deterrence and/or detection of possible illicit drug use; possession, sale, conveyance, distribution or manufacture of illegal drugs, intoxicants, or controlled substances in any amount or in any manner, on or off the job; or the abuse of alcohol or prescription drugs;</li> <li>• Investigation of possible individual employee impairment;</li> <li>• Investigation of workplace accidents, incidents of employee theft, or other employee misconduct;</li> <li>• Maintenance of safety for employees, customers, clients, or the public at large; or</li> <li>• Maintenance of productivity, quality of products or services, or security or information.</li> </ul> <p>The new law is not without limitations, however:</p> <ul style="list-style-type: none"> <li>• The employer must have a written policy related to testing (for applicants and current employees) before it tests employees or applicants;</li> <li>• The employer may not take any adverse employment action before a confirmatory drug test, by an approved laboratory, has come back positive;</li> <li>• The employer bears the cost of the testing, including payment to the employee for the time spent having the testing complete and transportation to the testing site, if necessary;</li> <li>• The employee must be given the opportunity to provide information which might bear upon the results of the test (i.e. prescription drug information);</li> <li>• Employer must provide employee information on any resources made available to employees by the employer upon request; and</li> <li>• The employer must not use or disclose communications relevant to an individual's test results expect in a proceeding related to the Act.</li> </ul> <p>Public-improvementcontractors and their subcontractors are required to implement and maintain a drug-free workplace program. West VirginiaAlcohol and Drug- Free Workplace Act, W. Va. Code §§21-1D-1, et seq.</p> <p>Coal mine operators are also required to implement a substance abuse screening policy and program. W.Va. Code § 22A-1A-1 et seq.</p>	<p>Any employee who attempts to pass a drug test by using another individual's sample or who adds anything to a sample to make it impure is guilty of a misdemeanor. Anyone who possesses, sells, or advertises for the sale or distribution of any product to pass drug and alcohol tests is guilty of a misdemeanor. The penalties include a fine of up to \$1,000 for a first offense, a fine of up to \$5,000 for a second offense, and a fine of up to \$10,000 plus up to one year of imprisonment for third and subsequent offenses. W. Va. Code § 60A-4-412.</p> <p>Public-improvement contractors and their subcontractors are required to implement and maintain a drug-free workplace program. West</p>	<p>Private employers and public-improvement contractors with contracts valued at \$100,000 or more.</p>	<p><b>Incentives:</b> A reduction in workers' compensation premiums may be granted employers who successfully complete a loss-prevention program that includes the establishment of a drug-free workplace.</p> <p><b>Covered employers:</b> Priv employees.</p> <p><i>Citation: W. Va. Code § 23-2-4(a)(2)(B).</i></p>

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
			Virginia Alcohol and Drug-Free Workplace Act, W. Va. Code §§ 21-1D-1, et seq.		

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
WI	Wisconsin has no law that expressly regulates substance-abuse testing. Section 103.53(3) requires substance abuse programs, including random, reasonable suspicion, and post-accident drug testing, except for those employers performing work on public projects. Of course, federal laws including the Drug Free Workplace Act, Department of Transportation rules, and Department of Defense rules apply regarding alcohol and drug testing in the workplace. If an employer intends to test employees for alcohol or drugs, the employee handbook should so advise. For unionized employees, testing has been held to be a mandatory subject of bargaining. Alcohol addiction is considered a disability under Wisconsin law, so an employer may have a duty to reasonably accommodate an applicant or employee who tests positive or admits to alcohol addiction. Currently, the	See Applicant testing column.	There is no provision for this topic in this state.	Employers performing work on public projects.	No program.

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	Wisconsin Labor & Industry Review Commission does not recognize hair samples for drug testing. Accordingly, it is currently unlikely that an employer can challenge unemployment compensation to employees terminated for testing positive for drugs using a hair sample. <i>Citation:</i> Wis. Stat. § 103.503.				

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
WY	The state doesn't regulate drug/ alcohol testing, but the question of reasonableness of employer testing has been addressed in federal and state court, primarily in wrongful termination and invasion of privacy cases. In Employment Sec. Comm'n v. Western Gas Processors, Ltd., 786 P.2d 866 (Wyo. 1990), an employee filed a claim for unemployment benefits after quitting rather than submitting to a urine drug test. that the employee had been constructively discharged and was entitled to unemployment compensation. The court also ruled that under the circumstances the demand to submit to the test was unreasonable. In Wyoming Dep't of Employment v. Rissler & McMurry Co., 837 P.2d 686 (Wyo. 1992), the court didn't address the reasonableness of the employer's drug/alcohol testing policy because the employer didn't follow its policy in	See Applicant testing column.	There is no provision for this topic in this state.	There is no provision for this topic in this state.	No program.

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	requiring the employee to submit to the test. The court held that, where a drug/ alcohol test is not in accordance with the employer's established policy, an employee's refusal to take the test is not misconduct that will disqualify him from unemployment compensation. In Greco v. Halliburton Company, 674 F. Supp. 1447 (D. Wyo. 1987), the federal court ruled that urine analysis tests required by an employer don't violate public policy against invasions of privacy. Finally, in Duncan v. Afton, Inc., 991 P.2d 739 (Wyo 1999), the employer's conduct was not directly addressed, but the court held that the collection company owed a duty of care to the employee when collecting, handling, and processing the employee's urine sample for the purpose of performing substance-abuse testing. The Wyoming				

# State Law Chart Builder

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## Drug and Alcohol Testing

- Does your state regulate drug and alcohol testing?

State	Applicant testing	Employee testing	Conditions/ methods	Covered employers	State drug-free workplace progr
	Supreme Court held employers may receive a discount on workers' compensation premiums by participating in a drug and alcohol testing program approved by the Wyoming Workers' Safety and Compensation Division. Wyo. Stat. § 27-14-201(o); Department of Employment, Workers' Compensation Division Rules and Regulations, Chapter 2, Section 8.				