

Best Practices for Non-DOT Post-Accident Testing

Program Considerations
for Successful Implementation



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Executive Summary

On the whole, employee drug abuse has the potential to negatively impact any business, regardless of size or industry; however, when employee drug abuse is the cause of workplace accidents, the impact exponentially increases.

According to a National Institute on Drug Abuse (NIDA) study, substance abusers are up to four times more likely to be involved in on-the-job accidents, and five times more likely to file workers' compensation claims. In addition, some states permit insurance companies to deny or reduce workers' compensation benefits if an employee involved in an accident was impaired or intoxicated at the time of the accident.



Simply put, organizations that implement a drug testing program that includes post-accident testing can gain a substantial edge over their competition by boosting workplace safety, saving on insurance costs and improving the overall worker's compensation experience, while reducing legal liability and the myriad costs and consequences associated with workplace accidents.

To assist in establishing an effective post-accident drug screening protocol or revising an existing program, this paper skips the complicated industry jargon and, instead, offers a simple, plain-English guide to the basics of post-accident testing. Readers will be exposed to fundamental drug testing concepts, how post-accident testing works, its legal limitations and key program considerations, along with a high-level workflow to clearly illustrate core components of a post-accident drug testing process.

This paper is written for organizations that are not regulated by the U. S. Department of Transportation (DOT), and is not intended for organizations that are DOT-regulated.

What is Drug and Alcohol Testing?

A drug test is designed to screen for the presence of any detectable amount of an illegal drug or a legal drug not legally prescribed. An alcohol test is designed to screen for the presence of alcohol in an individual's system which equals or exceeds a blood alcohol content (BAC) of a specific amount as determined by federal, state, local law or the company policy.

A drug test is typically conducted using urine, oral fluid or hair specimen, while an alcohol test can be conducted using a breath, saliva or blood specimen.

Typical Drug and Alcohol Testing Options

Several substance abuse testing options are available to employers, depending on their federal, state and industry requirements, and their unique organizational needs. Consultation regarding the implementation of testing options available within one or more states and in accordance with the federal guidelines should be carefully discussed. The types of tests available are as follows:

- Pre-employment
- Post-accident – the focus of this paper

- Reasonable cause
- Random
- Return-to-duty
- Follow-Up

Standard Definition of Post-accident Testing

With the exception of some state-specific laws and certain federal regulations such as those enforced by the Federal Motor Carrier Safety Administration (FMCSA), post-accident testing generally involves performing a drug and alcohol test on all employees involved in accidents occurring during work time or on company property. Covered accidents include, but are not limited to, accidents that employees caused or contributed to that involve: 1) personal injury to employees or others which necessitates medical attention, or results in lost work time; and 2) damage to company property.

Employees involved in accidents occurring during work time or on company property are expected to make themselves available for post-accident testing. If circumstances require an employee to leave the scene of an accident, the employee must make a good faith attempt to be tested and to notify the company of his or her location.

Any employee who fails to report any work-related accident is typically in violation of the company policy and is subject to disciplinary action, up to and including termination. Testing should never take precedence over necessary emergency medical care.

Who is Screened in Post-accident Testing?

In general, post-accident testing involves screening: 1) the injured employee; and 2) the employee who caused the accident, the situation or damage to company property.

The decision to require a test is based on the accident and/or injury as outlined by the company policy to conduct such testing.



How Soon Should Employees Be Tested Following an Accident?

A post-accident drug test should be performed as soon as possible, though the standard is up to 32 hours after the accident occurred. This is based on the estimated time frame that drugs remain detectable in the system. Alcohol tests are much more time sensitive and should be performed within two (2) hours, but not to exceed eight (8) hours following the accident due to the short duration of time alcohol remains in the blood system.

If testing is not performed within recommended time frames, all attempts to test the individual(s) should cease and reason(s) the test was not performed should be documented and recorded.

How Are Off-site Accidents Handled?

In situations when an accident occurs outside of normal business hours, or in an area outside the primary collection facility, organizations should develop and follow detailed internal policies and procedures that govern how and when to conduct post-accident testing.

Specifically, organizations should establish a designated contact person or procedure to consistently determine:

- If a post-accident test is required.
- Where to report for testing.
- How the employee should be transported to and from the collection site.

For organizations that opt to work with a TPA, look for reputable providers that offer a comprehensive drug testing solution that includes support for program administration and “after hour” services.

Jurisdictions That Prohibit or Restrict Post-accident Testing

Due to a variety of issues involving restrictions on drug testing and worker privacy rights, some jurisdictions (including state and city-specific regulations) either prohibit or restrict post-accident testing. Organizations should work with their internal human resource team and legal counsel to determine which, if any, state-specific laws apply to them.

While the list below is subject to change based on evolving laws, it includes all jurisdictions that currently prohibit or restrict post-accident testing.

State	Prohibited	Restricted
Arkansas*		X
Boulder, Colorado		X
Connecticut	X	
Iowa		X
Maine	X	
Massachusetts		X
Minnesota	X	
Mississippi*		X
Montana		X
Rhode Island	X	
San Francisco, California	X	
Tennessee*		X
Vermont	X	
West Virginia	X	

* Arkansas and Tennessee offer voluntary benefits under their state’s law. If a company is not interested in complying with the voluntary benefits, then there are no restrictions regarding post-accident testing.

Program Considerations



As mentioned earlier, it is essential that organizations consult with internal HR teams and legal counsel regarding local state and federal laws, and related employment law matters in order for any substance abuse testing program to be successful, particularly one that includes post-accident testing.

In addition, organizations should also:

- Address and meet all legal obligations to ensure the legal rights of an organization and its employees are protected.
- Fully develop and properly document all aspects of a drug screening and post-accident testing program, including any unique, organization-specific or industry-specific requirements, situations or circumstances.
- Effectively communicate all program requirements to all employees.
- Ensure that if a third-party administrator (TPA) is utilized, it offers:
 - Compliant, user-friendly policies and procedures to assist in the development and maintenance of a quality program.
 - Advanced, web-enabled technology and nationwide collections sites to promote the most streamlined, candidatefriendly process.

Sample Post-accident Workflow

To help organizations interested in taking the next step toward developing or revising a post-accident testing policy, below is a simplified workflow to help illustrate the core, high-level program components.

Step 1: Determine when to test. There are significant differences when testing options may be required, and different criterion used for post-accident testing if operating in multiple states. It is imperative to understand when testing is warranted, and then to ensure the proper procedures are followed. The criteria for post-accident testing are typically outlined in an organization's Substance Abuse Policy which should be carefully reviewed and understood.

Step 2: Obtain appropriate management approval. It is common to require that all accidents be reported to a designed company representative for notification purposes as well as assessment to properly determine if testing should take place.

Step 3: Notify employee of the required test. If the incident meets the criteria that would mandate a test, notification and instructions to proceed for testing should be provided to the employee. If an incident does not meet the testing requirements and the decision not to require a test is made, proper documentation of this assessment should be maintained.

Step 4: Determine if medical assistance is needed. While discussing the incident with the employee as outlined in Step 2 above, it should be determined if medical treatment may be necessary. The employee's physical well-being should always be a higher priority than conducting a drug test, thus medical treatment must be attended to first. Also at this time, it would be appropriate to determine if safe transportation to the collections facility will be necessary.

Step 5: Notify the collection site. Depending upon the situation that evolves, it may be best to call ahead to the collection site to inform them that an employee will be arriving, along with the reason and services needed. In the event the accident occurred outside of the established testing facility, organizations should refer to their contingency plan in locating a site to ensure testing takes place.

Step 6: Provide employee with the appropriate testing materials. Specific forms and information are usually required by the employer and the collection site, such as: 1) Custody and Control Form (CCF); 2) Collection Site Instruction Sheet; or 3) Test Appointment Form.

Step 7: Complete post-accident report. As soon as possible, the designated company representative should complete a detailed report surrounding the incident and file according to company policy.



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