

Clearing Up The Confusion About Substance Abuse Testing

2018 Indiana Safety and Health Conference and Expo

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Items to cover

- Latest Trends in Substance Abuse
- Understanding Reasonable Suspicion
- Misconceptions about drug testing

Latest Trends: What is being detected in workplace?

- #1 – Marijuana
 - In Indiana – data from MTS/construction industry - 63% of verified positives have marijuana identified, correlating to a 1.1% positive rate (2016, approximately 124,000 total tests)
 - Nationally – data from Quest Diagnostic's Drug Testing Index – based on 2016 data:
 - 2.4% positivity rate in urine samples (almost 9M samples tested)
 - 8.9% positivity rate in oral fluid samples (>1.3M samples tested)
 - 7.3% positivity rate in hair samples (170,000 samples tested)

What else is detected in workplace?

- #2 - Cocaine
- #3 - Amphetamines/Methamphetamines
- #4 – Opioids (heroin, illegal used of prescription opioids)

- Very low positivity rates: PCP, Ecstasy, K2/Spice, other prescription categories

DOT panel change effective 1-1-2018

- Panel changes include:
 - Addition of semi-synthetic opioids*: hydrocodone, hydromorphone, oxycodone, and oxymorphone
 - Some common names for these semi-synthetic opioids include OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, Exalgo®.
 - Addition of MDA (ecstasy metabolite) to initial screening process
 - Removal of MDEA (ecstasy metabolite) from confirmation testing process

Complete DOT panel now looks like:

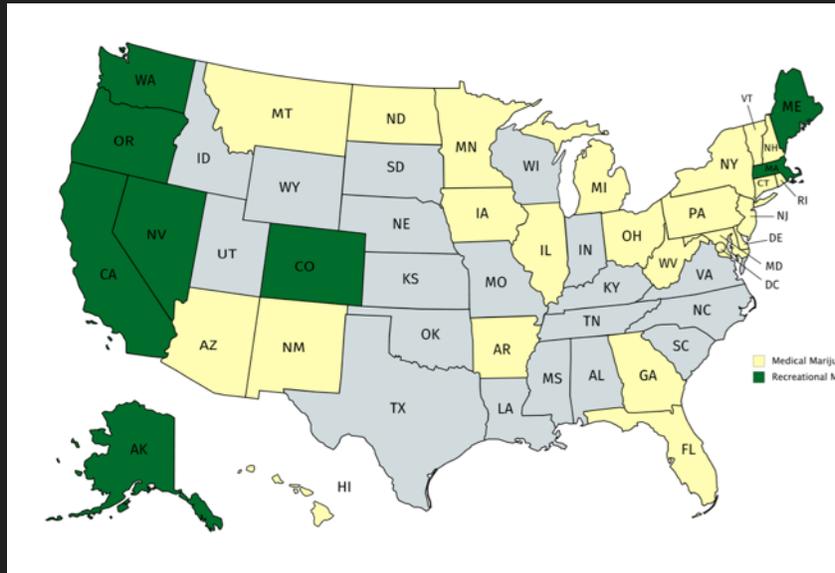
Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	Benzoylecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

Impact of panel change

- Higher cost of testing – increase lab costs and MRO costs
- Higher number of tests will require a MRO review for prescriptions
- Will see more delays in reporting results due to MRO process
- Will likely see a slight increase in overall positive rate

Marijuana Legalization

- Medical Marijuana laws
 - 29 states plus D.C.
 - 15 states allow use of “low THC, high cannabidiol (CBD)” for limited situations
- Recreational Use – 8 states plus D.C.
 - Colorado & Washington – 2012
 - Alaska, Oregon & D.C.– 2014
 - Nevada, California, Maine, Massachusetts - 2016



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Campaigns to support Legalization



Impact on DOT Testing

- Very clear – employees in a DOT covered position cannot use marijuana – it is a Schedule I drug and therefore illegal under Federal law.
- DOT/ODAPC website has two statements, one from 2009 and one from 2012 that clearly state this.

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Impact on Non-DOT testing

- A company's policy will be VERY important
- Employers can still test for marijuana in states that have medical or recreational marijuana laws in place
- Many policies are based on DOT protocol so they follow the same logic
- State laws vary a lot – most laws and court cases so far have been in favor of employers and not the employee (AZ would be a good exception)

Is there a test for Impairment?

- No
- A drug test detects past usage but it cannot tell you how long ago a person used or how much they used
- It is reasonable and legal for employers to expect current employees in safety-sensitive positions to refrain from marijuana use as a condition of employment

CBD Hemp Oil

- What is it? Cannabidiol Hemp Oil – made from cannabis (marijuana) plant but usually has a very low THC content
- Studies focus on it's ability to treat anxiety, epilepsy, inflammation, cancer, and chronic pain
- It's not currently approved by the FDA for treatment
- Will use be detected on workplace drug test?

What is Reasonable Suspicion?

- If there is reason to believe through observation, that an employee's appearance, behavior, speech or body odor indicates alcohol or drug use, then the employer should proceed with a reasonable suspicion drug and/or alcohol test

Why Are Supervisors Reluctant To Test For Suspicion?

- Could be wrong
 - If the test is negative – fear of litigation
- Hassle, too much trouble
- Shortage in labor force, no one else can do his/her job
- Is a friend (co-worker)
- Person will get fired
- Don't feel properly trained

Why Should Employers Test For Suspicion Situations?

- Safety
- Litigation
- Biggest reason – ME
 - Supervisors have to live with themselves - it is the “right” thing to do if you want to help the person
 - Employee has “drug to blame” – supervisor only has “self” to blame
 - “Why didn’t I test him/her”?

Reasonable Suspicion Action Steps

Step 1: Recognition

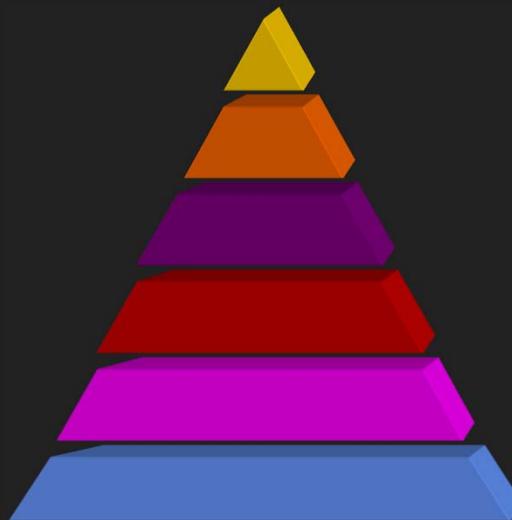
Step 2: Investigation

Step 3: Documentation

Step 4: Consultation

Step 5: Intervention

Step 6: Follow - up



Step 1: Recognition

- Be attentive to changes in the employee's ability to conduct the job competently, and monitoring for any difficulties that can compromise workplace safety
- Noting, in particular, any changes in:
 - Performance
 - Attendance
 - Behavior

Step 2: Investigation

- Look for other signs or symptoms that may indicate a problem
- See if others have witnessed the same behaviors
- Confirm behaviors are consistent with substance misuse
- Enlist help from other trained supervisors to observe/identify behaviors

Step 3: Documentation

- Keep a written record of any job-related difficulties you observed. Focus on job-related behavior, and answer the questions:
 - Who, What, When, Where?
 - What about the behavior appeared impaired?
 - Who else observed the behavior?
 - Is this behavior unusual for this person?
- Supervisors should not diagnose, only document what has been observed

Step 4: Consultation

- Meet with another supervisor, Human Resources, or the Safety Officer
- Refer back to the company policy on the situations where reasonable suspicion testing is appropriate
- Reach a decision on what action to take
- Decide how the employee is going to be approached
- Only trained supervisors can make observations that prompt a test

Step 5: Intervention and Referral to Testing

- Meet with the employee in a private place, and inform them that you are concerned about his/her performance – focus on safety
- State the problem, referring to the documentation of the specific event(s)
- Explain why a suspicion (drug and/or alcohol) test is required
- Immediately relieve an employee from any safety-sensitive functions

Step 5: Testing considerations

- Who should take the employee to the testing facility?
- What if the employee refuses to test?
- What do we do while waiting for the drug test results?
- Can I require an observed collection?

Step 6: Follow-up

- If the test is positive
 - Follow your policy regarding the consequences of a policy violation
- If the test is negative
 - The Supervisor still needs to take follow-up action to address the performance issue that initiated the reasonable suspicion action

Reasons why the test may be negative:

- Abusing drug that isn't detected on panel
- Employee "beat" the test by substitution
- Signs & symptoms were due to medical condition
- Abusing a legal prescription
- With alcohol, waited too long for test

Alternative options to consider in future:

- Fitness for duty evaluations
- Expanding testing panel (policy issue)
- Focus on job performance and other policy violations

Misconceptions:

- Misconception:
 - Workplace drug testing will always detect abuse of prescription drugs.
- Reality:
 - Very difficult to prove abuse of prescription drugs with a workplace drug test.

Misconception:

- Misconception:
 - Hair testing is the best testing method for detection of illegal drug use in the workplace.
- Reality:
 - For some situations, this may be true but there are many variables to consider:
 - Not a good choice for post-accident or reasonable suspicion reasons for testing
 - Testing panels can be limited
 - Hair challenged individuals
 - Lack of laboratory standards

Misconception

- Misconception:
 - When a DOT covered driver tests positive, their CDL will automatically be suspended.
- Reality:
 - For most states (including Indiana), positive DOT test results are not reported to the agency that issues Commercial Driver's Licenses.
 - An employer should not knowingly allow a driver to perform safety-sensitive functions that require a CDL after notification of a testing violation.
 - FMCSA is working on establishing a clearinghouse to track testing violations which could be tied back to a State's DMV/BMV

Misconception

- Misconception:
 - If an employees tests positive for alcohol in the morning, it could be detecting alcohol they drank the night before and they really aren't impaired.
- Reality:
 - Breath alcohol testing is the equivalent of a blood alcohol test and does reflect impairment.
 - Alcohol metabolizes at a rate of approximately 1 drink/hour (1 drink = 12 oz beer, 5 oz wine, 1.5 oz 80 proof liquor)

Thank you

Questions?

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