**PRIVILEGED AND CONFIDENTIAL**

**GUIDELINES FOR MANAGEMENT USE ONLY**

***[EMPLOYER NAME]***

**STATE ADDENDA GUIDE TO NON-DOT REGULATED DRUG AND ALCOHOL TESTING POLICIES FOR APPLICANTS AND EMPLOYEES**

**(NON-DOT-REGULATED)**

**(For All 50 States, Excluding Maine, including the District of Columbia)**

**As of January 8, 2024**

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# ALABAMA

## Marijuana

* Alabama has a CBD law that allows CBD use for certain “debilitating medical conditions”. The CBD must contain no more than 3% THC.
* Alabama enacted a medical marijuana law effective May 17, 2021. The law permits employers to enforce their drug testing policies and does not permit lawsuits against employers for employment decisions related to the use of medical marijuana.

# ALASKA

## Marijuana

* Alaska has a medical marijuana law and a recreational marijuana law. These laws do not provide any specific employment protections to applicants or employees.

# ARIZONA

* To take advantage of the voluntary law in Arizona creating a rebuttable presumption that the drug or alcohol test is valid, the policy must cover all employees including officers, directors, and supervisors.
* In Arizona,“employee” includes any person in the service of an employer.
* “Safety-sensitive positions” are generally defined as those positions designated by the Company as safety-sensitive or those jobs that include tasks or duties that the Company in good faith believes could affect the safety or health of the employee performing the task or others, including but not limited to the following categories of jobs:
  + operating a motor vehicle, other vehicle, equipment, machinery, or power tools;
  + repairing, maintaining or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage;
  + performing duties in the residential or commercial premises of a customer, supplies or vendor;
  + preparing or handling food or medicine; or,
  + working in any occupation regulated by Arizona Rev. Stat. title 32.
* Employers must provide transportation or pay reasonable transportation costs to employee if the drug or alcohol testing is conducted at a location other than the employee’s normal work site.
* The policy must be distributed to all employees.

## Reasonable Suspicion

* An employee can be required to submit to a drug and/or alcohol test whenever the Company has reasonable suspicion that the employee may be affected by drugs or alcohol when that use may adversely affect job performance or the work environment or to investigate possible individual impairment. Reasonable suspicion may arise from, among other factors, supervisory observation, co-worker reports or complaints, lawful surveillance video, or symptoms that an employee while working may be under the influence of drugs or alcohol that may decrease or lessen the employee's performance of the duties or tasks of the employee's job position, including symptoms of the employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, irrational or unusual behavior, negligence or carelessness in operating equipment, machinery or production or manufacturing processes, disregard for the safety of the employee or others, involvement in an accident that results in serious damage to equipment, machinery or property, disruption of a production or manufacturing process, any injury to the employee or others or other symptoms causing a reasonable suspicion of the use of drugs or alcohol.

## Post-accident testing:

* Post-accident testing is permitted if the test is administered as soon as practicable following the accident and only those employees whom the employer reasonably believes contributed to the accident are tested.
* Employees have the right to obtain a written copy of the test result and to explain, in confidence, the test result.
* All testing must be conducted at laboratories certified by DHHS, the College of American Pathologists, or the Arizona Department of Health Services.

## Marijuana

### Medical Marijuana:

* Due to recent case law in Arizona, the Company should not take disciplinary action against a medical marijuana user who tests positive for marijuana without clear evidence that the employee was under the influence at work. This is a very high burden, and we recommend that the Company consult with counsel when addressing medical marijuana issues in Arizona.

### Recreational Marijuana:

* Arizona also has a recreational marijuana law which does not include employment protections.

# ARKANSAS

## Marijuana

* The Company should engage in the interactive process and direct threat analysis before taking adverse employment actions against medical marijuana users, unless the exception applies (and the job has been designated safety-sensitive in the job description). We also recommend consulting with counsel in these situations, which are very fact-specific.

### Medical Marijuana:

* Arkansas has a medical marijuana law that prohibits discrimination against medical marijuana users. The Company should engage in the interactive process and direct threat analysis before taking adverse employment actions against medical marijuana users. However, there are exceptions for safety-sensitive positions. “Safety sensitive” positions are generally defined as:
  + positions involving safety sensitive functions under U.S. Department of Transportation regulations or other federal or state agency;
  + positions **designated in the written job description by an employer as safety sensitive** and in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety, including a position that requires carrying a firearm; performing life-threatening procedures; working with confidential information or documents pertaining to criminal investigations; or working with hazardous or flammable materials, controlled substances, food or medicine; and
  + positions in which a lapse of attention could result in injury, illness, or death, including positions that require operating, repairing, maintaining, or monitoring heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties.

# CALIFORNIA

**(including the city of San Francisco, but see San Francisco-specific requirements below)**

* In California (including the city of San Francisco), when conducting any type of drug and/or alcohol test under this policy, the Company should be aware of the requirements of the California Consumer Credit Reporting Act. The law provides that an employer who “collects, assembles, evaluates, compiles, reports, transmits, transfers or communicates” information about an employee’s “character, general reputation, personal characteristics or mode of living”, must comply with the law’s disclosure requirements. Workplace drug testing conducted by employers apparently is covered by the broad language of the statute.
* Sample consent forms for use in California are attached.
* An employer cannot use as a factor in determining any condition of employment (including promotion and termination), any record of arrest that did not result in a conviction, or any record regarding a referral to, and participation in, any pretrial or post-trial “diversion program” (i.e., court-ordered drug treatment programs).

## Post-Accident Testing:

* Employees have a right of privacy in the context of workplace drug testing. “Suspicion-less” drug and alcohol testing such as “automatic” post-accident testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions. In California, automatic post-accident testing should be limited to employees performing safety-sensitive functions.

## Random Testing:

* Employees have a right of privacy in the context of workplace drug testing. “Suspicion-less” drug and alcohol testing, such as random testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions.
* Due to the privacy issues in California, post-voluntary rehabilitation return-to-duty and follow-up drug and alcohol testing should be limited to safety-sensitive employees and the testing should be conducted only upon the recommendation of the SAP. To ensure the treating SAP can make an informed decision regarding the need for such testing, it is important for the Company to provide sufficient details concerning the nature of the employee’s job to the treating SAP.
* In California, urine specimen collections under direct observation are prohibited.

## Marijuana:

* California has both a medical marijuana law and a recreational marijuana law. Those laws do not provide protections to employees or applicants and case law in California indicates that employers may enforce their drug testing policies. **However, effective January 1, 2024, marijuana use will be legally protected, and employers will not be permitted to discriminate against individual who use marijuana off-duty. Employers will only be able to test for marijuana if the tests can detect psychoactive components of marijuana (i.e., recent use). Given that drug tests currently available cannot distinguish between psychoactive and nonpsychoactive components of marijuana, we do not recommend any marijuana testing in CA as of January 1, 2024.**

## CALIFORNIA JOB APPLICANT AUTHORIZATION FOR USE AND DISCLOSURE OF MEDICAL/TESTING INFORMATION

I authorize any laboratory that the Company designates to analyze the specimens collected as a result of my drug and/or alcohol test – to release to the Company, including but not limited to its designated Medical Review Officer, the results of any test for drugs and/or alcohol performed on me, *and* any other information relevant to my drug and/or alcohol test.

I acknowledge, authorize, and agree that the information provided pursuant to this authorization may be used by the Company in connection with any decision pertaining to my prospective employment and qualifications for employment.

This authorization is effective immediately and shall remain in effect for one (1) year from the date I sign it.

I have read the above and further understand that I have a right to receive a true copy of this authorization upon my request.

A copy of this executed authorization shall be deemed as valid as the original.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Job Applicant Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Job Applicant Printed Name

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Printed Name

## CALIFORNIA EMPLOYEE AUTHORIZATION FOR USE AND DISCLOSURE OF MEDICAL/TESTING INFORMATION

I authorize any laboratory that the Company designates to analyze the specimens collected as a result of my drug and/or alcohol test – to release to the Company, including but not limited to its designated Medical Review Officer, the results of any test for drugs and/or alcohol performed on me, *and* any other information relevant to my drug and/or alcohol test.

I acknowledge, authorize, and agree that the information provided pursuant to this authorization may be used by the Company in connection with any decision pertaining to my employment and qualifications for employment.

This authorization is effective immediately and shall remain in effect for one (1) year from the date I sign it.

I have read the above and further understand that I have a right to receive a true copy of this authorization upon my request.

A copy of this executed authorization shall be deemed as valid as the original.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Employee Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Employee Printed Name

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Printed Name

# SAN FRANCISCO, CALIFORNIA

* In San Francisco, CA., every employer that employs employees for salary or wages must adopt a Drug-Free Workplace Policy that, at a minimum, includes the distribution or prominent display of educational information regarding the adverse effects of using illegal drugs and the availability of substance abuse assistance programs. This requirement may be satisfied by distributing a copy of the San Francisco Drug Free Workplace Ordinance. A copy of the ordinance is provided.
* There are limitations regarding an employer’s ability to base employment decisions on an employee’s conviction of a crime that has been decriminalized since the date of the employee’s sentencing, including the non-commercial possession, use and cultivation of marijuana.
* In San Francisco, CA., post-voluntary rehabilitation return-to-duty and follow-up drug and alcohol testing are prohibited.
* In San Francisco, CA., the law permits only urine testing for drugs.
* In San Francisco, CA.,the employer must provide the employee who tests positive, at the Company’s expense, the opportunity to have the original specimen re-tested by another State licensed independent laboratory/testing facility. The employer also must provide the employee with a reasonable opportunity to rebut or explain his or her test result.
* Mandatory city law does not permit breath testing in San Francisco, CA.**,** so blood testing for alcohol should be used.

## Reasonable Suspicion Testing in San Francisco:

* An employee can be required to submit to a drug test when the Company has reasonable suspicion to believe that an “employee’s faculties are impaired on the job and the employee is in a position where such impairment presents a clear and present danger to the physical safety of the employee, another employee, or to a member of the public.”

## Post-Accident Testing in San Francisco:

* **Prohibited, unless there is reasonable suspicion as defined above.**

## Random Testing in San Francisco:

* **Prohibited.**

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## ARTICLE 40

ARTICLE 40:  
DRUG FREE WORKPLACE ORDINANCE

|  |  |
| --- | --- |
| Sec. 4001. | Title. |
| Sec. 4002. | Findings. |
| Sec. 4003. | Definitions. |
| Sec. 4004. | Adoption of Drug Free Workplace Policy. |
| Sec. 4005. | City Undertaking Limited to Promotion of General Welfare. |
| Sec. 4006. | Preemption. |
| Sec. 4007. | Severability. |

SEC. 4001. TITLE.

This ordinance shall be known as the San Francisco Drug Free Workplace Ordinance.

(Added by Ord. 339-89, App. 9/28/89)

SEC. 4002. FINDINGS.

The San Francisco Board of Supervisors finds as follows:

(a) Drug abuse in the United States has become a national health and economic problem. As much as $100 billion a year may be diverted from legitimate businesses to buy illegal drugs, while the costs to individual companies usually exceeds 2.5 percent of payroll.

(b) Law enforcement focuses on reducing the supply of illegal drugs. However, to reduce effectively the abuse of drugs the demand for such drugs must be reduced.

(c) If employers persuade a major portion of the nation's drug users to abandon drug use for the sake of retaining their jobs, they will undercut the economic base of the drug business. Accordingly, it is important that there be a corporate response to drug use in the workplace.

(d) It is the intent of the Board of Supervisors that the San Francisco Drug Free Workplace Ordinance be a first step in reducing the use of drugs in the workplace.

(Added by Ord. 339-89, App. 9/28/89)

SEC. 4003. DEFINITIONS.

(a) "Employee" means any person working for salary or wages within the City and County of San Francisco except that "employee" shall not include individuals providing child-care or other personal services in one's home.

(b) "Employer" means any individual, firm, corporation, partnership or other organization or group of persons however organized, located within the City and County of San Francisco, that employs employees for salary or wages. "Employer" shall not include the United States of America, the State of California or other governmental agency whose workplace policies the City and County of San Francisco may not regulate.

(Added by Ord. 339-89, App. 9/28/89)

SEC. 4004. ADOPTION OF DRUG FREE WORKPLACE POLICY.

Every employer shall adopt a Drug Free Workplace Policy. At a minimum, that policy shall include the distribution or prominent display of educational information regarding the adverse effects of using illegal drugs and the availability of substance abuse assistance programs. This requirement may be satisfied by distributing to employees or prominently displaying the following statement or any materials containing the substance therein. The information contained in this statement shall be reviewed annually by the Health Commission for accuracy, with any suggested changes to the statement to be referred to the Board of Supervisors for review and consideration for approval. The information contained in this statement shall also be provided by the City in Spanish, Chinese, Tagalog and in any other language as may be requested by employers.

The City and County of San Francisco is committed to working toward a drug-free workplace. To that end, the following information is provided to increase your awareness that substance abuse can create life-threatening situations, can aggravate pre-existing psychological problems which users may or may not have experienced in the past, and can create psychological problems on its own:

1. Using illegal drugs, or using prescription drugs without prescriptions, or abusing any substance by ingestion, injection, or inhalation, has the potential to kill the user.

Consider these facts concerning some commonly abused substances:

|  |  |
| --- | --- |
| - | COCAINE, INCLUDING CRACK COCAINE, IS A KILLER |
| • | Every dose of cocaine poses the risk of death for the user. |
| • | The amount of cocaine used safely yesterday can kill the user tomorrow depending on his or her general physical condition, age, race, heredity, sex, emotional state, health, the amount of exercise engaged in, alcohol or other substance ingested. |
| • | Even one line of snorted cocaine has been known to kill the user. |
| • | Cocaine and crack kill by causing HEART ATTACK, BRAIN SEIZURE, CARDIAC ARREST, STROKE OR SUFFOCATION. |
| • | Even one use of crack has been known to cause addiction, but two usages WILL cause addiction. |

|  |  |
| --- | --- |
|  |  |
| - | HEROIN IS A KILLER |
| • | Heroin depresses the user's breathing response and the user can die of SUFFOCATION. |
| • | Heroin users as a group have the second highest identifiable incidence of AIDS. |
| • | Since the early 1980's, users of heroin and synthetic heroin (particularly China White users) have run the risk of developing PARKINSON'S DISEASE-TYPE SYMPTOMS, including drooling, tremors and total paralysis, which begin to appear from two days to six weeks after usage and are irreversible. |

|  |  |
| --- | --- |
|  |  |
| - | STIMULANTS ARE KILLERS |
| • | Amphetamines and methamphetamines (SPEED) elevate heart and respiratory rates and blood pressure and the user can die of STROKE or HEART ATTACK. |

|  |  |
| --- | --- |
|  |  |
| - | PCP (PHENCYCLIDINE) IS A KILLER |
| • | PCP can cause the user to die from HEART ATTACK, LUNG FAILURE or KIDNEY FAILURE or RUPTURED BLOOD VESSELS IN THE BRAIN. |
| • | Even one dose of PCP can cause severe psychotic reactions. |
| • | PCP stores in fat cells and can be released into the body without warning many months after use causing severe trauma and injury. |

|  |  |
| --- | --- |
|  |  |
| - | LSD (LYSERGIC ACID DIETHYLAMIDE) IS A KILLER |
| • | LSD can cause life-threatening depression and severe psychotic reactions. |
| • | LSD users have a high incidence of SUICIDE. |
| • | LSD users have been known to engage in self-mutilation. |

|  |  |
| --- | --- |
|  |  |
| - | MARIJUANA CAN CAUSE SERIOUS PSYCHOTIC PROBLEMS PARTICULARLY IF THE USER HAS A SUBMERGED TENDENCY TOWARD PSYCHOLOGICAL PROBLEMS |
| • | Marijuana contains more cancer-causing agents than tobacco and weakens the immune-defense system. |
| • | Because of new growing techniques, the marijuana available today contains three to seven times as much THC (tetrahydrocannabinol, the psychoactive ingredient) as it did in the 1960s and 1970s and can cause severe depression and other physical and psychological problems. |
| • | Marijuana causes a temporary disruption in the delivery of the male hormone testosterone, particularly in adolescents and slightly decreases organ size in males (which may be critical to a user with hormonal imbalance or in the throes of puberty). |

|  |  |
| --- | --- |
| - | INHALANTS ARE KILLERS |
| • | Inhalants can cause NERVE DAMAGE, BRAIN DAMAGE, BLOOD DISORDERS, RESPIRATORY ARREST, PNEUMONIA, HEART FAILURE, SUFFOCATION, LIVER FAILURE, KIDNEY FAILURE and DEATH. |
| • | Solvent sniffing can cause death by ASPHYXIATION, but chronic users also develop ulcers around the mouth and nose and IRREVERSIBLE BRAIN DAMAGE has been reported. |
| • | Inhaling aerosol fluorocarbons can cause erratic heartbeat with an increased pulse rate and cardiac arrest (known as SUDDEN SNIFFING DEATH). |

|  |  |
| --- | --- |
| - | "DRUGS OF DECEPTION" ARE KILLERS |
| • | "Drugs of Deception," which are chemical compounds made in illegal labs and are designed to look like known substances of established strength and effect, are frequently more dangerous and more deadly than the original compound. |
| • | For example, "DOB" is often sold as LSD-25, and while it adversely affects blood flow like other amphetamines, it is extraordinarily strong and can partially or completely close arteries in arms and legs fairly quickly, causing gangrene and necessitating amputation to save the user's life. |

|  |  |
| --- | --- |
| - | ALCOHOL CAN KILL TOO! |
| • | Alcohol is one of the oldest psychoactive drugs used by man. |
| • | Alcohol abuse and alcoholism can cause damage, in some cases irreversible, to the brain, the nervous system, the liver and the pancreas. |

# COLORADO

**(including the city of Boulder, but see Boulder-specific requirements below)**

## Marijuana:

* Colorado has both a medical marijuana law and a recreational marijuana law. Those laws do not provide protections to employees or applicants and case law in Colorado indicates that employers may enforce their drug testing policies.

# BOULDER, COLODRADO

* The Company must include a notice in the application and in all advertisements regarding employment with the Company that a drug test will be required as part of the pre-employment screening process. In addition, applicants must be personally informed of the drug test during the first formal interview. A copy of Boulder’s drug testing ordinance must be included as part of the Company’s drug testing policy. Before any applicant is requested to take a test, he/she must be provided a form on which to acknowledge that he/she has seen the employer’s substance abuse policy. In addition, the Company must post a notice in an appropriate and conspicuous location on Company premises which advises applicants that the Company has adopted substance abuse policies for applicants which includes drug testing and that a copy of the policy is available for inspection during regular business hours in the Human Resources Department.
* Applicants in Boulder, Colorado may request a copy of the records pertaining to his or her positive test result, and may submit written information to the Company explaining such result.
* In Boulder, CO.,every employer that conducts employee drug and/or alcohol testing must have a written policy that must include, among other things, a copy of Boulder’s drug testing ordinance. A copy of the ordinance is attached. The term “employee” means an individual who is treated as an employee for federal income tax purposes who is either:
  + assigned or anticipated to be assigned to an immediate supervisor located in Boulder and does not have a principal out of the home office located outside of Boulder; or
  + is assigned or anticipated to be assigned more than 33 percent of the time on the job for a period of more than 3 months to a job located in Boulder.
* In Boulder, CO., the law permits only urine testing for drugs.
  + Because mandatory city law does not permit breath testing in Boulder, Co.**,** blood testing for alcohol should be used.
* An employee has the right to obtain, upon his or her request to the employer, a copy of all records maintained of his or her initial positive confirmatory test results, and to submit written information explaining any such results.
* Post-voluntary rehabilitation return-to-duty drug testing by employers is only permitted if the employee has agreed to the test as part of an employee assistance program, and only after a finding or admission of prior drug or alcohol use.
* In Boulder, CO, urine specimen collections under direct observation are prohibited.

## Reasonable Suspicion Testing in Boulder, CO.:

* An employee can be required to submit to a drug or alcohol test when the Company has individualized reasonable suspicion “to suspect that the employee is under the influence of a drug or alcohol on the job, or his or her job performance is currently adversely affected by use of a drug or alcohol,” which is based “on specific, objective, clearly expressed facts.”

## Post-Accident Testing in Boulder, CO.:

* **Prohibited, unless there is reasonable suspicion as defined above.**

## Random Testing in Boulder, CO.:

* **Prohibited.**

## BOULDER, COLORADO DRUG TESTING ORDINANCE

### **Chapter 3 - Drug Testing**

#### 12-3-1. - Definitions.

The following terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

Commercial vehicle means any vehicle which meets the definition set forth in the Colorado Department of Public Safety Minimum Standards for the Operation of Commercial Vehicles.

Employee means a person treated as an employee for purposes of federal income tax withholding: a) who is assigned or anticipated to be assigned to an immediate supervisor located in the city and does not have a principal out of home office located outside of the city, or b) who is assigned or anticipated to be assigned more than thirty-three percent of the time on the job for a period of more than three months to a job located in the city.

Employer means a person who pays wages or salary to an employee, an agent of such a person or a person in a position of authority over an employee.

Ordinance No. 5688 (1994)

#### 12-3-2. - Post-Employment Drug Testing Requirements.

Except as provided in [section 12-3-4](https://www.municode.com/library/co/boulder/codes/municipal_code?nodeId=TIT12HURI_CH3DRTE_12-3-4EX), "Exemptions," B.R.C. 1981, no employer shall request or require from an employee any urine, blood or other bodily fluid or tissue test for any drug or alcohol or determine an employee's eligibility for promotion, additional compensation, transfer, disciplinary or other personnel action, or the receipt of any benefit, based in whole or in part on the result of such test, unless all of the following conditions are met:

(a) At the time of the request or requirement, the employer has individualized reasonable suspicion, based on specific, objective, clearly expressed facts, to believe that the employee is under the influence of a drug or alcohol on the job, or his or her job performance is currently adversely affected by use of a drug or alcohol, or the employee has agreed to the test as a part of an employee assistance program after a finding or admission of prior drug or alcohol abuse;

(b) Prior to the administration of any drug or alcohol test, the employer adopts a written testing policy and makes it available to all employees. But a copy need not be provided directly to each employee, so long as a copy is made available freely for inspection by employees at any reasonable time during working hours, without personal identification of the employees. Such testing policy must, as a minimum, set forth all of the following information:

(1) The employees subject to testing under the policy;

(2) The circumstances under which drug or alcohol testing may be requested or required;

(3) The right of an employee to refuse to undergo drug or alcohol testing and the consequence of refusal;

(4) Any disciplinary or other personnel action that may be taken based on a confirmatory test verifying a positive test result on an initial screening test;

(5) The right of an employee to obtain, immediately upon request to the employer's custodian thereof, a copy of all records maintained of his or her initial positive confirmatory test results, and to submit written information explaining any such results;

(6) Any other appeal procedure available; and

(7) A copy of this chapter;

(c) The collection of any urine specimen is accomplished without direct observation of the genitals by any person other than the employee being tested;

(d) A sufficient specimen is collected to perform two tests, and the one untested specimen is maintained until a negative test result is obtained, or, in case of a positive result, for a period of not less than one year following the date on which the specimen is collected;

(e) No portion of any specimen is tested for pregnancy, and except for pre-employment physicals, no portion of any specimen is examined for evidence of any other medical condition, other than for the presence of alcohol or drugs;

(f) The collection, storage and transportation of the specimen is accomplished in tamper-proof containers;

(g) Chain-of-custody documentation identifies how the specimen was handled, stored and tested, at all times;

(h) Positive test results are confirmed by means of gas chromatography/mass spectrometry or an alternate method of equal or greater sensitivity and accuracy;

(i) The employer permits the employee, at the employee's request and expense, to contract with a laboratory meeting the National Institute of Drug Abuse Standards to have a second confirmatory test performed on an untested portion of the original specimen, subject to the same chain-of-custody assurances provided for the original test; and

(j) The release of the test results is prohibited, except as authorized by the person tested, or to those employees of the employer with reasonable business need to know, or as required by a court of law.

Ordinance No. 5688 (1994)

#### 12-3-3. - Job Applicant Drug Testing Requirements.

Except as provided in "Exemptions," B.R.C. 1981, no employer shall conduct a drug or alcohol test as part of a pre-employment screening or pre-employment physical except under the following circumstances:

(a) The employer includes notice that a drug or alcohol test will be part of the pre-employment screening process or pre-employment physical in the application for employment, or if no application form is required, in all advertisements soliciting applicants for employment, and all applicants for employment are personally informed of the requirement for a drug or alcohol test at the first formal interview;

(b) The drug or alcohol test is required only of Colorado residents who are the single finalist for the position or out-of-state resident finalists for the position who come to Colorado for an interview, if the same test is required of all finalists for that position; and

(c) Subsections (b) through (j), B.R.C. 1981, are complied with concerning job applicants as well as employees.

Ordinance Nos. 5271 (1990); 5688 (1994)

#### 12-3-4. - Exemptions.

The following are exempt from this chapter:

(1) United States government;

(2) Colorado state government;

(3) The University of Colorado;

(4) Boulder County government;

(5) Boulder Valley School District; and

(6) Testing of an employee operating a commercial vehicle weighing over twenty six thousand pounds and for which a Commercial Driver's License is required, or which transports sixteen or more passengers, including the driver, under the Controlled Substances Testing Provisions set forth in the U.S. Department of Transportation regulations for commercial vehicles.

Ordinance No. 5688 (1994)

#### 12-3-5. - Employers' Rights.

(a) Nothing in this chapter restricts an employer's ability to prohibit the use of, possession of or trafficking in, illegal drugs during work hours, or restricts an employer's ability to discipline an employee for being under the influence of, using, possessing, or trafficking in, illegal drugs during work hours or on the employer's premises. Nothing in this chapter restricts an employer's ability to prohibit the use of alcohol during work hours, or restricts an employer's ability to discipline an employee for being under the influence of alcohol during work hours or on the employer's premises.

(b) Nothing in this chapter prevents an employer from conducting routine medical examinations of employees or medical screening in order to monitor exposure to toxic or other unhealthy substances encountered in the work place or in the performance of an employee's job responsibilities. But no employer shall extend medical screening beyond the specific substance being monitored, and any inadvertently obtained information concerning drug or alcohol use shall be maintained in confidence in the medical record and not disclosed to any employer. No employer shall use any such evidence to determine promotion, additional compensation, transfer, termination, disciplinary or other personnel action or the receipt of any benefit.

(c) It is an affirmative defense that a person was required to conduct drug or alcohol testing or take disciplinary action against an employee based on such testing in order to comply with a statute or regulation of the United States or the State of Colorado or any of their agencies or any agency interpretation of such statute or regulation. It is a specific defense that a person, based on specific, objective, clearly expressed facts, was reasonably required to conduct such testing, or take such action in order to compete effectively to obtain a contract with the United States or the State of Colorado or any of their agencies.

Ordinance No. 5688 (1994)

#### 12-3-6. - Enforcement.

(a) The penalty for violation of any provision of this chapter is a fine of not more than $1,000.00 per violation. In addition, upon conviction of any person for violation of this chapter, the court may issue a cease and desist order and any other orders reasonably calculated to remedy the violation. Violation of any order of the court under this section is a violation of this section and is punishable by a fine of not more than $2,000.00 per violation, or incarceration for not more than ninety days in jail, or both such fine and incarceration. [[15]](https://www.municode.com/library/#fn_346)

(b) Any person who commits or proposes to commit an act in violation of this chapter also may be enjoined therefrom by the municipal court or by any other court of competent jurisdiction.

(c) An action for injunctive relief under this chapter may be brought by the city attorney, upon ascertaining that a violation is likely to occur. Nothing in this chapter shall be construed to create a private right of action for damages.

Ordinance No. 5639 (1994)

# CONNECTICUT

* In Connecticut, applicants must be informed in writing at the time of application that they will be required to submit to a pre-employment drug test. Additionally, in Connecticut, “applicant” does not include an individual who was formerly employed by the employer, including in a managerial position, who is being rehired by the former employer within 12 months of the individual’s termination.
* Applicants must be provided with a copy of a positive test result.
* In Connecticut,employees who test positive must be given the opportunity to submit a written statement explaining the test result. Employees have the right to inspect and obtain a copy of any drug test result. All drug test results must be maintained separately from other personnel files.
* In Connecticut post-voluntary rehabilitation return-to-duty and follow-up drug and alcohol testing by employers is permitted, if the test is conducted as part of an employee assistance program sponsored or authorized by the employer and the employee is voluntarily participating in the program.
* Urine specimen collections under direct observation are prohibited.

## Reasonable Suspicion Tests:

* An employee can be required to submit to a drug test whenever the Company has reasonable suspicion “that the employee is under the influence of drugs or alcohol which adversely affects or could adversely affect the employee’s job performance.”

## Post-Accident Testing:

* **Prohibited, unless there is reasonable suspicion as defined above.**

## Random Testing:

* **Prohibited, absent Department of Labor approval.**

## Marijuana

### Medical Marijuana:

* Due to recent case law in Connecticut, the Company should not take disciplinary action against a medical marijuana user who tests positive for marijuana, and should instead engage in the interactive process and direct threat analysis (see sample letter for this purpose at the end of the addenda). We recommend that the Company consult with counsel when addressing medical marijuana issues in Connecticut.

### Recreational Marijuana:

* Marijuana is legal in Connecticut as of July 1, 2021. On July 1, 2022, new provisions applicable to employers took effect. There are exceptions in the law for certain types of jobs and employers. In addition, employers still may test for marijuana as long as they have a written drug testing policy. As of July 1, 2022, there are many exempted employers and exempted positions. Exempted employers include mining, utilities, construction, manufacturing, transportation or delivery, educational services, health care or social services, justice, public order, safety activities or national security and international affairs. Exempt positions include firefighters, EMTs, police, law enforcement, CDL drivers, positions requiring certification in construction safety and health approved by OSHA, positions requiring a DOD security clearance; positions where the statute conflicts with an employment contract or collective bargaining agreement, positions funded by a federal grant, positions requiring supervision of children, medical patients or vulnerable persons, positions with the potential to adversely impact the health or safety of employees or the public; positions at a nonprofit organization the primary purpose of which is to discourage drug use; or positions at any exempt employer.

# DELAWARE

## Marijuana

### Medical Marijuana:

* Due to recent case law in Delaware, the Company should not take disciplinary action against a medical marijuana user who tests positive for marijuana, and should instead engage in the interactive process and direct threat analysis (see sample letter for this purpose at the end of the addenda). We recommend that the Company consult with counsel when addressing medical marijuana issues in Delaware.

### Recreational Marijuana:

* Delaware legalized recreational marijuana on April 23, 2023. The law does not contain employment protections for users.

# DISTRICT OF COLUMBIA

* Employers will have to notify employees about their statutory rights, whether the employer has designated the employee’s position as safety sensitive, and the protocols for any testing for alcohol or drugs that the employer performs. The notice is due:
  + Within 60 days from the law’s effective date and annually thereafter to all incumbent employees;
  + When the employer hires a new employee; and
  + Within 45 days after the DC Office of Human Rights publishes a template for the required initial notice.

## Marijuana:

* The District of Columbia has both a medical marijuana and a recreational marijuana law. While these laws do not provide employment protections to marijuana users at the present time, we recommend engaging in the interactive process and consulting with counsel when addressing marijuana issues in D.C. There is new legislation pending in D.C. that will provide significant protections for users of marijuana (both recreational and medical). This legislation will take effect when its fiscal effect is included in an approved budget. Employers will be prohibited from discriminating against anyone who uses marijuana for any reason while off-duty, and employers will be required to accommodate medical marijuana users as they would accommodate other prescription drug use. There will be some exceptions to this law. Employers will be permitted to take adverse employment actions if:
  + The individual is in a position designated as safety sensitive – one in which it is reasonably foreseeable that an employee impaired from using drugs or alcohol would likely cause actual, immediate, and serious bodily injury or death;
  + Federal law or a federal contract or funding agreement mandates the adverse action;
  + The employee used, consumed, possessed, stored, delivered, transferred, displayed, transported, sold, purchased, or grew marijuana at the employee’s workplace, or during his/her worktime; or
  + Using marijuana has “impaired” the employee, meaning that the employee “manifests specific articulable symptoms while working, or during the employee’s hours of work, that substantially decrease or lessen the employee’s performance, or those symptoms interfere with the employer’s obligation to provide a safe and healthy workplace as required by District of federal occupational safety and health law.

# FLORIDA

## Marijuana

### Medical Marijuana:

* Florida has a medical marijuana law, but it allows employers to have policies prohibiting the use of marijuana and protects employers from wrongful discharge or discrimination claims relating to the use of medical marijuana.
* Florida also has a CBD law that permits CBD use for individuals who have certain medical conditions. The CBD must contain no more than .8% THC.

# GEORGIA

## Marijuana

* Georgia has a CBD law that permits CBD use for individuals who have certain medical conditions. The CBD must contain no more than 5% THC.

# HAWAII

* In Hawaii, “employee” means any individual currently employed or formerly employed and currently being rehired by the same employer with 12 months of terminating his employment, and includes any individual in a managerial position.
* In Hawaii,all in-state testing must be performed at laboratories approved by the Hawaii Department of Health or certified by DHHS and approved by the Hawaii Director of Health. Out-of-state testing of Hawaii specimens must be conducted at laboratories certified by DHHS and approved by the Hawaii Director of Health.
* In Hawaii, prior to any testing, applicants and employees must be provided with a written statement of the specific substances to be tested for and a statement that over-the-counter medications or prescribed drugs may result in a positive test result.
* Because mandatory state law does not permit breath testing in Hawaii,blood testing for alcohol should be used.
* Direct observation of urine collections is permitted only after suspected adulteration or substitution.

## Medical Marijuana:

* Hawaii has a medical marijuana law which does not address employment issues. Due to the recent trend in the case law, we still urge caution when addressing positive drug (marijuana) test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis.

# IDAHO

## Marijuana

* Idaho has a CBD law that legalizes CBD products only if they contain zero THC.

# ILLINOIS

## Marijuana

### Recreational Marijuana

Under the Illinois recreational marijuana law, marijuana is a “lawful product.” Employers may not test for marijuana unless there is reasonable suspicion that an employee is under the influence, or, after an accident. We do not recommend pre-employment marijuana testing, random marijuana testing and other types of “suspicions-less” testing.

Employers still may prohibit the use and possession of marijuana at work and during work time, and may prohibit employees from being under the influence of marijuana at work.

Employers still may test for marijuana when the employee was impaired at work or during work time, or if the employee was involved in a workplace accident. An employer may consider an employee to be impaired or under the influence of cannabis if the employer has a good faith belief that an employee manifests specific, articulable symptoms while working that decrease or lessen the employee’s performance of the duties or tasks of the employee’s job position, including symptoms of the employee’s speech, physical dexterity, agility, coordination, demeanor, irrational or unusual behavior, or negligence or carelessness in operating equipment or machinery; disregard for the safety of the employee or other, or involvement in any accident that results in serious damage to equipment or property; disruption of a production or manufacturing process; or carelessness that results in any injury to the employee or others.

**If an employer elects to discipline any employee on the basis that the employee is under the influence or impaired by cannabis, the employer must afford the employee a reasonable opportunity to contest the basis of the determination. See sample form below.**

### Medical Marijuana:

* Illinois also has a medical marijuana law that prohibits discrimination against medical marijuana users. We recommend engaging in the interactive process and direct threat analysis before taking an adverse employment action against a medical marijuana users in Illinois.

## Sample Post-Test Notice for Employees Who Test Positive for Marijuana in Illinois On A Reasonable Suspicion Or Post-Accident Test

Date

**VIA CERTIFIED MAIL OR EMAIL**

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Marijuana Drug Test Result on a Reasonable Suspicion or Post-Accident Drug Test**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], you were considered to be impaired or under the influence of a prohibited substance after management personnel acquired a good faith belief that you: (insert all that apply from the following two bullets)

* manifested symptoms of your speech, physical dexterity, agility, coordination, demeanor, appearance/odor and/or irrational or unusual behavior that decreased or lessened your performance of the duties or tasks of your job position.
* Exhibited negligence or carelessness in operating equipment or machinery; disregard for the safety of yourself or others, or involvement in an accident that resulted in damage to equipment or property; or carelessness that resulted in an injury to yourself or others.

Based on this good faith belief of impairment, you were subjected to a drug test that resulted in a positive test result for marijuana (THC).

This positive test result is a violation of the Company’s Substance Abuse Policy and you are now subject to disciplinary action. Before finalizing this action, the Company is providing you with a reasonable opportunity to contest the basis of this determination.

If you wish to contest this determination, please use the attached form to write down information that you believe the Company should consider prior to taking disciplinary action. You should use the envelope provided and it must be postmarked by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (within 7 business days) for the Company to consider this information, or you may e-mail it to this e-mail address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. If it is not received by the Company within this time period, we will assume that you have elected not to contest the Company’s determination and we will immediately proceed with disciplinary action. If you do contest the Company’s determination within the specified timeframe, the Company will evaluate this information and then communicate a decision to you within a reasonable timeframe.

Sincerely,

[Name]

Human Resources Manager

Employee Full Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I am contesting the Company’s determination that I violated the Substance Abuse Policy by providing the following information:

Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Please use the supplied self-addressed and stamped envelope and send back to the Company (postmarked by) no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or e-mail to this e-mail address by same date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

# INDIANA

## Marijuana

* Indiana has a CBD law that does not specify who may use it. The CBD must not contain more than .3% THC.

# IOWA

* The Company’s drug testing procedures comply with Iowa Code Ann. §730.5. All testing must be performed at laboratories certified by DHHS or approved under rules adopted by the Iowa Department of Public Health.
* In Iowa, the employer’s drug and alcohol testing policy must be made available for applicants to review. If the applicant to be tested is a minor, a copy of the policy must be provided to the minor's parent by certified mail, return receipt requested.
* In Iowa, written notification of a verified positive drug test result also will be provided to a parent of a minor applicant by certified mail, return receipt requested.
* Applicants and employees may provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. In addition, prior to testing, applicants and employees should be provided with a form notifying them that they have the right to provide information bearing on their drug test result. (See sample form we have provided).

In Iowa, the Company is required to inform applicants in writing of a positive test result. The Company also must provide the name and address of the Medical Review Officer who made the report, and advise the applicant of his/her right to request review of all records relating to the drug or alcohol test result, including the laboratory records and Medical Review Officer report. Such a request must be made within fifteen (15) days from the date the employer provided the applicant with written notice of the test result. A sample Post-Test Notice for Applicants Who Test Positive for Drugs in Iowa is provided. In addition, written notification of a verified positive drug test result also will be provided to a parent of a minor applicant by certified mail, return receipt requested.

Applicants who test positive be given an opportunity to request a confirmatory "re-test" of the original specimen. The split-specimen methodology must be used.

In Iowa, “employee” includes any person in the service of an employer, and includes the employer and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.

In Iowa, employees must be given a copy of the policy, which must set forth the disciplinary actions to be taken for a positive test result, and must set forth options for rehabilitation and employee assistance. If the employee to be tested is a minor, a copy of the policy must be provided to the minor's parent by certified mail, return receipt requested.

In Iowa, employers who conduct drug and alcohol testing must require supervisory personnel involved with drug and alcohol testing to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program.

* Employers must provide transportation or pay reasonable transportation costs to employees if drug or alcohol testing is conducted at a location other than the employee's normal work site.

Drug or alcohol testing of employees must occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

Employers in Iowa may not automatically terminate employees who test positive for alcohol (only) if it is the first time the employee has tested positive for that employer. In Iowa, if an employee tests positive for alcohol, and the employer employs more than 50 employees, and the tested employee has been employed for at least twelve of the preceding eighteen months, and the employee agrees to rehabilitation and has not violated the substance abuse policy before, the Company may not terminate the individual's employment, but instead must offer rehabilitation, and apportion the costs of rehabilitation as follows:

if the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan;

if no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than $2,000 toward the costs not covered by the employee's health care plan;

if no employee benefits plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than $2,000 towards the cost of rehabilitation.

* In Iowa, the Company is required to mail positive drug test results to the employee by certified mail, return receipt requested. At that time, the Company must also advise the employee that:
  + he/she has the right to request a split-specimen test at an approved laboratory of the employee's choice, at a cost that is consistent with the cost paid by the employer for the initial test;
  + he/she must make that request within seven days of the date that the employer mailed the test result to him/her;
  + if the split-specimen test result is negative, the employer will reimburse the employee for the cost of the test; and
  + if the split-specimen test result is negative, the initial positive test result will not be considered for purposes of taking disciplinary action. A sample Post-Test Notice For Employees Who Test Positive for Drugs in Iowa is provided.
* In Iowa, all testing must be performed at laboratories certified by DHHS or approved under rules adopted by the Iowa Department of Public Health.
* **Blood testing for drugs or alcohol is not permitted.**
* In Iowa, if an employer conducts drug and alcohol testing and maintains an EAP, the employer is required to inform employees of the benefits and services of the EAP; to post notice of the EAP in conspicuous places and explore alternative routine and reinforcing means of publicizing such services; and must provide employees with notice of the EAP and procedures regarding access to and utilization of the program. If an employer does not maintain an EAP, the employer must maintain a resource file of alcohol and other drug abuse programs certified by the Iowa Department of Public Health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.

## Marijuana

* Iowa has a CBD law that permits use of CBD with no more than 3% THC by individuals with certain debilitating medical conditions. The law does not require employers to permit or accommodate the use, consumption, or possession of marijuana in the workplace. Employers are also permitted to implement policies restricting marijuana use by employees, to enter into contracts with employees prohibiting the use of marijuana, and to establish a zero-tolerance drug policy in accordance with the Iowa drug testing statute or applicable federal law.

## Reasonable Suspicion Testing:

An employee can be required to submit to a drug or alcohol test based upon evidence that the employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Facts and inferences may be based upon, but not limited to, any of the following:

observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use;

abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

a report of alcohol or other drug use provided by a reliable and credible source;

evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer;

evidence that an employee has caused an accident while at work which resulted in serious injury or property damage in an amount reasonably estimated at the time of the accident to exceed $1,000

evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

## Post-Accident Testing:

Permitted, in accordance with the definition of reasonable suspicion set forth above.

## Random Testing:

Permitted, as long as employees are selected by an entity independent of the employer and using a computer-generated neutral selection procedure. In general, the pool of employees eligible for random selection can be either all employees or all employees in safety-sensitive positions, excluding those employees that are not scheduled to be at work at the time of the testing and those that are not subject to testing pursuant to a collective bargaining agreement. An Iowa court recently found that conducting drug testing at arbitrary times was not permissible. Rather, the random/periodic testing should be based on set intervals.

## Sample Post-Test Notice for Applicants Who Test Positive for Drugs in Iowa

Date

**VIA CERTIFIED MAIL,**

**RETURN RECEIPT REQUESTED**

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Drug Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the drug test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a positive test result. A copy of the test result is enclosed.

The name and address of the Medical Review Officer who verified the positive test result is:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please be advised that you have the right to request review of all of the records relating to the drug test result, including the laboratory’s records and the Medical Review Officer’s report. Such a request must be made within fifteen (15) calendar days from the date that the Company provided you with written notice of the test result.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

## Sample Post-Test Notice for Employees Who Test Positive for Drugs in Iowa

**[Note: Under Iowa law, this notice must be sent to an employee who tests positive for drugs by certified mail, return receipt requested].**

Date

**VIA CERTIFIED MAIL**

**RETURN RECEIPT REQUESTED**

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Drug Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the drug test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_ [date] resulted in a positive test result. A copy of the test result is enclosed.

You have the right to request a confirmatory test of your “split specimen” urine sample at a different laboratory of your own choosing. If you would like the “split specimen” to be tested, you must notify the Company in writing, in person or by certified mail, return receipt requested, within seven days that the Company mailed this letter to you. You also must identify the laboratory (that is approved to conduct such testing under Iowa law) where you would like the test conducted and must include a check for $\_\_\_\_\_\_\_\_\_\_\_\_\_ to pay for the test.

The result of the “split specimen” test will be reported to the Company’s Medical Review Officer, who will then report the result to the Company. If the result of the “split specimen” test is negative, the Company will reimburse you for the cost of the “split specimen” test and the initial positive drug test result shall be deemed negative for purposes of taking disciplinary action.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

# KANSAS

* Kansas permits 5-panel testing only (amphetamines, cocaine, marijuana, opioids, and PCP).
* The Company must use a laboratory that is licensed by the state.

# KENTUCKY

* The Company must use a laboratory that is licensed by the State to conduct testing.

## Marijuana

* Kentucky has a CBD law that appears to allow CBD use in only very limited circumstances (e.g., clinical trials or products that have been approved by the FDA). Currently no products have been approved by the FDA, except for one product that is for use by people with two rare forms of epilepsy.
* On November 15, 2022, the Governor of Kentucky signed an executive order allowing state residents to use medical marijuana purchased outside the state for certain illnesses as directed by a physician. The executive order does not address employment issues, but employers should be mindful of potential disability discrimination issues. The order took effect on January 1, 2023.
* On January 1, 2025, a medical marijuana law will take effect in Kentucky. The law permits employers to prohibit the use of marijuana at work and to have zero tolerance drug testing policies. The law also prohibits employees from asserting legal claims against their employers related to the use of medical marijuana.

# LOUISIANA

* The Company must use a laboratory that is certified either by DHSS or the College of American Pathologists.
* In Louisiana, if an employee who tests positive makes a written request, the Company is required to give the employee access to his or her records relating to the drug test result and/or related disciplinary proceedings, within seven working days.
* In Louisiana, “employee” includes any person, paid or unpaid, in the service of an employer.
* In Louisiana, collection of urine specimens must conform to the Mandatory Guidelines for Federal Workplace Drug Testing Programs, published by the Substance Abuse and Mental Health Services Administration.
* In Louisiana, the Company may use a laboratory that is certified either by DHHS, or by the College of American Pathologists.
* Because mandatory state law does not permit breath testing in Louisiana, blood testing for alcohol should be used.
* In Louisiana, urine specimens under direct observation only may take place when:
  + there is reason to believe the applicant may adulterate or substitute the urine specimen;
  + the temperature of the urine specimen falls outside the acceptable range;
  + the MRO determines that the specimen is adulterated; or,
  + collection site personnel observe suspicious conduct.

## Medical Marijuana:

* Louisiana’s medical marijuana law prohibits discrimination against medical marijuana users. So, we are engaging in the interactive process and direct threat analysis with medical marijuana users before making employment decisions.

# MAINE

* **THIS POLICY AND ADDENDUM DO NOT COMPLY WITH MAINE LAW AND SHOULD NOT BE USED IN THE STATE OF MAINE. Maine has a very technical drug testing law that requires approval of a written drug testing policy by the Maine Department of Labor, among other things. Maine drug and alcohol testing policies must be prepared separately from all other drug testing policies, with the assistance of legal counsel.**
* **If the Company has DOT-regulated employees employed in the state of Maine, it is exempt from all of the legal requirements of the Maine drug testing statute (as to its non-DOT-regulated employees in Maine). If there are no DOT-regulated employees employed in the state of Maine, then the Company is required to have a separate Maine-compliant drug and alcohol testing policy that is approved by the Maine Department of Labor.**

## Marijuana:

* Maine has both legalized recreational marijuana and medical marijuana laws. The medical marijuana law prohibits discrimination, and the recreational marijuana law appears to prohibit adverse actions for off-duty use, so we do not recommend testing for marijuana in Maine unless there is reasonable suspicion. We urge caution when addressing positive marijuana test results in Maine, and consulting with counsel.

# MARYLAND

* In Maryland, the drug and alcohol testing law generally applies to any person who is tested for job-related reasons, including contractors.
* In Maryland, the Company is required to inform applicants and employees of a positive test result in person or by certified mail. The notification must occur within 7 days from the date that the Company receives the test results. The Company’s notification must include:
  + a copy of the laboratory test result;
  + a copy of the written policy;
  + a written description of the disciplinary action the Company will take as a result of the positive test; and
  + a statement concerning the applicant’s right to request independent testing of their urine specimen for verification of the test result, at his/her own expense. A sample Post-Test Notice For Applicants and Employees Who Test Positive for Drugs in Maryland is provided.
* In Maryland, the Company must use laboratories that are certified by the Maryland State Department of Health & Mental Hygiene. The name and address of the laboratory that will test the specimen must be provided to the applicant or employee at the time of testing if he or she requests that information.
* Because mandatory state law does not permit breath testing in Maryland, blood testing for alcohol should be used.

## Safety-Sensitive Positions:

* Maryland deems crane operators, signal persons, riggers and crane operator trainees as safety-sensitive positions and drug and alcohol testing is mandated for these positions. Specifically, employees in these positions must be subject to pre-employment drug testing, reasonable suspicion testing, random testing, and, unless the medical condition of the employee does not permit it, immediately or not later than 24 hours following any incident for which crane operations were a direct or indirect cause and which involve: (i) Property damage greater than $5,000; (ii) Bodily injury; or (iii) A fatality.

## Marijuana

### Medical Marijuana:

* Maryland has a medical marijuana law which does not address employment issues. Due to the recent trend in the case law, we still urge caution when addressing positive drug (marijuana) test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis (see sample letter at the end of the Addenda that may be used for this purpose).

### Recreational Marijuana:

* Maryland will allow the recreational use of marijuana on July 1, 2023, subject to legislation concerning the regulation, distribution, possession and taxation of marijuana.

## Sample Post-Test Notice for Applicants and Employees Who Test Positive for Drugs or Alcohol in Maryland

**[Note: Under Maryland law, this letter must be delivered in person or by certified mail, within seven days of the date that the Company receives the test result. The envelope must be marked personal and confidential and for addressee only]**

Date

**PERSONAL AND CONFIDENTIAL**

**VIA CERTIFIED MAIL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Drug or Alcohol Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the drug or alcohol test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a positive test result. A copy of the test result is enclosed. In addition, a copy of the Company's Substance Abuse Policy is enclosed.

Please be advised that you have the right to request a re-test of the original specimen at a different laboratory, of your own choosing, that is certified by the Maryland State Department of Health & Mental Hygiene, at your own expense. If you would like to request a re-test, please notify the undersigned and the laboratory who conducted your original test immediately. If you have not made such a request within seven days of the date of this letter, the Company will assume you do not wish to request a re-test.

Please be further advised that if you do not request a re-test, or if your re-test also results in a positive test result, your conditional offer of employment will be withdrawn *[for applicants] OR \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* *[state consequences for employees].*

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

# MASSACHUSETTS

* Post-voluntary rehabilitation return-to-duty and follow-up drug and alcohol testing should be limited to safety-sensitive employees and the testing should be conducted only upon the recommendation of the SAP. To ensure the treating SAP can make an informed decision regarding the need for such testing, it is important for the Company to provide sufficient details concerning the nature of the employee’s job to the treating SAP.

## Post-Accident Testing:

* Employees have a right of privacy, in the context of workplace drug testing. “Suspicion-less” drug and alcohol testing, such as post-accident testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions.

## Random Testing:

* Employees have a right of privacy in the context of workplace drug testing. “Suspicion-less” drug and alcohol testing, such as random testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions.

## Marijuana:

* Massachusetts has both a medical marijuana law and a recreational marijuana law. Due to case law involving medical marijuana use, employers must be careful not to discriminate against medical marijuana users, and should instead engage in the interactive process and the “direct threat” analysis before taking adverse employment actions against medical marijuana users.

# MICHIGAN

## Marijuana:

* Michigan has both a medical marijuana law and a recreational marijuana law. Those laws do not provide protections to employees or applicants and case law in Michigan indicates that employers may enforce their drug testing policies.

# MINNESOTA

* In Minnesota, pre-employment testing is permissible as long as all applicants for that position are tested. In addition, an employer’s drug and alcohol testing policy must be in writing, and the employer must give applicants written notice of its drug and alcohol testing policy before such testing begins. Prior to the time an applicant is tested he/she must receive written notice that his/her job offer is contingent upon taking a pre-employment drug test and receiving a negative test result. Each applicant who receives a conditional offer of employment must also receive a copy of the policy and any changes to the policy. Before any applicant is requested to take a test, he/she must be provided a form on which to acknowledge that he/she has seen the employer’s substance abuse policy. In addition, the Company must post a notice in an appropriate and conspicuous location on Company premises which advises applicants that the Company has adopted substance abuse policies for applicants which includes drug testing and that a copy of the policy is available for inspection during regular business hours in the Human Resources Department.

In Minnesota, an applicant must be informed of the reasons why his or her offer of employment was withdrawn. The Company must inform the applicant in writing of the drug test result (negative or positive) within three working days after receipt of the result from the laboratory, and must advise the applicant of his/her right to obtain a copy of the test result report. An applicant who tests positive must be given written notice of the right to explain the positive test result. Within three working days after notice of a positive test result, the applicant may submit information to explain the test result. Within five working days after notice of a positive test result, the applicant may request a confirmatory re-test at the applicant's own expense. Within three working days of such request, the employer shall notify the original testing laboratory of the request for the confirmatory re-test and to arrange for the transfer of the specimen to another approved laboratory. If the confirmatory re-test result is negative, no adverse action may be taken against the applicant. A sample Post-Test Notice For Applicants and Employees Who Test Positive for Drugs or Alcohol in Minnesota is provided, and a sample Post-Test Notice For Applicants and Employees Who Test Positive for Drugs or Alcohol in Minnesota is provided.

* In Minnesota, an employer’s drug and alcohol testing policy must be in writing, and the employer must give all employees written notice of its drug and alcohol testing policy before such testing begins. Before an employee is requested to take a test, he/she must be provided a form on which to acknowledge that he/she has seen the employer’s substance abuse policy. In addition, the Company must post a notice in an appropriate and conspicuous location on Company premises which advises employees and applicants that the Company has adopted substance abuse policies for employees and applicants which includes drug testing and that a copy of the policy is available for inspection during regular business hours in the Human Resources Department.

In Minnesota, the term “employee” includes independent contractors.

Employers in Minnesota may not automatically terminate employees who test positive for drugs or alcohol if it is the first time the employee has tested positive for that employer. Before an employee can be terminated from employment for testing positive, the employee must first be offered an opportunity to be evaluated and enroll in a treatment program, if treatment is deemed appropriate.

in Minnesota, after an employee tests positive, return-to-duty and follow-up testing are permissible for up to two years following the employee’s completion of the treatment program.

* In Minnesota, the Company must inform the employee in writing of the drug test result (negative or positive) within three working days after receipt of the result from the laboratory, and must advise the employee of his/her right to obtain a copy of the test result report. An employee who tests positive must be given written notice of the right to explain the positive test result. Within three working days after notice of a positive test result, the employee may submit information to explain the test result. Within five working days after notice of a positive test result, the employee may request a confirmatory re-test at the employee's own expense. Within three working days of such request, the employer shall notify the original testing laboratory of the request for the confirmatory re-test and to arrange for the transfer of the specimen to another approved laboratory. If the confirmatory re-test result is negative, no adverse action may be taken against the employee. A sample Post-Test Notice for Applicants and Employees Who Test Positive For Drugs or Alcohol In Minnesota has been provided. A sample Post-Test Notice for Applicants and Employees Who Test Negative For Drugs or Alcohol In Minnesota has been provided.
* For drug testing, the Company must use laboratories that are either:
  + DHHS-certified;
  + certified by the College of American Pathologists; or,
  + licensed by the New York State Department of Health.

Mandatory state law does not permit breath testing in Minnesota, so blood testing for alcohol should be used. For alcohol testing, the Company must use laboratories that are either:

certified by the College of American Pathologists; or,

licensed by the New York State Department of Health.

In Minnesota post-voluntary rehabilitation return-to-duty and follow-up drug and alcohol testing by employers is permitted, if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan.

## Reasonable Suspicion Testing:

* An employee may be subjected to a drug or alcohol test when there is reasonable suspicion that the employee, while at work,
  + is under the influence of alcohol or drugs;
  + violated a written work rule prohibiting the use of alcohol or drugs while working or operating machinery;
  + sustained a personal injury or caused another person's injury; or
  + caused a work-related accident, or was operating or helping to operate equipment involved in a work-related accident.

## Post-Accident Testing:

* Permitted, in accordance with the definition of reasonable suspicion above.

## Random Testing:

* In Minnesota, random testing is limited by statute to safety-sensitive employees, defined as “a job, including any supervisory or management position, in which an impairment by drug or alcohol usage would threaten the health or safety of any person.”

## Marijuana

### Medical Marijuana:

* Minnesota has a medical marijuana law which prohibits discrimination against medical marijuana users. We urge caution when addressing positive drug (marijuana) test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis.

### Recreational Marijuana:

* Minnesota’s new recreational marijuana law took effect on August 1, 2023. The law makes marijuana a lawful consumable product. Employers may not discriminate against users of lawful consumable products. However, nothing in the new law prohibits employers from taking action against employees who use, possess, sell, transfer, or are otherwise impaired by such lawful products while working, while on work premises, or while operating an employer’s vehicles, machines, or equipment. Similarly, employers may continue prohibiting the use of such products if failing to do so would violate another federal or state law or regulation or cause the employer to lose money or any licensing-related benefit under federal law or regulations. As to drug testing, employers may not conduct pre-employment marijuana testing or routine physical examination marijuana testing unless the applicant or employee falls into one of these categories:
* A safety-sensitive position (*i.e.,* a job in which an impairment caused by drug, alcohol, or cannabis usage would threaten the health or safety of any person);
* A peace officer position;
* A firefighter position;
* A position requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to: children, vulnerable adults, or patients who receive health care services from a provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition;
* A position requiring a commercial driver’s license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of a job applicant or an employee;
* A position of employment funded by a federal grant; or
* Any other position for which federal law requires testing of a job applicant for cannabis.
* Employers may continue to test for marijuana (as to all employees) on reasonable suspicion tests and post-accident tests. We do not recommend testing for marijuana on random tests, given that they are not mentioned in the statute.

## Sample Post-Test Notice for Applicants Who Test Positive for Drugs or Alcohol in Minnesota

**[under Minnesota law, applicants who test positive must be informed of the test result within three working days of receipt of the test results from the laboratory]**

Date

**VIA CERTIFIED MAIL or EMAIL,**

**RETURN RECEIPT REQUESTED**

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Drug or Alcohol Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the *[drug or alcohol]* test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a positive test result. A copy of the test result report is enclosed. (If the test result was inadvertently omitted and not enclosed, you have the right to request a copy). Due to the positive test result, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[state consequences for testing positive]*.

You have the right to explain the positive test result. If you choose to do so, you must submit such information to the Company within three (3) business days after you receive this notice.

Please be advised that you have the right to request a confirmatory re-test of the original specimen) at a different laboratory (that must be certified by U.S. Department of Health and Human Services, the College of American Pathologists, or the New York State Department of Health), at your own expense. If you would like to request a confirmatory re-test, you must notify the undersigned within five (5) days of receipt of this letter. If you have not made such a request within five days of the date of this letter, the Company will assume you do not wish to request a confirmatory re-test.

Please be advised that Minnesota law prohibits employers from discriminating against or refusing to hire an applicant on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

## Sample Post-Test Notice for Employees Who Test Positive for Drugs or Alcohol in Minnesota

**[under Minnesota law, employees who test positive must be informed of the test result within three working days of receipt of the test results from the laboratory]**

Date

**VIA CERTIFIED MAIL or EMAIL,**

**RETURN RECEIPT REQUESTED**

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Drug or Alcohol Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the *[drug or alcohol]* test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a positive test result. A copy of the test result report is enclosed. (If the test result was inadvertently omitted and not enclosed, you have the right to request a copy from the Company, and you have a right to request from the Company other information acquired in the drug and alcohol testing process and conclusions drawn from and actions taken based on the reports or other acquired information).

The enclosed positive test result has been verified by a confirmatory test. Due to the positive test result, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *[state consequences for testing positive]*.

You have the right to explain the positive test result. If you choose to do so, you must submit such information to the Company within three (3) business days after you receive this notice.

You have the right to request a confirmatory re-test of the original specimen at a different laboratory (that must be certified by U.S. Department of Health and Human Services, the College of American Pathologists, or the New York State Department of Health), at your own expense. If you would like to request a confirmatory re-test, you must notify the undersigned within five (5) days of receipt of this letter. If you have not made such a request within five days of the date of this letter, the Company will assume you do not wish to request a confirmatory re-test.

Please be advised that Minnesota law prohibits employers from discharging, disciplining, discriminating against, or requesting or requiring rehabilitation of an employee on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test, or on the basis of medical history information revealed to the employer in response to the positive test result unless the employee was under an affirmative duty to provide the information before, upon, or after hire. These prohibitions do not prevent an employer who believes that it is reasonably necessary under the circumstances to protect the health or safety or the employee, coworkers, or the public from temporarily suspending a tested employee or transferring the employee to another position at the same rate of pay pending the outcome of the confirmatory test, and if, requested by the employee, the confirmatory retest.

In addition, an employer may not discharge an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the employer unless the following conditions have been met: (1) the employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the employer after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency; and, (2) the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion or by a positive test result on a confirmatory test after completion of the program.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

## Sample Post-Test Notice for Applicants and Employees Who Test Negative for Drugs or Alcohol in Minnesota

**[under Minnesota law, applicants and employees who test negative must be informed of the test result within three working days of receipt of the test results from the laboratory]**

Date

**VIA CERTIFIED MAIL or EMAIL,**

**RETURN RECEIPT REQUESTED**

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Negative Drug or Alcohol Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the *[drug or alcohol]* test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a negative test result. You may request a copy of the test result.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

# MISSISSIPPI

## Medical Marijuana

* Mississippi has a medical marijuana law that does not contain employment protections for medical marijuana users. The law allows employers to conduct drug testing and to prohibit marijuana use. Employees may not sue their employers under the law.
* Mississippi also has a CBD law that permits its use for epileptic conditions.

# MISSOURI

## Marijuana

### Medical Marijuana

* Missouri has a medical marijuana law that permits employers to take adverse employment actions against applicants and employees who are “working or attempting to work while under the influence of marijuana.” However, there is no definition of “under the influence” so it is not clear how this language affects an applicant or employee who uses medical marijuana only while off-duty but tests positive on a workplace drug test. As of December 8, 2022, employers may not discriminate against medical marijuana users unless they are under the influence of marijuana, and employers may not take adverse action against medical marijuana users who test positive for marijuana on a drug test unless the employer can show that the employee was under the influence of marijuana at work.
* Missouri has a CBD law that permits its use for intractable epilepsy. The CBD may have no more than .3% THC.

### Recreational Marijuana

* As of December 8, 2022, recreational marijuana is legal in Missouri. Employers do not have to allow marijuana use at work and may take adverse action against individuals who are under the influence of marijuana at work. It is not clear whether this includes a positive drug test result.

# MONTANA

* In Montana, drug testing is permissible only for applicants and employees “engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position.” Montana law defines “hazardous work environment” to include (but is not limited to) positions:
  + for which testing is required by federal law;
  + “that involve the operation of or work in proximity of construction equipment, industrial machinery, or mining activities;” or
  + “that involve handling or proximity to flammable materials, explosives, toxic chemicals or similar substances.” Covered employees must be given at least 60-days’ notice of this policy before it takes effect or is changed.
* All drug testing in Montana will follow the procedures utilized by the U.S. Department of Transportation, 49 C.F.R. Part 40. The Company only may test for those drugs for which the U.S. Department of Transportation tests: marijuana, cocaine, amphetamines (including Ecstasy), opioids and PCP.
* In Montana, the Company must provide covered employees with a copy of their test report. An employee who tests positive has the right to explain the test and to request a split-specimen test. The employee shall pay for the split-specimen test if the result is positive; the employer shall pay for the split-specimen test if the result is negative.
* In Montana, an employer’s testing program must contain chain-of-custody and other procedural requirements that are at least as stringent as those mandated by the U.S. Department of Transportation.
* In Montana, post-voluntary rehabilitation return-to-duty and follow-up drug and alcohol testing are prohibited.
* **Blood testing for drugs or alcohol is not permitted.**
  + Alcohol testing may only be conducted using a breath alcohol test.
* Applicants and employees who test positive be given an opportunity to request a confirmatory "re-test" of the original specimen. The split-specimen methodology must be used.

## Reasonable Suspicion Testing:

* A covered employee can be required to submit to a drug and/or alcohol test whenever the Company “has reason to suspect that an employee’s faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption.”
* In Montana, supervisors who will be making reasonable suspicion determinations must be trained to do so. Such training must consist of a minimum of 60 minutes of training on alcohol misuse and 60 minutes on drug use, which is to include the physical, behavioral, speech and performance indicators of probable alcohol misuse and use of drugs.

## Post-Accident Testing:

* A post-accident test may be required of a covered employee where the employer has reason to believe the “employee’s act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of $1,500.”

## Random Testing:

* Random testing of covered employees is permitted, provided that all wage-earning safety-sensitive employees, including all supervisory and managerial employees, are tested, in conjunction with a program containing: (1) an established calendar period for testing; (2) an established random testing rate; (3) a random selection process; and (4) a signed statement from each employee that confirms that the employee has received a written copy of the employer’s testing program.

## Other Types of Testing Prohibited:

* Montana permits pre-employment, reasonable suspicion, post-accident, random and follow-up testing of covered applicants and employees. All other types of tests are prohibited.

## Marijuana

### Medical Marijuana:

* Montana has a medical marijuana law, but it does not provide employment protections to applicants or employees. case law in Montana indicates that employers may enforce their drug testing policies.

### Recreational Marijuana:

* Montana’s recreational marijuana law took effect on January 1, 2021, but was amended in May 2021 to add significant protections for off-duty use of marijuana, effective January 1, 2022. In general, employers are prohibited from taking adverse employment actions related to off-duty use of marijuana, with some exceptions. Employers may take adverse action if the off-duty use of marijuana:
  + affects employees' ability to perform job-related employment responsibilities or the safety of other employees;
  + conflicts with a bona fide occupational qualification that is reasonably related to the employees' employment; or
  + violates a personal service contract with an employer and the unique nature of the services provided authorizes the employer to limit the use of marijuana (or other products).
  + An employer can also take adverse action if the employer is a non-profit organization whose primary purpose or objective discourages the use of marijuana by the general public; or
  + The employer acts based on the belief that its actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

## Sample Post-Test Notice for Applicants and Employees Who Test Negative for Drugs or Alcohol in Montana

Date

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Negative Drug or Alcohol Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the *[drug or alcohol]* test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a negative test result. A copy of the test result is enclosed.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

**Sample Post-Test Notice for Applicants and Employees Who Test Positive for Drugs or Alcohol in Montana**

Date

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Drug or Alcohol Test Result**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the *[drug or alcohol]* test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a positive test result. A copy of the test result is enclosed.

You may request a split-specimen test of the original specimen at your own expense. If we do not hear from you within seven days, we will assume that you do not wish to request such a test.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

# NEBRASKA

* The company must use laboratories that have been licensed under the Clinical Laboratory Improvement act or accredited by the College of Pathologists.
* An employee who tests positive for alcohol on a breath test may immediately request confirmation by providing a blood specimen for testing.

# NEVADA

* In Nevada, point-of-collection testing may only be conducted within a licensed medical facility that has a licensed laboratory. However, we have been advised by the State Attorney General’s office that point-of-collection testing conducted by an employer may be permissible if the applicant/employee administers the test to himself/herself and the employer simply reads the result off of the test device, without any additional interpretation. We recommend that any non-negative test results should be sent to a licensed laboratory for confirmation testing and MRO review.

## Marijuana

* Nevada’s recreational marijuana law does not permit employers to refuse to hire a prospective employee due to a positive marijuana test result unless the job is deemed by the employer to be safety-sensitive. The law provides an exception for positions that “in the determination of the employer, could adversely affect the safety of others.” If an employer requires an employee to submit to a drug test within the first 30 days of employment, the employee shall have the right to submit to an additional drug test, at his or her own expense, to rebut the initial test result. The employer must accept and give appropriate consideration to the results of such test.
* Nevada has both a medical marijuana law and a recreational marijuana law. The medical marijuana law prohibits discrimination against medical marijuana users, so we recommend engaging in the interactive process and direct threat analysis before taking adverse employment actions against medical marijuana users.

# NEW HAMPSHIRE

## Medical Marijuana:

* New Hampshire has a medical marijuana law which does not address employment issues. However, a recent court case indicates that employees may sue their employers for failure to accommodate under the law, so we urge caution when addressing positive marijuana test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis. See sample letter at the end of the Addenda to use in that process.

# NEW JERSEY

* In New Jersey, employers must provide a written notice to applicants and employees who test positive for marijuana, to advise them that they have the right to:
  + provide a legitimate medical explanation to explain the test result; or,
  + to request a confirmatory re-test of the original specimen at a different laboratory at their own expense. See attached sample form.
* In New Jersey, due to the privacy issues in that state, post-voluntary rehabilitation return-to-duty, and follow-up drug and alcohol testing should be limited to safety-sensitive employees and the testing should be conducted only upon the recommendation of the SAP. To ensure the treating SAP can make an informed decision regarding the need for such testing, it is important for the Company to provide sufficient details concerning the nature of the employee’s job to the treating SAP.

## Post-Accident Testing:

* Employees have a right of privacy in the context of workplace drug testing “Suspicion-less” drug and alcohol testing, such as post-accident testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions.

## Random Testing:

* In New Jersey, employees have a right of privacy in the context of workplace drug testing. “Suspicion-less” drug and alcohol testing, such as random testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions.

## Medical Marijuana:

* New Jersey has a medical marijuana law which prohibits discrimination against medical marijuana users. We urge caution when addressing positive drug (marijuana) test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis before taking an adverse employment action.

## Recreational Marijuana:

* New Jersey has a recreational marijuana law which prohibits discrimination against marijuana users. We recommend that pre-employment, random and post-accident marijuana testing should be discontinued. Reasonable suspicion testing is permitted for the time being, but a Cannabis Regulatory Commission is being formed to create regulations that will require a trained Workplace Impairment Recognition Expert to evaluate an employee for potential impairment prior to testing. Although the Commission issued a 160-page Personal-Use Cannabis Rules, it largely addressed the cannabis industry and remain virtually silent as to employer drug testing. However, the Personal-Use Rules do temporarily waive the “physical examination” requirement until the Commission, in consultation with the Police Training Commission, “develops standards for a Workplace Impairment Recognition Expert certification.” § 17:30-2.1 (e) of the Personal-Use Cannabis Rules. Until then, employers are not required to conduct a physical evaluation of an employee for drug testing purposes.
* The Commission did not indicate how long it will take to develop the certification standards or when employers can expect regulations addressing marijuana testing.
* On September 9, 2022, the NJ Cannabis Regulatory Commission published Guidance that confirms that NJ employers should not test for marijuana on pre-employment drug tests. However, reasonable suspicion marijuana testing still is permissible when the impaired behaviors have been observed by two trained supervisors and the observations have been documented in writing. Additionally, any adverse employment action should be based on both the documented impaired behaviors as well as the positive marijuana drug test result, and not solely on the positive marijuana drug test result. We do not recommend testing for marijuana on post-accident or random tests.

## Sample Post-Test Notice for Applicants and Employees Who Test Positive for Marijuana in New Jersey

Date

**PERSONAL AND CONFIDENTIAL**

**VIA OVERNIGHT MAIL or EMAIL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: Notice of Positive Drug Test Result For Marijuana**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the drug test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a positive test result for marijuana. A copy of the test result is enclosed.

Please be advised that, within three working days of your receipt of this letter, you have the right to: (1) provide the Company with a legitimate medical explanation of the positive marijuana test result (such as a physician’s authorization to use medical marijuana or proof of registration with the New Jersey Medical Marijuana Program); OR, (2) you have the right to request a re-test of the original specimen at a different certified laboratory, of your own choosing, at your own expense. If you would like to request a re-test of the original specimen, please notify the undersigned and the laboratory who conducted your original test within three working days of your receipt of this letter.

Very truly yours,

[Company Name]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

# NEW MEXICO

## Marijuana

* New Mexico has a medical marijuana law that prohibits discrimination against medical marijuana users. However, adverse actions may be taken if the job is safety-sensitive. We recommend engaging in the interactive process and direct threat analysis before taking adverse employment actions against medical marijuana users in New Mexico. See sample letter at the end of the Addenda to be used for that purpose.
* New Mexico also has a recreational marijuana law, but it does not provide employment protections to employees.

# NEW YORK (INCLUDING NEW YORK CITY)

* In New York, the employer must pay for testing when an employee tests positive and requests the opportunity to have the original specimen re-tested by another State licensed independent laboratory/testing facility.

## Marijuana

* Effective May 10, 2020, pre-employment marijuana testing is prohibited in New York City, with certain limited exceptions. **[HOWEVER, THE NEW YORK CITY LAW IS NOW MOOT BECAUSE OF THE NEW YORK STATE LAW: NO MARIJUANA TESTING SHOULD BE CONDUCTED ANYWHERE IN NEW YORK STATE].**

### Medical Marijuana

* New York has a medical marijuana law that prohibits discrimination against medical marijuana users. We recommend engaging in the interactive process and direct threat analysis before taking adverse employment actions against medical marijuana users in New York. See sample letter at the end of the Addenda to assist in this process. (This law is now overshadowed by the very expansive recreational marijuana law – see below).

### Recreational Marijuana:

* Effective March 31, 2021, marijuana is legal in New York, and off-duty use of marijuana is protected. Employers are prohibited from discriminating against employees who use marijuana while off duty. Employers still may prohibit the use, possession and impairment by marijuana during work hours. Although testing for marijuana is permitted when there are “articulable symptoms of impairment,” the NY Department of Labor takes the position that employers may not take adverse employment actions based on positive marijuana test results because drug tests cannot detect current marijuana impairment. **Therefore, there should be no testing for marijuana in NY.**

# NORTH CAROLINA

* In North Carolina, applicants and employees must be provided with an initial notice in writing under the North Carolina Controlled Substance Examination Regulation Act each time that he or she submits to a drug test. The notice must explain the applicant's rights under that law. A sample "Initial Notice to Applicants and Employees When Submitting to Drug Testing in North Carolina" has been provided.
* In North Carolina, the Company is required to inform applicants and employees in writing of a positive test result within 30 days after the results are mailed or delivered to the Company. In addition, the Company must advise the applicant who tests positive of his or her rights under the North Carolina Controlled Substance Examination Regulation Act (which includes the right to request a confirmatory re-test). A sample Post-Test Notice Under CSERA for Applicants and Employees Who Test Positive For Drugs in North Carolina is provided.
* In North Carolina, the Company may use a laboratory that is certified either by DHHS, or by the College of American Pathologists.

## Marijuana

* North Carolina has a CBD law that permits CBD use for individuals with epilepsy. The CBD must contain no more than .09% THC.

## North Carolina Controlled Substance Examination Regulation Act (CSERA)

INITIAL NOTICE TO APPLICANTS AND EMPLOYEES WHEN SUBMITTING TO DRUG TESTING IN NORTH CAROLINA

In accordance with 13 NCAC 20.0401, this notice explains your rights and responsibilities under the CSERA and associated administrative regulations.

Under the CSERA, you have the following rights and responsibilities:

* All drug tests for employees, and confirmation tests for applicants, will be performed at laboratories that have been certified either by the U.S. Department of Health and Human Services, or by the College of American Pathologists.
* All positive drug tests will be confirmed by gas chromotography/mass spectrometry, or an equivalent methodology.
* Proper chain-of-custody procedures will be maintained.
* Positive drug test specimens will be preserved by the laboratory that conducts the confirmatory test for at least 90 days from the time the positive result is mailed to the employer.
* Applicants and employees who test positive will receive notification of the positive test result within 30 days after the results are mailed or delivered to the Company.
* Applicants and employees who test positive have the right to request a confirmatory re-test of the original specimen at the same or another DHHS- or CAP-certified laboratory, and will receive notice, in writing, that they have such a right.
* Applicants and employees who request a confirmatory re-test must pay all reasonable expenses associated with such tests, including: the actual cost of the confirmatory re-test charged by the laboratory; laboratory expenses, including chain of custody procedures and shipping; the employer's expenses to comply with chain of custody procedures relating to the confirmatory re-test (not to exceed $15.00 unless the employer can prove the actual expenses exceed $15.00); and, the employer's actual shipping expenses, if any.
* All information pertaining to drug test results, medical histories and lawful prescription drug use will be kept confidential. Such information only may be disclosed to: (a) the applicant or employee; (b) any other person if authorized, in writing, by the applicant or employee; (c) laboratories performing the tests; (d) the employer; or, (e) a government agency, court or other tribunal having jurisdiction over any claim or proceeding involving the applicant or employee and the employer.

Prior to signing this notice, I read it carefully and had an opportunity to ask questions regarding its content.

Signature of Applicant/Employee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(print name)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## Sample Post-Test Notice Under CSERA for Applicants and Employees Who Test Positive For Drugs in North Carolina

**[Note: Envelope containing this letter must be marked personal and confidential and for addressee only]**

**PERSONAL AND CONFIDENTIAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RE: NOTICE OF POSITIVE TEST RESULT UNDER NORTH CAROLINA CONTROLLED SUBSTANCE EXAMINATION REGULATION ACT**

Dear \_\_\_\_\_\_\_\_\_\_\_\_\_:

On \_\_\_\_\_\_\_\_\_ [date], the Company was notified that the drug test you underwent on \_\_\_\_\_\_\_\_\_\_\_\_[date] resulted in a positive test result. The testing was conducted in accordance with the North Carolina Controlled Substance Examination Regulation Act ("CSERA").

In accordance with 13 NCAC 20.0402, this notice explains your rights and responsibilities under the CSERA and its associated administrative rules. Under the CSERA, you have the following rights and responsibilities:

* You have the right to request a confirmatory re-test of the original specimen at the same or another laboratory certified by the U.S. Department of Health and Human Services, or the College of American Pathologists.
* If you request a confirmatory re-test, you must pay all reasonable expenses associated with such tests, including: the actual cost of the confirmatory re-test charged by the laboratory; laboratory expenses including chain of custody procedures and shipping; the employer's expenses to comply with chain of custody procedures relating to the confirmatory re-test (not to exceed $15.00 unless the employer can prove the actual expenses exceed $15.00); and, the employer's actual shipping expenses, if any.
* All information pertaining to drug test results, medical histories and lawful prescription drug use will be kept confidential. Such information only may be disclosed to: (a) you; (b) any other person if authorized, in writing, by you; (c) laboratories performing the tests; (d) the employer; or (e) a government agency, court or other tribunal having jurisdiction over any claim or proceeding involving the applicant or employee and the employer.
* If you would like to request a confirmatory re-test, you must do so within 90 days of the date of this letter. If you have not made such a request within 90 days of the date of this letter, we will assume that you do not wish to request a confirmatory re-test.

Very truly yours,

[COMPANY NAME]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Company representative]

# NORTH DAKOTA

## Medical Marijuana

* North Dakota has a medical marijuana law, but it does not provide employment protections to applicants or employees.

# OHIO

## Medical Marijuana

* Ohio has a medical marijuana law. The law permits employers to establish zero-tolerance drug policies, and prohibits employees from suing employers who take action against them due to the use of medical marijuana.

# OKLAHOMA

* In Oklahoma, the Company will test for drugs and alcohol as defined in the Standards for Workplace Drug and Alcohol Testing Act, including controlled substances approved for testing by the State Commissioner of Health.
* Applicant testing is permitted, provided the applicant has received a conditional offer of employment. A copy of this policy and any changes must be given to each applicant upon his/her receipt of a conditional offer of employment by either hand delivery, mail, e-mail, posting on the employer’s intranet or website, or posting a copy in a prominent employee access location.

In Oklahoma, the term “employee” does not include independent contractors, contractors or employees of independent contractors. However, such individuals may be subject to drug and alcohol testing pursuant to the terms of a contractual agreement when the policy applies to other workers at the job site or workers who are in the same or similar classification or group.

* The company must use laboratories that are either DHHS certified or have been licensed by the Oklahoma Department of Health.
* Employees must be given at least 10 days’ notice of this policy and of policy changes before they can become effective in Oklahoma. A copy of the drug testing policy must also be given to each employee either by hand delivery, mail, email, posting on the employer’s intranet or website, or posting a copy in a prominent employee access location.
* Oklahoma considers an alcohol test result of .02 or greater to be a positive test result.
* Oklahoma requires the use of these cut-off levels in urine testing (and requires confirmation testing using GC/MS or an equivalent accepted method of equal or greater accuracy):

Initial test Confirmation test

Marijuana 50 ng/ml 15 ng/ml

Cocaine 300 ng/ml 150 ng/ml

Opiates (codeine, morphine, heroin) 2000 ng/ml 2000 ng/ml

Amphetamines 1000 ng/ml 500 ng/ml

PCP 25 ng/ml 25 ng/ml

Barbiturates 300 ng/ml 300 ng/ml

Benzodiazepines 300 ng/ml 300 ng/ml

Methaqualone 300 ng/ml 300 ng/ml

Semi-synthetic opioids 300 ng/ml 300 ng/ml

* Post-voluntary rehabilitation follow-up drug and alcohol testing by employers is permitted for a period up to 2 years following completion of the treatment program, commencing with the employee’s return to duty.

## Reasonable Suspicion Testing:

* An employee can be required to submit to a reasonable suspicion drug and/or alcohol test whenever the Company reasonably believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:
  + drugs or alcohol on or about the employee’s person or in the employee’s vicinity;
  + conduct on the employee’s part that suggests impairment or influence of drugs or alcohol;
  + a report of drug or alcohol use while at work or on duty;
  + information that an employee has tampered with drug or alcohol testing at any time;
  + negative performance patterns; or
  + excessive or unexplained absenteeism for tardiness.

## Post-Accident Testing:

* An employer may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or the employer's property has been damaged, including damage to equipment.

## Other Types of Testing Prohibited:

* Oklahoma permits pre-employment, reasonable suspicion, post-accident, random, follow-up, periodic, fitness-for-duty and return-from-leave testing of applicants and employees. All other types of tests are prohibited.
* Urine specimen collections under direct observation are prohibited.
* Blood testing for drugs is prohibited.
* The Oklahoma Medical Marijuana and Patient Protection Act or “Unity Bill” took effect on August 30, 2019. Oklahoma law prohibits employers from taking an adverse action against an employee or applicant solely on the basis of the applicant or employee’s status as a medical marijuana licensee and, **an employer may not refuse to hire, discipline, discharge or penalize an applicant or employee solely on the basis of a positive marijuana test result. However, adverse employment actions may be taken in certain circumstances, including:** 
  + the applicant or employee is not in possession or a valid medical marijuana license;
  + the licensee possesses, consumes, or is under the influence of medical marijuana or medical marijuana product while at the place of employment or during the fulfillment of employment obligations; or
  + the position involves safety-sensitive duties. Safety-sensitive means any job the employer reasonably believes could affect the safety and health of the employee performing the tasks or others. Specific examples of safety sensitive duties are described in the statute. A positive test is at or above the cutoff levels established by DOT or Oklahoma law regarding being under the influence, whichever is lower.
    - “Safety-sensitive” is defined to mean any job that includes tasks or duties that the employer reasonably believes could affect the safety and health of the employee performing the task or others including, but not limited to, any of the following:

1. The handling, packaging, processing, storage, disposal, or transport of hazardous materials;
2. The operation of a motor vehicle, other vehicle, equipment, machinery, or power tools;
3. Repairing, maintaining, or monitoring the performance or operation of any equipment, machinery or manufacturing process, the malfunction or disruption of which could result in injury or property damage;
4. Performing firefighting duties;
5. The operation, maintenance or oversight of critical services and infrastructure including, but not limited to, electric, gas, and water utilities, power generation or distribution;
6. The extraction, compression, processing, manufacturing, handling, packaging, storage, disposal, treatment or transport of potentially volatile, flammable, combustible materials, elements, chemicals or any other highly regulated component;
7. Dispensing pharmaceuticals;
8. Carrying a firearm; or,
9. Direct patient care or direct childcare.

## Marijuana

* Oklahoma has a CBD law that permits CBD use for certain medical conditions. The CBD must contain no more than .3% THC and must be used in liquid form.

# OREGON

* **In Oregon,** the Company must use a laboratory that is licensed by the state.
* Breath testing for alcohol is permitted only when there is reasonable suspicion, or when the employee consents. Otherwise, blood testing for alcohol should be used.

## Marijuana:

* Oregon has both a medical marijuana law and a recreational marijuana law. Those laws do not provide protections to employees or applicants and case law in Oregon indicates that employers may enforce their drug testing policies.

# PENNSYLVANIA

**(including the city of Philadelphia, but see Philadelphia-specific requirements below)**

* Due to the privacy issues in Pennsylvania, post-voluntary rehabilitation return-to-duty, sweep, and follow-up drug and alcohol testing should be limited to safety-sensitive employees and the testing should be conducted only upon the recommendation of the SAP. To ensure the treating SAP can make an informed decision regarding the need for such testing, it is important for the Company to provide sufficient details concerning the nature of the employee’s job to the treating SAP.

## Post-Accident Testing:

* Employees have a right of privacy in the context of workplace drug testing. “Suspicion-less” drug and alcohol testing, such as post-accident testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions.

## Random Testing:

* A number of states, including Pennsylvania, have recognized a right of privacy, whether constitutional, statutory, or by common law, specifically with regard to substance abuse testing. In such states, “suspicionless” drug and alcohol testing, such as random testing, may violate employees’ privacy rights unless the employees are performing safety-sensitive functions.

## Marijuana

### Medical Marijuana:

* Pennsylvania has a medical marijuana law that prohibits discrimination against medical marijuana users. We recommend engaging in the interactive process and direct threat analysis before taking adverse employment actions against medical marijuana users in Pennsylvania (see sample letter at the end of the Addenda to be used for this purpose). The medical marijuana law does not permit certain jobs to be "under the influence" of marijuana but that phrase is not defined:
  + A patient may not operate or be in physical control of any of the following while under the influence with a blood content of more than 10 ng/ml:
    - chemicals which require a permit issued by the federal government, state government, federal agency, or state agency; or
    - high-voltage electricity or any other public utility;
  + A patient may not perform any employment duties at heights or in confined spaces, including, but not limited to, mining while under the influence of medical marijuana;
  + A patient may be prohibited by an employer from performing any task which the employer deems life-threatening, to either the employee or any of the employees of the employer, while under the influence of marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient;
  + A patient may be prohibited by an employer from performing any duty which could result in a public health or safety risk while under the influence of medical marijuana. The prohibition shall not be deemed an adverse employment decision even if the prohibition results in financial harm for the patient.

# PHILADELPHIA, PENNSYLVANIA

## Marijuana

* Employers in the City of Philadelphia are prohibited from testing for marijuana as a condition of employment (pre-employment testing). (Chapter 9-4700 of the Philadelphia Code). There are exceptions in the law for individuals working in certain jobs or professions, including but not limited to commercial drivers; law enforcement; positions requiring the supervision of children, medical patients, disabled or vulnerable individuals; or any position in which the employee could significantly impact the health or safety of other employees or members of the public, as determined by the enforcement agency and set forth in regulations pursuant to this Chapter. The regulations have not yet been published. The law also states that it does not apply to drug testing that is required by:
  + Any federal or state statute, regulation or order that requires drug testing of prospective employees for purposes of safety or security;
  + Any contract between the federal government and an employer or any grant of financial assistance from the federal government to an employer than requires drug testing of prospective employees as a condition of receiving the contract or grant; or
  + Any applicant whose prospective employer is a party to a valid collective bargaining agreement that specifically addresses the pre-employment drug testing of such applicants.

# RHODE ISLAND

* In Rhode Island, state law expressly provides that pre-employment testing is permitted only after a conditional offer of employment is made.
* **Post-voluntary rehabilitation return-to-duty and follow-up drug and alcohol testing are prohibited.**
* Employers in Rhode Island may not automatically terminate employees who test positive for drugs or alcohol if it is the first time the employee has tested positive for that employer. Before an employee can be terminated from employment for testing positive, the employee must first be offered an opportunity to be evaluated and enroll in a treatment program, if treatment is deemed appropriate.
* An employee who tests positive may request a confirmatory re-test at the Company's expense.
* Urine specimen collections under direct observation are prohibited.

## Reasonable Suspicion Testing:

* An employee can be required to submit to a drug test when the Company has "reasonable grounds to believe, based on specific aspects of the employee's job performance and specific contemporaneous observations, capable of being articulated, concerning the employee's appearance, behavior or speech that the employee's use of controlled substances is impairing his or her ability to perform his or her job."

## Post-Accident Testing:

**Prohibited, unless there is reasonable suspicion as defined above.**

## Random Testing:

**Prohibited.**

## Marijuana

### Medical Marijuana:

* Rhode Island has a medical marijuana law, and case law in that state indicates that employers may not discriminate against medical marijuana users. We urge caution when addressing positive drug (marijuana) test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis.

### Recreational Marijuana:

* Rhode Island’s recreational marijuana law took effect on May 25, 2022. Off-duty use is protected, although employers do not have to accommodate use or possession during work time (including remote work). In addition, if an employee works in a job, occupation or profession that is “hazardous, dangerous or essential to public welfare and safety,” an employer may adopt and implement policies that prohibit the use or consumption of cannabis within the 24-hour period prior to a scheduled work shift or assignment. Examples of work that falls under this exception include: operation of an aircraft, watercraft, heavy equipment, heavy machinery, commercial vehicles, school buses or public transportation, the use of explosives, public safety first responder jobs, and emergency and surgical medical personnel. Because of the length of time that marijuana stays in the body, all marijuana drug testing now is risky in Rhode Island. We do not recommend any marijuana testing except possibly for reasonable suspicion, and if there is a positive marijuana test result, discipline should be based on the impaired behaviors and not just the positive test result alone.

# SOUTH CAROLINA

## Marijuana

* South Carolina has a CBD law that permits CBD use by individuals with certain epileptic conditions. The CBD must contain no more than .9% THC.

# SOUTH DAKOTA

## Marijuana:

* South Dakota has a medical marijuana law which took effect in July 2021. Although employers may discipline employees for ingesting marijuana in the workplace or for working while under the influence of marijuana, employers may not consider a qualifying patient to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in “insufficient concentration to cause impairment.” Employers in South Dakota should take note of this language because there is no universally accepted concentration of marijuana that proves “impairment.” We recommend consulting with counsel when addressing medical marijuana in South Dakota.

# TENNESSEE

## Marijuana

* Tennessee has a CBD law that permits CBD use by individuals with certain epileptic conditions. The CBD must contain no more than .9% THC.

# TEXAS

## Marijuana

* Texas has a CBD law (low THC) that permits CBD use by individuals with certain medical conditions. The CBD must contain no more than .5% THC.

# UTAH

## Marijuana

* Utah has a medical marijuana law which does not address employment issues. Due to the recent trend in the case law, we still urge caution when addressing positive drug (marijuana) test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis. See sample letter at the end of the Addenda to use for this purpose.
* Utah has a CBD law that permits CBD use by individuals with “intractable epilepsy.” The CBD must contain no more than .3% THC.

# VERMONT

* In Vermont, the only permissible specimen that may be tested is urine, for both drugs and alcohol. In particular, the statute prohibits blood testing (unless the tested individual requests that a blood sample be drawn at the same time as the urine specimen is taken and preserved for potential later testing).
* In Vermont, state law expressly provides that pre-employment testing is permitted only after a conditional offer of employment is made. The applicant must be provided with a copy of the Company's policy which must include: the testing procedures to be followed; a list of the drugs to be tested; a statement that therapeutic levels of medically-prescribed drugs tested will not be reported; and, the consequences of a positive test result.
* Applicants and employees who test positive be given an opportunity to request a confirmatory "re-test" of the original specimen. Additionally, an applicant or employee may request, at his or her own expense, to have a blood specimen drawn at the time that he or she provides the urine specimen, and maintained for potential testing at a later time.
* In Vermont, the term “employee” includes any person who may be permitted, required, or directed by an employer, in consideration of direct or indirect gain or profit, to perform services.
* In Vermont, employers may test for “drugs,” defined as follows: “a drug listed or classified by the U.S. Drug Enforcement Administration as a Schedule I drug, or its metabolites, and alcohol. It shall also mean other drugs or their metabolites which are likely to cause impairment of the individual on the job, which are: amitriptyline, amphetamines, barbiturates, benzodiazepines, cannabinoids, cocaine, doxepin, glutethimide, hydromorphone, imipramine, meperidine, methadone, methaqualone, opiates, oxycodone, pentazocine, phenytoin, phencyclidine, phenothiazines, and propoxyphene. In addition, the Commissioner of Health may, pursuant to 3 V.S.A. chapter 25, add drugs to this list not recognized as being commonly abused and likely to cause impairment of the employee on the job as of May 22, 1987.” The drugs that the employer tests for must be listed in the drug testing policy.
* Employers in Vermont may not automatically terminate employees who test positive for drugs or alcohol if it is the first time the employee has tested positive for that employer. Before an employee can be terminated from employment for testing positive, the employee must first be offered an opportunity to be evaluated and enroll in a treatment program, if treatment is deemed appropriate. In Vermont, an employee testing positive must be given the opportunity to participate in an EAP and may be discharged only if he or she refuses participation or subsequently tests positive after completing rehabilitation. Vermont does permit employers to suspend such employees during the period they participate in an employee assistance program. However, no employee may be suspended for longer than three months.
* In Vermont, the Company must use a laboratory that is approved by the Vermont Department of Health.
* In Vermont, employers must maintain an employee assistance program, and must offer an employee who tests positive the opportunity to participate in the EAP rather than discharging him or her.
* In Vermont, return-to-duty testing and follow-up testing are prohibited.

## Reasonable Suspicion Testing:

* An employee can be required to submit to a drug and/or alcohol test whenever the Company has “probable cause to believe the employee is using or is under the influence of a drug on the job.” Vermont’s statute defines “drug” to include alcohol.

## Post-Accident Testing:

* Prohibited, unless there is reasonable suspicion as defined above.

## Random Testing:

* Prohibited.

## Marijuana

### Medical Marijuana:

* Vermont has a medical marijuana law, although it does not address employment issues. We urge caution when addressing positive drug (marijuana) test results of medical marijuana users, and recommend engaging in the interactive process and direct threat analysis.

### Recreational Marijuana:

* Vermont also has a recreational marijuana law, but there are no employment protections in it.

# VIRGINIA

## Marijuana

* Virginia has a CBD law that permits CBD use by individuals with any medical condition as long as determined by a “practitioner” that the individual would benefit from such use. The CBD must contain no more than 5% THC. Effective July 1, 2021, employers may not discriminate against employees who use medical CBD oil.
* Virginia’s recreational marijuana law took effect in July 2021. It does not contain employment protections for employees.

# WASHINGTON

## Marijuana:

* Washington has both a medical marijuana law and a recreational marijuana law. Those laws do not provide protections to employees or applicants and case law in Washington indicates that employers may enforce their drug testing policies.
* Effective January 1, 2024, pre-employment marijuana testing is prohibited unless the drug test can distinguish between psychoactive and nonpsychoactive components of THC. Since there are no drug tests currently on the market that can make that distinction, employers should not test for marijuana on pre-employment tests starting on January 1, 2024, unless an exception applies. The law does not apply to applicants seeking:
* Positions requiring a federal government background investigation or security clearance;
* Certain law enforcement positions;
* Certain fire department positions;
* First responders (including 911 dispatchers) positions;
* Corrections officers positions;
* Positions in the airline or aerospace industries;
* Safety-sensitive positions for which impairment while working presents a substantial risk of death. Such safety-sensitive positions must be identified by the employer prior to the applicant’s application for employment.

The law does not preempt state or federal laws requiring an applicant to be tested for drugs. This includes testing that is related to the receipt of federal funding or federal licensing-related benefits or as required by a federal contract.

# WEST VIRGINIA

An employer’s drug and alcohol testing policy must be in writing, and the policy must be distributed to all employees subject to testing. It also must be made available for review to any person who has applied for employment.

* Employers must provide transportation or pay reasonable transportation costs to employees if drug or alcohol testing is conducted at a location other than the employee's normal work site.
* Employers must pay the cost for all required testing, not including split specimen testing requested by employees (except that the employee must be reimbursed if the split specimen test result is negative).
* Drug or alcohol testing of employees must occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.
* For confirmatory testing, the Company must use laboratories that are:
  + DHHS-certified;
  + approved by DHHS under the Clinical Laboratory Improvements Act; or,
  + approved by the College of American Pathologists.
* West Virginia requires that employees who test positive for drug or alcohol tests be given an opportunity to request a split specimen test of the original specimen.

## Marijuana

* West Virginia has a medical marijuana law that prohibits discrimination against medical marijuana users. However, the laws contain some helpful language with respect to safety-sensitive employees. We recommend engaging in the interactive process and the direct threat analysis before taking an adverse employment action against a medical marijuana user.

# WISCONSIN

## Marijuana

* Wisconsin has a CBD law that permits CBD use “to treat a medical condition.” The law does not specify a maximum amount of THC, but states that the CBD must not have a psychoactive effect.

# WYOMING

## Marijuana

* Wyoming has a CBD law that permits CBD use for “intractable epilepsy.” The CBD may have no more than .3% THC.

# GUIDELINES FOR MAKING “REASONABLE SUSPICION” DETERMINATIONS

**IN GENERAL**: Employees may be at work in a condition that raises concern regarding their safety or productivity or the safety of others. If a supervisor, manager, or another Company official with training in the identification of the signs and symptoms of drug use or alcohol misuse reasonably concludes that there are objective facts which indicate the employee has used or may be using drugs or alcohol in violation of the Company’s substance abuse policy there is sufficient justification to recommend to Human Resources that the employee submit to a “reasonable suspicion” test.

In general, “reasonable suspicion” means that a supervisor or manager who has received appropriate training can point to specific, contemporaneous, articulable observations, including but not limited to the employee’s appearance, behavior, speech or body odors, which indicate that the employee has or may have used drugs or alcohol in violation of the Company’s substance abuse policy. These observations can include indications of chronic drug use or the effects of the employee’s withdrawal from drugs. **There may be additional requirements for making reasonable suspicion determinations under applicable state and/or local law. Refer to the State Law Addenda for further details, to ensure that all reasonable suspicion determinations comply with applicable law.**

**Timing of “reasonable suspicion” tests is critical. Reasonable suspicion alcohol tests must be conducted within 8 hours of the suspicion. Reasonable suspicion drug tests must be conducted within 32 hours of the suspicion.**

All Company decisions to require a employee to submit to a “reasonable suspicion” test will be made by Human Resources based upon the recommendation(s) of the supervisor or manager who either directly observed the employee, or, in the case of a third-party report concerning a employee’s appearance, behavior, speech or body odors, the individual who took the report and followed Company procedures to ensure that:

* the third-party making the report is reliable and credible and
* the nature of the particular employee’s appearance, behavior, etc. upon which a test would be based is no less than what the Company would otherwise require if the decision to test was instead being based on the supervisor’s, manager’s, or other Company official’s direct observation of the employee. Whenever first-hand observation of the employee is possible following the receipt of a third-party report, however, direct observation of the employee is recommended and to the extent possible should be obtained if doing so would not unduly delay the test or jeopardize its outcome, particularly in the case of an alcohol test because of alcohol’s rapid rate of metabolization within the body. However, whenever first-hand observation is not possible, the reason(s) should be documented.

If the supervisor, manager or Human Resources has reason to believe a employee has violated the Company’s policy, but is unsure whether the employee is using drugs or alcohol and cannot rule out either, the employee should be directed to submit to both a drug and alcohol test. **If the employee is required to submit to a drug and alcohol test, the alcohol test should be conducted first, since an alcohol test must be performed within a defined period of time and because alcohol leaves the body much earlier than drugs.**

Once it has been determined that a employee must submit to a “reasonable suspicion” drug or alcohol test, the supervisor, manager, or another on-site official should insure that the employee is immediately transported to and also from the collection site. In addition, depending on the alcohol test results and the employee’s condition at the completion of the test(s), it may be necessary to arrange for the individual to be transported home. The following are some examples of how a employee can be transported home:

* by his or her supervisor or another staff member,
* by a relative or friend of the employee who is identified on the employee’s emergency contact list, or
* by the police.

**“Short-term” indicators of possible use**: The following are some examples of “short-term” indicators of possible drug or alcohol use by a employee which can provide an objective basis upon which to conclude that a legitimate basis for testing the employee exists. It is important to understand and remember, however, that this is not an exhaustive list of possible indicators of use. The occurrence of one or more of the following is also not an absolute indicator of drug or alcohol use, but merely *an indication of the possibility* that such use has occurred. Different drugs also have different symptoms and indications of use. Some medical emergencies, such as an epileptic seizure or diabetic episode, can also resemble the symptoms of alcohol or drug use. Accordingly, as part of the determination process, it is important to compare the employee's observed symptoms and appearance, behavior, speech or body odor with the employee's normal appearance, behavior, speech or body odor:

1. Direct observation of possession, distribution, or use of drugs or alcohol.

2. Slurred, rapid, or incoherent speech.

1. Hyper-body movements, staggering, unsteady, poor muscular control or motor coordination.
2. Runny nose, sniffles, itchy nose, sores around nostrils, white powder around nose.
3. Dilated or constricted pupils or pupils which do not respond to changes in light, blank stare, rapid and involuntary eye movement.
4. Bloodshot or watery eyes.
5. Extreme fatigue or sleeping on the job.
6. Excessive sweating or clamminess of skin.
7. Flushed or very pale face.
8. Highly excited or nervous mood.
9. Nausea or vomiting.
10. Smell of alcohol, marijuana (sweet odor similar to burnt rope) or solvents (glue, nitrates, ether or turpentine).
11. Disheveled appearance.
12. Dry mouth (frequent swallowing/lip wetting).
13. Dizziness or fainting.
14. Shaking hands or body tremors/twitching.
15. Breathing irregularity or difficulty breathing.
16. Puncture or "track" marks.
17. Wearing sunglasses and long-sleeved shirts at inappropriate times (to hide dilated pupils or needle marks) — this should be exercised with care, however, to avoid provoking a possible charge of discrimination, triggered solely by the employee’s selection of clothing apparel or “uniform.”
18. Sudden mood, attitude or behavioral changes (for example, depression, unresponsiveness, extreme aggressiveness or agitation, combative behavior, hallucinations, disorientation, excessive euphoria, confusion, unexplained burst or lack of energy, physical or verbal abusiveness and any other erratic or inappropriate behavior which is different from the employee’s mood, attitude and behavior, especially if observed after breaks or other occasions when the employee may have had an opportunity to use drugs or alcohol).
19. Presence of drugs or drug paraphernalia, e.g., small pieces of foil or folded paper, safety razor blade, containers of alcohol, cigarette papers and remnants (“roaches”), pipes, alligator clips or hemostats.
20. Statements of personal observations by co-workers.
21. A report of drug or alcohol use, provided by a reliable and credible third-party source, *e.g.,* a customer, which has been independently corroborated.
22. Information that a employee has caused, contributed to, or been involved in an accident or a near "miss," a flagrant violation of safety rules, or serious misconduct.
23. Evidence that a employee has used, distributed, dispensed, possessed, sold, solicited, or transferred drugs or alcohol in violation of Company’s substance policy.
24. Abnormal operation of a vehicle or equipment, such as driving in a weaving motion
25. Arrest for driving while intoxicated.
26. Flushed or pale or sickly complexion.

**“Long-term” indicators**: The following are some examples of “long-term” indicators related to a employee’s performance or behavior which can be caused by or associated with drug and alcohol abuse. As with the “short-term” indicators, their occurrence should be viewed as *an indication of possible abuse* and not necessarily an absolute indication. Nonetheless, the occurrence of one or more of the following can provide a good indication that the employee is experiencing a problem which may involve drugs or alcohol. The observance of such “long-term” indicators by a supervisor or manager should prompt that supervisor or manager to look more carefully and closely at the employee to see whether any of the “short-term” are also present and provide a sufficient factual basis upon to conclude that “reasonable suspicion” to test exists:

1. Work performance problems, including a deterioration in quality or quantity of work.

2. Problems with attendance such as tardiness and increasing absenteeism (especially after a weekend or holiday).

3. Increased accidents or injuries without explanation.

4. Poor judgment and difficulty in concentration.

5. Personality changes, including increased aggressiveness, mood changes, fearful or paranoid behavior.

6. Social withdrawal, including isolation, overreaction to criticism, and a lack of eye contact.

7. Emotional changes such as noticeable signs of anxiety or depression, paranoia, or excessive laughing.

8. Deterioration in personal grooming and hygiene.

9. Frequent or more frequent requests for time off during weekdays.

10. Pattern of accidents in the area during particular time period.

11. Frequent or more frequent need to borrow money.

12. Avoidance of supervisors.

13. Noticeable increase in medical insurance claims, particularly for non-job related injuries.

14. Lack of concentration or decreased productivity after lunch or breaks.

15. Non-work related visits from other employees, visitors, or strangers.

16. Frequent or more frequent trips to the restroom or water fountain.

17. Long or longer lunch hours.

18. Frequent visits to car/parking lot.

**Making the determination**: “Reasonable suspicion” determinations should be based on specific, contemporaneous, articulable observations concerning the employee's appearance, behavior, speech, or body odors. A supervisor’s or manager’s observations also may include indications of the chronic use and/or the effects of the employee’s withdrawal from drugs. Therefore, some of the above signs and symptoms identified above may not necessarily be sufficient by themselves to conduct a test under state law. For example, under some state laws, the mere possession or distribution of drugs or alcohol, without some additional indication that the employee has used or consumed drugs or alcohol, may not be a sufficient basis for a “reasonable suspicion” drug or alcohol tests. In such cases, although the Company might not be able to conduct a test, the employee’s possession or distribution may violate Company policy and, therefore, subject the employee to discipline without the need to conduct a test.

A supervisor, manager or other Company official’s observations regarding a employee may be made at any time the employee is at work. “Reasonable suspicion” tests for alcohol should be conducted within eight hours of the determination. As a general rule, alcohol tests should be conducted either just before the employee comes on-duty, while the employee is on duty, or just after the employee comes off duty.

Whenever a supervisor or manager believes a “reasonable suspicion” drug or alcohol test should be conducted, a “Reasonable Suspicion and Post-Accident Drug and/or Alcohol Test Report” form should be completed. The form is used to identify and document the reason(s) why the test should be conducted. If at all possible, this report should be prepared before the employee is requested to submit to the tests. If not, the report should be prepared as soon as possible after the employee is directed to take the test. The report should also be reviewed by the Department Head who is on-site at that time, prior to contacting the Human Resources Department for confirmation to test.

Once there is concurrence that “reasonable suspicion” to test does exist, the test or tests should be conducted as soon as possible, following the procedures outlined in the Company’s “Reasonable Suspicion Test Procedures Checklist.” If the employee is required to submit to a drug and alcohol test, the alcohol test should be conducted first, because alcohol breaks down or metabolizes in the body much quicker than drugs and is therefore detectable for a shorter period of time.

Management’s role is to help inform employees about the Company’s substance abuse policy and to determine when there is a reasonable justification to recommend an employee be tested. Supervisors and managers are expected to determine whether the employee may have or has violated the Company’s substance abuse policy, not the substance(s) a employee may be using in violation of the policy. Supervisors and managers are expected to be able to articulate and substantiate specific behavioral performance or physical indicators of drug or alcohol use. However, it is not the responsibility of the supervisors and managers to "diagnose" an employee.

It is also essential to understand that a referral for a “reasonable suspicion” test is not and should not be treated as an out-right conclusion that the employee has, in fact, used drugs or alcohol in violation of the Company policy. Indeed, the cause of a employee’s conduct could be due to other legitimate reasons. Therefore, a request that a employee submit to a “reasonable suspicion” test should be treated as a request to obtain objective data to determine or “rule out” that drugs or alcohol was or was not the underlying cause of the observed behavior. Finally, all interactions with the employee and information about the basis of the “reasonable suspicion” determination and the test results are confidential and should be handled with utmost respect for the employee's privacy.

# “REASONABLE SUSPICION” DRUG AND/OR ALCOHOL TEST REPORT

**Instructions:** This report is to be used for documenting the basis for all “reasonable suspicion” and post-accident drug and alcohol tests to be conducted by the Company. The report should be filled out by a supervisor or company official who has received training in the identification of actions, appearance or conduct indicating drug and/or alcohol usage. Note that *in the case of alcohol*, the required observations can only be made either *during, just before or just after* the employee’s scheduled workday. **Part I** of the report should be prepared and signed by the supervisor, manager or other Company official who observes, or receives a third-party report regarding, the employee’s appearance, behavior, conduct, speech, or body odors which form the basis for the belief that the employee has used drugs in violation of the Company’s substance abuse policy. **Part II** should be filled out in the event the employee refuses to submit to a test or refuses to be escorted to or from the test site. **In all cases, this form should be filled out as soon as possible after the triggering event occurs. The supervisor(s) or other official(s) who fills out the report must sign and date the report where indicated at the end of this report.**

|  |
| --- |
| Employee:  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Identification Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Observation/ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Time: (from \_\_\_\_\_\_am/pm: to \_\_\_\_\_\_\_\_am/pm)  Accident:  Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(Street) (Street) (City) (State) (Zip )* |
|  |

**PART I: OBSERVED CAUSES FOR SUSPICION**

1. Presence of Alcohol/Drugs and/or Alcohol/Drug Paraphernalia *(specify)*:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Appearance: 🞏 Flushed 🞏 Odor (Breath or body) 🞏 Puncture Marks

🞏 Disheveled 🞏 Bloodshot or Watery Eyes 🞏 Dry-mouth Syndrome

🞏 Dilated/Constricted Pupils 🞏 Profuse Sweating

🞏 Runny Nose/Sores 🞏 Tremors/twitching

🞏 Other:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Speech: 🞏 Incoherent 🞏 Slurred 🞏 Silent

🞏 Confused 🞏 Slowed 🞏 Whispering

🞏 Other:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Motor Skills: 🞏 Unsteady; swaying 🞏 Reaching for Support 🞏 Arms Raised for Balance

🞏 Stumbling, staggering 🞏 Falling down 🞏 Lack of coordination

🞏 Other:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

5. Behavior: 🞏 Confused 🞏 Disoriented 🞏 Mood Swings

🞏 Paranoid 🞏 Unresponsive 🞏 Lethargic; sleepy

🞏 Euphoria (excessive feeling of well-being)

🞏 Withdrawn, depressed, tearful 🞏 Highly excited/nervous

🞏 Verbally abusive 🞏 Physically abusive 🞏 Extreme aggressiveness or agitation

🞏 Nausea/vomiting 🞏 Dizziness/fainting

🞏 Lack of concern for care or safety of self or others

Other erratic or inappropriate behavior *(please specify):*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Other Workplace Observations *(specify)*:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

7. Third-party Report:

Name of third-party: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone number: (\_\_)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Nature of contact with employee (*e.g.,* customer):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Explain basis of third-party’s credibility:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**PART II REPORT OF EMPLOYEE’S REFUSAL TO SUBMIT TO TEST OR REFUSAL OF ESCORT**

**Instructions:** Under the Company’s substance abuse policy, a employee must submit to a “reasonable suspicion” drug and/or alcohol test when directed by the Company. In addition, the employee should be escorted to and from the test site, in accordance with the Company’s escort procedure. This section of the report is to be filled out by the supervisor, manager or another Company official in the event the employee refuses to submit to a test or refuses to be escorted either to or from the test site.

🞏 Employee refused to submit to test (provide brief description of event): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

🞏 Employee refused to be escorted (provide brief description of event): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Supervisor/ Manager/ other Company Official:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Signature) (Title) (Date/Time)*

If more than one Supervisor/ Manager/ other Company Official:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(Signature) (Title) (Date/Time)*

# “REASONABLE SUSPICION” TEST PROCEDURES CHECKLIST

**Instructions:** Under the Company’s substance abuse policy for employees, the Company will conduct a “reasonable suspicion” drug and/or alcohol test whenever the Company’s Human Resources Department has determined there is “reasonable suspicion” to believe an employee may be using drugs or alcohol in violation of the Company policy, based on an employee’s appearance, behavior, conduct, speech, or body odors. **The specific standard which should be used for making this determination is governed by state law. Before any such determination is made, refer to the State Law Addenda, in order to ensure that the determination is made appropriately and in accordance with applicable law, and documented.**

**Timing of “reasonable suspicion” tests is critical. Reasonable suspicion alcohol tests must be conducted within 8 hours of the suspicion. Reasonable suspicion drug tests must be conducted within 32 hours of the suspicion.**

To be valid, the employee’s appearance, behavior, speech, or body odor must be personally observed by at least one of the employee’s supervisors or another Company official who has received training in the identification of actions, appearance or conduct indicating drug and/or alcohol usage. Note that *in the case of alcohol*, the required observations can only be made either *during, just before, or just after* the period of the workday the employee’s use of alcohol is prohibited. Examples of “short-term” and “long-term” indicators of possible drug or alcohol use are discussed in the Company’s “Guidelines for Making Reasonable Suspicion Determinations.” The applicable indicators should be documented on the Company's “Reasonable Suspicion Drug and/or Alcohol Test Report” form.

When at least one supervisor or manager believes there is “reasonable suspicion” to test a employee, the following procedures should be *immediately* followed:

□ Step 1: Immediately complete the “Reasonable Suspicion Drug and/or Alcohol Test Report” form, which documents the Company’s basis for its determination to test.

□ Step 2: Discuss your observations with the Human Resources Department (if the Human Resources representative is not the person filling out this form), in order to determine if the Human Resources Department agrees with your observations. **Remember, no testing is to be conducted without the prior approval of the Human Resources Department.**

□ Step 3: If the Human Resources Department agrees with your determination and authorizes the test to be conducted, have the employee come to your office and, in the presence of the Human Resources representative or another supervisor if the Human Resources representative is not available (a second witness is recommended), read the following statement to the employee:

“[I] [We] have been observing your [appearance], [behavior], [conduct], [speech] and/or [body odor] and it appears that you have been using drugs and/or alcohol. In accordance with the Company’s substance abuse policy, the Company has the right to test you. As a condition of your employment, you have agreed to submit to such tests immediately. **You will be suspended while awaiting your drug [and/or alcohol] test result.** Although you have a right to refuse to submit to the test, if you do, you are subject to immediate termination of employment. Do you understand? Do you have anything to say?”

□ Step 4: *If the employee consents to be tested:*

(i) Escort: Advise the employee that he/she will be escorted to the collection site and also escorted home following the drug and/or alcohol test. The employee should also be advised that he/she will be escorted from the test site following an alcohol test if the Company continues to have reason to believe the employee is unfit to return to work following the alcohol test whose result is negative. Also advise the employee that if he/she refuses to be escorted, either to or from the site, he/she is subject to corrective action, up to and including termination of employment.

(ii) Contact with MRO and Company: Remind employees who are being drug tested of the

need to be available for contact from the Company’s medical review officer (MRO) and/or local Human Resources representative to discuss a test result, if necessary. If an employee will be away from his/her house, advise the employee that he/she is responsible for calling the MRO’s office periodically after the test is conducted to obtain the test result and also responsible for calling his/her local Human Resources representative to advise where the employee can be reached in the event the MRO or Company needs to contact the employee to discuss the test result.

□ Step 5: *If the employee refuses to be escorted:*

(i) Have the employee wait in your office with another supervisor and go to Step 6.

(ii) Complete the section of the “Reasonable Suspicion Drug and/or Alcohol Test Report” form which documents that the employee refused to submit to the test and/or refused to be escorted. If the refusal was witnessed by another supervisor, that supervisor should document the refusal as well.

□ Step 6:Regardless of whether the employee consents or refuses to be escorted to the test site, immediately contact the employee’s spouse or another family member, domestic partner, or emergency contact person, or make other arrangements for transporting the employee home from the collection site or worksite. In the event you are unable to contact the employee’s spouse, another family member, domestic partner or other emergency contact, you must make other arrangements for transporting the employee home. In the event the employee refuses this assistance, advise the employee that the Company will take the measures it deems appropriate to transport the employee home. REMEMBER: When conducting a “reasonable suspicion” alcohol test, a negative alcohol test result would only rule out that alcohol use was not the underlying cause for the employee’s conduct. Therefore, if an alcohol test is the only test taken, unless there is sound evidence upon which to conclude that there is no longer any reason to continue questioning the employee’s fitness, the Company will still have need to escort the employee home following an alcohol test even if the employee’s test result is negative.

# SAMPLE “LAST CHANCE” AGREEMENT

*(for use when Employee has tested positive but will not be terminated)*

1. I, **[insert name]**, acknowledge and agree that, on **[insert date]**, I knowingly engaged in gross and willful misconduct prohibited under the Company’s Drug and Alcohol Policy, by testing positive for **[insert drugs or alcohol]**. I understand that I must comply with this Last Chance Agreement (“Agreement”) to continue my employment with the Company, and I agree that I will fully comply with the terms of this Agreement, as set forth below.
2. As a condition of my continued employment by the Company, I hereby agree to be evaluated by a substance abuse professional. I understand and acknowledge that the purpose of the evaluation is solely to determine whether I have a substance abuse problem and, if so, to recommend an appropriate counseling, treatment, or rehabilitation program (hereafter referred to as “treatment program”) for me to attend. I further understand that I must make efforts to contact a substance abuse professional immediately and that I must keep the Company apprised of my efforts.
3. I agree that if the substance abuse professional determines I am in need of a treatment program, I will promptly enroll in that program and will fully cooperate and participate in the program in accordance with its instructions and requirements. I further understand that I must advise the Company that I have enrolled in the treatment program and am cooperating and participating in the program in accordance with its instructions and requirements.
4. I understand and acknowledge that if I require time off from work in order to participate in any recommended treatment program and if I provide the Company the necessary administrative forms and certifications required by the Company’s Family and Medical Leave Policy, (or other applicable leave policy, if any), I will be granted an unpaid Leave of Absence to participate in the treatment program. I further understand and acknowledge that any leave time will be granted in accordance with the Company’s Family and Medical Leave Policy, (or other applicable leave policy, if any). Any request for an extension of leave beyond this period must be made in writing and approved by the Company. The Company reserves the right to request medical documentation supporting the request for additional leave. I also understand and agree that the continuance of my leave to participate in the treatment program, after my initial enrollment, is subject to verification by the Company on a weekly basis that I continue to be enrolled in the treatment program. I agree to comply with provisions and requirements of the Company’s Family and Medical Leave Policy, (or other applicable leave policy, if any), and to provide the Company with the necessary administrative forms and certifications as from time-to-time are required.

5. I understand and acknowledge that the Company may need access to the records of my evaluation and treatment program and the opportunity to confer with the attending substance abuse professional(s) and other program representatives involved in my evaluation and treatment. I hereby agree to provide the Company with such access and consent to authorize and do hereby authorize the initial evaluating substance abuse professional and all counseling, treatment or rehabilitation program representatives to disclose to the Company’s designated representative information about my evaluation and treatment plan which are requested by and relevant to my continued employment by the Company. This includes, but is not limited to, records of my attendance, continued participation and suitability for continued employment or return to active employment, as the case may be. I further consent to and authorize such substance abuse professional(s) and other treatment program representatives to discuss such information directly with the Company’s designated representative, as the Company may request. I agree to sign any authorization forms required by the Company and/or the treatment provider(s) to permit the Company and the treatment provider(s) to confer for the purposes described herein. I understand that I will not be permitted to return to work until the substance abuse professional, or other treatment program representative involved in my treatment, certifies in writing that I may return to work and can perform the essential functions of my job with or without reasonable accommodation, and without posing a direct threat to the health or safety of myself or others.

6. I understand that, in accordance with federal law, the consent which I have given above is subject to revocation at any time, except to the extent that the treatment program which is to make the disclosure has already taken action in reliance on my consent. If not previously revoked, this consent will remain in effect until such time as I am no longer employed by the Company, or until I have completed any recommended treatment or rehabilitation program, whichever occurs first. Unless otherwise revoked by me, a copy of this Agreement will operate as my continuing authorization regarding such disclosures. However, I understand and agree that if I revoke my consent prior to such time as I am either no longer employed by the Company or prior to the time that I have completed any recommended treatment or rehabilitation program, thereby preventing the Company from having access to information which the Company needs to determine my continued fitness for duty, I will be in violation of this Agreement and thereby subject to immediate termination of my employment.

7. I understand and agree that upon my return to duty I may be required to undergo a return-to-duty drug and/or alcohol test[[1]](#footnote-2) and must receive a negative result, and that if I refuse to take such test(s) when requested (as defined by the Company’s Drug and Alcohol Policy) or test positive my employment will be terminated.

8. I understand and agree that I may also be required to submit to unannounced follow-up drug and/or alcohol testing,[[2]](#footnote-3) as directed by the substance abuse professional. I further understand and acknowledge that by refusing to take such test(s) when requested (as defined by the Company’s Drug and Alcohol Policy), or by testing positive, my employment will be terminated. I understand and agree that such follow-up testing shall be as directed by the substance abuse professional. I also understand and agree that this follow-up testing will be conducted in addition to all other tests I may be required to submit to under the Company's Drug and Alcohol Policy.

9. I understand and agree that, upon my return to active employment, I must meet all of the Company’s standards of conduct and job performance, including this Agreement and the Company’s Drug and Alcohol Policy, for the entire duration of my continued employment, as the Company requires for all other Employees.

10. I agree that I will fully comply with the terms of this Agreement. I also understand that my entering into this agreement, does not, and is not intended to, alter my at-will employment status with the Company.

11. I also understand and acknowledge that if I refuse to sign this Agreement, or refuse to be evaluated by a substance abuse professional or undergo treatment if recommended by the substance abuse professional, or if I fail to comply with the terms of this Agreement, my employment will be terminated.

12. Prior to signing this Agreement, I had an opportunity to discuss its requirements with the Company and to ask any questions I may have had regarding its terms and conditions. All of my questions were answered to my satisfaction and my entry into this Agreement was fully voluntary.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EMPLOYEE SIGNATURE DATE

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APPROVED BY DATE

# SAMPLE AGREEMENT FOR VOLUNTARY TREATMENT AND CONDITIONS FOR CONTINUED EMPLOYMENT

**(For Use when Employees voluntarily self-identifies a substance abuse problem but has not violated the policy)**

1. I, **[insert Employee's name]**, understand and acknowledge that I have voluntarily advised the Company that I have a substance abuse problem and have requested assistance for my problem. I agree that I will fully comply with the terms of this Agreement For Voluntary Treatment and Conditions for Continued Employment ("Agreement") set forth below.
2. I hereby request the Company to provide me an opportunity to be evaluated by a substance abuse professional ("SAP") and further request leave to participate in any counseling, treatment, or rehabilitation program (hereafter referred to as "treatment program") which is recommended by the SAP. I further understand that I must make efforts to contact a SAP immediately and that I must keep the Company apprised of my efforts.
3. In the event a treatment program is recommended, I agree to fully cooperate and participate in that program in accordance with the instructions and requirements of the treatment program. I further understand that I must advise the Company that I have enrolled in the treatment program and am cooperating and participating in the program in accordance with its instructions and requirements.
4. I understand and acknowledge that if I require time off from work in order to participate in any recommended treatment program and if I provide the Company the necessary administrative forms and certifications required by the Company's Family and Medical Leave Policy, or other leave policy, if applicable, I will be granted an unpaid Leave of Absence to participate in the treatment program. I further understand and acknowledge that any leave time will be granted in accordance with the Company's Family and Medical Leave Policy, or other leave policy, if applicable. Any request for an extension of leave beyond this period must be made in writing and approved by the Company. The Company reserves the right to request medical documentation supporting the request for additional leave. I also understand and agree that the continuance of my leave to participate in the treatment program, after my initial enrollment, is subject to verification by the Company on a weekly basis that I continue to be enrolled in the treatment program. I agree to comply with provisions and requirements of the Company's Family and Medical Leave Policy, or other leave policy, if applicable, and to provide the Company with the necessary administrative forms and certifications as from time-to-time are required.
5. I understand and acknowledge that upon my completion of any recommended counseling, treatment or rehabilitation program, the Company may need to access records from such program and confer with the attending substance abuse professional(s) and other treatment program representatives as may be needed to confirm my suitability for continued employment or return to active employment, and, if appropriate, to explore an arrangement with the Company to permit me to continue in and complete such program after returning to active employment. I hereby consent to this and authorize the Company’s designated representative to access such information and confer with the attending substance abuse professional(s) or other treatment program representatives for these purposes. I further consent to and authorize such substance abuse professional(s) and other treatment representatives to make available and discuss such information directly with the Company’s designated representative, as the Company may request. I agree to sign any authorization forms required by the Company and/or the treatment provider(s) to permit the Company and the treatment provider(s) to confer for the purposes described herein. I understand that I will not be permitted to return to work until the substance abuse professional, or other treatment program representative involved in my treatment, certifies in writing that I may return to work and can perform the essential functions of my job with or without reasonable accommodation, and without posing a direct threat to the health or safety or myself or others.
6. I understand that, in accordance with federal law, the consent which I have given above is subject to revocation at any time, except to the extent that the treatment program which is to make the disclosure has already taken action in reliance on my consent. If not previously revoked, this consent will remain in effect until such time as I am no longer employed by the Company, or until I have completed any recommended treatment or rehabilitation program, whichever occurs first. Unless otherwise revoked by me, a copy of this Agreement will operate as my continuing authorization regarding such disclosures. However, I understand and agree that if I revoke my consent prior to such time as I am either no longer employed by the Company or prior to the time that I have completed any recommended treatment or rehabilitation program,thereby preventing the Company from having access to information which the Company needs to determine my continued fitness for duty, I will be in violation of this Agreement and thereby subject to immediate termination of my employment.
7. I understand and agree that I may be required to submit to return-to-duty drug and/or alcohol testing as a condition of my returning to work.[[3]](#footnote-4) I further understand and acknowledge that if I refuse or fail to take such test(s) when requested, or test positive, I will be subject to discipline up to and including termination of my employment.
8. I understand and agree that I may also be required to submit to unannounced follow-up drug and/or alcohol testing conducted by the Company after I return to work.[[4]](#footnote-5) I further understand and acknowledge that if I refuse or fail to take such test(s) when requested, or test positive, I will be subject to discipline up to and including termination of my employment. I understand and agree that such follow-up testing shall be as directed by the substance abuse professional. I also understand and agree that this follow-up testing will be conducted in addition to all other tests I may be required to submit to under the Company's Drug and Alcohol Policy.
9. I understand and agree that my continued employment with the Company depends upon my satisfactory performance of my job and my compliance with all Company policies and procedures, including this Agreement and the Company's Drug and Alcohol Policy, for the entire duration of my continued employment, as the Company requires for all other Employees.
10. I agree that I will fully comply with the terms of this Agreement. I also understand that my entering into this agreement does not, and is not intended to, alter my at-will employment status with the Company.

11. Prior to signing this Agreement, I had an opportunity to discuss its requirements with the Company and to ask any questions I may have had regarding its terms and conditions. All of my questions were answered to my satisfaction and my entry into this Agreement is fully voluntary.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EMPLOYEE SIGNATURE DATE

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APPROVED BY DATE

[ORGANIZATION LETTERHEAD]

\_\_\_\_\_\_\_\_\_\_\_\_, 2024

To Applicant’s Treating Physician

[address]

Re:[Applicant Name]

Dear Dr. [Name]:

Your patient, [Name], has applied for a job with our organization as a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. He/she should have authorized us to receive the information sought below and attached. If that is not the case, kindly contact us so we may arrange for such authorization to be provided.

*[Organization]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*[describe the business briefly].* [Name] has applied for the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The essential functions of this job include, but are not limited to: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; among other things, as detailed in the enclosed job description. *[Please edit this paragraph to emphasize the particularly dangerous aspects of the job, especially things like driving, operating equipment or machinery, providing medical care, etc.]*

[Name] recently disclosed to us that he/she has a [State] medical marijuana card permitting himself/herself to use medical marijuana. This has raised a question as to whether [Name] can perform the duties of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ position safely, without endangering the health or well-being of him/herself or of others. We therefore ask you to respond to the attached list of questions. For your convenience, I enclose a self-addressed postmarked envelope to return your responses to the questions. You also may email or fax the information, if you so choose, to me at [insert email and fax number]. If you need additional information about the job duties of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_ position, please contact me.

Please provide this information to us by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2024, so that we may make a decision with regard to [Name]’s employment application. We appreciate your assistance as we address this important issue.

Sincerely,

[Name]

[Title]

***APPLICANT’S NAME***

*The Genetic Information Nondiscrimination Act of 2008 (“GINA”) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic information” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.*

1. Are you [Name]’s treating physician?

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1. If the answer to No. 1 above is No – Do you know the name and location of [Name]’s treating physician?

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1. For what period of time do you anticipate that [Name] will use medical marijuana?

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1. How often does [Name]’s medical condition require the use of medical marijuana, and in what amount?

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1. Does [Name]’s medical condition require him/her to use medical marijuana during the hours of \_\_\_\_ am to \_\_\_\_ pm, which are Name’s anticipated work hours? *[Please insert applicable work hours.]*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. Does [Name]’s medical condition and/or use of medical marijuana pose any safety risks to his/her being able to perform the essential functions of the \_\_\_\_\_\_\_\_\_\_\_\_ position, as those functions are described in the accompanying letter and the attached job description?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. If yes, what job functions, if any, should [Name] not perform due to safety concerns, in your medical opinion?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. For what period of time should [Name] not perform the job functions you note in the answer to 5.a., if any are listed?

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1. Based upon the information we provide regarding the \_\_\_\_\_\_\_\_\_ job functions, in your medical opinion, can [Name] perform these essential functions without endangering the health or well-being of himself/herself or of others? If not, why not?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. If [Name] uses medical marijuana within 6-8 hours of reporting to work as a \_\_\_\_\_\_\_\_\_, can he/she perform the essential functions of the job without endangering the health or well-being of himself/herself or of others? If yes, why? If no, why not?

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. Does [Name]’s medical condition/use of medical marijuana preclude assignment of any other tasks and/or duties? If so, please identify the tasks and duties he/she is precluded from performing, the expected duration of these restrictions and the medical reason for your decision.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. Does [Name]’s medical condition and/or use of medical marijuana preclude him/her from being at work? If so, how long is his/her absence from work expected to last and what is the medical reason?

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1. Are there any job modifications of which you are aware which would enable [Name] to safely and satisfactorily perform all of the tasks you assert he is precluded from performing, if any?

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1. Is there a medical reason to believe that [Name] is likely to experience injury or harm to himself/herself or others by performing or attempting to perform any of his/her job duties for any period of time?

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1. If so, what is the degree of injury, harm or aggravation that should be expected, and what is the likelihood that it will occur?

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1. What is the expected duration of the risk?

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1. What is the medical reason for your conclusions?

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Physician’s Signature Date

Print Physician Name

Physician’s Area of Practice

# CERTIFICATION REGARDING MEDICAL MARIJUANA

**EMPLOYEE’S CERTIFICATION**:

I have voluntarily disclosed that I am legally authorized to use medical marijuana while off-duty. I acknowledge and agree that I will never use marijuana at work or during work time (including lunch and breaks) and I further agree that I will never possess marijuana at work or during work time.

I agree that I will not use medical marijuana for six hours prior to reporting for work.

I further understand and agree that I never may be impaired by marijuana at work or during work time. I understand and agree that if the Company has reason to believe that I may be under the influence of drugs or alcohol, I will be tested for “reasonable suspicion” in accordance with the Company’s Substance Abuse Policy. If my test result(s) are positive, even for marijuana, I understand and agree that I may be subject to disciplinary action up to and including termination.

Signature of Employee:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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(print name)

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Refer to the State Law Addenda for potential restrictions or prohibitions on return-to-duty testing in the applicable jurisdiction. [↑](#footnote-ref-2)
2. Refer to the State Law Addenda for potential restrictions or prohibitions on follow-up testing in the applicable jurisdiction. [↑](#footnote-ref-3)
3. Refer to the State Law Addenda for potential restrictions and prohibitions on post-voluntary return-to-duty testing in the applicable jurisdiction. [↑](#footnote-ref-4)
4. Refer to the State Law Addenda for potential restrictions and prohibitions on post-voluntary follow-up testing in the applicable jurisdiction. [↑](#footnote-ref-5)