

Workplace Drug Testing

The Iowa Board of Nursing frequently receives questions from employers about drug testing. Although the Board does not provide testing oversight, the Board is committed to helping employers establish best practices regarding chemical screenings. The Iowa Board of Nursing has provided a copy of the “A Guide to Workplace Drug Testing in Iowa,” prepared by the Governor’s Office of Drug Control Policy. This guide can be used by employers to determine if drug testing is appropriate for their facility. The Board of Nursing did not develop or write this guide. It is intended for general use and not intended as legal advice. Questions regarding workplace drug testing may be directed to the Governor’s Office of Drug Control Policy.

Sources:

Governor’s Office of Drug Control Policy. *A Guide to Workplace Drug Testing in Iowa*.

Retrieved from <https://odcp.iowa.gov/>

**A GUIDE TO
WORKPLACE DRUG TESTING
IN IOWA**

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Note: This informal guide is for general information purposes only, and does not constitute legal advice. Iowa employers are encouraged to seek legal counsel before implementing or revising a drug-free workplace policy.

To Test or Not To Test?

The purpose of the State of Iowa's private sector drug testing law—Iowa Code Section 730.5 (& Iowa Administrative Code Section 641)—is to enhance worker safety by creating workplaces that are free of drugs and substance abuse or misuse. One tool available to private sector employers is drug testing (inclusive of alcohol testing), that often is coupled with educational efforts as part of a comprehensive drug-free workplace program.

Each employer must first decide if drug and/or alcohol testing is appropriate for them. Under Iowa law, workplace drug or alcohol testing is optional for private sector employers. Federal laws or regulations governing drug or alcohol testing supersede state law in Iowa. Before making a decision on drug or alcohol testing under Iowa law, several factors should be considered, including, but not limited to, the following:

- A. Types of private sector workplace drug testing permitted in Iowa:
 - 1. Unannounced testing of workers randomly selected from pools of employees, consisting of (a) the entire employee population at a particular work site, (b) the entire full-time active employee population at a particular work site, or (c) all employees at a particular work site who are in a pool of employees in a safety-sensitive position;
 - 2. Testing of employees during, and after completion of drug or alcohol rehabilitation;
 - 3. Testing of employees for reasonable suspicion, which may include (a) direct observation of substance abuse or related impairment while at work, (b) abnormal conduct or significant deterioration in performance while at work, (c) a credible report of alcohol or drug use, (d) evidence of tampering with a drug test, (e) evidence that an employee has caused an accident while at work causing sufficient injury or damage to require a report to OSHA, or (f) evidence that an employee has made, sold, possessed or used drugs while at work;
 - 4. Testing of prospective employees;
 - 5. Testing of employees, as required by federal law or regulation or by law enforcement; and
 - 6. Testing of employees in the investigation of workplace accidents that cause sufficient injury or damage to require a report under Iowa Code chapter 88, or that result in damage to property in an amount reasonably estimated at the time of the accident to exceed \$1,000.

- B. Employer responsibilities when drug testing in Iowa include:
 - 1. Prior to testing, the employer must establish a detailed written drug testing policy that is provided to every person subject to testing and made available for review by employees and prospective employees. Special provisions apply to dealing with minors.

2. Prior to testing, the employer must establish an employee awareness program to include an Employee Assistance Program or a resource file where workers can access help for substance abuse problems.
3. The employer must provide supervisors with a minimum of two (2) hours of training initially, and one (1) hour of training each year subsequently. The initial two hour training must include, but is not limited to, (1) information concerning the recognition of evidence of alcohol and other drug abuse, (2) the documentation and corroboration of employee alcohol and other drug abuse, and (3) the referral of employees who abuse alcohol or other drugs to the employer assistance program or the resources file.
4. In the event of a positive alcohol test in which the alcohol concentration exceeds the level established by the employer—and under certain other conditions—the employer *may* be required to pay up to \$2,000 in rehabilitation costs for the employee in question, depending on employee benefit plan coverage. This requirement applies only to employers with at least 50 employees and only if the employer has employed the employee for at least 12 of the preceding 18 months; the employee is a first-time violator of the employer's substance abuse policy; and the employee agrees to receive rehabilitation, if required by the employer's policy.
5. A laboratory doing business for an employer that conducts drug or alcohol tests must file an annual report with the Iowa Department of Public Health by March 1 of each year concerning the number of positive drug and alcohol test results during the previous calendar year.

Put It in Writing

Private sector drug or alcohol testing is optional in Iowa. However, employers who choose to test can do so only after developing and disseminating a written policy. Here are some things to keep in mind when developing a written policy.

1. Drug or alcohol testing must be conducted within the terms of a written policy.
2. The written policy must be provided to every employee subject to testing, and be available for review by employees and prospective employees. Typically, employees and prospective employees are asked to sign a certification that they have read and understand the policy as a condition of their employment. Many times, the employer's Drug-Free Workplace Policy will be included in an employee manual. Additionally, some employers may choose to post the policy in common areas.
3. In the case of a minor, the employer must provide a copy of the written policy to a parent of the employee or prospective employee and receive acknowledgement from the parent that a copy of the policy has been received (i.e., certified mail, return receipt requested).
4. The employer's written policy must provide uniform requirements for disciplinary or rehabilitative actions that will be taken against an employee who tests positive for alcohol or drugs, or who refuses to provide a testing sample. An employer

- may not take any action against an employee that is not stated in the written policy.
5. If the written policy provides for alcohol testing, the employer must establish a standard for alcohol concentration that will constitute a violation of the policy. The standard for alcohol concentration shall not be less than .02 (as amended in 2018), expressed in terms of grams of alcohol per 210 liters of breath, or its equivalent.

An employee or prospective employee who tests positive for drugs or alcohol, or who refuses to provide a testing sample—in violation of the employer's written policy—may be subject to disciplinary and/or rehabilitative actions, including, but not limited to:

1. Employer-provided or approved rehabilitation, treatment or counseling (*see conditional requirement in the case of certain positive alcohol tests);
2. Suspension of an employee, with or without pay, for a designated period of time;
3. Termination of employment;
4. An employer's refusal to hire a prospective employee; or
5. Other adverse employment action, in conformance with the employer's written policy, including relevant collective bargaining agreement provisions.

Remember, these actions—individually or in combination—are options available to private sector employers, and can only be executed if they are so stated in the employer's written policy.

Supervisor Training

In order to conduct private sector drug or alcohol testing in Iowa, an employer must require supervisors involved with testing to attend a minimum of two (2) hours of initial training and a minimum of one (1) hour of training every year thereafter.

This training must include, but is not limited to:

1. Information concerning the recognition of evidence of employee alcohol and other drug abuse;
2. Documentation and corroboration of employee alcohol and other drug abuse; and
3. Referral of employees who abuse alcohol or other drugs to the employer's Employee Assistance Program or to a resource file maintained by the employer.

Though no entity is charged with providing this training, many of the state-licensed substance abuse provider agencies may offer workplace training for a fee, negotiated on an agency-by-agency basis. Occupational health agencies and other providers may offer similar services. Additional organizations listed online and in telephone directories may also offer these services. An employer may opt for in-house training, particularly on those matters that relate directly to actionable elements of the employer's policy.

Employee Education and Resources

Employers must establish an awareness program, to inform employees about the dangers of drug and alcohol use in the workplace, and comply with the following requirements.

1. If an employer has an Employee Assistance Program, employees must be informed of the benefits and services offered by the program. An employer must post notice of the program in conspicuous places and explore alternative means of publicizing the services. Additionally, the employer must inform employees how they can access and utilize the program; or
2. If an employer does not have an Employee Assistance Program, the employer must maintain a resource file of certified substance abuse programs available to assist employees with personal or behavioral problems. The employer must notify employees of the existence of the resource file, and provide information on how to access services listed in the file.

The Essentials of Drug Testing

The following procedures must be followed when conducting private sector drug or alcohol testing in Iowa.

1. The collection of samples must be performed under (a) sanitary conditions, (b) with regard to the privacy of the individual providing the sample, and (c) in a way to preclude contamination or substitution of the sample. In many cases, urine is the sample collected for drug testing and breath is collected for alcohol tests. Additionally, Iowa Code Section 730.5 was amended in 2004 to permit oral fluids samples for drug testing, and in 2017 to also allow hair samples for drug testing of prospective employees. The only time an employer may take action based on results of a blood test for drugs or alcohol is when an employee is involved in an accident at work, and the blood test is administered by a care provider without direction from the employer.
2. Drug testing samples (urine, oral fluids or hair) must be collected so that samples are split into two components at collection time. The testing laboratory must store the second of the two components for at least 45 days, for the purposes of a second confirmatory test, if one is requested by the test subject. Alcohol breath test samples must be collected according to U.S. D.O.T. rules that allow for confirmatory testing (see #3 below).
3. Alcohol testing samples are collected using an “alcohol screening device” or “non-evidential breath testing device for the initial sample. If that sample is positive the employer must use an evidential breath testing device for the confirmatory test. If needed, the confirmatory test is taken immediately after the initial test.

4. Samples must be collected, labeled, stored and transported in ways that protect against contamination, adulteration or misidentification.
5. Employees or prospective employees must be given an opportunity to provide any information that may be considered relevant to the test (e.g. identification of prescription or over-the-counter medicine currently or recently used, or other relevant medical information). An employer must provide employees and prospective employees with a list of the drugs to be tested.
6. All confirmatory testing must be conducted at a laboratory certified by the U.S. Department of Health and Human Services or approved under rules adopted by the Iowa Department of Public Health.
7. If a confirmed positive drug test for a current employee is reported to the employer by the medical review officer, the employer must notify the employee in writing by certified mail return receipt requested of (a) the test results, (b) the employee's right to request and obtain a second confirmatory test within seven days of the date the letter was sent and (c) the fee payable by the employee for the costs of a second confirmatory test. In the event of a negative second confirmatory test, the employee must be reimbursed by the employer for testing expenses, and the test cannot be considered a positive test for the purposes of disciplinary action.

Frequently Asked Questions

For Iowa Employers Acting in Accordance with Applicable Iowa State Law:

Q Can an employer test a "problem employee" right now, if the employer suspects the employee is using drugs or alcohol at work?

A Drug or alcohol tests of individual employees may be conducted only if the employer has a written Drug Testing Policy and that policy allows for *reasonable suspicion* testing AND the reasonable suspicion threshold is met, as defined in Iowa law. Employees cannot be singled out for testing, simply because they are difficult to manage.

Q Can an employer be required to pay for the rehabilitation of an employee who tests positive for illicit drugs?

A No, not if the employer doesn't provide for rehabilitation in the company policy. While state law does not require employer-paid rehabilitation for employees who test positive for illegal drugs, employers may choose to provide it.

Q Can an employer be required to pay for the rehabilitation of an employee who tests positive for alcohol?

A Yes, under certain conditions. The alcohol concentration must exceed the level established by the employer; the employer must employ at least 50 people; the employee must have been employed by the employer for at least 12 of the preceding 18 months; the employee must be a first-time violator of the employer's substance abuse policy; and the employee must agree to receive rehabilitation, if required by the employer's policy. Under these conditions, the employer *may* be required to pay up to \$2,000 in

rehabilitation costs for the employee in question, depending on employee benefit plan coverage.

Q What recourse does a former employee have if he/she was fired following a positive drug or alcohol test?

A In the case of a drug test, the employee can request and pay for a second confirmatory test within seven days of the date the certified letter notifying the employee of the positive test result is sent. If this second test of the initial sample comes back negative, the test is ruled negative and no action is taken. In this case, the employee is reimbursed by the employer for the costs of the second test. If the second test comes back positive, the results of the first test are upheld. In this case, an employee who continues to believe that he/she has been wronged may seek relief, first at the administrative and eventually at the district civil court level. Since the confirmatory alcohol test is taken immediately following an initial positive test, employees who test positive a second time would be considered in violation of company policy and subject to disciplinary procedures, up to and including termination. See the previous question for information regarding one-time mandatory rehabilitation for positive alcohol tests.

Q Can an employer charge employees for the cost of a drug or alcohol test?

A No, except when an employee requests a second confirmatory test (see above) that comes back positive. Tests of employees must be conducted during or adjacent to their regularly scheduled work times. The time required for testing by the employer shall be deemed work time for purposes of employee compensation and benefits, including travel costs if applicable.

Q If an employee is on over-the-counter or prescription medicine that may impact their ability to safely perform their duties at the time of a drug or alcohol test, what should they do?

A Employers must afford employees the opportunity to list legal medicines they are taking, and employees must report these medicines *prior* to testing so that they are considered when analyzing and reporting the results.

Contacts/Resources

General drug/alcohol testing questions relating to Iowa "state" law:

Governor's Office of Drug Control Policy
(Dale Woolery)
Phone: 515-725-0300
E-Mail: dale.woolery@iowa.gov

Iowa Department of Public Health
(Lori Hancock-Muck)
Phone: 515-242-6162

E-Mail: lori.hancock-muck@idph.iowa.gov

General drug/alcohol testing questions relating to US DOT "federal" regulations:

U.S. DOT, Federal Motor Carriers Safety Administration
(Jodi Stevenson)
Phone: 515-233-7413

Drug/Alcohol educational materials & local substance abuse agency referral:

Iowa 24/7 Substance Abuse Help Center
Phone: 855-581-8111 or Text: 855-895-8398 (toll-free)
Web: YourLifeIowa.org

Other resources:

Iowa Code-Section 730.5

(Enter **730.5** in the "Iowa Code" search cell and click go. Check this site for the most current version of Iowa law, including possible amendments.)

Iowa Administrative Code-Section 641.12

(Enter **641.12** in the "Iowa Administrative Code" search cell and click go. Check this site for the most current version of Iowa's administrative rules pertaining to private sector drug and alcohol testing, and particularly regulations for confirmatory laboratories.)

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