

MODEL DRUG & ALCOHOL TESTING POLICY

While it may be the most effective way to enforce your anti-drug and alcohol policies, an employee testing policy must be carefully drafted to withstand legal challenges, especially if you impose the policy unilaterally. You can adapt this Model Policy based on the laws of your state and the disciplinary provisions of applicable collective bargaining agreements.

1. POLICY STATEMENT

ABC Laboratories (ABC) recognizes that employees who use or are impaired by drugs or alcohol while performing work endanger not only themselves but co-workers, test patients and others affected by their work. ABC has a zero tolerance policy for such conduct.

Employee drug and alcohol testing is essential to ensuring compliance with that policy and fulfilling ABC's commitment to maintain a drug- and alcohol-free workplace.

2. PURPOSE

ABC also recognizes that drug and alcohol testing is intrusive and may raise privacy, discrimination and other legal issues. The intent of this testing Policy is to empower ABC to accomplish its health and safety objectives in a manner that is fair, humane and consistent with employees' privacy, accommodation and other legal rights. While discipline may be used as a measure of last resort, ABC's ultimate goal is not to punish but to help employees identify and get help for their substance abuse issues and maximize their health, safety, productivity and happiness.

3. SCOPE

This Policy applies to all individuals that work for ABC including but not limited to full-time, part-time, temporary and contract employees, independent contractors, volunteers and employees of third party contractors or subcontractors that ABC engages to perform work at its facilities, as well as individuals who apply for jobs with ABC.

a. Union Employees

This Policy applies to both union and non-union employees but is not intended to supersede or circumvent the provisions of any current collective bargaining agreement to which ABC is a party. In the event of a conflict between this Policy and a collective bargaining agreement, the latter shall control.

b. Job Applicants

This Policy applies to individuals applying for jobs with ABC or that involve performing work at ABC facilities that is safety-sensitive or otherwise subject to pre-employment testing in accordance with the below provisions.

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Unless the context requires otherwise, the term “employee” or “worker” as used in this Policy shall also refer to job applicants.

4. DEFINITIONS

For purposes of this Policy:

- **“Alcohol”** means any beverage that contains the intoxicating agent ethyl alcohol (ethanol) or other low molecular weight alcohols, including methyl or isopropyl alcohol, and includes but is not limited to beer, wine and distilled spirits;
- **“Drugs”** includes:
 - Narcotics and illegal drugs;
 - Marijuana whether used or obtained legally or illegally; and
 - Legal prescription and over-the-counter medications and drugs that cause or have the potential to cause impairment and render an employee not fit for duty.
- **“Fit for duty”** means a physical and mental state that allows individuals to perform their job duties safely and effectively without impairment due to use of or after-effects of alcohol, illegal drugs, legal medications or other health conditions.
- **“On duty”** includes reporting for and performing work, including:
 - Scheduled work;
 - Unscheduled call-in work;
 - Work performed on ABC facilities;
 - Work performed for ABC away from ABC facilities, including but not limited to driving or traveling to and from work.
- **“Safety-sensitive job”** means positions that have a direct and substantial impact on the health and safety of the employee, other workers, patients, clients, visitors, the public, property and/or the environment, including but not limited to those involving driving, operation of machinery or equipment, handling of toxic substances.
- **“Substance abuse”** means use of alcohol, illegal drugs, legal marijuana and medications and other substances that can impair a person’s judgment, clarity and functioning and render him/her not fit for duty.

5. EMPLOYEE DUTIES

All employees and workers covered by this Policy are required to:

- Come to work fit for duty;
- Work safely in accordance with OSHA requirements;
- Refrain from using or being impaired by alcohol or drugs while on duty;
- Refrain from possessing, purchasing, selling, distributing or engaging in any other conduct involving alcohol or illegal substances or paraphernalia while on duty;

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- Refrain from misusing or being impaired by prescription or non-prescription drugs while on duty;
- Notify their supervisor if they suspect a co-worker is unfit for duty; and
- Submit for drug and alcohol testing in accordance with this Policy as set forth below.

6. GROUNDS FOR DRUG & ALCOHOL TESTING

6.1 Pre-Employment Testing

All applicants given a conditional offer of employment must submit to drug and/or alcohol testing that yields a negative test result as a prerequisite for employment.

6.2. For-Cause Testing

For-cause testing may be mandated where ABC reasonably believes that an employee may be under the influence of drugs or alcohol, including not limited to the following indications:

- The presence of drugs or alcohol on or about the employee's person or in his/her vicinity;
- Conduct by the employee suggesting impairment or influence of drugs or alcohol;
- A report of drug or alcohol use while the employee is at work or on duty;
- Information that an employee has tampered with drug or alcohol testing at any time;
- Negative performance patterns; and/or
- Excessive or unexplained absenteeism or tardiness.

6.3 Post-Incident Testing

ABC may require drug and/or alcohol testing if the employee is involved in or engages in conduct which results in a work-related injury or causes damage to property, including ABC vehicles, machinery, instruments, equipment, supplies or buildings.

6.4 Random Testing

From time to time, ABC may require individual employees to be tested at random to the extent they occupy safety-sensitive positions that ABC deems as justifying random testing.

6.5 Post-Rehabilitation Testing

ABC may offer employees who test positive for drugs or alcohol the opportunity to successfully complete a drug and alcohol rehabilitation program in lieu of discipline. In such event, ABC may ask the employee to undergo individual, unannounced drug and alcohol testing for a period of up to two (2) years, starting with the employee's return to work, following participation in a drug or alcohol dependency treatment program.

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6.6 Scheduled Periodic Testing

Employees may be required to submit to drug and alcohol testing as a routine part of a scheduled fitness for duty medical examination.

7. PROCEDURES FOR DRUG & ALCOHOL TESTING

7.1 Consent

Job applicants offered employment with ABC will be asked to sign the ABC Drug & Alcohol Testing Consent Form (“Consent Form,” attached as Exhibit A), giving their consent to drug and alcohol testing before employment and after employment begins in accordance with the terms of this Policy. Failure to provide consent shall be grounds for revoking the job offer as will be a positive test result. Subsequent failure of employees to submit to testing during their employment will also be considered a violation of this Policy in accordance with Section 9 below.

7.2 Sample Collection

[List collection procedures]

7.3 Chain of Custody

ABC will ensure that a strict written chain of custody process is followed throughout the collection and testing process and that samples are collected and, if necessary, transported to the testing department or facility in a manner to insure the sample’s integrity.

7.4 Initial & Confirmation Testing

If a sample initially tests positive for alcohol or drugs, the result will be considered inconclusive and the test result will be confirmed by a second test of the initial sample using gas chromatography-mass spectroscopy or an equivalent scientifically-accepted method of equal or greater accuracy. If the second confirmation test of the sample is also positive, the testing department or facility will send the result to the HR department for review and implementation of the procedures for obtaining an explanation from the person.

7.5 Drug Testing

Initial and confirmation tests for drugs may be conducted using any type of sample from which a measurement of the presence or content of drugs in the person’s body can be made, including but not limited to saliva, blood, or urine samples. Samples may be screened for drugs and alcohol as defined in applicable regulatory requirements, including determining a positive test result by using the levels prescribed by regulation for the particular substance. ABC reserves the right to test for other drugs or synthetic or other intoxicants, e.g., K-2, Spice, synthetic cannabis, bath salts and Kratom, in the future.

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7.6 Retesting/Appeal Procedure

If after ABC completes drug or alcohol testing, a job applicant or employee whose test result is positive wants their sample retested, they may request in writing that a subsequent confirmation test of the original split sample be performed at the employee or job applicant's own expense. Any retest must be requested within 24 hours of receiving notice of the positive test.

8. PRIVACY

ABC recognizes that test results and related information is protected personal information under privacy laws and will keep it confidential and secure and refrain from using or disclosing it except as permitted or required by law. Testing records are the property of ABC but will be made available to the job applicant or employee upon request for inspection and copying in accordance with the requirements of applicable privacy laws.

9. POLICY VIOLATIONS

ABC will deem the following conduct by employees and job applicants Policy violations:

- Refusals to sign the Consent Form or submit to testing in accordance with this Policy;
- Adulterating, diluting or otherwise tampering with a test specimen or attempting to do so;
- Having a confirmed positive test result.

10. CONSEQUENCES OF VIOLATIONS

Violation of this Policy is grounds for discipline up to and including termination in accordance with the ABC Progressive Discipline Policy. Employees with substance abuse issues may also be referred for counselling or assistance through the ABC Employee Assistance Program or outside agencies. Job applicants who violate this Policy will not be offered employment with ABC and may forfeit their current jobs if the violation is discovered after the job applicant has begun employment.

11. ASSISTANCE & REINSTATEMENT

ABC reserves the right to place employees with substance abuse issues on administrative leave and sign a Last Chance Agreement offering them the opportunity to return to work if they successfully complete the terms of their treatment and rehabilitation program, pass drug and alcohol tests and meet other conditions of reinstatement.

12. RIGHT TO ACCOMMODATIONS

ABC Company recognizes that drug and alcohol addiction is deemed a disability under the *Americans with Disabilities Act* and state discrimination laws. Accordingly, in administering the disciplinary and other provisions of this Policy, addictions and other substance abuse related to disabilities, such as use of medical marijuana or prescription drugs for chronic pain and debilitating conditions, will be treated as non-culpable

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violations and employees will be offered reasonable accommodations based on their individual circumstances and capabilities to the point of undue hardship.

EXHIBIT A

DRUG & ALCOHOL TESTING CONSENT & RELEASE FORM

I, the undersigned job applicant who has received an offer of employment from or employee who is currently employed by ABC Laboratories (ABC), voluntarily give my consent to the taking of specimens for drug and alcohol testing as a condition of my initial and/or continued employment. I authorize the release of all results of such testing to ABC.

I release ABC; its agents, servants, representatives and assigns; any outside testing laboratory and its physicians, nurses, technicians; and any other employees or agents involved with my tests, from any and all liabilities, claims, or causes of action relating to such substance abuse screening including, without limitation, those that may result from administering such tests and/or the disclosure of test results.

I understand and freely and voluntarily agree that if ABC asks me to, I will submit to drug and alcohol testing. I also understand that either refusal to submit to testing or a positive test result may result in revocation of a conditional offer of employment or termination of my employment, as applicable.

In the case of a breath alcohol test, I understand and agree that if the breath alcohol test level as determined by the test reflects an illegal level of intoxication, I will be unable to operate a motor vehicle and must use an alternative form of transportation operated by someone other than myself. If I refuse alternative transportation, I understand and agree that law enforcement officials may be notified.

I also understand that I may be required to submit to testing for the presence of drugs and/or alcohol within twenty-four (24) hours of a work-related injury. I understand that if I refuse to execute all forms of consent and/or refuse to consent to the testing after a work-related injury, ABC has the right to impose disciplinary action, up to and including termination.

Signature _____ Date _____

Printed Name _____

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