

# **Table of Contents**

## **Volume 1**

### **CHAPTER 1. OVERVIEW OF DRUG USE, TESTING, AND LEGALIZATION**

#### **I. SUBSTANCE ABUSE IN SOCIETY—EXTENT AND COSTS**

- § 1:1 Substance abuse in the United States
- § 1:2 —Adolescents
- § 1:3 —Illicit Drug Use
- § 1:4 —Alcohol Use
- § 1:5 —Disorder
- § 1:6 —Treatment
- § 1:7 —Need for and barriers to substance use treatment
- § 1:8 —Co-occurring substance use disorders and mental health issues
- § 1:9 Cost of substance abuse within the workplace
- § 1:10 Cost of substance abuse—International

#### **II. SUBSTANCE ABUSE IN THE WORKPLACE—EXTENT AND COSTS**

- § 1:11 Drug and alcohol use in the workplace
- § 1:12 Drug test positivity rates, and drug test cheating
- § 1:13 Drug and alcohol use in the workplace—Industries/workplace settings
- § 1:14 —Small businesses
- § 1:15 —Employer health care costs
- § 1:16 —Age of worker
- § 1:17 —International

#### **III. DRUG-FREE WORKPLACE FACTS**

##### **A. THE NATURE OF MARIJUANA**

- § 1:18 Introduction to marijuana facts
- § 1:19 Nature of marijuana/cannabis—Δ9-Tetrahydrocannabinol (THC)
- § 1:20 Marijuana use on the rise among adults and children and is causing severe damage

- § 1:21 Marijuana is addictive
- § 1:22 Rise in THC levels in marijuana
- § 1:23 How marijuana is used
- § 1:24 Marijuana concentrates, extracts and edibles
- § 1:25 —THC extraction process
- § 1:26 —Effects of concentrates on users
- § 1:27 —How are concentrates abused?
- § 1:28 —Concentrates compared to smoked marijuana
- § 1:29 Marijuana use and the Gateway effect
- § 1:30 Marijuana overdoses
- § 1:31 Science on marijuana and pain

## B. CONCERNS FOR EMPLOYERS

- § 1:32 Effects of marijuana use—Pharmacological, psychological, mental, physiological, and side effects and why employers should still test for marijuana—The DOT opinion
  - § 1:33 —Duration of effects
  - § 1:34 —Lifetime effects
  - § 1:35 Marijuana and impact on the brain
  - § 1:36 Marijuana and mental health—Concerns for employers
  - § 1:37 Marijuana and employer concerns about driving, job performance and safety
  - § 1:38 Marijuana urine test results, pharmacokinetics and interpretation of blood concentrations
  - § 1:39 Marijuana and other drug interactions
  - § 1:40 Workplace and other violence and marijuana
  - § 1:41 CBD (cannabidiol) safety, drug testing, employee health and work performance
  - § 1:42 Employees who test positive for THC but claim they were only using CBD
  - § 1:43 Coronavirus and marijuana use
  - § 1:44 Effects of Marijuana on Driving and Operating Machinery
  - § 1:45 Recreational marijuana sales and workplace injuries
  - § 1:46 Second-hand marijuana smoke
  - § 1:47 Introduction to psychoactive hemp products and concerns for employers
  - § 1:48 Hemp products an overlooked threat to employee and public health and safety
  - § 1:49 The Rossheim expert report on intoxicating hemp products—Concerns for employers and public safety
  - § 1:50 How psychoactive hemp products become available to employees
  - § 1:51 The failure to enforce federal law and exploitation of loopholes
  - § 1:52 The Centers for Disease Control (CDC) warning about the use of hemp products.

## TABLE OF CONTENTS

- § 1:53 The FDA has provided information on psychoactive hemp products
- § 1:54 FDA warning letters about the use of hemp products
- § 1:55 How does a laboratory determine an acceptable hemp THC level in a consumable hemp product?
- § 1:56 Drug testing for cannabinoids—The basics
- § 1:57 Detection of use of hemp products by employers
- § 1:58 Employers can terminate or discipline employees who use psychoactive hemp products

### C. HOW THE FEDERAL GOVERNMENT VIEWS MARIJUANA

- § 1:59 The federal classification of marijuana
- § 1:60 Role of the Food and Drug Administration and marijuana
- § 1:61 Marijuana contamination and employees' health

## IV. EFFECTIVENESS OF WORKPLACE DRUG AND ALCOHOL TESTING

- § 1:62 Detection by drug testing
- § 1:63 Self reporting versus actual drug tests results
- § 1:64 Beliefs about testing
- § 1:65 Government studies of drug testing
- § 1:66 Department of Transportation Requirements

## V. IMPACT OF LEGALIZATION OF DRUGS

### A. TYPES OF LEGALIZATION

- § 1:67 Types of legalization

### B. THE CONVENTIONS

- § 1:68 United Nations International Drug Control Conventions and the International Narcotic Control Board
- § 1:69 Position of International Narcotic Control Board
- § 1:70 —Legalization of non-medical use of drugs
- § 1:71 United Nations International Drug Control Conventions and the International Narcotic Control Board—Questions regarding implementation of drug legalization
- § 1:72 —Violation by the United States

### C. HISTORY AND CRIMES

- § 1:73 History of alcohol prohibition
- § 1:74 Strong penalties for drug use—Deterrent effect

## DRUG TESTING LAW TECHNOLOGY AND PRACTICE

- § 1:75 Sale of illicit drugs—Purchase related crimes
- § 1:76 Drug-related crime
- § 1:77 Mass marketing and drug profits
- § 1:78 Black market crime
- § 1:79 Tax revenue and legalization

### D. DRUGGED DRIVING

- § 1:80 Drugged driving—Marijuana and other drugs
- § 1:81 —Effect of marijuana legalization

### E. LEGALIZATION AND COMMERCIALIZATION

- § 1:82 Marijuana legalization and commercialization—
  - Negative impact
- § 1:83 —Known Harms of Marijuana Use
- § 1:84 —Impact on public health
- § 1:85 —Effect on the immune system
- § 1:86 —Addiction
- § 1:87 —Impact on Public Safety
- § 1:88 —Impact on productivity
- § 1:89 —Impact on Public Budgets
- § 1:90 —Economic Consequences
- § 1:91 —Increase in Healthcare Costs
- § 1:92 —Negative Impact on Youth
- § 1:93 —Criminal Justice Costs
- § 1:94 —Substantial Implementation Costs
- § 1:95 —Aggregate Burden Outweighs Benefit
- § 1:96 —Tax revenues
- § 1:97 —Overview and conclusion
- § 1:98 —Social, personal, and public health problems
- § 1:99 —Recent data

### F. WORKPLACE TESTING AND NOTICE

- § 1:100 Workplace drug testing in the era of legal marijuana
- § 1:101 Arizona Chamber of Commerce policy brief—
  - Recreational Marijuana: Is the Case for Legalization Going Up in Smoke?
- § 1:102 DOT recreational marijuana notice
- § 1:103 Websites regarding medical and recreational marijuana

## VI. MEDICAL MARIJUANA IN THE WORKPLACE

### A. LAWS AND GUIDELINES

- § 1:104 Medical Marijuana in the Workplace—Passage of laws

TABLE OF CONTENTS

- § 1:105 Employers' concerns
- § 1:106 Employer guidelines and current case law

**B. FACTS ABOUT MEDICAL MARIJUANA**

- § 1:107 Facts about medical marijuana—Overview
- § 1:108 —Crude marijuana
- § 1:109 —Crude marijuana is not a safe and effective medicine
- § 1:110 —National medical organizations oppose medical marijuana
- § 1:111 —Anecdotal reports not reliable scientific evidence.
- § 1:112 —Need for research
- § 1:113 —FDA approved cannabinoid medicines and drug testing
- § 1:114 —Patient rights and doctor recommendations
- § 1:115 —Smoking marijuana
- § 1:116 —Protection against unsafe and ineffective drugs and the role of the FDA
- § 1:117 —FDA statement regarding smoked marijuana as medicine
- § 1:118 —Medical marijuana and children
- § 1:119 —Addiction
- § 1:120 —Safety and side effects
- § 1:121 —Marijuana and the immune system
- § 1:122 —State medical marijuana laws
- § 1:123 —Overall plan regarding marijuana
- § 1:124 —Funding the medical marijuana movement
- § 1:125 —Law enforcement problem
- § 1:126 —Medical marijuana shops
- § 1:127 —No impediments to legitimate research.
- § 1:128 Who is really using marijuana under the guise of medicine?

**C. DAMAGE AND EFFECTIVENESS**

- § 1:129 Damage caused by medical marijuana
- § 1:130 Effectiveness of medical marijuana
- § 1:131 —Chemotherapy
- § 1:132 —HIV
- § 1:133 —Glaucoma
- § 1:134 —Spastic quadriplegia
- § 1:135 —Multiple sclerosis

**D. EMPLOYER RESPONSIBILITIES**

- § 1:136 Reasonable accommodation for medical marijuana users

- § 1:137 Positive drug testing for marijuana
- § 1:138 Workers compensation for medical marijuana users
- § 1:139 Wrongful discharge and medical marijuana
- § 1:140 “Unlawful” medical marijuana use under state law
- § 1:141 State-by-state review of the medical marijuana laws as they affect employment

## **VII. PHYSICIAN ROLE AND MEDICAL MARIJUANA**

- § 1:142 Physician prescriptions for medical marijuana
- § 1:143 Medical malpractice and medical marijuana

## **VIII. THE CONTROLLED SUBSTANCES ACT (CSA), MEDICAL MARIJUANA, AND LEGALIZATION**

- § 1:144 The Controlled Substances Act
- § 1:145 Conflict between federal law and state laws
- § 1:146 Is marijuana control a states’ rights issue?
  - § 1:147 —Enforcement of the CSA
  - § 1:148 —Marijuana is a Schedule I controlled substance
  - § 1:149 Federal prosecution in medical marijuana states
  - § 1:150 Violation of the CSA
  - § 1:151 Property owners and landlords who violate the CSA
  - § 1:152 Financiers and banks who violate the CSA
  - § 1:153 Immunity of state employees from prosecution for violating the CSA
  - § 1:154 Federal tax consequences of trafficking in marijuana
  - § 1:155 Medical marijuana, the Controlled Substances Act and the Congressional Research Service opinion
  - § 1:156 Legalization of marijuana and the Racketeer Influenced and Corrupt Organizations Act (RICO)
  - § 1:157 The Controlled Substances Act—Department of Justice (DOJ) position
  - § 1:158 FDA enforcement against marijuana manufacturers
    - § 1:159 —Smoking devices
    - § 1:160 —Marijuana vaporizers
  - § 1:161 The role of the Food and Drug Administration and medical marijuana
  - § 1:162 Marijuana industry contracts in contravention of public policy may be void and unenforceable under the CSA and state law

## **CHAPTER 2. PUBLIC EMPLOYEE DRUG AND ALCOHOL TESTING—CONSTITUTIONAL AND PROCEDURAL ISSUES**

- § 2:1 Requirement of state action

TABLE OF CONTENTS

§ 2:2	Alternatives to drug and alcohol testing
§ 2:3	—Background checks
§ 2:4	—Searches of employee property
§ 2:5	—Polygraphs
§ 2:6	—Electronic eavesdropping and undercover agents
§ 2:7	—Observations
§ 2:8	—Performance tests
§ 2:9	—The drug recognition process
§ 2:10	—Horizontal Gaze Nystagmus test
§ 2:11	Drug testing as reasonable search
§ 2:12	Supreme Court position on Fourth Amendment and employee drug testing— <i>O'Connor v. Ortega</i>
§ 2:13	— <i>Skinner v. Railway Labor Executives' Association</i>
§ 2:14	— <i>National Treasury Employees Union v. Von Raab</i>
§ 2:15	State constitutional issues
§ 2:16	Consent and refusal to test
§ 2:17	Due process in public employment drug testing
§ 2:18	—Right to a hearing and test accuracy
§ 2:19	—Substantive and due process
§ 2:20	—Notice
§ 2:21	—Opportunity to contest drug test results
§ 2:22	Self-incrimination
§ 2:23	Exclusionary rule
§ 2:24	Property
§ 2:25	Liberty
§ 2:26	Equal protection
§ 2:27	Preemployment
§ 2:28	Probationary period testing
§ 2:29	Reasonable suspicion
§ 2:30	Arrests and reasonable suspicion for testing
§ 2:31	Random tests
§ 2:32	—Case law on random testing of federal designated positions
§ 2:33	Medical examinations
§ 2:34	Posttreatment
§ 2:35	School teachers and other school employees
§ 2:36	School bus drivers and mechanics
§ 2:37	Law enforcement personnel—Police, corrections, probation and parole
§ 2:38	Military drug testing
§ 2:39	Military personnel and marijuana and cannabidiol (CBD)
§ 2:40	Military drug testing—Civilian employees
§ 2:41	Drug-free federal workplace armed forces civilian personnel and involvement with marijuana growing or distributing
§ 2:42	Firefighters

- § 2:43 Transportation
- § 2:44 Safety and security sensitive public employees
- § 2:45 Questions to answer in designing a public employee drug/alcohol testing process and hearing process
- § 2:46 Drug and alcohol testing policy—Post-accident or incident
- § 2:47 Limitation of freedom of speech
- § 2:48 Zero tolerance policies
- § 2:49 Conduct of hearings, admissibility, quality and weight of evidence in public and private employment

## CHAPTER 3. PRIVATE EMPLOYMENT AND COMMON LAW

### I. TESTING, EXAMINATIONS, AND ISSUES

- § 3:1 Consent and refusal to test
- § 3:2 Preemployment
- § 3:3 Probationary period
- § 3:4 Reasonable suspicion testing
- § 3:5 Postaccident
- § 3:6 OSHA Rule on Reporting Workplace Injuries and Post-accident Drug Testing
- § 3:7 OSHA Rule on Reporting Workplace Injuries and Post-accident Drug Testing—Examples and interpretations
- § 3:8 OSHA Rule on Reporting Workplace Injuries and Post-accident Drug Testing—OSHA memorandum
- § 3:9 Random testing
- § 3:10 Medical examinations
- § 3:11 Post-treatment
- § 3:12 Federal preemption of employee state law claims
- § 3:13 Public policy issues

### II. ISSUE OF TORTS

- § 3:14 Torts
- § 3:15 —Negligence
- § 3:16 —Negligent hiring or retention
- § 3:17 —Liability of employers for employee intoxication and for drunk and drugged driving
- § 3:18 Tort—Defamation
- § 3:19 Torts—Invasion of privacy—Intrusion
- § 3:20 —Unreasonable publicity and false light
- § 3:21 —Intentional or negligent infliction of emotional distress/outrageous conduct
- § 3:22 —False imprisonment
- § 3:23 —Wrongful discharge

TABLE OF CONTENTS

**III. STATE WORKER'S COMPENSATION**

- § 3:24 State workers' compensation and drug and alcohol issues
- § 3:25 State by state review—Workers' compensation discounts—Compliance with state drug-free workplace programs
- § 3:26 State workers' compensation statutes and cases relating to substance abuse
- § 3:27 State workers' compensation statutes and cases—
  - Alabama
  - Alaska
  - Arizona
  - Arkansas
  - California
  - Colorado
  - Connecticut
  - Delaware
  - District of Columbia
  - Florida
  - Georgia
  - Hawaii
  - Idaho
  - Illinois
  - Indiana
  - Iowa
  - Kansas
  - Kentucky
  - Louisiana
  - Maine
  - Maryland
  - Massachusetts
  - Michigan
  - Minnesota
  - Mississippi
  - Missouri
  - Montana
  - Nebraska
  - Nevada
  - New Hampshire
  - New Jersey
  - New Mexico
  - New York
  - North Carolina
  - North Dakota
  - Ohio
  - Oklahoma

- § 3:64 —Oregon
- § 3:65 —Pennsylvania
- § 3:66 —Puerto Rico
- § 3:67 —Rhode Island
- § 3:68 —South Carolina
- § 3:69 —South Dakota
- § 3:70 —Tennessee
- § 3:71 —Texas
- § 3:72 —Utah
- § 3:73 —Vermont
- § 3:74 —Virginia
- § 3:75 —West Virginia
- § 3:76 —Wisconsin
- § 3:77 —Wyoming

#### **IV. STATE WORKER'S UNEMPLOYMENT BENEFIT LAWS**

- § 3:78 State unemployment benefit laws—Misconduct
- § 3:79 State unemployment benefit laws and case law
- § 3:80 —Alabama
- § 3:81 —Alaska
- § 3:82 —Arizona
- § 3:83 —Arkansas
- § 3:84 —California
- § 3:85 —Colorado
- § 3:86 —Connecticut
- § 3:87 —Delaware
- § 3:88 —District of Columbia
- § 3:89 —Florida
- § 3:90 —Georgia
- § 3:91 State unemployment benefit laws and case law—  
Hawaii *[Reserved]*
- § 3:92 —Idaho
- § 3:93 —Illinois
- § 3:94 —Indiana
- § 3:95 —Iowa
- § 3:96 —Kansas
- § 3:97 —Kentucky
- § 3:98 —Louisiana
- § 3:99 —Maine
- § 3:100 —Maryland
- § 3:101 —Massachusetts
- § 3:102 —Michigan
- § 3:103 —Minnesota
- § 3:104 —Mississippi
- § 3:105 —Missouri

TABLE OF CONTENTS

- § 3:106 State unemployment benefit laws and case law—  
Montana *[Reserved]*
  - § 3:107 —Nebraska
  - § 3:108 —Nevada
  - § 3:109 —New Hampshire
  - § 3:110 —New Jersey
  - § 3:111 —New Mexico
  - § 3:112 —New York
  - § 3:113 —North Carolina
  - § 3:114 —North Dakota
  - § 3:115 —Ohio
  - § 3:116 —Oklahoma
  - § 3:117 —Oregon
  - § 3:118 —Pennsylvania
  - § 3:119 State unemployment benefit laws and case law—Puerto  
Rico *[Reserved]*
  - § 3:120 State unemployment benefit laws and case law—Rhode  
Island *[Reserved]*
  - § 3:121 —South Carolina
  - § 3:122 State unemployment benefit laws and case law—South  
Dakota *[Reserved]*
  - § 3:123 —Tennessee
  - § 3:124 —Texas
  - § 3:125 —Utah
  - § 3:126 State unemployment benefit laws and case law—  
Vermont *[Reserved]*
  - § 3:127 —Virginia
  - § 3:128 —Washington
  - § 3:129 —West Virginia
  - § 3:130 —Wisconsin
  - § 3:131 —Wyoming
  - § 3:132 —Refusal to test

## **CHAPTER 3A. LABOR LAW AND DISCRIMINATION LAW**

### **I. ISSUE OF CONTRACTS**

- § 3A:1 Contracts
- § 3A:2 —policies as contracts
- § 3A:3 —Laboratories, MROs, and third party  
administrators
- § 3A:4 Labor law and drug and alcohol testing
- § 3A:5 Drug testing and unfair labor practices by employers
- § 3A:6 Labor law—Collective bargaining
- § 3A:7 —Collective bargaining not required
- § 3A:8 —Collective bargaining required

## DRUG TESTING LAW TECHNOLOGY AND PRACTICE

- § 3A:9 —Unilateral implementation versus negotiated implementation of drug testing
- § 3A:10 —Arbitration
- § 3A:11 State laws regarding collective bargaining and drug testing
- § 3A:12 Preparing for collective bargaining over drug and alcohol testing

### II. ISSUE OF DISCRIMINATION

- § 3A:13 Discrimination
- § 3A:14 Racial discrimination
- § 3A:15 ADA and drug-free workplaces
- § 3A:16 Summary of ADA protections—Exemptions for drug addiction or use
- § 3A:17 ADA and past drug addiction
- § 3A:18 ADA and current illegal or legal use of drugs
- § 3A:19 ADA Protection—Enrollment in treatment program
- § 3A:20 ADA and alcohol use
- § 3A:21 ADA and legal use of drugs
- § 3A:22 ADA and reasonable accommodation
- § 3A:23 ADA and direct threat posed by substance abuse
- § 3A:24 ADA and employ rights and responsibilities
- § 3A:25 Pre-employment and medical examinations of applicants and employees
- § 3A:26 ADA and employment drug and alcohol testing
- § 3A:27 ADA and confidentiality
- § 3A:28 Other laws and regulations
- § 3A:29 Discrimination—Religion involvement
- § 3A:30 —Union involvement or lack of it

### III. FAIR CREDIT REPORTING ACT

- § 3A:31 Drug testing and the Fair Credit Reporting Act

### IV. FEDERAL FAMILY AND MEDICAL LEAVE ACT

- § 3A:32 Federal Family and Medical Leave Act, substance abuse, and drug testing

### V. STATE FAMILY AND MEDICAL LEAVE LAWS

- § 3A:33 State family and medical leave laws—Treatments for substance abuse
- § 3A:34 Native americans tribal codes

## CHAPTER 4. FEDERAL AND STATE TESTING LAWS

- § 4:1 State drug and alcohol testing laws for the workplace

TABLE OF CONTENTS

§ 4:2 Federal laws and regulations

**I. STATE DRUG-FREE WORKPLACE LAWS**

§ 4:3	Alabama
§ 4:4	Alaska
§ 4:5	Arizona
§ 4:6	Arkansas
§ 4:7	California
§ 4:8	Colorado
§ 4:9	Connecticut
§ 4:10	Delaware
§ 4:11	District of Columbia
§ 4:12	Florida
§ 4:13	Georgia
§ 4:14	Hawaii
§ 4:15	Idaho
§ 4:16	Illinois
§ 4:17	Indiana
§ 4:18	Iowa
§ 4:19	Kansas
§ 4:20	Kentucky
§ 4:21	Louisiana
§ 4:22	Maine
§ 4:23	Maryland
§ 4:24	Massachusetts
§ 4:25	Michigan
§ 4:26	Minnesota
§ 4:27	Mississippi
§ 4:28	Missouri
§ 4:29	Montana
§ 4:30	Nebraska
§ 4:31	Nevada
§ 4:32	New Hampshire
§ 4:33	New Jersey
§ 4:34	New Mexico
§ 4:35	New York
§ 4:36	North Carolina
§ 4:37	North Dakota
§ 4:38	Ohio
§ 4:39	Oklahoma
§ 4:40	Oregon
§ 4:41	Pennsylvania
§ 4:42	Puerto Rico
§ 4:43	Rhode Island
§ 4:44	South Carolina
§ 4:45	South Dakota

## DRUG TESTING LAW TECHNOLOGY AND PRACTICE

- § 4:46 Tennessee
- § 4:47 Texas
- § 4:48 Utah
- § 4:49 Vermont
- § 4:50 Virginia
- § 4:51 Virgin Islands
- § 4:52 Washington
- § 4:53 West Virginia
- § 4:54 Wisconsin
- § 4:55 Wyoming
- § 4:56 Model state drug-testing acts
- § 4:57 Drug-test fraud and adulteration laws—Federal

### **II. HORIZONTAL GAZE NYSTAGMUS TEST**

- § 4:58 Horizontal Gaze Nystagmus test—In general

### **III. DRUG RECOGNITION EXPERTS**

- § 4:59 Drug recognition experts (DRE)—In general
- § 4:60 More resources for drug detection in the workplace when drug testing is not an option
- § 4:61 The comprehensive New Jersey Supreme Court special master’s final report on drug recognition experts
- § 4:62 Workplace impairment recognition experts (WIREs)

### **IV. DRUG-FREE WORKPLACE ACT OF 1988**

- § 4:63 The Drug-Free Workplace Act for federal contractors and federal grantees
- § 4:64 Drug-Free Workplace Act

### **V. EXECUTIVE ORDER AND GUIDELINES—DRUG-FREE FEDERAL WORKPLACE**

- § 4:65 Executive order for drug-free federal workplace
- § 4:66 —Procedures
- § 4:67 —Personnel actions
- § 4:68 Mandatory guidelines for federal workplace drug-testing programs
- § 4:69 A glossary of federal drug testing terms
- § 4:70 2023 Urine testing guidelines—Summary of major changes to 2017 guidelines
- § 4:71 2023 oral fluid guidelines—Summary of major changes to 2019 oral fluid guidelines
- § 4:72 HHS proposal—Revise drug testing procedures for urine testing
- § 4:73 New oral fluid guidelines for federal workplace drug testing programs

TABLE OF CONTENTS

- § 4:74 The DOT Agencies Oral Fluid Specimen Collection Procedures Guidelines
- § 4:75 HHS proposal—Use of hair testing for federal workplace drug testing
- § 4:76 Guidance for selection of testing designated positions
- § 4:77 Prescription drug abuse epidemic
- § 4:78 SAMHSA fact sheets on preventing prescription abuse in the workplace

**VI. ALCOHOL AND DRUG-TESTING RULES FOR DEPARTMENT OF TRANSPORTATION**

- § 4:79 Federal Department of Transportation alcohol and drug-testing rules
- § 4:80 Department of Transportation revisions to rules
- § 4:81 DOT notices about rule revisions
- § 4:82 Protections for Maintenance of Way Workers—Expansion of Drug and Alcohol Testing
- § 4:83 Significant vulnerabilities in DOT's drug-testing program
- § 4:84 DOT's management information system
- § 4:85 DOT questions and answers
- § 4:86 2023 Department of Transportation (DOT) random drug and alcohol testing rates
- § 4:87 Do the FTA regulations apply?—Taxis
- § 4:88 —Ubers, Lyfts, and Ride-Sourcing
- § 4:89 DOT public interest exclusions (PIE)
- § 4:90 DOT rules and over-the-counter and prescription medicines
- § 4:91 HIPAA and DOT requirements
- § 4:92 FTA policy and procedures
- § 4:93 —Undercover collection site inspections
- § 4:94 DOT and FTA—Definition of “immediately”
- § 4:95 Failure to print confirmation tests
- § 4:96 Standardized information for collectors
- § 4:97 Qualification requirements for service agents
- § 4:98 File management and compliance
- § 4:99 Previous employers check for safety-sensitive functions
- § 4:100 Return-to-duty tests and redundant testing
- § 4:101 Revision of the federal drug testing custody and control form (CCF)
- § 4:102 Guidance for using the 2020 federal custody and control form (CCF) for urine specimens
- § 4:103 Information provided for positive drug/alcohol test or refusal to test
- § 4:104 Safety—Sensitive functions
- § 4:105 Safeguards to prevent tampering

DRUG TESTING LAW TECHNOLOGY AND PRACTICE

- § 4:106 Batch testing of employees
- § 4:107 Records retention
- § 4:108 Use of law enforcement officers as breath alcohol technicians
- § 4:109 Delay/failure to conduct post-accident test
- § 4:110 Release of information on covered employee
- § 4:111 MRO information on federal forms
- § 4:112 Temperature of the specimen
- § 4:113 Frequent procedural errors performed by collectors
- § 4:114 Shy bladder scenario
- § 4:115 Calibration checks and documentation
- § 4:116 Instructions on back of custody and control form
- § 4:117 What DOT employers need to know about monitoring collection sites
- § 4:118 Reclassifying DOT tests as non-DOT tests
- § 4:119 Substance Abuse Professionals as gatekeepers
- § 4:120 Contractors under the FTA regulations
- § 4:121 Guidance for employees on transportation drug testing
- § 4:122 Commercial driver's license drug and alcohol clearinghouse
- § 4:123 DOT drug testing: Part 40—Employee notice of testing for four semi-synthetic opioids
- § 4:124 Video cameras and reasonable suspicion determinations for drug/alcohol test
- § 4:125 Tracking post-accident testing delays
- § 4:126 Non-DOT follow-up tests
- § 4:127 Employees must relinquish firearms at collection-site
- § 4:128 Evidential breath testing devices and manual mode
- § 4:129 Negative-dilute tests
- § 4:130 Policies and the term substance abuse professional
- § 4:131 Random rosters accuracy counts
- § 4:132 Preferred delivery of communication for positive drug test results
- § 4:133 Substance abuse professionals and compliant referral practice
- § 4:134 Removal of employee following a post-accident or reasonable suspicion occurrence
- § 4:135 DOT and DNA testing
- § 4:136 2016 drug and alcohol MIS results
- § 4:137 Responding to a 40.25 request for testing information
- § 4:138 The collector's role
- § 4:139 2016 Drug and alcohol MIS results
- § 4:140 Alcohol results less than 0.04 are not DOT violations
- § 4:141 Timely reasonable suspicion testing
- § 4:142 Employer oversight of MROs
- § 4:143 Pre-employment test refusals

TABLE OF CONTENTS

- § 4:144 C/TPA information required on annual MIS submissions
- § 4:145 Top 5 audit findings
- § 4:146 Collector errors & affidavits
- § 4:147 No “expiration” on return-to-duty requirements
- § 4:148 Using mobile collection sites
- § 4:149 Who should be trained to make reasonable suspicion determinations
- § 4:150 Reasonable suspicion training
- § 4:151 Clarification: an employee who consumes alcohol while on-call has not violated a FTA prohibition
- § 4:152 Reviewing SAP letters & testing plans
- § 4:153 After hours testing
- § 4:154 Use a mobile collector
- § 4:155 Spot-checking your consortium/TPA
- § 4:156 Department of Transportation notice about the use of cannabidiol (CBD) for safety-sensitive employees who are subject to drug testing
- § 4:157 DOT Office of Drug and Alcohol Policy and Compliance Notice Regarding Hemp and CBD
- § 4:158 Frequently asked questions from FTA grantees regarding COVID-19 and FTA drug and alcohol testing requirements
- § 4:159 Federal Motor Carrier Safety Administration Notice of Enforcement Discretion Determination: Random Controlled Substance and Alcohol Testing in Response to COVID-19
- § 4:160 DOT COVID-19 Drug & Alcohol Testing Statement of Enforcement Discretion for Substance Abuse Professionals and Service Agents
- § 4:161 DOT Coronavirus Disease 2019 (COVID-19) Guidance
- § 4:162 Completely discounting an operator’s performance after a non-fatal accident
- § 4:163 Correcting errors on a custody and control form
- § 4:164 Employees who are randomly selected for both drug and alcohol tests
- § 4:165 MROs and “shy bladder” cases
- § 4:166 Pre-employment testing after an absence of 90 days
- § 4:167 Post-accident testing for mechanics under FTA rules
- § 4:168 Revenue vehicle operators vs. non-revenue vehicle operators with a CDL
- § 4:169 Custody and control form and employee ID numbers
- § 4:170 FTA follow-up alcohol test timing
- § 4:171 Late night and off-hours random testing notifications
- § 4:172 SAP referral required for pre-employment positives and refusals
- § 4:173 Custody and control form (CCF) errors and the federal motor carrier safety administration’s (FMCSA) clearinghouse

DRUG TESTING LAW TECHNOLOGY AND PRACTICE

- § 4:174 The 60-minute training must cover only effects and consequences of drug use
- § 4:175 Employer requirements when the MRO is unable to contact the employee
- § 4:176 Access to FTA drug and alcohol testing records
- § 4:177 Post-accident testing: FTA vs. FMCSA
- § 4:178 Step 3 of the federal alcohol testing form (atf) and common errors
- § 4:179 Flaws in alcohol testing when using an EBT
- § 4:180 Leftover urine from a dot drug test may not be used for non-dot testing
- § 4:181 Substance abuse professional (SAP) referrals for education and treatment
- § 4:182 Revenue vehicle control/dispatch is not a “catch-all” employee category
- § 4:183 Direct observation criteria under DOT rules
- § 4:184 Discovery of drug paraphernalia is not cause for reasonable suspicion testing
- § 4:185 FTA accidents and vehicle operation and testing
- § 4:186 DOT employers must ask applicants about pre-employment test failures and refusals
- § 4:187 How to prepare for an FTA or DOT audit
- § 4:188 Shy lung in alcohol testing
- § 4:189 FTA and dot required choices and company options and company policies
- § 4:190 FMCSA COVID-19 pre-employment testing guidance
- § 4:191 Data from the annual drug and alcohol management information system (DAMIS) and FTA
- § 4:192 Evidentiary breath testing devices and daylight saving time
- § 4:193 DOT management information system (MIS) frequently asked questions
- § 4:194 Cancelled drug tests
- § 4:195 Third party administrators must meet DOT requirements
- § 4:196 Pre-employment alcohol tests
- § 4:197 FTA testing other safety-sensitive employees after an accident
- § 4:198 Marijuana use dominates positive drug testing rates of commercial drivers
- § 4:199 Notice for federal drug testing collection sites and CDL employers
- § 4:200 Procedures for transportation workplace drug and alcohol testing programs: Addition of oral fluid specimen testing for drugs
- § 4:201 List of organizations that obtain recognition for the SAP credential for their members
- § 4:202 eCCF notice: urine specimen collectors

TABLE OF CONTENTS

- § 4:203 Drug and alcohol Management Information System (MIS) data must be in before safety sensitive contracts terminate
- § 4:204 What DOT managers are really safety-sensitive?
- § 4:205 Employees who test positive for a controlled substance may no longer possess firearms under federal law
- § 4:206 The transit industry drug and alcohol positive rate remains high
- § 4:207 Former Employees with Violations
- § 4:208 Non-contact responsibilities for Designated Employer Representatives (DERs)
- § 4:209 DOT prohibitions and state drug decriminalization
- § 4:210 Software generated random test dates and times
- § 4:211 Saliva specimens and confirmation alcohol tests
- § 4:212 DOT employer drug and alcohol policies
- § 4:213 Referrals to Substance Abuse Professionals (SAPs)
- § 4:214 Random testing excusals
- § 4:215 Towing and post-accident testing
- § 4:216 Alcohol tests below 0.04 is not a DOT violation
- § 4:217 All DOT testing records must be legible
- § 4:218 Previous employer checks
- § 4:219 Employees covered by FTA and FMCSA
- § 4:220 Two tests for one event: which is the test of record?
- § 4:221 Laboratory summary reports
- § 4:222 Voluntary self-referral for help with substance use must be non-DOT
- § 4:223 Shy bladders and removal from safety-sensitive functions
- § 4:224 Employers may not adjust substance abuse professional testing plans
- § 4:225 Who should be listed as the certifying official on the annual drug and alcohol MIS report?
- § 4:226 Diabetes does not interfere with DOT alcohol testing
- § 4:227 Situation changes after post-accident determination
- § 4:228 State and local legislation prohibiting testing for marijuana does not apply to DOT employers
- § 4:229 Operators of revenue service vehicles on transit or private property are covered
- § 4:230 Previous employers must respond to requests for DOT testing information
- § 4:231 What happens when a collector finds items used to defraud a drug test?
- § 4:232 CBD may generate a THC positive
- § 4:233 Grantee's access to records when maintained by a Third-Party Administrator (TPA)
- § 4:234 Prescription medication cannot be verified solely using photographs

DRUG TESTING LAW TECHNOLOGY AND PRACTICE

- § 4:235 Finding a qualified Substance Abuse Professional (SAP)
- § 4:236 What will the MRO report to the DER when there is a laboratory positive, adulterated, or substituted test result?
- § 4:237 Employers who operate seasonally must still meet minimum testing rates
- § 4:238 Common follow-up testing issues
- § 4:239 DOT tests are separate from and take priority over non-DOT tests
- § 4:240 Refusal exemptions for pre-employment tests
- § 4:241 Taxicab exception
- § 4:242 Unauthorized items left in the restroom
- § 4:243 Employer discretion when scheduling random tests
- § 4:244 If you receive FTA operating funds all safety-sensitive functions are covered
- § 4:245 Reclassifying drug and alcohol tests
- § 4:246 Designated Employer Representative (DER) must remove employee from safety-sensitive functions while awaiting, split specimen test results
- § 4:247 DOT oral fluids testing

**VII. FOREIGN BASED OR NUCLEAR POWER EMPLOYEES**

- § 4:248 Foreign-based employees
- § 4:249 Nuclear Power Employees
- § 4:250 Department of Defense interim rule on drug-free workplace

**VIII. TESTING PRODUCTS AND LABORATORIES**

- § 4:251 Alcohol screening devices
- § 4:252 Certified laboratories for federal drug-testing

**IX. MEDICAL REVIEW OFFICERS**

- § 4:253 Medical review officers—In general
- § 4:254 —Standard operating procedures and continuing education
- § 4:255 Medical review officer's responsibilities
- § 4:256 Medical review officers—Explanations proffered by employees regarding drug use
  - § 4:257 —Drug test methods
  - § 4:258 —Federal drug-testing custody and control form
  - § 4:259 —Administrative review of the CCF
  - § 4:260 —Technical review of single or primary specimen test result
  - § 4:261 —Interview with the donor

## TABLE OF CONTENTS

- § 4:262 —Retest request and results
- § 4:263 —Report verified result to employer
- § 4:264 Medical review officers—The litigation package
- § 4:265 Medical review officers—Occupational and public safety
  - § 4:266 —State initiatives and laws
  - § 4:267 —Specific drug class issues—Amphetamines
  - § 4:268 ——Cannabinoids (Marijuana)
  - § 4:269 ——Cocaine
  - § 4:270 ——Opioids
  - § 4:271 Fentanyl and drug testing
  - § 4:272 Fentanyl—Federal grantees may now use funds to purchase fentanyl test strips
  - § 4:273 Medical review officers—Specific drug class issues—Phencyclidine (PCP)
  - § 4:274 Medical review officers—Documentation and recordkeeping
    - § 4:275 —Confidentiality
    - § 4:276 —Blind quality control samples
    - § 4:277 —Shy bladder
    - § 4:278 —Testing for additional drugs
    - § 4:279 —Certification
  - § 4:280 Safety concerns require medical review officers to report medical information
  - § 4:281 The revised DOT medical examiner's handbook and medical advisory criteria proposed regulatory guidance

## **X. JURISDICTION OF ON-SITE DRUG AND ALCOHOL TESTING**

- § 4:282 Jurisdiction of the FDA—On-site drug and alcohol testing
- § 4:283 Best practices for DOT's drug-testing program

## **XI. HIPAA PRIVACY RULE**

- § 4:284 Privacy rules under HIPAA—Federal drug and alcohol testing and DOT
- § 4:285 Federal medical privacy rules under HIPAA—Impact of testing laws on foreign companies and nationals

## **XII. FEDERAL REQUIREMENT FOR STATE DWI LAWS**

- § 4:286 Federal requirement for state DWI laws—In general

### **XIII. FEDERAL DEPARTMENT OF ENERGY— TESTING RULES AND GUIDELINES**

- § 4:287 The federal Department of Energy—Rules and Guidelines
- § 4:288 Federal Clinical Laboratory Improvement Act

## **CHAPTER 5. TECHNICAL ISSUES**

### **I. METHODOLOGY**

- § 5:1 Drug testing methods
- § 5:2 Substances detected by federal drug tests
- § 5:3 Specimen reporting criteria
- § 5:4 Drug detection times
- § 5:5 Initial drug tests

### **II. ON-SITE DRUG TESTING**

- § 5:6 On-site drug tests
- § 5:7 Admissibility and reliability of on-site drug tests
- § 5:8 Confirmation test methods
- § 5:9 Specimen validity tests
- § 5:10 Screening and confirmatory drug testing reliability—Court cases

### **III. ANALYSIS AND TESTING METHODS**

- § 5:11 Blood, hair, saliva and sweat testing
- § 5:12 Hair analysis—Drug testing
  - Passive contamination and hair testing
  - § 5:14 —Test bias
  - § 5:15 —Current findings and hair testing
  - § 5:16 —Current state of hair testing
- § 5:17 Oral fluid (saliva) analysis—Drug testing
- § 5:18 Federal agencies' use of saliva (oral fluids) testing
- § 5:19 Sweat—Drug testing
- § 5:20 Breath testing
- § 5:21 Sensitivity and cutoffs of drug tests
- § 5:22 False positive, negative results, and test inaccuracy
- § 5:23 Passive inhalation or accidental exposure

### **IV. LABORATORY**

- § 5:24 Laboratory selection
- § 5:25 Laboratory quality assurance and quality control
- § 5:26 Fatal flaws in drug testing that may result in finding the test invalid

TABLE OF CONTENTS

## **Volume 2**

### **CHAPTER 6. HOW TO ESTABLISH A DRUG TESTING PROGRAM**

#### **I. DUE PROCESS**

- § 6:1 Due process rights of employee
- § 6:2 Procedural due process
- § 6:3 Due process—Substantive due process
- § 6:4 Due Process—Notice of drug or alcohol testing
- § 6:5 —Opportunity to contest drug test results
- § 6:6 Innocent ingestion defense

#### **II. POLICY FOR DRUG AND ALCOHOL TESTING**

##### **A. PLANNING AND DEVELOPMENT**

- § 6:7 Program planning and philosophy
- § 6:8 Written policy development
- § 6:9 Implementation of written policy

##### **B. STATEMENT AND CONSEQUENCES**

- § 6:10 Policy statement
- § 6:11 Consequences of policy violation
- § 6:12 —Last Chance Agreements and treatment options

##### **C. CONFIDENTIALITY, ENFORCEABILITY AND COMMUNICATION**

- § 6:13 Employee confidentiality
- § 6:14 Communication of policy
- § 6:15 Enforcement of policy
- § 6:16 Model information sheet for employees

##### **D. FTA SUBSTANCE ABUSE POLICY IMPLEMENTATION**

- § 6:17 FTA substance abuse policy implementation—Checklist
- § 6:18 —Covered Employees

##### **E. MODEL LANGUAGE FOR DRUG FREE WORKPLACE POLICIES**

- § 6:19 Model language for drug free workplace policies—In general
- § 6:20 —Model Policy 1
- § 6:21 —Model Policy 2

- § 6:22 —Model Policy 3
- § 6:23 —Model Policy 4
- § 6:24 —Model Policy 5

### **III. SPECIMEN COLLECTION PROCESS**

#### **A. SPECIMEN COLLECTION UNDER THE DEPARTMENT OF TRANSPORTATION (DOT)**

- § 6:25 Specimen collection under the DOT

#### **B. DOT URINE SPECIMEN COLLECTION GUIDELINES**

- § 6:26 DOT Urine Specimen Collection Guidelines—In general
- § 6:27 Requirements to be a collector
- § 6:28 Collection site
- § 6:29 Collection supplies
- § 6:30 Federal Drug Testing Custody and Control Form (CCF)
- § 6:31 Employee identification
- § 6:32 Collection procedures
- § 6:33 Shy bladder procedures
- § 6:34 Directly observed collections
- § 6:35 Transgender observed collections
- § 6:36 Monitored collections
- § 6:37 Problem collections
- § 6:38 —Catheterization
- § 6:39 —External urine bag
- § 6:40 Temperature of specimen
- § 6:41 Volume of Specimen
- § 6:42 Adulteration or substitution of specimen
- § 6:43 Blind quality control samples
- § 6:44 Correcting collection problems
- § 6:45 Regulated and non-regulated employers
- § 6:46 DOT Guidelines Appendix A—Training Requirements for Collectors
- § 6:47 DOT Guidelines Appendix B—Collection Site Security and Integrity
- § 6:48 DOT Guidelines Appendix C—Standards for Urine Collection Kits
- § 6:49 DOT Guidelines Appendix D—Direct Observation Procedures
- § 6:50 DOT Guidelines—Questions and Answers
- § 6:51 DOT Guidelines Appendix F—Operating Administrations' Rules on Collection
- § 6:52 Retention of specimens for litigation

TABLE OF CONTENTS

**C. EMPLOYEE SPECIMEN COLLECTION AND CHAIN OF CUSTODY**

- § 6:53 Employee specimen collection checklist—Collection of blood
- § 6:54 Specimen collection and chain of custody—Private and public employment
- § 6:55 Chain of custody issues
- § 6:56 Employee's failure to comply
- § 6:57 Adulteration of tests
- § 6:58 Prison disciplinary hearings

**IV. MEDICAL REVIEW OFFICERS AND SUBSTANCE ABUSE PROFESSIONALS**

- § 6:59 Medical review officers
- § 6:60 Substance abuse professionals
- § 6:61 —Qualifications
- § 6:62 —Duties of a SAP
- § 6:63 —Regulations governing SAPs

**V. PRE-EMPLOYMENT DRUG TESTING**

- § 6:64 Pre-employment drug testing—Example for implementation
- § 6:65 —Checklist

**VI. RANDOM AND REASONABLE TESTING**

- § 6:66 Implementation of random testing
- § 6:67 Reasonable suspicion testing
- § 6:68 Reasonable suspicion checklist

**VII. POST-ACCIDENT TESTING AND RETURN-TO-DUTY**

- § 6:69 Post-accident testing process
- § 6:70 —Alcohol tests
- § 6:71 —Drug tests
- § 6:72 Post-accident policy checklist
- § 6:73 Return to duty testing checklist
- § 6:74 DOT follow-up testing checklist

**VIII. DOCUMENTATION**

- § 6:75 Documentation checklist for litigation
- § 6:76 Proper record keeping
- § 6:77 —Maintenance of records
- § 6:78 —Chain of custody documents

## **IX. DRUG AND ALCOHOL SERVICES**

### **A. CONSORTIA AND SERVICES**

- § 6:79 Consortia to provide drug and alcohol services
- § 6:80 Lower costs and savings
- § 6:81 Professionalism and expertise
- § 6:82 Reduced administrative burden
- § 6:83 Pragmatism
- § 6:84 Reduced liability

### **B. CONSORTIA AND DISADVANTAGES**

- § 6:85 Disadvantages
- § 6:86 —Shared design
- § 6:87 —Reduced control
- § 6:88 —Financial considerations

### **C. TYPES OF CONSORTIA**

- § 6:89 Types of consortia
- § 6:90 —Purchasing cooperatives
- § 6:91 —Separate entity
- § 6:92 —Managing partner
- § 6:93 —External management

### **D. CONSORTIUM CONTRACT**

- § 6:94 Importance of consortium contract

## **X. ON-SITE DRUG AND ALCOHOL TESTING**

- § 6:95 On-site drug and alcohol testing—In general
- § 6:96 —Legal and technical advantages
- § 6:97 —Specimen collection
- § 6:98 —Operator certification
- § 6:99 —Employee confrontations
- § 6:100 —Paruresis or shy bladder syndrome
- § 6:101 Unsuitable on-site specimens

## **XI. CHECKLIST FOR IMPLEMENTATION**

- § 6:102 Checklist to determine implementation of testing program
- § 6:103 How to avoid legal problems

## **XII. “PRIVATE” SUBSTANCE ABUSE**

- § 6:104 Off-duty or off-worksitce substance abuse

## **XIII. TRAINING REGARDING COMPANY POLICY**

- § 6:105 Employee training

TABLE OF CONTENTS

**XIV. EMPLOYEE ASSISTANCE PROGRAM (EAP)**

- § 6:106 Employee Assistance Programs—Background
- § 6:107 Employee assistance programs—Implementation
- § 6:108 —Referral

**XV. PROTECTIONS UNDER THE FAMILY AND MEDICAL LEAVE ACT**

- § 6:109 The Family and Medical Leave Act—Substance abuse treatment of employees

**XVI. CONFIDENTIALITY**

**A. CONFIDENTIALITY**

- § 6:110 Confidentiality procedures
- § 6:111 42 C.F.R. Part 2, Confidentiality of substance use disorder patient records
- § 6:112 Confidentiality Procedures—Federal treatment confidentiality
- § 6:113 Confidentiality and qualified service organizations
- § 6:114 Confidentiality and HIPAA—Pre-employment physicals, drug tests, or fitness-for-duty examinations
- § 6:115 Confidentiality—State laws
- § 6:116 —Employment privacy laws
- § 6:117 —Physician-patient privilege
- § 6:118 —State medical and laboratory records laws

**B. DISCLOSURE OF MEDICAL INFORMATION**

- § 6:119 Disclosure of employee medical information—  
Company physicians
- § 6:120 —Contractual right to confidentiality
- § 6:121 —Laboratory reports to employers
- § 6:122 —Preemployment test reporting

**C. CONFIDENTIALITY AND GUIDELINES**

- § 6:123 Confidentiality of alcohol test records—Americans with Disabilities Act
- § 6:124 Guidelines to confidentiality

**XVII. LAST CHANCE AGREEMENTS**

- § 6:125 Last chance agreements (LCA)

**XVIII. ORGANIZATIONS THAT CAN HELP**

- § 6:126 The National Drug & Alcohol Screening Association: the voice of an industry—Forms and guidelines

## **XIX. PROGRAM MONITORING CHECKLIST**

- § 6:127 Drug Testing Program Monitoring—Checklist
- § 6:128 Guidelines for employers—Drug overdoses

# **CHAPTER 7. ALCOHOL TESTING IN DUI/ DWI CASES AND IN EMPLOYMENT CASES**

## **I. ALCOHOL USE, POLICIES, AND LAWS**

### **A. ALCOHOL USE AND IMPACT**

- § 7:1 Alcohol use in the United States
- § 7:2 Alcohol use, alcohol abuse, and employment
- § 7:3 Impact of alcohol on human physiology
- § 7:4 Fatal crashes and fatalities involving alcohol-impaired drivers

### **B. LIABILITY**

- § 7:5 State DUI, Dram Shop, and Social Host Laws
- § 7:6 Liability of employers for employee intoxication

### **C. POLICIES AND ISSUES**

- § 7:7 Zero tolerance policy and DOT rules
- § 7:8 Legal authority for alcohol testing
- § 7:9 Policy issues in consideration for employee alcohol testing
- § 7:10 Alcohol testing procedures for employers
- § 7:11 Presumptions in prosecution of intoxicated driving charge

## **II. FEDERAL DEPARTMENT OF TRANSPORTATION RULES FOR ALCOHOL TESTING**

- § 7:12 Federal DOT rules for alcohol testing
- § 7:13 —Technicians who can conduct tests
- § 7:14 —Qualified testing site
- § 7:15 —Testing procedures
- § 7:16 —Procedures for the screening test
- § 7:17 —Use of a saliva or breath tube ASD
- § 7:18 —Procedures after a screening test result
- § 7:19 —First steps in an alcohol confirmation test
- § 7:20 —Conducting an alcohol confirmation test
- § 7:21 —After the alcohol confirmation test result
- § 7:22 —Refusal to take an alcohol test and the consequences
- § 7:23 —Insufficient saliva

## TABLE OF CONTENTS

- § 7:24 —Insufficient amount of breath
- § 7:25 —Problems that always cause cancellation
- § 7:26 —Problems that cause cancellation unless corrected
- § 7:27 —Process to correct problems
- § 7:28 —Effect of a cancelled alcohol test
- § 7:29 —Procedural problems not sufficient to cancel test
- § 7:30 —Alcohol tests other than saliva or breath

## III. FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION ALCOHOL TESTING PROCEDURES

- § 7:31 FMCSA alcohol testing procedures—Overview
- § 7:32 —Requirements
- § 7:33 —Evidential breath testing device
- § 7:34 —Breath Alcohol Technician
- § 7:35 —Alcohol testing site
- § 7:36 —Alcohol testing process
- § 7:37 —EBT screening test
- § 7:38 —ASD screening test
- § 7:39 —Confirmation test
- § 7:40 —Reporting
- § 7:41 —Incomplete tests
- § 7:42 —Test accuracy
- § 7:43 —Substance abuse professional
- § 7:44 —Alcohol-related conduct
- § 7:45 —Dry run of the program

## IV. PRE-EMPLOYMENT TESTING

- § 7:46 Pre-employment alcohol testing
- § 7:47 Refusal to take a DOT alcohol test

## V. DOT-AUTHORIZED TECHNICIANS

- § 7:48 DOT alcohol test technicians

## VI. ALCOHOL TESTING METHODS

- § 7:49 Field sobriety testing
- § 7:50 Horizontal Gaze Nystagmus (HGN) testing
- § 7:51 Alcohol testing devices, proper administration and use as evidence
- § 7:52 Ignition Interlock Devices (IIDs)
- § 7:53 Breath testing devices—ASD and EBT
- § 7:54 Alcohol Screening Devices (ADS)
- § 7:55 Evidentiary Breath Testing devices (EBT)
- § 7:56 Alcohol test calibrating units

- § 7:57 Breathalyzer
- § 7:58 Theory and operation of breathalyzer
- § 7:59 Infrared testing devices
- § 7:60 Alcotest
- § 7:61 Intoximeters
- § 7:62 Gas chromatography
- § 7:63 Blood testing
- § 7:64 Urine alcohol test
- § 7:65 Saliva alcohol test

## **VII. TECHNICAL AND POLICY ISSUES**

- § 7:66 Technical and policy issues—Custody and control forms
- § 7:67 —Importance of calibration checks and required documentation
- § 7:68 —Law enforcement officers serving as BATs
- § 7:69 —Acetone and alcohol testing
- § 7:70 —Driver alcohol detection system for safety
- § 7:71 —Documentation required for post-accident test delays
- § 7:72 Impaired driving studies

## **VIII. ALCOHOLISM IN THE WORKPLACE**

- § 7:73 Alcoholism in the workplace—In general
- § 7:74 —Employee Assistance Programs (EAPs)
- § 7:75 —Providing help to employee

# **CHAPTER 8. NONEMPLOYMENT APPLICATIONS FOR ALCOHOL AND DRUG TESTING**

- § 8:1 Introduction

## **I. SCHOOLS**

- § 8:2 Drug testing of students
- § 8:3 Amicus Brief in Supreme Court student drug testing case *Board of Education v. Earls*
- § 8:4 Student drug testing under state law
- § 8:5 Implementing a school drug testing program
- § 8:6 —School policy
- § 8:7 —Statement of need
- § 8:8 —Substance abuse program coordinator
- § 8:9 Reasonable suspicion and random testing
- § 8:10 Drug testing is a two-step process
- § 8:11 Specimen collection
- § 8:12 Cutoff levels

## TABLE OF CONTENTS

- § 8:13 Medical review officer (MRO)
- § 8:14 Confirmation of tests
- § 8:15 Student assistance programs (SAPs)
- § 8:16 —Community involvement in SAPs
- § 8:17 Small schools
- § 8:18 Confidentiality
- § 8:19 —Schools and federal alcohol and drug confidentiality regulations
- § 8:20 —Family Educational Rights and Privacy Act
- § 8:21 —SAPs and confidentiality
- § 8:22 Training
- § 8:23 Model school drug testing policy provisions
- § 8:24 On-site testing for schools
- § 8:25 —Model student random drug testing legislation
- § 8:26 Studies on the effectiveness of student random drug testing

## II. CRIMINAL JUSTICE SYSTEM

- § 8:27 Use and admissibility of drug tests
- § 8:28 —Pretrial
- § 8:29 —Drug and alcohol testing of pretrial detainees
- § 8:30 —Probation and parole
- § 8:31 —Prisoners
- § 8:32 —On-site testing
- § 8:33 Drug courts and on-site drug testing
- § 8:34 Other criminal justice uses of drug and alcohol testing
- § 8:35 Drug testing in federal prisons

## III. OTHER NONEMPLOYMENT APPLICATIONS

- § 8:36 Drug-exposed infants and pregnant women
- § 8:37 Drug testing and state drugged driving laws
- § 8:38 Animal testing
- § 8:39 Child custody and child abuse
- § 8:40 Professional licensing and monitoring
- § 8:41 Drug tests for recipients of public assistance
- § 8:42 Drug testing in athletics—National collegiate athletic association (NCAA)
- § 8:43 Steroids testing
- § 8:44 Drug testing and the federal-state unemployment compensation program
- § 8:45 Drug testing in Addiction Medicine

## APPENDICES

- APPENDIX A.      Governmentwide Requirements for Drug-Free Workplaces for Federal Contractors and Grantees

- APPENDIX B-1. Federal Drug Testing Custody and Control Forms-HHS
- APPENDIX B-2. Mandatory Guidelines for Federal Workplace Drug Testing Programs
- APPENDIX B-2.10. Mandatory Guidelines for Federal Workplace Drug Testing Programs, 82 FR 7920-01, 2017 WL 264702 (January 23, 2017)

## Volume 3

- APPENDIX B-2.20. U.S. Department of Health and Human Service Mandatory Guidelines for Federal Workplace Drug Testing Programs—Oral/Fluid
- APPENDIX B-2.30. Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine (UrMG) with revised standards and technical requirements with an effective date of February 1, 2024
- APPENDIX B-2.40. Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid (OFGM) with revised standards and technical requirements with an effective date of October 10, 2023
- APPENDIX B-2.50. Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies, May 1, 2024
- APPENDIX B-3. DOT—Federal Aviation Administration—Drug Testing Program (14 C.F.R. Part 121, App I)
- APPENDIX B-4. DOT—Coast Guard—Chemical Testing (46 C.F.R. Part 16 and § 4.06-60)
- APPENDIX B-5. DOT—Research and Special Programs Administration—Pipeline Safety—Drug and Alcohol Testing (49 C.F.R. Part 199)
- APPENDIX B-6. DOT—Federal Motor Carrier Safety Administration—Controlled Substances and Alcohol Use and Testing (49 C.F.R. Part 382)
- APPENDIX B-7. DOT—Federal Transit Administration—Prevention of Alcohol Misuse and Drug Use in Transit Operations

TABLE OF CONTENTS

APPENDIX B-8. Nuclear Regulatory Commission—Fitness for Duty Programs

APPENDIX B-9. U.S. Department of Transportation Final Rule—Oral Fluid Testing

Appendix B-9.10. DOT Oral Fluid Specimen Collection Procedures Guidelines

APPENDIX B-10. DOT—Federal Highway Administration—Commercial Driver's License Standards; Driver Disqualifications and Penalties

APPENDIX B-11. Cutoff Concentrations for Oral Fluid Drug Tests

APPENDIX B-12. Office of Personnel Management—Federal Personnel Manual Letter 792-19, Establishing a Drug-Free Federal Workplace (54 Fed Reg 47324)

APPENDIX B-13. 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs

APPENDIX B-13.10. Procedures For Transportation Workplace And Alcohol Testing Programs: Drug And Alcohol Management Information System Reporting

APPENDIX B-13.20. Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation's Drug-Testing Panel and Certain Minor Amendments, 2017 WL 5236314 (November 13, 2017)

APPENDIX B-14. Substance Abuse Professional Guidelines

APPENDIX B-15. *[Reserved]*

APPENDIX B-16. Department of Defense—Drug-Free Workplace Rules (48 C.F.R. § 223.570 et seq.)

APPENDIX B-17. 42 CFR Part 2, Confidentiality of Substance Use Disorder Patient Records

APPENDIX B-18. Highway Safety Programs; Conforming Products List of Screening Devices To Measure Alcohol in Bodily Fluids (June 12, 2012)

APPENDIX B-19. Federal Department of Transportation Random Testing Rates

APPENDIX B-20. Medical Review Officer Manual for Federal Agency Workplace Drug Testing Programs

APPENDIX B-20.10. MRO Case Studies Oral Fluid-2024

APPENDIX B-20.20. MRO Case Studies Urine-2024

DRUG TESTING LAW TECHNOLOGY AND PRACTICE

APPENDIX B-21. Highway Safety Programs; Conforming Products List of Evidential Breath Alcohol Measurement Devices, November 2, 2017

APPENDIX B-22. Highway Safety Programs; Conforming Products List of Calibrating Units for Breath Alcohol Testers (October 22, 2012)

APPENDIX B-23. DOT—Alcohol Testing Form

APPENDIX B-24. Title 10 Part 707. Workplace Substance Abuse Programs At DOE Sites

APPENDIX B-25. DOT Guidance for Employers to Monitor Collection Services

APPENDIX B-26. Urine Specimen Collection Handbook for Federal Agency Workplace Drug Testing Programs. Revised January, 2022

APPENDIX B-27. Department of Transportation (DOT) directly observed urine collection procedures

APPENDIX B-28. HHS Guidance on Using the 2020 Federal Custody and Control Form for Urine Specimens

APPENDIX B-29. Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)

APPENDIX C. Workplace Drug Testing in the Era of Legal Marijuana

APPENDIX C-1. NJ Wire Guidance

APPENDIX D. SAMHSA Opioid Overdose Prevention Toolkit

APPENDIX E. The Federal Drug-Free Workplace Act

APPENDIX E-1. Omnibus Transportation Employee Testing Act of 1991

APPENDIX F. *[Reserved]*

APPENDIX G. *[Reserved]*

APPENDIX H-1. State Laws That Regulate Drug and Alcohol Use Testing—Alabama

APPENDIX H-2. State Laws That Regulate Drug and Alcohol Use Testing—Alaska

APPENDIX H-3. State Laws That Regulate Drug and Alcohol Use Testing—Arizona

APPENDIX H-4. State Laws That Regulate Drug and Alcohol Use Testing—Arkansas

APPENDIX H-5. State Laws That Regulate Drug and Alcohol Use Testing—California

TABLE OF CONTENTS

- APPENDIX H-6. State Laws That Regulate Drug and Alcohol Use Testing—Colorado *[Reserved]*
- APPENDIX H-7. State Laws That Regulate Drug and Alcohol Use Testing—Connecticut
- APPENDIX H-8. State Laws That Regulate Drug and Alcohol Use Testing—Delaware
- APPENDIX H-9. State Laws That Regulate Drug and Alcohol Use Testing—District of Columbia
- APPENDIX H-10. State Laws That Regulate Drug and Alcohol Use Testing—Florida
- APPENDIX H-11. State Laws That Regulate Drug and Alcohol Use Testing—Georgia
- APPENDIX H-12. State Laws That Regulate Drug and Alcohol Use Testing—Hawaii
- APPENDIX H-13. State Laws That Regulate Drug and Alcohol Use Testing—Idaho
- APPENDIX H-14. State Laws That Regulate Drug and Alcohol Use Testing—Illinois
- APPENDIX H-15. State Laws That Regulate Drug and Alcohol Use Testing—Indiana
- APPENDIX H-16. State Laws That Regulate Drug and Alcohol Use Testing—Iowa
- APPENDIX H-17. State Laws That Regulate Drug and Alcohol Use Testing—Kansas
- APPENDIX H-18. State Laws That Regulate Drug and Alcohol Use Testing—Kentucky
- APPENDIX H-19. State Laws That Regulate Drug and Alcohol Use Testing—Louisiana
- APPENDIX H-20. State Laws That Regulate Drug and Alcohol Use Testing—Maine
- APPENDIX H-21. State Laws That Regulate Drug and Alcohol Use Testing—Maryland
- APPENDIX H-22. State Laws That Regulate Drug and Alcohol Use Testing—Massachusetts *[Reserved]*
- APPENDIX H-23. State Laws That Regulate Drug and Alcohol Use Testing—Michigan
- APPENDIX H-24. State Laws That Regulate Drug and Alcohol Use Testing—Minnesota
- APPENDIX H-25. State Laws That Regulate Drug and Alcohol Use Testing—Mississippi
- APPENDIX H-26. State Laws That Regulate Drug and Alcohol Use Testing—Missouri

DRUG TESTING LAW TECHNOLOGY AND PRACTICE

- APPENDIX H-27. State Laws That Regulate Drug and Alcohol Use Testing—Montana
- APPENDIX H-28. State Laws That Regulate Drug and Alcohol Use Testing—Nebraska
- APPENDIX H-29. State Laws That Regulate Drug and Alcohol Use Testing—Nevada
- APPENDIX H-30. State Laws That Regulate Drug and Alcohol Use Testing—New Hampshire *[Reserved]*
- APPENDIX H-31. State Laws That Regulate Drug and Alcohol Use Testing—New Jersey *[Reserved]*
- APPENDIX H-32. State Laws That Regulate Drug and Alcohol Use Testing—New Mexico *[Reserved]*
- APPENDIX H-33. State Laws That Regulate Drug and Alcohol Use Testing—New York *[Reserved]*
- APPENDIX H-34. State Laws That Regulate Drug and Alcohol Use Testing—North Carolina
- APPENDIX H-35. State Laws That Regulate Drug and Alcohol Use Testing—North Dakota
- APPENDIX H-36. State Laws That Regulate Drug and Alcohol Use Testing—Ohio
- APPENDIX H-37. State Laws That Regulate Drug and Alcohol Use Testing—Oklahoma
- APPENDIX H-38. State Laws That Regulate Drug and Alcohol Use Testing—Oregon
- APPENDIX H-39. State Laws That Regulate Drug and Alcohol Use Testing—Pennsylvania *[Reserved]*
- APPENDIX H-40. State Laws That Regulate Drug and Alcohol Use Testing—Puerto Rico
- APPENDIX H-41. State Laws That Regulate Drug and Alcohol Use Testing—Rhode Island
- APPENDIX H-42. State Laws That Regulate Drug and Alcohol Use Testing—South Carolina
- APPENDIX H-43. State Laws That Regulate Drug and Alcohol Use Testing—South Dakota
- APPENDIX H-44. State Laws That Regulate Drug and Alcohol Use Testing—Tennessee
- APPENDIX H-45. State Laws That Regulate Drug and Alcohol Use Testing—Texas
- APPENDIX H-46. State Laws That Regulate Drug and Alcohol Use Testing—Utah
- APPENDIX H-47. State Laws That Regulate Drug and Alcohol Use Testing—Vermont
- APPENDIX H-48. State Laws That Regulate Drug and Alcohol Use Testing—Virginia *[Reserved]*

TABLE OF CONTENTS

APPENDIX H-49.	State Laws That Regulate Drug and Alcohol Use Testing—Virgin Islands <i>[Reserved]</i>
APPENDIX H-50.	State Laws That Regulate Drug and Alcohol Use Testing—Washington <i>[Reserved]</i>
APPENDIX H-51.	State Laws That Regulate Drug and Alcohol Use Testing—West Virginia
APPENDIX H-52.	State Laws That Regulate Drug and Alcohol Use Testing—Wisconsin
APPENDIX H-53.	State Laws That Regulate Drug and Alcohol Use Testing—Wyoming <i>[Reserved]</i>
APPENDIX I.	Forms
APPENDIX I-1.	Consent to Drug Test under Federal Regulations
APPENDIX I-2.	Recording Prescription Medicine Form
APPENDIX I-3.	Authorization for Release of Medical Information
APPENDIX I-4.	Alcohol/Drug Patient Records Release Authorization
APPENDIX I-5.	Label for Specimen Container and Lid
APPENDIX I-6.	Chain of Custody Form
APPENDIX I-7.	Chain of Custody Form for On-Site Testing
APPENDIX I-8.	Reasonable Suspicion Report
APPENDIX I-9.	Drug/Alcohol Test Results Form
APPENDIX I-10.	Annual Drug Testing Data Summary
APPENDIX I-11.	Qualified Service Organization Agreement for a Laboratory
APPENDIX I-12.	Liability Release Waiver
APPENDIX I-13.	Liability Release—Indemnity
APPENDIX I-14.	Equipment Validation and Operator Qualification Form
APPENDIX I-15.	Training Certification
APPENDIX I-16.	On-Site Drug Test Results—Negative Test Certification Form
APPENDIX I-17.	On-Site Drug Test Results—On-Site Drug Test Result Form
APPENDIX I-18.	Last Chance Agreement Form
APPENDIX J.	<i>[Reserved]</i>
APPENDIX J-1.	NDASA: CBD and Drug Testing
APPENDIX J-2.	NDASA: Recommended Safe Practices and Procedures During COVID-19

DRUG TESTING LAW TECHNOLOGY AND PRACTICE

APPENDIX J-3. NDASA: Marijuana and Workplace Policies

APPENDIX J-4. NDASA: How COVID-19 Affects our Industry

APPENDIX K. *[Reserved]*

APPENDIX L. Federal Conditions of Release Drug Testing Requirements

Appendix M. Hazardous and Illicit Products in Texas

Appendix M-1. Derived Psychoactive Cannabis Products (DPCPs): An Overlooked Threat to Public Safety

Appendix M-2. CDC Health Advisory

Appendix M-3. How to Read a Certificate of Analysis for Your Cannabis Product

**Table of Laws and Rules**

**Table of Cases**

**Index**