

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— Δ^9 -
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—O'Connor v. Ortega |
| § 2:13 | —Skinner v. Railway Labor Executives' Association |
| § 2:14 | —National Treasury Employees Union v. Von Raab |
| § 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
- § 3:28 —Alaska
- § 3:29 —Arizona
- § 3:30 —Arkansas
- § 3:31 —California
- § 3:32 —Colorado
- § 3:33 —Connecticut
- § 3:34 —Delaware
- § 3:35 —District of Columbia
- § 3:36 —Florida
- § 3:37 —Georgia
- § 3:38 —Hawaii
- § 3:39 —Idaho
- § 3:40 —Illinois
- § 3:41 —Indiana
- § 3:42 —Iowa
- § 3:43 —Kansas
- § 3:44 —Kentucky
- § 3:45 —Louisiana
- § 3:46 —Maine
- § 3:47 —Maryland
- § 3:48 —Massachusetts
- § 3:49 —Michigan
- § 3:50 —Minnesota
- § 3:51 —Mississippi
- § 3:52 —Missouri
- § 3:53 —Montana
- § 3:54 —Nebraska
- § 3:55 —Nevada
- § 3:56 —New Hampshire
- § 3:57 —New Jersey
- § 3:58 —New Mexico
- § 3:59 —New York
- § 3:60 —North Carolina
- § 3:61 —North Dakota
- § 3:62 —Ohio
- § 3:63 —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 [<i>Reserved</i>] |
| § 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 [<i>Reserved</i>] |
| § 3:120 | State unemployment benefit laws and case law—Rhode Island [<i>Reserved</i>] |
| § 3:121 | —South Carolina |
| § 3:122 | State unemployment benefit laws and case law—South Dakota [<i>Reserved</i>] |
| § 3:123 | —Tennessee |
| § 3:124 | —Texas |
| § 3:125 | —Utah |
| § 3:126 | State unemployment benefit laws and case law— Vermont [<i>Reserved</i>] |
| § 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 |

- § 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 |

- § 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 |

- § 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 |

- § 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

§ 5:13 —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

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-worksites 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 (OFMG) 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. | <i>[Reserved]</i> |
| 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 <i>[Reserved]</i> |
| 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 <i>[Reserved]</i> |
| 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