


**SUBSTANCE ABUSE:  
MODEL POLICY AND PROGRAM of  
the  
electrical training ALLIANCE**

National Training Institute  
Ann Arbor, MI  
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Washington, D.C.

  
IBEW - NECA

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**Available Documents  
(on NTI Website)**

- **ALLIANCE's Model Substance Abuse Policy and Program for JATCs (Oct. 1, 2017)**
- **Notice of Changes to Current Policy, effective Oct 1, 2017 (for existing apprenticeship classes)**
- **Chart of State drug testing laws**
- **Chart of State medical marijuana laws**

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**Drug Testing at Pepsi**



"You're fired, Jack. The lab results just came back and you tested positive for Coke."

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**Substance Abuse Topics**

- I. Context/Background Info
- II. *ALLIANCE's* Model Policy and Program
- III. Recap

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**I. Context/Background**

- 1. Why test?
- 2. Legal considerations
- 3. Policy considerations

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**I. Context: Why Test?**

- Studies on drug and alcohol use in and out of the workplace

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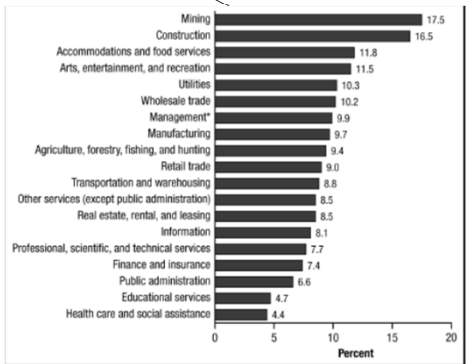
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**Figure 1. Past month heavy alcohol use among adults aged 18 to 64 employed full time, by industry category: combined 2008 to 2012**




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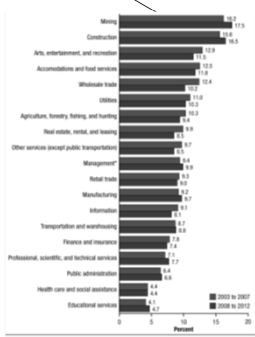


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**Figure 4. Past month heavy alcohol use among adults aged 18 to 64 employed full time, by industry category: combined 2003 to 2007 and combined 2008 to 2012**



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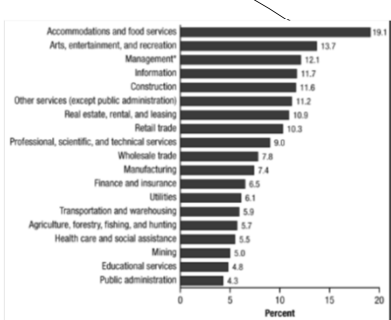


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**Figure 2. Past month illicit drug use among adults aged 18 to 64 employed full time, by industry category: combined 2008 to 2012**



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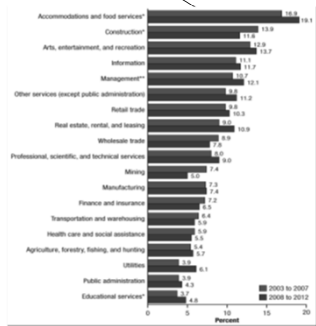


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**Figure 2. Past month illicit drug use among adults aged 18 to 64 employed full time, by industry category: combined 2008 to 2012**



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**Table S3. Past year substance use disorder among full-time workers aged 18-64, by industry categories: combined 2003 to 2007 and combined 2008 to 2012**

Industry category	Combined 2003-2007			Combined 2008-2012		
	Number (in thousands)	Percent	SE	Number (in thousands)	Percent	SE
Accommodations and food services	1,061	17.4	0.59	1,038	16.9	0.59
Construction	1,964	17.3	0.48	1,381	14.3	0.53
Arts, entertainment, and recreation	222	13.0	1.02	224	12.9	1.10
Information	294	10.8	0.82	254	9.8	0.80
Management*	529	12.8	0.26	499	11.4	0.66
Retail trade	1,224	11.2	0.36	1,057	10.5	0.44
Other services (except public administration)	499	9.4	0.54	535	10.1	0.56
Wholesale trade	504	13.4	0.82	347	10.4	0.75
Professional, scientific, and technical services	720	9.4	0.46	725	8.9	0.52
Real estate, rental, and leasing	225	11.2	1.03	162	10.0	0.88
Mining	81	14.3	1.96	81	11.8	1.65
Finance and insurance	604	10.0	0.56	527	9.4	0.59
Manufacturing	1,682	10.4	0.26	1,239	9.3	0.36
Transportation and warehousing	517	9.9	0.64	430	9.1	0.69
Agriculture, forestry, fishing, and hunting	166	9.6	0.90	165	10.5	1.31
Health care and social assistance	887	6.4	0.29	868	5.7	0.25
Public administration	427	6.5	0.43	493	7.2	0.48
Educational services	453	5.0	0.31	528	5.5	0.33
Utilities	99	9.1	1.10	135	11.5	1.53

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## BCTD Experience

- Sponsors drug testing program
- In 2008, thousands tested
- Only 1.9% failed

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## Why Test?

- Workplace Safety
- Enhance Jobsite and Classroom Learning
- Assure Quality Work
- Protect Property
- Establish Clear Expectations for the Trade

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## Context: 2. Is It Legal?

- Laws Governing Testing
  - Federal
  - State
  - Local
- Can Affect Issues Such as
  - Random Testing
  - Methodology
  - Who Pays
  - Notice



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## State Statutes

- Govern *Employer* testing
- Three Areas
  - Restrictions/Procedural Safeguards
  - Workers Comp Reductions
  - Provide Litigation Defenses
- Public works contracts

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## Other Legal Considerations

- Disability laws
- Privacy laws
- Defamation law
- Contract law

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## Federal Guidance and Regulations

- HHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs"
- NRC Regulations for Alcohol Testing: 10 CFR 26.31
- HHS "List of Laboratories which Meet Minimum Standards to Engage in Urine Drug Testing"

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- [www.workplace.samhsa.gov](http://www.workplace.samhsa.gov)

- [www.nrc.gov](http://www.nrc.gov)

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**Updates to HHS Guidelines**

HHS updated its technical Guidelines on Jan. 23, 2017

Changes are effective Oct. 1, 2017

*ALLIANCE* has amended its Model Policy for new apprentice classes

*ALLIANCE* has distributed a Notice of changes for current classes

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**Context:**

**3. JATC Policy Considerations**

- JATC Policy Statement
  - (Policies and Procedures)
- Specific JATC Drug and Alcohol Policy
- Testing Program **MUST BE CONSISTENT** with your policies

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**TESTING: Balancing the Concerns**

- *ALLIANCE* Policy Balances
  - Safety needs with
  - Worker concerns re: privacy and dignity

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## II. ALLIANCE Model Policy and Program: 6 major issues

1. Who?
2. When?
3. For what substances?
4. What testing methods?
5. What other safeguards?
6. What consequences?

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## ALLIANCE Model Policy: 1. Who Gets Tested?

**Applicants**

**Incumbent Apprentices**

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## 2. When Tested? Applicants

- After Conditional Offer  
– *Don't Inquire During Interview (ADA)*
- Once you make conditional offer, can require medical tests --- job related – must test everyone
- If Positive = Not Selected



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Exception:  
Applicants and Alcohol Testing (ADA)

- Differential treatment based on ADA
- Alcohol dependence is “disability”
- Question is whether person can perform essential functions, with reasonable accommodation
- Impairment at work is not reasonable accommodation

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Applicants and Alcohol Testing (ADA)

- If applicant discloses alcohol dependence problem before testing, JATC can test
- If test is positive, applicant rejected
- If test is negative, can continue interview

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Applicants and Alcohol Testing (ADA)

If offer of indenture is made:

- Can condition on proof of completion of rehab program, or enrollment in rehab program
- Until applicant completes rehab, can require alcohol testing before each job
- If any test is positive, apprenticeship terminates

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**2. When Tested?**  
Incumbent Apprentices

- Two Preconditions to testing:
  - “Reasonable Cause”
  - Denial of use or impairment

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**“Reasonable Cause”**

- Apprentice Failed Employer Test
- Failure to Obtain/Provide ER Test Results Upon Request
- Reliable Sources
- Unexplained/Frequent Absenteeism
- Unexplained Employment Rejection

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**Employer's Test as “Reasonable Cause”**

- Failing ER test is reasonable cause to test under Model Policy
- Safeguards re: ER test under Model Policy
  - Chance to prove prescription meds caused positive on ER test
  - Chance to have ER preserved sample tested

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## Document Reasonable Cause

- Train staff



- Put it in writing



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## Random Testing?

- Not in basic Model Plan  
(see *attachment*)
- In some JATC Policy Statements
- Check state law

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## Model Policy: 3. What Substances?

Copyright 2012 by Randy Glasbergen.  
www.glasbergen.com



"I hate to terminate your employment, Mr. Kent,  
but we found traces of kryptonite in your urine."

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Model Policy:  
3. What Substances?

- Drug Testing (original five)
  - Marijuana
  - Cocaine
  - Opiates
  - PCP
  - Amphetamines
- Additional Drugs (Oct. 1, 2017)
  - Oxycodone
  - Oxymorphone
  - Hydrocodone
  - Hydromorphone

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Model Policy  
4. Testing Procedures: Drugs

- Incorporates SAMSHA/HHS Mandatory Guidelines (updated in January 2017; effective Oct. 1, 2017)
- Incorporates MRO Manual
- Incorporates Federal Specimen Collection Procedures

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4. Testing Procedures: Drugs

- Urinalysis or Other Method Recognized as "State of the Art"
- Alternative method now allowed under limited circumstances, effective Oct. 1, 2017
  - In the event donor cannot provide a urine sample, an oral sample (saliva) may be used instead

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#### 4. Testing Procedures: Drugs

- Split Samples (Parts A&B)
  - Either Urine and Oral Fluids



- HHS Certified Labs



- Chain of Custody Forms



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#### 4. Testing Procedures: Drugs

- If initial is positive, results must be confirmed by more rigorous test (on Bottle A)
- Then , if confirmed test is positive, apprentice/applicant:
  - Can have preserved half of sample (Part B) tested at own expense, or
  - Can provide alternate explanation to MRO



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#### Drug Detection Methods

- Urinalysis Used in Model:
  - Most common type of testing
- Oral Fluids also noted in Model: HHS will now permits this testing (as of Oct. 1, 2017) when donor is unable to provide urine sample

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## Other Drug Detection Methods

- Hair
- Oral fluids (for all drug testing)
- Sweat Patch
- Blood

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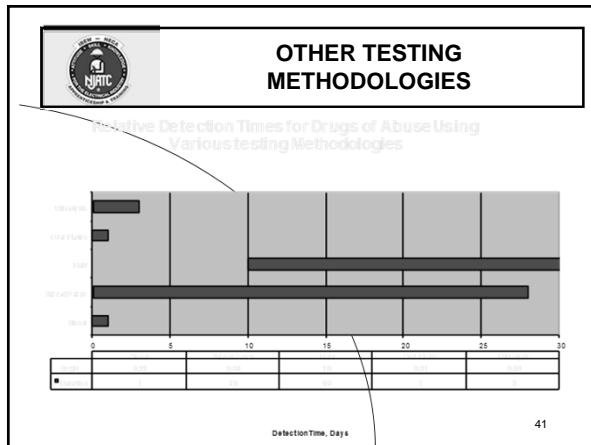
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**OTHER TESTING METHODOLOGIES**

### Urinalysis Summary

**Advantages**

- -DOT/SAMHSA approved \*Gold Standard\*
- Highest assurance of reliable results
- Least expensive
- Able to test more drugs than standard 5 panel

**Disadvantages**

- Specimen adulteration
- Specimen Dilution or Substitution
- Collection procedure may be considered invasive and embarrassing
- Limited Detection Time 2-4 days

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## OTHER TESTING METHODOLOGIES


### Oral Fluids Analysis Summary

**Advantages**

- Sample is obtained at any location under direct observation
- Reflects very recent drug use
- Less invasive to collect than urine, hair or blood

**Disadvantages**

- Not DOT or SAMHSA approved
- Not Permitted in all jurisdictions
- Some drugs inhibit salivary secretions (e.g., MDMA) making collection difficult.
- Shorter window of detection
- Concerns regarding detection of marijuana use, differentiating passive inhalation from use
- Limited drug panel
- No SAMHSA or DOT cutoffs for confirmation of drugs in saliva



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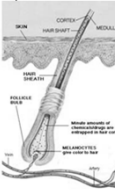
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## OTHER TESTING METHODOLOGIES

### Hair Analysis Summary

- **Advantages**
  - Can Test for more than 5-panel
  - Specimen collection easy and noninvasive.
  - Preservation, storage, and transportation of samples is relatively easy.
- **Disadvantages**
  - Not approved by DOT or SAMHSA
  - Not Permitted in all jurisdictions
  - Tests Drug Use History, Not Intoxication or recent Drug use.
  - The amount of drugs ingested cannot be quantified.
  - Results may be subject to influences related to race, environment, and sex differences. Hair pigment may alter the amount of a drug absorbed in hair.
  - Hair length affects the period of detection. Limited number of laboratories that can test hair.
  - Typically more expensive than urine testing.



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## OTHER TESTING METHODOLOGIES


### Sweat Patch Analysis Summary

**Advantages**

- Non-Invasive
- Tamper-evident
- Longer window of detection than urinalysis, oral fluids or blood testing

**Disadvantages**

- Not SAMHSA or DOT approved; not permitted in all jurisdictions
- Limited number of labs offer test
- Passive exposure may contaminate patch and affect results
- People with skin eruptions or excessive hair cannot use



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### OTHER TESTING METHODOLOGIES


#### Blood Analysis Summary

**Advantages**

- Can Detect a Wide Range of Drugs
- Low likelihood of adulteration or substitution

**Disadvantages**

- Invasive
- Expensive
- Long turnaround time
- Short detection window



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### Issues with On-Site Testing “Quick Tests”

- Reliability
- State laws may restrict
- Can't be used in court unless confirmed by a more rigorous test
- Many quick tests state this on the packaging

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#### On-Site Devices

SAMHSA Evaluation of Non-Instrumented Drug-Testing Devices



Substance Abuse & Mental  
Health Services Administration  
[www.samhsa.gov](http://www.samhsa.gov)

- Dipro 10 Panel
- Drug Check Cup
- Dtx 520
- Genie Cup
- InstaCheck
- PharmScreen Drug Screen Card

- PharmScreen Drug Screen Multi
- Rapid Drug Screen
- Status DS-5
- Syva Rapid Test
- TesTcup 5
- Accutest

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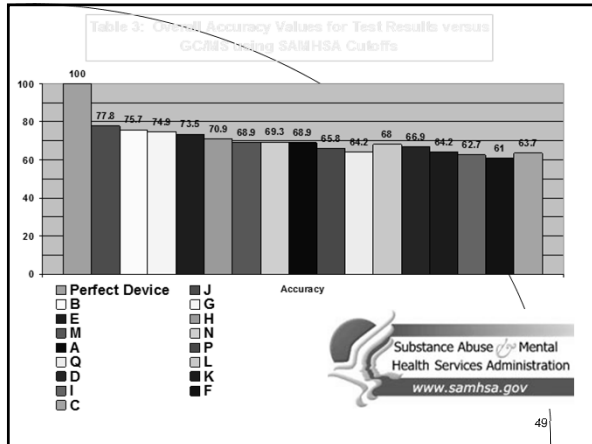
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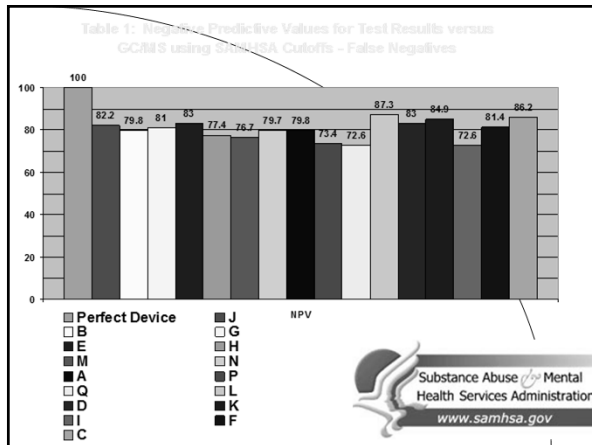
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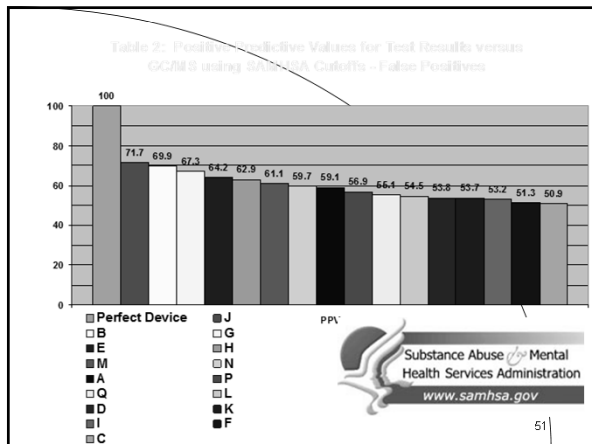
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## On-Site "Quick" Testing State Laws

- Permitted with no restrictions:
  - Alaska (Voluntary Drug Testing Laws)

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## States that Prohibit Quick Tests

**Alabama (Worker's Comp. preference)**  
**Arkansas (Worker's Comp. preference)**  
**Florida (Worker's Comp. preference)**  
**Kentucky (Worker's Comp. preference)**  
**Minnesota (Drug Testing Law)**  
**Tennessee (Worker's Comp. preference)**  
**Vermont (Drug Testing Laws)**

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## On-Site Testing – Permitted Only as an Initial Screening Test (Part 1)

- Georgia (Worker's Comp. preference)
- Hawaii (Drug Testing Law)
- Idaho (Worker's Comp. preference – alcohol only)
- Iowa (Private Sector Drug Testing Law)
- Louisiana (Drug Testing Law)
- Maine (Drug Testing Law – applicants only)
- Maryland (Drug Testing Law -- applicants only)
- Mississippi (Worker's Comp. preference)

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On-Site Testing – Permitted Only as an Initial Screening Test (Part 2)

- **Montana (Drug Testing Law)**
- **Nebraska (Drug Testing Law)**
- **North Carolina (Drug Testing Law)**
- **Maryland (Drug Testing Law)**
- **Oregon (Drug Testing Law)**
- **Rhode Island (Drug Testing Laws)**
- **Utah (Voluntary Drug Testing Programs)**
- **Wyoming (Worker’s Comp. preference)**

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4. Testing Procedures: Alcohol

- Follows NRC Regulations
- Model used to refer to NRC’s “Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs”
- NRC deleted and replaced the Guidelines
- Detailed requirements for conducting testing now found in 10 CFR Part 26, Subparts E, F and G

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4. Testing Procedures: Alcohol

- Subpart E deals with collecting specimens for testing and is found at 29 CFR 26.81 to 26.119
- Subpart F covers testing facilities and is found at 29 CFR.121 to 26.139
- Subpart G deals only with drug testing

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4. Testing Procedures: Alcohol

- As before, initial test can be done by breathalyzer
- Under revised rule, oral fluids may also be used, but for initial test only

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Alcohol Testing

- Initial test must be done by devices approved by National Highway Traffic Safety Administration (NHTSA) and listed in most current version of its Conforming Products List (CPL) (29 CFR 26.91(a))
- If initial test negative, end of story

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Alcohol Testing

- If initial test is positive, must be confirmed by more rigorous device
- Even if oral fluids used for initial test, confirmatory test must be done on breath sample
- Confirmatory testing devices must be listed in the NHTSA CPL for evidential breath testing (EBT) (29 CFR 26.91(b))
- If confirmatory test is negative, end of story

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## Alcohol Testing

- If confirmatory test is positive, move to consequences
- No review by MRO
- NRC used to permit donor to have a blood sample taken, to be analyzed if confirmatory breathalyzer was positive
- Provision deleted, except in very rare cases, because other federal agencies do not permit it

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## Model Policy:

### 5. What Safeguards?

- Already discussed:
  - Split samples for drugs
  - Second sample for alcohol, if first test positive
  - Chain of custody requirements (drugs and alcohol)
  - Use of certified labs
  - State of the art testing

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### 5. Additional Safeguards

- Plan Administrator
- Medical Review Officer
- Confidentiality Policy
- Notice
- Consent Form
- Your Role

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## Safeguards: Plan Administrator

- Third Party Implements *Your* Plan
  - Specimen collection
  - Hire MRO
  - Send samples for analysis (HHS lab)
  - Chain of custody
  - Confidentiality

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## Safeguards: Medical Review Officer (MRO)

- Becomes involved if a drug test result is **positive**, indicating drug use
- If test is **negative**, that's the end of the story, and nothing is communicated to the JATC

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## Medical Review Officer: **POSITIVE** Test Results

- MRO:
  - Reviews drug test results
  - Contacts Apprentice/Applicant
    - Advises of Right to test preserved portion of Split Sample
    - Evaluates Explanation



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## MRO: Positive Tests

- If MRO satisfied with explanation, or test on preserved sample negative:
  - End of story!
- If MRO concludes positive test is valid
  - Notifies JATC Representative

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## Equivalent “Positive” Results

- Possession
- Refusal to take test
- “AWOL” after testing:
  - Doesn’t respond to MRO
  - Doesn’t respond to JATC

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## 5. Safeguards: Confidentiality

- Files
- Communicating Test Results



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### 5. Safeguards: Notice

- Plan does not apply to conduct prior to plan's effective date



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### 5. Safeguards: Give Notice Before Amending Policy

- 30 Day Notice



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### 5. Safeguards: Consent Form

- Acknowledges consent to policy as condition of apprenticeship
- Authorizes release of *employer* test results
  - Positive test w/o explanation = reasonable cause



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## Consent Form

- Also, requires apprentice to make written request/provide ER's test results to JATC
  - Failure = reasonable cause for JATC to test
- Releases ERs, Physicians to discuss ER test results with JATC
- Recognizes JATC's authority to amend



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## 5. Safeguards: Your Role

- Hire 3d Party Administrator
- Make sure Notice given
- Keep all MRO reports confidential
- Implement plan according to its terms
- Enforce the consequences of positive tests consistently and fairly

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## Model Policy:

### 6. Consequences - **Applicant**

- Confirmed positive: conditional offer withdrawn



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Model Policy:  
6. Consequences - Apprentice

- First Strike: rehabilitation
  - If Apprentice enters rehab, status not Affected
  - But, OJT suspended w/o pay

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6. Consequences: Apprentice

- 2nd Strike: OUT?
  - *Policy doesn't say*
- Be consistent with your Policy Statement
- Place before Committee



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Medical Marijuana

- States with MM Laws do not provide workplace protection: that is, they do not protect on the job use, possession or impairment

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## Medical Marijuana

- Six states simply protect status: that is, no one can be penalized simply because they hold an MM card.
  - Connecticut
  - Maine
  - Minnesota
  - Pennsylvania
  - New York
  - Rhode Island

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## Medical Marijuana

- There are only two states that offer any sort of workplace protection:
  - Arizona
  - Delaware
- And all they offer is the fact that no one can be penalized simply for the presence of M metabolites in their drug test
- Also, M use and possession remain unlawful under Federal Law, regardless what the States say

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## III. Recap:

### 1. Balancing the Concerns

- **Reasons for testing**
  - Workplace/Classroom Safety
  - Assure Quality Work
  - Protect Property
  - Establish Expectations

vs.

- **Safeguards**
  - Fair Employment Rules
  - Worker Dignity
  - Opportunity for Rehabilitation



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## Recap: Remember

- Give clear notice of obligations
- Get signature acknowledging obligations (consent)
- Follow well-recognized, respected protocols
- Follow JATC's established policies and procedures
- Be consistent and even-handed

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## SUBSTANCE ABUSE: MODEL POLICY AND PROGRAM of the *electrical training ALLIANCE*

National Training Institute

Ann Arbor, MI

July 31, 2017

Nora Leyland, Union Lawyer  
Sherman, Dunn, Cohen, Leifer & Yellig, PC  
Washington, D.C.



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