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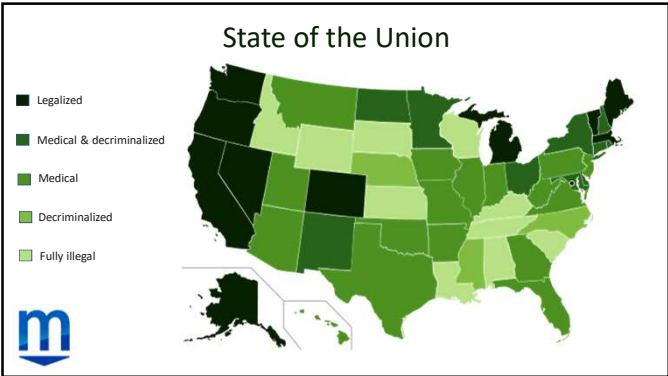


Disclaimer

The information contained in this presentation is educational and intended for informational purposes only. It does not constitute legal advice, nor does an attorney-client relationship exist.

If you require legal advice, you should consult a licensed attorney in your jurisdiction

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- Banned in 1933
- 2014 Oklahomans for Health Petitioned for the legalization of Medical Marijuana but failed
- 2015 Petitioned again to get on 2016 ballot
- Lawsuits
- Vote pushed to 2018
- 30th State to Legalize Marijuana in some form
- SQ 788
 - Medical Marijuana License

OKLAHOMA m

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Introduction

- Sensitive because of the need to balance safety and privacy.
- The U.S. Supreme Court – while invade privacy, it may be necessary in order to protect the health and safety of others, especially in **safety sensitive jobs (i.e. EMS)**.

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Introduction

	Health Care	Overall	Year Estimate Based On
Tobacco ^{1,2}	\$168 billion	\$300 billion	2010
Alcohol ³	\$27 billion	\$249 billion	2010
Illicit Drugs ^{4,5}	\$11 billion	\$193 billion	2007
Prescription Opioids ⁶	\$26 billion	\$78.5 billion	2013

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Introduction

Figure 1. National Drug Overdose Deaths Number Among All Ages, by Gender, 1999-2017

Year	Total Overdose Deaths	Male	Female
1999	15,949	-	-
2000	18,000	-	-
2001	20,000	-	-
2002	22,000	-	-
2003	24,000	-	-
2004	26,000	-	-
2005	28,000	-	-
2006	30,000	-	-
2007	32,000	-	-
2008	34,000	-	-
2009	36,000	-	-
2010	38,000	-	-
2011	40,000	-	-
2012	42,000	-	-
2013	44,000	-	-
2014	46,000	-	-
2015	48,000	-	-
2016	50,000	-	-
2017	70,237	-	-

Source: Centers for Disease Control and Prevention, National Center for Health Statistics, Multiple Cause of Death, 1999-2017 and CDC WONDER query database, released December 2018.


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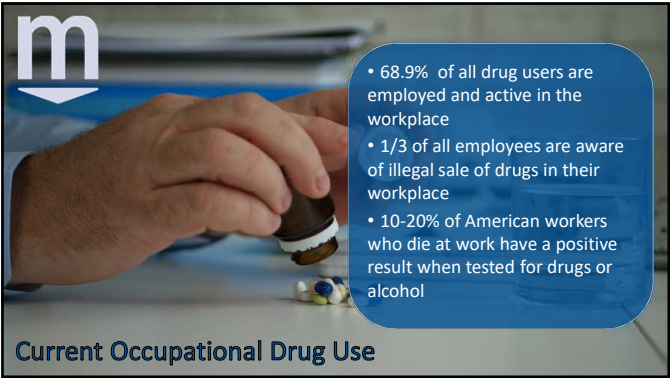
Workplace Drug Use Statistics

- Cocaine on rise for 5th consecutive year
- Methamphetamine increased 167% over 4 years.
- Marijuana on the rise

- 16% of work-related ED visits, employee had ETOH
- 26% employed adults have substance abuse problem
- Employees with ETOH problem miss 34% more days

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- 68.9% of all drug users are employed and active in the workplace
- 1/3 of all employees are aware of illegal sale of drugs in their workplace
- 10-20% of American workers who die at work have a positive result when tested for drugs or alcohol

Current Occupational Drug Use

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EMS Drug Use Statistics



36% of EMS workers suffer from depression, which puts them at a very high risk for abusing drugs and alcohol.

72% of EMS workers suffer from sleep deprivation, which leads to addiction for many individuals.



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Most Common Workplace Drugs

- Tobacco
- Alcohol
- Heroin
- Marijuana
- Painkillers



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Workplace Drug Use: Tobacco

- Tobacco use claims more lives than any that of any other addictive substance.
- Many smokers cannot quit despite knowing smoking's impact on their health.
- Wanting to quit but being unable to is a telltale sign of addiction.



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Workplace Drug Use: Alcohol

- Alcohol abuse is defined as any use that negatively impacts the user.
- This encompasses health effects, such as bad hangovers and alcohol-induced accidents, as well as social effects, such as doing or saying regrettable things while intoxicated.
- 15.1 million adults (18 and older) suffer from alcohol use disorder (AUD)



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Workplace Drug Use: Marijuana

- 33 states and the District of Columbia have legalized marijuana for medical or recreational use.
- The legalization of marijuana in some states has made the drug's use more socially acceptable. This trend can distract people from marijuana's addictive potential.



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Workplace Drug Use: Cocaine

- In 2014, there were an estimated 1.5 million current (past-month) cocaine users aged 12 or older (0.6 percent of the population).
- While rates of cocaine addiction in the United States are dropping the decline is slow, however, with an estimated 821,000 Americans still addicted as of 2011.



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Workplace Drug Use: Heroin

- More than 886,000 people used heroin at some point during the last year in 2017—a number that has steadily risen from over 370,000 in 2007.
- Heroin abuse has been growing in the United States, particularly among young women.



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Workplace Drug Use: Prescription Painkillers

- Painkillers' prescription status does not mean they aren't addictive. Addiction to painkillers can develop from seemingly harmless levels of use.
- Most patients who become addicted to prescription painkillers don't notice they have a problem until they try to stop use.



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Diversion in EMS

The EMS industry is a key player in the fight against the opioid overdose epidemic, but the industry is not immune from it.

Drug diversion is the tactful term used by the Drug Enforcement Agency for stealing medication. It is a misappropriation of controlled substances by providers for their own use.

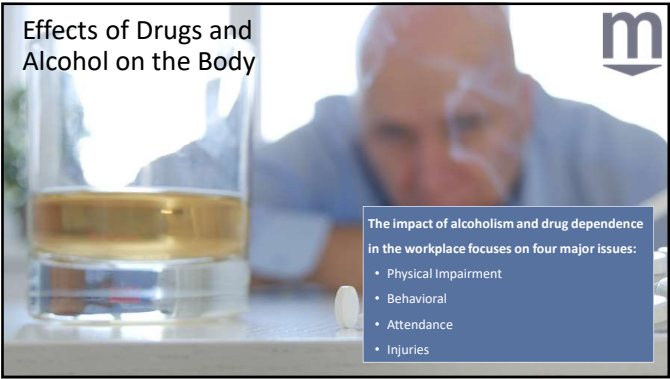


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Effects of Drugs and Alcohol on the Body

The impact of alcoholism and drug dependence in the workplace focuses on four major issues:

- Physical Impairment
- Behavioral
- Attendance
- Injuries



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Workplace Drug Testing Laws


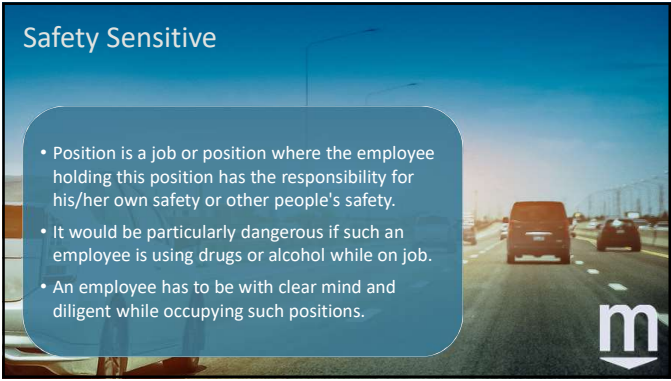
- Part 382 Federal Motor Carrier Safety Regulation
- Drug Free Workplace
- State Laws



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Safety Sensitive

- Position is a job or position where the employee holding this position has the responsibility for his/her own safety or other people's safety.
- It would be particularly dangerous if such an employee is using drugs or alcohol while on job.
- An employee has to be with clear mind and diligent while occupying such positions.



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Workplace Drug Testing Laws: Drug Free Workplace

- Requires a drug-free workplace policy is required for:
 - Any organization that receives a federal contract of \$100,000 or more
 - Any organizations receiving a federal grant of any size



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Safety Sensitive Work includes:

- working with or transporting hazardous materials;
- operating motor vehicles, other vehicles, equipment, machinery or power tools;
- repairing, maintaining or monitoring heavy equipment or manufacturing processes if a malfunction could result in injury or property damage;
- firefighting;
- operating, maintaining or supervising critical infrastructure such as utility services;
- working with volatile or flammable materials;
- dispensing pharmaceuticals;
- carrying firearms; or providing direct patient care or direct child care services.

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EMS Drug Use

- Access
- Long hours
- Supervision
- Call volume
- Lack of training and prevention

RISK

FACTOR

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EMS Drug Use Risk Factors:
Training and Prevention

There is a general lack of substance abuse prevention programs and training in EMS.

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Finding addiction in EMS

Some obvious behaviors associated with addiction:



- Stealing medications
- Violence
- Sudden tardiness or attendance issues

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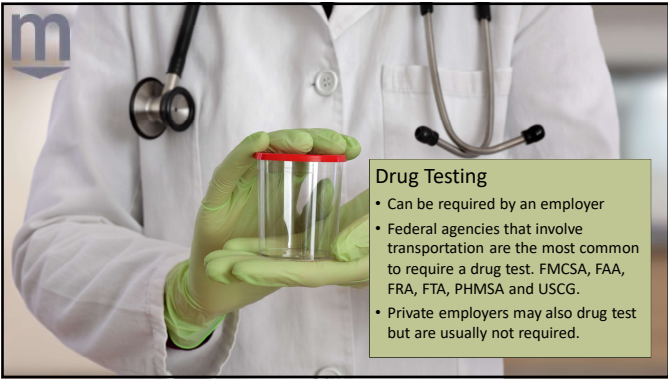
Finding addiction in EMS

Some behaviors may not be so obvious:

- Feeling or appearing too sedated or over-stimulated
- Experiencing extreme changes in sleeping habits
- Having problems getting along with their co-workers
- Frequently making judgment errors on the job
- Struggling with personal appearance and hygiene




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Drug Testing

- Can be required by an employer
- Federal agencies that involve transportation are the most common to require a drug test. FMCSA, FAA, FRA, FTA, PHMSA and USCG.
- Private employers may also drug test but are usually not required.





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Drug Testing Types

Employers drug test at various employment intervals:

- Pre-Hire
- Random
- Reasonable Suspicion
- Post Accident
- Return to work/duty



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Drug Testing Types:
Pre-Hire

The most common time an individual is tested as it is almost universally accepted that drug testing can be done as a condition of hire.

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Drug Testing Types:
Random

Random drug testing is a strong deterrent to drug users because it is conducted on an unannounced basis.

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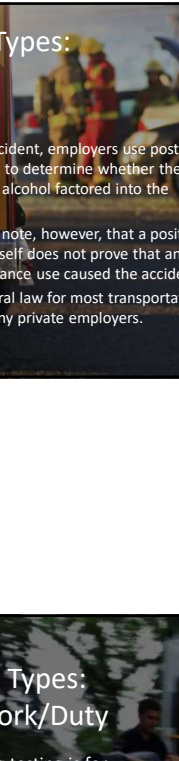
Drug Testing Types:
Reasonable Suspicion

- Reasonable Suspicion
- Performed when the employer has evidence or reasonable cause to suspect an employee
- Evidence is based upon direct observation, either by a supervisor or another employee, of drug or alcohol use.

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Drug Testing Types: Post Accident



- After a workplace accident, employers use post-accident drug testing to determine whether the ingestion of drugs or alcohol factored into the accident.
- It is important to note, however, that a positive result in and of itself does not prove that an employee's substance use caused the accident
- Required under federal law for most transportation jobs and used by many private employers.



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Drug Testing Types: Return to Work/Duty

Return-to-duty drug testing is for employees who have previously tested positive for illicit substances or violated a company's drug and alcohol policy.




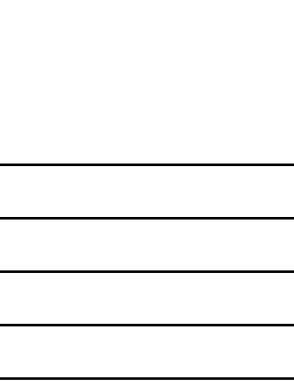
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What Do We Test For?

Testing conducted according to SAMHSA's guidelines.

DOT and other federal agencies usually only use what is called a 5-Panel* which tests for:


- Amphetamines (meth, speed, crank, ecstasy)
- THC (cannabinoids, marijuana, hash)
- Cocaine (coke, crack)
- Opiates (heroin, opium, codeine, morphine)
- Phencyclidine (PCP, angel dust)



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How Do We Test? Collection Types


Urine
Saliva
Breath
Blood
Sweat
Hair



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How Do We Test: Breath

- A breath-alcohol test is the most common test for finding out how much alcohol is currently in the blood. The person being tested blows into a breath-alcohol device, and the results are given as a number, known as the Blood Alcohol Concentration (BAC), which shows the level of alcohol in the blood at the time the test was taken.
- **This is the only test which evaluates current impairment**



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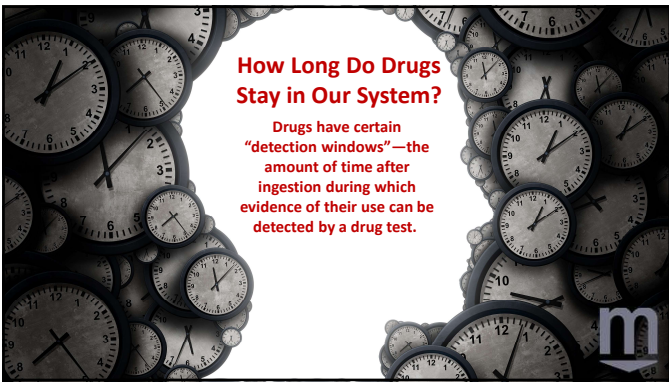
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Medical Review Officer (MRO)

A Medical Review Officer (**MRO**) is a person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's **drug testing** program and evaluating medical explanations for certain **drug test** results.




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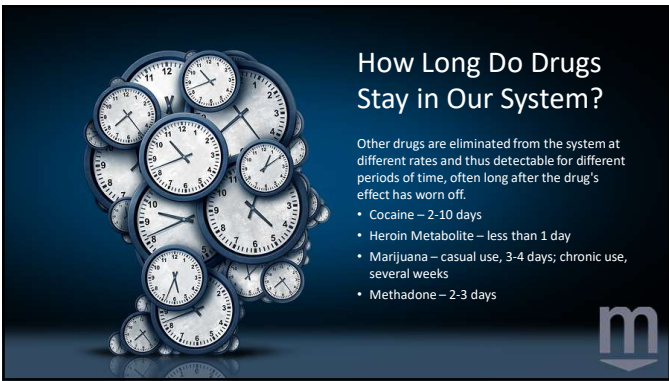


How Long Do Drugs Stay in Our System?

Drugs have certain "detection windows"—the amount of time after ingestion during which evidence of their use can be detected by a drug test.




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How Long Do Drugs Stay in Our System?

Other drugs are eliminated from the system at different rates and thus detectable for different periods of time, often long after the drug's effect has worn off.


- Cocaine – 2-10 days
- Heroin Metabolite – less than 1 day
- Marijuana – casual use, 3-4 days; chronic use, several weeks
- Methadone – 2-3 days



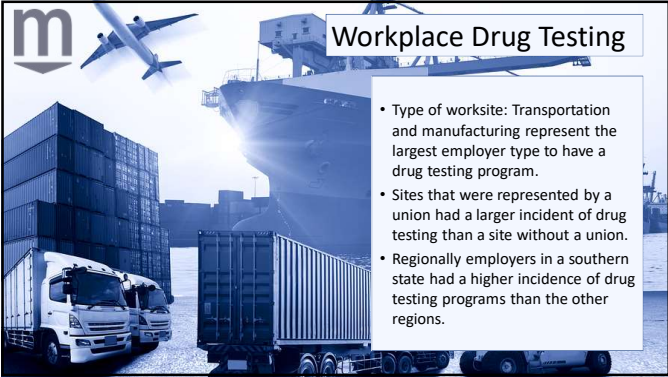
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Why? Workplace Drug Testing

- Strategy to control substance abuse in the workplace.
- Be able to identify early and appropriately refer employees who have drug and/or alcohol problems.
- Provide a safe workplace for employees
- Protect the general public and instill consumer confidence that employees are working safely
- Comply with State laws or Federal regulations




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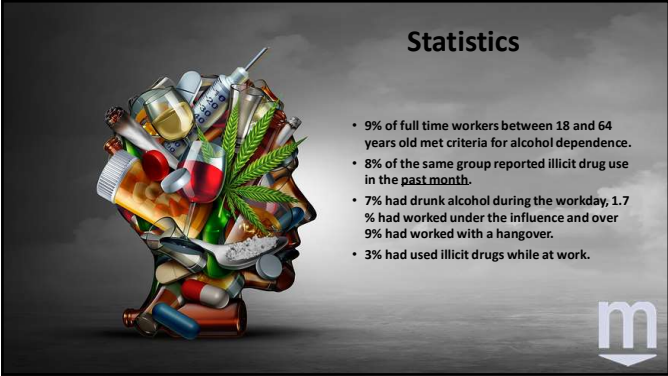


Workplace Drug Testing

- Type of worksite: Transportation and manufacturing represent the largest employer type to have a drug testing program.
- Sites that were represented by a union had a larger incident of drug testing than a site without a union.
- Regionally employers in a southern state had a higher incidence of drug testing programs than the other regions.




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Statistics

- 9% of full time workers between 18 and 64 years old met criteria for alcohol dependence.
- 8% of the same group reported illicit drug use in the past month.
- 7% had drunk alcohol during the workday, 1.7 % had worked under the influence and over 9% had worked with a hangover.
- 3% had used illicit drugs while at work.



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Think about this...

A black and white photograph of a person's silhouette at a bar, holding a glass and drinking from a bottle. The bar has various items on it, including another bottle and a lamp. A small 'm' logo with a downward arrow is in the bottom left corner.

A person who drinks alcohol 3 or more times per week has 3.2 injuries per 10,000 person work days v. a non drinker with 1.9 per 10,000 PWD, 70% higher!

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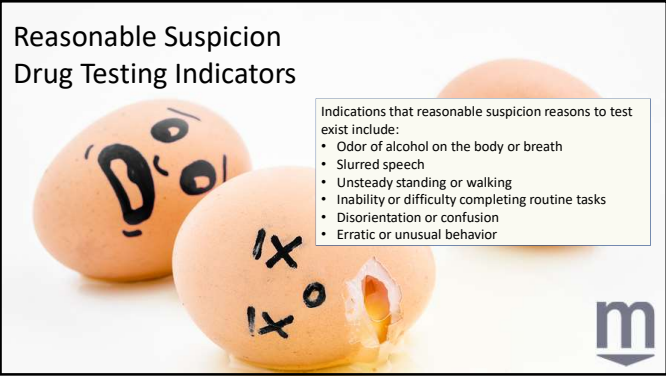
Reasonable Suspicion Drug Testing Requirements

- Based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the driver.
- Observations are made during, just preceding, or just after the driver is performing safety-sensitive functions or is attempting to perform safety-sensitive functions.

A close-up photograph of a man with a shaved head, wearing a dark suit and white shirt, looking directly at the camera with a serious expression. A small 'm' logo with a downward arrow is in the bottom right corner.

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Reasonable Suspicion Drug Testing Indicators

A photograph of three brown eggs. Two of the eggs have faces drawn on them with black marker. One face has 'X's for eyes, and the other has 'X's for eyes and a large 'X' on its forehead. The third egg is cracked open, showing a hole. A small 'm' logo with a downward arrow is in the bottom right corner.



Indications that reasonable suspicion reasons to test exist include:

- Odor of alcohol on the body or breath
- Slurred speech
- Unsteady standing or walking
- Inability or difficulty completing routine tasks
- Disorientation or confusion
- Erratic or unusual behavior

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Reasonable Suspicion Drug Testing Requirements

- Typically the requirements of reasonable suspicion require observation of suspected behaviors immediately before, during or after performing a safety sensitive duty.
- A good definition of safety sensitive position is one in which job performance can affect the safety of the employee and others.



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Reasonable Suspicion Drug Testing Requirements

- It would be easy to designate every position as "Safety Sensitive" wouldn't it?
- Under Title I of the ADA an employer may make disability-related inquiries and require medical examinations only if they are job-related and consistent with business necessity.




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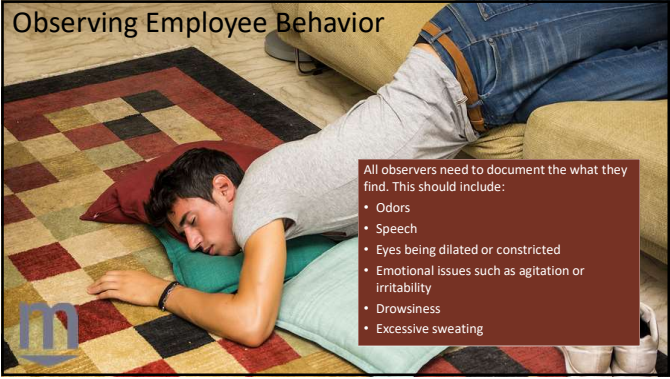
Observing Employee Behavior

- Suspicions regarding an employee who may be under the influence may come from co-workers or clients, often before it is noticed by a supervisor.
- Document any complaints, concerns, behavior patterns or witnesses to the behavior.
- Ideally the behavior is actually observed by the employer, this will not always be the case of course. If possible have a second employer representative observe the behavior.



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Observing Employee Behavior



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Observing Employee Behavior

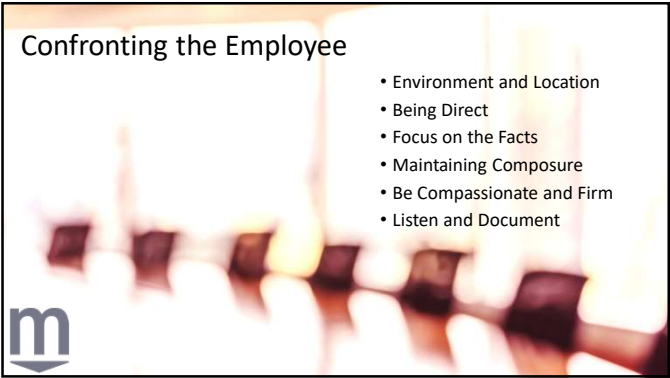
- Because the frequency utilize a checklist assist supervisors with consistency.
- The checklist should cover observations including but not limited to: Standing, movements, speech, demeanor and appearance.



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Confronting the Employee



- Environment and Location
- Being Direct
- Focus on the Facts
- Maintaining Composure
- Be Compassionate and Firm
- Listen and Document



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Confronting the Employee



- It is understood that one of the greatest fears that a supervisor may have is that of being wrong of accusing an employee of using drugs or alcohol, of being involved in an illegal act or violation of the company policy.
- A recommended approach would be to “rule out” as a possible cause or explanation for the behavior or appearance.



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Confronting the Employee

- The supervisor **MUST** interact with the employee and they must be prepared for the interaction to become confrontational.
- Focusing on the specific observations of the employee’s behavior and appearance is key.
- There should be no accusation of substance use and the employee should be told testing is to “rule out” any possibility of substance use.
- Explain everything, from transportation to the testing site, documentation, waiting for test results and positive tests.



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The Logistics



- Have a policy that clearly states when a test is indicated and what follows,
- A company policy needs to be in place which not only outlines prohibited conduct but also what procedures are in place and how to use them.



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The Logistics

- EMT's and paramedics work 24 hours a day, 7 days a week.
- When you think about your average drug testing site are they open the same hours as your business? How would you handle an off hours or weekend test?
- Be prepared, off hours testing is expensive.
- Have a professional drug testing vendor



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Handling Challenging Employee Situations

- The Denial/Defensive
- The Crier
- The Aggressive/Angry Employee
- The Quiet Type
- The Talker
- The Divorter




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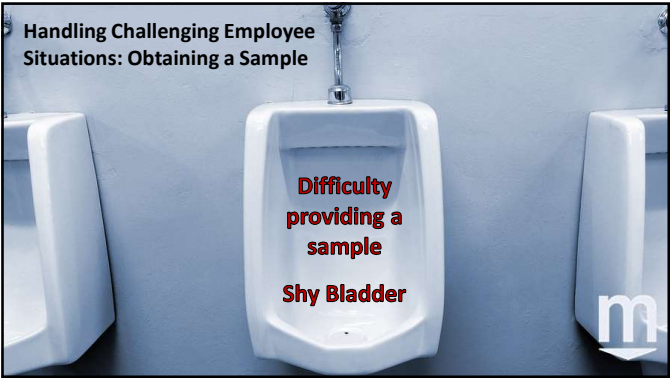
Handling Challenging Employee Situations: Refusal



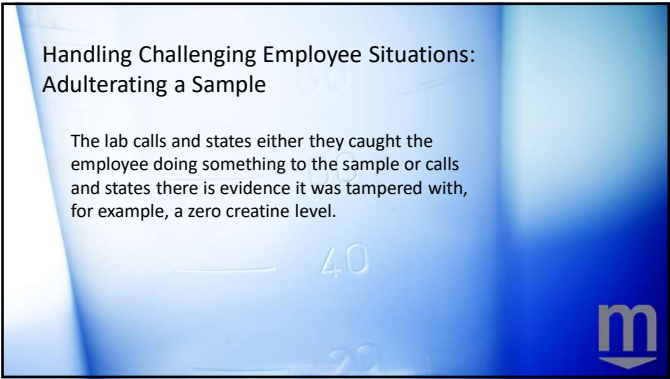
- If the employee states that he/she will not take the test, the supervisor must clearly state the consequences of the employee's refusal to submit to the test.
- The consequence can be up to and include termination.



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Other considerations: Privacy

- As stated by the Court of Appeals for the Fifth Circuit, "there are few activities in our society more personal or private than the passing of urine."
- In addition, analysis of a person's urine can disclose many details about that person's private life other than drug use, including personal medical information.



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Results:



Chem	Loc	S/N	Results	Units
AMPH	(11)	503380	2MZ	
BARB	(12)	503110	1PN	
ENZ	(13)	501223	110	
DCM	(14)	505015	10D	
TD	(15)	501221	0LV	
X	(16)	504053	0QC	
	(17)	503105	0EJ	

- Negative
- Non-Negative
- Positive

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Other considerations: Lawsuits

- Americans with Disabilities Act (ADA)
- The Genetic Information Nondiscrimination Act (GINA)

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Employment Action/Final Disposition


- Last Chance Agreement
- Ongoing Random Drug Testing
- Termination



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Supervisor/Manager Documentation

1. Document Received Complaints
2. Observe Employee
3. Have Second Person Observe Employee
4. Remove from Safety-Sensitive Position
5. Meet with Employee
6. Prepare Transportation for Drug Test
7. Send Employee for Testing
8. Await Test Results
9. Respond to Employee Refusal to Take Test
10. Respond to Negative Test Results
11. Respond to Positive Test Results




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Top EMS HR Issues

1. Drugs In Workplace
2. Presumptive PTSD/Mental Health Injuries
3. Recruitment & Retention

Bonus Round

4. HR Regulatory Compliance
5. Employee Healthcare Costs



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