

There is no comprehensive federal law that regulates drug testing in the private sector. The Drug-Free Workplace Act does impose certain employee education requirements on companies that do business with the government, but it does not require testing, nor does it restrict testing in any way. Drug testing is allowed under the Americans with Disabilities Act (ADA) because the ADA does not consider drug abuse a disability—but the law does not regulate or prohibit testing. Instead of a comprehensive regulatory system, federal law provides for specific agencies to adopt drug testing regulations for employers under their jurisdiction.

The Department of Defense requires defense contractors to set up procedures for identifying drug users, including random testing. The Department of Transportation requires the industries it regulates to conduct random drug and alcohol testing for workers in safety sensitive jobs, as well as testing after accidents and when there is "reasonable suspicion" of employee substance abuse. The federal Omnibus Transportation Employee Testing Act (OTETA) requires tests for all operators of aircraft, railroad equipment, mass transportation vehicles, and commercial motor vehicles.

Since there is no comprehensive federal drug-testing law, this leaves the field open to state regulation, and many states have enacted provisions imposing drug-testing restrictions of various

kinds. Some limit testing to "reasonable suspicion" or "probable cause" situations. Some explicitly authorize random testing under certain circumstances. Some impose restrictions on public sector employers but not on private companies. Many prescribe specific methods for the handling of specimens and the use of test results. Only states that have drug-testing laws are listed in this table.

As a general rule, testing is presumed to be lawful unless there is a specific restriction in state or federal law. However, the body of law on employee privacy and related issues continues to evolve, and any testing program that is not explicitly authorized by law should be considered open to legal challenge. Of equal importance is the controversial character of employee drug testing in labor-management relations and the potential for legal challenges from this quarter.

State	Statute or Order	Covered Employers	Applicant Testing	Employee Testing	Conditions/Methods
Alaska	Alaska Stat. §23.10.600 <i>et seq.</i> , §14.09.025	All employers, including school districts or regional educational attendance areas.	Applicant testing not restricted. Positive results or refusal may be grounds for not hiring.	Testing authorized, including random testing, for job-related purpose, consistent with business necessity. Thirty days' notice and a written policy statement must be given to employees. Discipline or discharge for positive test or refusal to submit to test. School bus drivers subject to random testing and discipline under separate provisions.	Confidentiality of test results. Confirming test in case of positive result. Opportunity to obtain results within 5 days and explain positive result within 10 days.
Ala.	Ala. Code §25-5-330 <i>et seq.</i>	All employers.	Testing authorized after applicant is given notice of drug-testing policy and a conditional offer of employment.	Testing authorized, including random testing and testing on reasonable suspicion, as part of fitness-for-duty exam, after on-the-job injury, or as follow-up to a rehabilitation program. Employees must receive 60 days' advance notice of testing policy, which must be conspicuously posted.	Confirming test in case of positive result. Opportunity to contest or explain positive test within five days of receiving results.
Ariz.	Ariz. Rev. Stat. §23-493 <i>et seq.</i> , §15-513, §28-414.01	All private employers, plus school districts and entities that furnish transportation to school districts.	Testing authorized if applicant is informed in writing beforehand. Applicant's refusal to submit to test may be used as basis for not hiring. Testing required to certify school bus drivers.	Testing authorized, including random testing, for any job-related purpose consistent with business necessity. Written drug-testing policy must be distributed to all employees. Discipline or discharge authorized for employees who test positive or refuse to submit to test. School district transportation employees must submit to testing in the event of accident or if based on probable cause.	Confirming test in case of positive findings and methods of collection, storage, and transportation that preclude contamination of specimen, and confidentiality of test results.
Calif.	Exec. Order D-58-86, Labor Code §1025 <i>et seq.</i>	State agencies.	Testing authorized of applicants to state agency positions of "sensitivity" if testing is job related.	Testing authorized of state employees in positions of "sensitivity." Employees who test positive may be referred for treatment or may be suspended or removed from job. Private sector and public employers of 25 or more must "reasonably accommodate" employees who want to enter drug treatment programs.	In state agencies, advance notification of employee or applicant, documentation showing chain of custody, and confirming test in case of positive findings.

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Conn.	Conn. Gen. Stat. §31-51t <i>et seq.</i> , §14-261a <i>et seq.</i> , §14-276a	All private employers.	Testing authorized if applicant is informed in writing beforehand. Former employees may not be tested unless they have been away from the job for at least 12 months. Testing required to certify school bus drivers.	Testing authorized on reasonable suspicion of substance abuse; random testing authorized of employees in safety-sensitive jobs. Testing required for intrastate truck drivers after a reportable accident, upon reasonable cause, or at random under federal law. Discipline or discharge authorized for employees who test positive.	Confirming test in case of positive findings, privacy for employee in collection of specimen, and confidentiality of test results.
Del.	Del. Code Ann. Tit. 21 §2708	Public and private schools and entities that furnish transportation services to schools; Department of Corrections.	Testing required to certify school bus drivers. Testing also required for security-sensitive positions with Department of Corrections.	Employee testing is not subject to restriction.	Further analysis in case of positive findings.
Fla.	Fla. Stat. §440.101 <i>et seq.</i> , §627.0915, §112.0455	Private employers with 3 or more employees. Public employers with safety-sensitive and law enforcement positions	Testing authorized with advance notice to applicant; applicant's refusal to submit to test may be used as basis for not hiring.	Testing authorized on reasonable suspicion of substance abuse, as part of routine fitness-for-duty exam, or as follow-up to employee's participation in counseling or rehabilitation. Written notice of testing program must be given 60 days in advance. Testing confers eligibility for certain discounts and other benefits under state's workers' compensation law. Discipline or discharge authorized for employees who test positive.	Confirming test in case of positive findings, privacy for employee in collection of specimen, methods of collection, storage, and transportation that preclude contamination of specimen, and confidentiality of results.
Ga.	Ga. Code Ann. §45-23-1 <i>et seq.</i> §45-20-110 <i>et seq.</i> , 34-9-410 <i>et seq.</i>	State government employers, public schools, and entities that furnish transportation services to school systems; private employers.	Testing authorized of applicants for state government employment, public school employment, and private employment. Applicant who refuses to be tested or who tests positive may be barred from state and public school employment for 2 years.	Testing authorized, including random testing, on reasonable suspicion, as part of routine fitness-for-duty exam, after an on-the-job injury, and as part of follow-up to rehabilitation. Policy must be distributed to employees and posted. Testing confers eligibility for certain discounts and other benefits under the state's workers' compensation law. Random testing of "high risk" state government and public school employees including school bus drivers is authorized under separate provisions.	Methods to assure privacy for employee in collection of specimen, and methods of collection, storage, and transportation that ensure noncontamination of specimen, and confidentiality of test. Confirming test after positive result.
Hawaii	Hawaii Rev. Stat. §329B-1 <i>et seq.</i>	All employers.	Testing authorized if applicant receives advance notice in writing of substances to be tested for and has opportunity to disclose current prescription and nonprescription medications. Testing required of civil service applicants for positions with city of Honolulu.	Testing authorized if employee receives advance notice in writing of substances to be tested for and has opportunity to disclose current prescription and nonprescription medications.	Methods to assure privacy for employee in collection of specimen and reliability of results, including confirming test in case of positive findings.
Idaho	Idaho Code §72-1701 <i>et seq.</i>	All employers.	Testing authorized as a condition of employment.	Testing authorized, including random testing, after notice to employees. Policy must list types of tests and state that violation is grounds for misconduct discharge. Unemployment benefits may be denied for discharge because of positive result, refusal to be tested, or altering results.	Confirming test after positive results, confidentiality of test, and methods of collection, storage, and transportation that ensure noncontamination of specimen.

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Iowa	Iowa Code Ann. §730.5	Public and private employers.	Testing authorized as part of pre-employment physical examination if applicant is informed orally at time of application that drug test is required, and if ads and application forms carry notice of drug test.	Testing authorized when there is probable cause to suspect substance abuse and employee holds job in which impairment would pose a danger, or during annual employee physical, if employee is given 30 days' notice. Random testing permitted so long as specific procedure in the law is followed using a computer-based random number generator that matches employee's social security number or payroll identification number (selection from entire employee pool, full time employee pool or safety sensitive employee pool). Substance abuse evaluation and opportunity for treatment required for first positive test result. Discipline or discharge authorized for subsequent positive result or failure to complete treatment.	Opportunity for test subject to explain or rebut positive findings and to request confirmation through retesting. Confidentiality of test results, records of positive test removed from personnel file when employee terminates if treatment program was successfully completed.
Kan.	Kan. Gen. Stat. Ann. §75-4362	State government.	Testing authorized of applicants for safety-sensitive jobs in state government after a job offer has been made. Advertisements for safety-sensitive jobs must include notice of drug testing requirement.	Testing authorized of state employees holding safety-sensitive jobs and individuals taking office as governor, lieutenant governor, or attorney general, but only if there is reasonable suspicion of substance abuse, as evidenced by a workplace accident or medical emergency that could be attributed to drug use, by direct observation of impaired performance, by information that the employee is using drugs, or by physical signs of on-the-job drug use. Employee testing positive for the first time must have opportunity to undergo drug evaluation and recommended treatment.	Confidentiality of test results.
La.	La. Rev. Stat. §49:1001 <i>et seq.</i> , §23:1601(1), §46:460.4	Public and private employers not subject to a federally mandated testing program.	Applicant testing not restricted.	Employee testing authorized, but employer may not discharge an employee on the basis of first-time positive test findings. Employees who are discharged for drug use, on or off the job, may be disqualified from receiving unemployment compensation. Employees of state contractors subject to random testing.	Methods to assure privacy for employee in collection of specimen, but a witness may be present in case of post-accident testing and testing performed on suspicion of substance abuse, or when there is reason to doubt the integrity of the specimen. Confirming test using different testing method after positive result.
Maine	Maine Rev. Stat. §26:681 <i>et seq.</i>	Public and private employers.	Applicant testing authorized if applicant has been offered employment or a position on a roster of eligibility. Employer may refuse to hire employee who refuses to test or who tests positive.	Employee testing authorized if there is probable cause for suspicion of substance abuse that is not based solely on the occurrence of an accident. Random testing authorized of employee returning to work after positive test, of employees in safety-sensitive jobs, and pursuant to a collective bargaining agreement. Employee who tests positive may be referred for counseling or treatment. Discipline or discharge authorized for refusal to submit to test, for subsequent positive result, or for failure to complete treatment.	Written policy providing for testing by certified laboratory, sample collection by nurse or doctor in medical facility, confirming test for employees testing positive, 3-day period for employee to explain or contest findings, and employee option to provide blood rather than urine sample. Before implementation of testing, employers of 25 or more must make suitable arrangements with certified employee assistance program.
Md.	Md. Code Ann. Health Gen. §17-214	All employers.	Applicant testing not subject to restriction.	Employee testing authorized if supported by legitimate business reason.	Testing only by certified laboratory. Confirming test after positive result at employee's expense.

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Minn.	Minn. Stat. §181.950 <i>et seq.</i>	Public and private employers.	Applicant testing authorized, pursuant to employer's written policy and with advance notification of applicant, only after offer of employment has been made and only if all candidates for job are tested.	Employee testing authorized after an accident, as part of an employee assistance program, when there is reasonable suspicion of substance abuse, or part of annual physical exam, provided employee has two weeks' advance notice. Random testing authorized of employees in safety-sensitive jobs. Employer may suspend or transfer employee testing positive pending outcome of confirming test. Discharge authorized only if employee refuses or fails to complete treatment.	Testing only by certified laboratory, documentation showing chain of custody, and confirming test in case of positive findings. Confidentiality of test results.
Miss.	Miss. Stat. §71-7-1 <i>et seq.</i>	Public and private employers.	Applicant testing not subject to restriction.	Employee testing authorized on reasonable suspicion of substance abuse, in connection with rehabilitation or treatment, as part of routine physical exam, or if collective bargaining agreement authorizes random testing. Discharge authorized if employee tests positive or refuses test.	Advance written notice of test, documentation showing chain of custody, and opportunity for employee to explain positive findings. Confidentiality of test results.
Mont.	Mont. Code Ann. §39-2-205 <i>et seq.</i>	Public and private employers.	Testing authorized of applicants for intrastate motor carrier jobs, for jobs in hazardous environments, or jobs that primarily involve security, public safety, or fiduciary responsibility.	Employee testing authorized, including random testing, on reasonable belief of job impairment, after work-related accident causing injury or damage of \$1,500 or more, or as part of regular physical exam for employees of intrastate motor carriers. Disciplinary action authorized if employee presents no reasonable explanation for positive findings.	Advance written notice of testing procedure, confirming test in case of positive findings, and opportunity for employee to rebut positive findings.
Neb.	Neb. Rev. Stat. §48-1901 <i>et seq.</i>	Private employers with six or more employees; public employers.	Applicant testing not subject to restriction.	Employee testing authorized without restriction. Discipline or discharge authorized after a confirming positive test or refusal to submit to test.	Confirming test in case of positive findings, option for blood test after positive breath test, and methods to ensure confidentiality of test findings.
Nev.	Nev. Rev. Stat. §284-4061 <i>et seq.</i>	State agencies.	Applicant testing authorized for jobs involving public safety.	Employee testing authorized for jobs involving public safety. Referral for counseling or treatment authorized for employee testing positive. Discipline or discharge authorized for subsequent positive findings, for workplace use, or for working under the influence.	Testing only by independent laboratory and confirming test in case of positive findings.
N.C.	N.C. Gen. Stat. §95-230 <i>et seq.</i>	Public and private employers.	Applicant testing not subject to restriction.	Employee testing not subject to restriction.	Testing only by approved laboratory, documentation showing chain of custody, and confirming test in case of positive findings.
Ohio	Ohio Admin. Code §4123-17-58	All employers.	Applicant testing authorized with advance notice to applicant and after offer of employment has been made.	Employee testing authorized on reasonable suspicion of substance abuse, for new hires, after an accident, and as follow-up to a treatment program.	Documentation showing chain of custody and confirming test in case of positive findings. A written policy statement.

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Okla.	OK Stat. Tit. 40 §551-565	Public and private employers	Applicant testing authorized with advance notice to applicant and after offer of employment has been made. Notice to be in writing, describing methods, procedures, and policies in detail.	Employees testing authorized on 30 days' advance notice to employees of policy describing the potential discipline for positive test result.	Procedures must ensure privacy and confidentiality of results. Confirming test in case of positive findings.
Ore.	OR Rev. Stat. § 438.435 <i>et seq.</i> ; 659.227	All employers.	Testing authorized if there is reasonable suspicion applicant is under the influence of alcohol or controlled substance.	Testing authorized if there is reasonable suspicion employee is under the influence of alcohol or controlled substance.	Testing done by third party. All positive test results must be confirmed by a state licensed laboratory.
R.I.	R.I. Gen. Laws §28-6.5-1 <i>et seq.</i>	Public and private employers.	Applicant testing authorized in the private sector after offer of employment has been made. In public sector, testing authorized for jobs involving public safety or when required by federal law.	Employee testing authorized on reasonable suspicion of substance abuse and in conjunction with rehabilitation program. Random testing prohibited.	Confirming test in case of positive findings, privacy for employee in collection of specimen, opportunity for employee to rebut test findings.
S.C.	S.C. Code §38-73-500, §41-1-15	All employers.	Applicant testing is not subject to restriction.	Testing authorized, including random testing, with follow-up tests within 30 minutes of initial test.	Positive test results in writing to employee within 24 hours. Written notification of testing program when implemented or upon hire.
S.D.	S. Dak. Cod. Laws Ann. §23-3-64	State government.	Testing authorized of applicants for safety-sensitive state jobs after offer of employment, but public announcements and advertisements must carry notice of drug-testing requirements.	Testing authorized of state employees holding safety-sensitive jobs if there is reasonable suspicion of substance abuse.	Availability of test findings to applicants and employees on written request and methods to ensure confidentiality of test findings.
Tenn.	Tenn. Code Ann. §41-1-122	State Dept. of Corrections.	Applicant testing not subject to restriction.	Testing of Corrections Department employees authorized if there is reasonable suspicion of substance abuse. Employees who test positive subject to appropriate disciplinary action, but counseling and rehabilitation must be offered.	Circulation to employee of a written summary of facts forming basis for suspicion and opportunity for explanation, plus confirmation of positive findings.
Utah	Utah Code Ann. §34-38-1 <i>et seq.</i>	Private employers, local government entities, and state institutions of higher education.	No restriction on applicant testing in the private sector. Local governments and state colleges may test applicants pursuant to a written policy and with advance notice to applicant. Positive results or refusal to test grounds for not hiring.	Employee testing authorized pursuant to employer's written policy, distributed to all employees, in cases of possible employee impairment, workplace accidents or theft, safety maintenance, or productivity/quality/security maintenance. Employees who test positive or refuse to be tested are subject to referral for rehabilitation or disciplinary action, including discharge.	Documentation showing chain of custody from time of collection and confirming test in case of positive findings. Testing authorized for employees of local government entities and state institutions of higher education for postaccident investigations, reasonable suspicion situations, preannounced periodic testing, and random testing in safety-sensitive positions or when required by federal law.
Vt.	Vt. Stat. Ann. Tit. 21 §511 <i>et seq.</i>	Public and private employers.	Applicant testing authorized with advance written notice to applicant, after conditional offer of employment has been made, and if test is part of preemployment physical.	Employee testing authorized as part of an employee assistance program or when there is probable cause for suspicion of substance abuse. Random testing prohibited. Employer may suspend employee who tests positive for period of rehabilitation, but may not discharge an employee who agrees to rehabilitation after first positive test.	Testing only by certified laboratory, documentation showing chain of custody, confirming test with part of original sample in case of positive findings, and opportunity for employee to explain findings.

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Wash.	Wash. Rev. Code §49.127.1 <i>et seq.</i> , Wash. Admin. Code §356-46-125, §356-05-128	Private employers seeking to qualify for a 5% workers' comp. premium discount, with approval by state authorities.	Applicant testing authorized with advance written notice to applicant and after conditional offer of employment has been made.	Testing authorized for private employers on 60 days' notice to employees, in cases of workplace accidents, as part of an employee assistance program, on reasonable suspicion of substance abuse, or at random. Employers' written substance abuse policy must be posted and distributed to employees. State agencies can test on reasonable suspicion—stated in writing—for safety-sensitive positions pursuant to a written testing policy.	Testing only by certified laboratory, documentation showing chain of custody, confirming test for positive result, opportunity for employee to explain results, and methods to ensure confidentiality of test findings. First-time positive test result may not be grounds for termination. State agency policy must be approved by collective bargaining representative.