

**Associated General Contractors  
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**Drug Testing and Substance Abuse Management**

**jackson lewis**  
Prevention Strategies and  
Proactive Solutions for the Workplace

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**jackson lewis** **Today's Presentation**



- The Need to Test
- Drug Free Workplace Act
- DOT Revised Regulations
- Types of Testing
- Key Issues of Testing Policy




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**jackson lewis** **Implementation**

**Why Implement a Testing Program?**

- **Compliance with Federal Laws**
  - Department of Transportation ("DOT")
  - Department of Defense Contractors
  - Department of Energy Contractors
  - Nuclear Regulatory Commission Employers
- **Compliance with State Laws**
  - Require testing of employees in safety-sensitive or care-giving positions
  - Require written policy
  - Examples: IA, ME, MD, OK, CA, etc.

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## Implementation

**Why Implement a Testing Program?**

- **Compliance with Workers' Compensation Laws**
  - Required for certain state construction contractors
    - Ex. ID, FL, OH, TN
  - Permitted/encouraged by some states
- **Operational Concerns**
  - Safety
  - Productivity
  - Attendance
  - Insurance Costs
  - Negligent hiring/retention claims
  - Company culture/reputation




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## Drug Free Workplace Act

- **Federal Law**
  - Applies to:
    - Some Federal contractors and all grantees
  - Requires:
    - A policy against drugs
    - Drug-free awareness program
    - Notification of workplace drug convictions, reporting to contracting agency
  - BUT, does not require substance abuse testing
- **State Law**
  - Some states have their own DFWAs
  - Ex. CA, IL, SC, VA

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## DOT Regulations

**Coverage**

- Generally, DOT regulations cover safety-sensitive transportation employers and employees.
- However, each DOT agency (FRA, FMCSA, FTA, FAA, and PHMSA) and the USCG have specific drug and alcohol testing regulations that outline who is subject to their testing regulations.




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**jackson lewis** DOT Regulations

- **Forms of Transportation**
  - Aviation
  - Pipeline
  - Public Transportation
  - Railroad
  - Ships/Vessels
  - Trucking/Buses



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**jackson lewis** DOT Regulations

**Requirements**

- Covered employers are responsible for developing and implementing successful DOT workplace drug and alcohol programs that have:
  - clear policies,
  - provisions for education and training,
  - drug and alcohol testing, and
  - when needed, referral for evaluation and treatment.
- DOT regulated employers must comply with 49 CFR Part 40 and applicable DOT agency regulations.

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- **49 CFR Part 40** states:
  - how drug and alcohol testing is conducted,
  - who is authorized to participate in the drug and alcohol testing program, and
  - what employees must do before they may return-to-duty following a drug and/or alcohol violation.



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**jackson lewis** **DOT Regulations**

**Revision of Drug Testing Procedures**

- DOT published a final rule revising drug testing procedures to conform its testing rules to new rules being implemented by the Dept. of Health and Human Services.
- Changes become effective 10/1/10.
- All DOT-regulated employers should review their drug and alcohol testing programs to incorporate changes required by the rule.

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**jackson lewis** **DOT Regulations**

**Revision of Drug Testing Procedures**

- New rules include:
  - DOT now requires testing for Ecstasy.
  - The test cutoff concentrations for cocaine have been lowered.
  - The test cutoff concentrations for amphetamines have been lowered.
  - Initial testing for 6-acetylmorphine ("6-AM") (a unique metabolite of heroin, considered to be definitive proof of heroin use) is now required.
  - Modification of and addition of terms/definitions.
  - Revision of rules relating to certain MRO training and qualifications.

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**jackson lewis** **Key Issues to Address in Substance Abuse Policy**

- Prohibited Conduct
- Who will be Tested
- When will Testing Occur
- What Substances Will be Tested For
- How Testing will Be Conducted
- What Discipline will be Imposed for Violations
- Treatment of Employee who Voluntarily Discloses Substance Abuse Problem

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**jackson lewis** **Types of Testing**

- **Preliminary Considerations**
  - Federal DOT/state mandated testing
  - Testing prohibited by state law
  - Discrimination laws
- **Types**
  - Pre-Employment Testing
  - Reasonable Suspicion Testing
  - Random Testing
  - Post Accident Testing
  - Return to Duty Testing




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**jackson lewis** **Medical Marijuana**

- **Federal Controlled Substances Act**
  - Marijuana is an illegal drug that may not be used for any purpose.
- **State Laws**
  - Some states decriminalize marijuana use for persons suffering from specified medical conditions who have a registry identification card.
  - However, most laws specifically say that an employer does not have to accommodate medical marijuana in the workplace.

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**jackson lewis** **Medical Marijuana**

- **Policy**
  - If you are in a state that decriminalizes use, be sure to include your position on medical marijuana in your substance abuse policy.
  - Including off-duty use of medical marijuana may lead to positive drug test results and adverse employment actions may ensue.
  - A positive test result obtained from an employee using medical marijuana will be treated as any other positive test result under the drug testing policy.




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