

## Guidelines for Companies to Drug Test Employees Not Mandated by FMCSA.

1. Before a company can start drug testing employees not mandated by FMCSA (commercial truck drivers), it must have a policy approved by the Maine Department of Labor (DOL).
  - a. Two different styles of testing, two different programs, both have to be approved before implementation.
    - i. New applicant testing:
      1. You may test all applicants or a select group if you choose
      2. Can start right away after approval from the DOL
    - ii. Employee testing:
      1. A company program can authorize testing based upon probable cause or reasonable suspicion.
        - a. Probably cause or reasonable suspicion must be based on a determination by a qualified observer that the employee may be abusing a substance.
        - b. In Maine, an accident is not reasonable suspicion for testing, there must be other qualified observation of substance abuse.
      2. You can do random testing solely on “safety-sensitive” positions or if the company has more than 50 employees, then all can be put into the random pool.
        - a. If you choose this option, there needs to be a committee formed to discuss the program.
      3. You can have the test be arbitrary.
        - a. This is based on an event.
          - i. Anniversary
          - ii. A Contract obligation
          - iii. Other non-cause-related occurrences
      4. Can't start testing until 30 days after the DOL has approved the plan.
      5. If the company has more than greater than 20 employees, they need to have an employee-assisted plan (EAP) approved through the Department of Human Services (DHS)
  - b. What can you test for?
    - i. Amphetamine/Methamphetamine/MDMA /MDA/MDEA
    - ii. Cocaine and/or metabolites

1. Metabolites are substances made or used when the body breaks down food, drugs, chemicals, or tissue.
  - iii. Marijuana and/or metabolites
  - iv. Opiates and/or metabolites
  - v. Phencyclidine
  - vi. Barbiturates
  - vii. Benzodiazepines
  - viii. Methadone
  - ix. Methaqualone
  - x. 6-Acetylmorphine (heroin)
  - xi. Alcohol
- c. Specimen collection type to be used:
- i. Urine
  - ii. Oral Fluids / Saliva
  - iii. Hair Follicle
  - iv. Breath for Alcohol
  - v. Sweat Patch
- d. How do you apply to DOL for recognition of your program?
- i. Consult with employees in the development of any section of the testing policy.
  - ii. Give individual written notice to employees that it has submitted a testing policy to the Department of Labor for review.
  - iii. Include instructions on both where and how an employee may review the proposed policy.
  - iv. Inform employees of how and when they may comment to DOL and display the contact information prominently.
  - v. Employees must be given a minimum of 10 days to comment directly to the Department of Labor.
  - vi. Fill out the application on the DOL website.
- e. Resources:
- i. [https://www.maine.gov/labor/labor\\_laws/substanceusetesting/](https://www.maine.gov/labor/labor_laws/substanceusetesting/)
  - ii. [https://www.maine.gov/labor/labor\\_laws/substanceusetesting/policytypes/index.html](https://www.maine.gov/labor/labor_laws/substanceusetesting/policytypes/index.html)
  - iii. <https://www.samhsa.gov/workplace/employer-resources>