



Proper Documentation of Reasonable Suspicion

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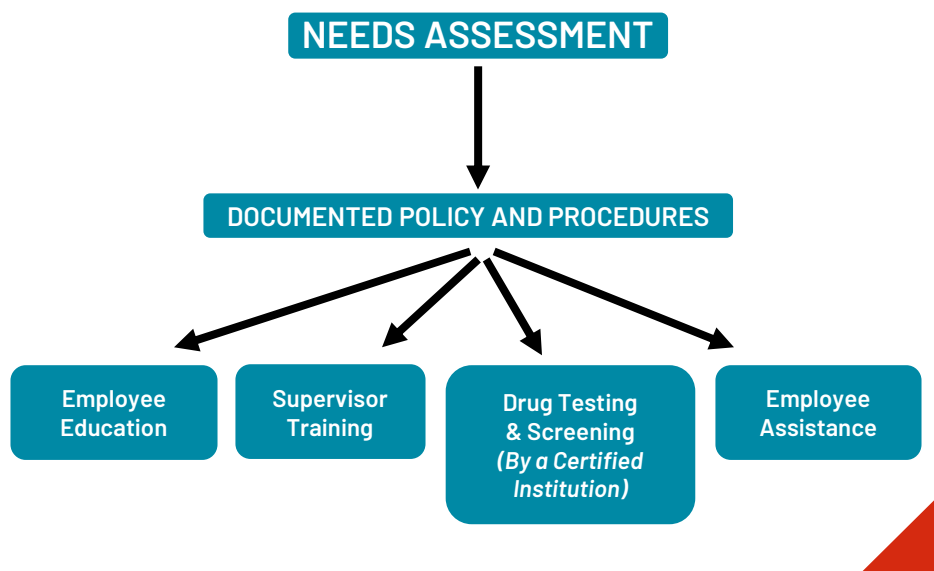
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Elements of a Drug-Free Workplace Program



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Why Do Drug & Alcohol Testing

- To ensure that injuries and accident do not occur by an individual that might be under the influence of either alcohol or drugs or both.
- **Why?**
- In 2016, 10,497 people died in **alcohol**-impaired driving **crashes**, accounting for 28% of all traffic-related deaths in the United States. Of the 1,233 traffic deaths among children ages 0 to 14 years in 2016, 214 (17%) involved an **alcohol**-impaired driver.

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Who You Should Be Testing

- Safety Sensitive employees and Non-Safety Sensitive employees.
- A safety-sensitive position is **a job or work duty in which an employee's performance of the job impacts the safety of themselves or others.** The term includes jobs where performing a task poorly or failure to perform it at all could result in a safety incident.
 - Ex. Transit drivers, employees using powered industrial machines, police officers or other armed employees
 - A Non-Safety Sensitive employee would be both bargaining and non-bargaining employee.
- DOT Covered Drivers
- Federal or other Contract Requirements
- Other Third-party Organizations that May Require Testing

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What Are the Types of Testing?

Post-offer/Pre-employment

Reasonable Suspicion

Post-Accident/Incident

Random Testing

Return-To-Work

Fit-For-Duty

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How are You Going to Handle Marijuana?

Agreement with Drug and Alcohol Testing Facility

- Medical Review Officer (MRO) to screen positive results
- Establish the panel you'll use for drug testing
 - Many types of drug panels, anywhere from 5-16 panels
 - All drug panels include THC as a standard

What are you going to do about THC?

- Will the facility remove it?
- Will they not report it?
- Are you going to ignore it?
 - Which types of testing
 - Post-Accident/Incident – e.g. Saliva Drug Test
 - Reasonable Suspicion
 - Which classes of employees?



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Reasonable Suspicion Determinations

A reasonable suspicion of drug use must generally be based on actual facts and logical inferences

- Based on specific, current, objective observations
- Made by a supervisor or manager
- Made in connection with safety-sensitive functions
- Reasoned conclusion drawn by an individual based on objective, articulable criteria.
- For drugs, made at any time

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When is a Suspicion Reasonable?

- Direct observation of drug use or its physical symptoms, including slurred speech, agitated or lethargic demeanor, uncoordinated movement, and inappropriate responses to questions
- Abnormal conduct or erratic behavior while at work, or significant deterioration in work performance
- A report of drug use provided by a reliable and credible source that has been independently corroborated
- Evidence that the employee has tampered with current drug test results
- Information that the employee has caused or contributed to an accident at work, or
- Evidence that the employee has used, possessed, sold, solicited, or transferred drugs while working or at work.

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Acute Reasonable Suspicion Situations

Generally, there are immediate work performance indicators. They may be that the employee:

- Almost falls
- Almost injures self
- Physical functions in an unusual manner
- Makes obvious safety rule violations
- Drops suddenly in quality or quantity of work performed
- Can't get along with anyone (something different from the norm)
- Is unusually late or absent from work

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Documentation of Reasonable Suspicion

- Need to document testing for cause
- Discuss process and form
- Need to train supervisors
- Need to have a trained evaluator - Determination
- Notification to Employee - Sample (may have form from your testing service)
- Refusal = Resignation on the spot (Policy) - may not hold in some jurisdictions
- Transport employee to testing center
- Disposition of forms - treat as confidential medical records

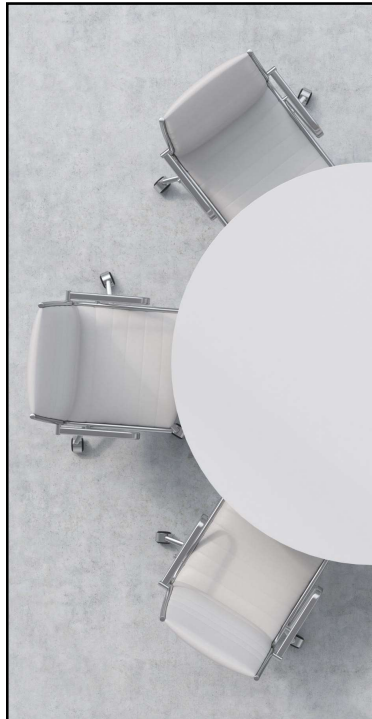
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What Should You Do If There is Reasonable Suspicion?

- Remove employee immediately from any safety sensitive position.
- Discuss observed behaviors with employee
- Arrange "for cause" drug testing
 - (per your company policy for under the influence)
- Drive or have employee driven to clinic
- Alert Human Resources
- Contact EAP

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Steps for Conducting a Reasonable Suspicion Interview

Receive information from an employee, supervisor about behavior or actions of an employee, which raises red flags.

1. Conduct the interview, noting physical or behavioral issues which leads you to believe that the employee is under the influence.
2. Send the employee to be tested.
3. Write up the report, where you indicate why you believe that the employee may have been under the influence. The report must be based on what you see and observe in the interview. Not from third party sources.

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Objective Criteria

Must be based on the supervisor's specific contemporaneous articulable observations of an employee's:

- Behavior
- Appearance
- Speech
- Body odors associated with alcohol or controlled substance use.

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Sample Reasonable Suspicion Form

This checklist is to be completed when an incident has occurred which provides reasonable suspicion that an employee is under the influence of a prohibited drug substance or alcohol. The observer(s) should note all pertinent behavior and physical signs or symptoms that lead you to reasonably believe that the employee has recently used or is under the influence of a prohibited substance. Mark each applicable item on this form and any additional facts or circumstances that you have noted. Turn the form in to your supervisor or to HR. **DO NOT MAKE COPIES OF THIS FORM.** The original will be kept in a confidential file in Human Resources.

GENERAL INFORMATION:			
Employee Name:			Date of Observation:
Job Title:			Time of Observation:
Department:			Location of Observation:
PERSON(S) OBSERVING BEHAVIOR:			
Observer(s):	Name:	Title:	
	Name:	Title:	

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Reviewing the Form

SUSPICION TYPE(S):	CHECK YOUR RESPONSE TO THE FOLLOWING FIVE QUESTIONS:		
<input type="checkbox"/> Alcohol <input type="checkbox"/> Controlled Substance	1. Is the employee sick or injured? 2. Is the employee diabetic? 3. Is the employee epileptic? 4. Is the employee aware of any condition that may affect his/her ability to do his/her job? <i>If yes, list: _____</i> 5. Is the employee taking any prescribed or non-prescribed medication? <i>If yes, list: _____</i>	1. <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unknown 2. <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unknown 3. <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unknown 4. <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unknown 5. <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> Unknown	
A. NATURE OF THE INCIDENT/CAUSE FOR SUSPICION – Check all appropriate items:			
<input type="checkbox"/> Observed/reported possession or use of a prohibited substance <input type="checkbox"/> Apparent drug or alcohol intoxication <input type="checkbox"/> Observed abnormal or erratic behavior <input type="checkbox"/> Arrest or conviction for drug related offense <input type="checkbox"/> Evidence of tampering on a previous drug test <input type="checkbox"/> Other (e.g., flagrant violation of safety regulations, serious misconduct, fighting or argumentative/abusive language, refusal of supervisor instruction, unauthorized absence on the job) (please specify): _____			
B. UNUSUAL BEHAVIOR – Check all appropriate items:			
<input type="checkbox"/> Verbal abusiveness <input type="checkbox"/> Physical abusiveness <input type="checkbox"/> Extreme aggressiveness or agitation <input type="checkbox"/> Withdrawal, depression, mood changes, or unresponsiveness <input type="checkbox"/> Inappropriate verbal response to questioning or instructions <input type="checkbox"/> Other erratic or inappropriate behavior (e.g., hallucinations, disorientation, excessive euphoria, confusion) (please specify): _____			

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Reviewing the Form

C. OBSERVATIONS OF PHYSICAL SIGNS OR SYMPTOMS – Check all appropriate items:

- | | |
|---|---|
| <input type="checkbox"/> Possessing, dispensing, or using controlled substance | <input type="checkbox"/> Highly excited or nervous |
| <input type="checkbox"/> Slurred or incoherent speech | <input type="checkbox"/> Nausea or vomiting |
| <input type="checkbox"/> Unsteady gait or other loss of physical control; poor coordination – stumbling, staggering | <input type="checkbox"/> Extremely poor hygiene |
| <input type="checkbox"/> Lethargic / slow movement | <input type="checkbox"/> Dry mouth (frequent swallowing/lip wetting) |
| <input type="checkbox"/> Dilated or constricted pupils or unusual eye movement | <input type="checkbox"/> Dizziness or fainting |
| <input type="checkbox"/> Bloodshot or watery eyes | <input type="checkbox"/> Shaking hands or body tremors/twitching |
| <input type="checkbox"/> Glazed or glassy eyes | <input type="checkbox"/> Irregular or difficult breathing |
| <input type="checkbox"/> Extreme fatigue or sleeping on the job | <input type="checkbox"/> Runny sores or sores around nostrils |
| <input type="checkbox"/> Excessive sweating or clamminess to the skin | <input type="checkbox"/> Inappropriate wearing of sunglasses |
| <input type="checkbox"/> Flushed or very pale face | <input type="checkbox"/> Puncture marks or "tracks" |
| <input type="checkbox"/> Loss of inhibitions with no apparent reason (yelling, screaming, cursing, assaultive, overly friendly) | <input type="checkbox"/> Odor of alcohol beverage on breath |
| | <input type="checkbox"/> Body odor of alcohol beverage |
| | <input type="checkbox"/> Odor of marijuana on person or in room |
| | <input type="checkbox"/> Trembling or uncoordinated movement of hands |
- ☐ Other (please specify):

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Reviewing the Form

D. WRITTEN SUMMARY - If known, how is the employee's behavior different from that previously observed? Be specific and describe any other observations about behaviors or actions not listed above:

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Reviewing the Form

To the best of my knowledge, this report represents the appearance, behavior and/or conduct of the above-named employee, observed by me and upon which I base my decision to refer the person to the Human Resources Department for further assessment and/or referral.

Signature of Observer

Date

Signature of Second Observer

Date

**DO NOT MAKE COPIES OF THIS FORM –
THE ORIGINAL WILL BE KEPT IN A CONFIDENTIAL FOLDER IN THE HUMAN RESOURCES DEPARTMENT.**

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If An Employee Tests Positive

- If your company has a zero-tolerance policy, give the employee the name of a local Substance Abuse Professional (SAP) to follow up with his or her positive test
 - Required for DOT covered employees
- **No** you may not send the employee in for another test hoping they will pass this one
- Follow the DOT regulations
- If you allow for a second chance, then you must allow the SAP to do his or her job
- Once employee has been cleared by SAP a Return to Duty test is required (Observed)

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Administrative Requirements

- **Retention of records in a secure location with highly restricted, limited access:**
 - **Five Years**
 - Verified positive drug or alcohol test results.
 - Refusals to take required drug or alcohol tests.
 - Employee referrals to Substance Abuse Professionals.
 - Follow-up testing schedules.

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Some Great Resources

U.S. Department of Labor Drug-Free Workplace Advisor

<http://www.dol.gov/elaws/asp/drugfree/drugs/dt.asp>

DOL Policy Writing Assistant

www.dol.gov/elaws/drugfree.htm

Substance Abuse and Mental Health Services Administration

<http://beta.samhsa.gov/workplace>

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Questions

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