



REASONABLE **SUSPICION TESTING**

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Table of Contents

| | |
|--|----|
| Introduction | 3 |
| What is Reasonable Cause/Suspicion Testing | 3 |
| Why Employers Should Be Concerned About Workforce Substance Abuse | 4 |
| Why Would a Company Need a Reasonable Suspicion Policy? | 5 |
| What are Triggers for Reasonable Suspicion? What Do You Look For? | 6 |
| Commonly Abused Substances | 7 |
| How Do You Design and Implement a Program? | 8 |
| What Specimens Should You Use? | 10 |
| Recommended Best Practices | 12 |
| Frequently Asked Questions on Reasonable Suspicion Testing | 13 |
| Implementing or Strengthening a Reasonable Suspicion Policy | 17 |
| About Hireright | 18 |

Introduction

Making reasonable suspicion testing part of your drug-free workplace program

Picture this: Jenny works in manufacturing, using heavy machinery to move large crates of industrial materials across the company warehouse. One morning, Jenny shows up late for her shift and her manager notices that she doesn't seem right. Her speech is a bit slurred, her responses delayed, she reeks of alcohol, and she stumbles as she attempts to climb into a crane. If this happened at your company and you were her manager, what would you do? What could you do? What should you do? If you had a reasonable suspicion policy in place, these answers would come easy.

What is reasonable cause/suspicion testing?

Reasonable suspicion testing, sometimes called for-cause testing, is used when an employer has a strong reason to believe that a worker may be acting under the influence of drugs or alcohol while on the job. Typically, it is utilized when a supervisor (and/or another employee) has directly observed the employee exhibiting unusual or concerning behavior, displaying physical symptoms of use, or is in possession of alcohol, drugs or drug paraphernalia. The employer can require the employee

to immediately get a medical evaluation and/or drug test to confirm or refute the suspicion that the employee is impaired, and what may be causing the impairment.

Reasonable suspicion testing is an important component of an overall drug-free workplace program, primarily because it serves as a very effective deterrent. When workers know their employer has a standing policy of testing anyone suspected to be impaired or under the influence of drugs or alcohol while at work, they are less likely to use substances on the job.

But such drug testing is not something an employer does sporadically. Reasonable suspicion testing needs to be applied methodically and consistently, in accordance with a broader policy on reasonable suspicion.



Why Employers Should Be Concerned About Workforce Substance Abuse?

- Higher health care expenses for injuries and illnesses.
- Reductions in job productivity and performance. Workers with substance abuse disorders miss nearly [50% more work days than their peers](#).
- Increase in worker's compensation and disability claims.
- Safety and security risks for employees and employers
- [Employees who abuse drugs are more than three and a half times as likely to have an accident on the job and five times more likely to have an off-the-job accident that impacts work performance.](#)
- Depending on the drug used, employees may also be more likely to experience after-effects from drug use. For example, [people using hypnotics may still experience an increased risk of traffic accidents and reduced cognitive functioning the morning after using the drug.](#)



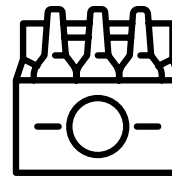
Why Would a Company Need a Reasonable Suspicion Policy?

For many highly regulated, safety-sensitive industries, including federally regulated transportation companies, reasonable suspicion testing is a normal and fully accepted part of the job. However, employers in other industries may not think much about for-cause testing until they are confronted with an impaired employee of their own.

Whether or not it's required by regulation, there are a number of compelling reasons employers should have a reasonable suspicion policy/program in place:

- **IT MITIGATES RISK.** Reasonable suspicion testing policies enable employers to mitigate risk by removing suspected users from safety-sensitive duties. It also prevents accidents, reduces workplace injuries and limits litigation.
- **IT PROVIDES ACTIONABLE INFORMATION.** Reasonable suspicion testing provides employers with important and defensible information that can be used to determine whether personnel (or HR) action (e.g., termination, suspension, or job change) is warranted.
- **IT PROTECTS EMPLOYERS AGAINST DISCRIMINATION CLAIMS.** Consistently applying a standard policy across all employees means you'll be less vulnerable to claims of discrimination or unfair treatment.

- **IT DETERS POTENTIAL USERS.** When employees know they'll be drug tested for impairment or signs of impairment, they will be less likely to risk using drugs.
- **IT LIMITS DIRECT AND INDIRECT COSTS ASSOCIATED WITH WORKERS WHO ABUSE SUBSTANCES.** Reasonable suspicion testing helps keep your workplace free of substance abusers – a population of workers who are generally less productive, have higher rates of absenteeism and contribute to a large percentage of workers' compensation claims.



Did you know? Workers with an alcohol problem are 270% more likely to have a work accident.

[Source](#)

- **IT MAY SAVE A LIFE!** Reasonable suspicion testing programs identify impaired workers and can keep them from hurting themselves or others. Sometimes the impairment is not the result of a substance issue, but rather a medical one and prompt evaluation may lead to a quicker diagnosis and treatment.

What are Triggers for Reasonable Suspicion? What Do You Look For?

There are various indicators that someone may be under the influence of drugs or alcohol, or exhibiting signs of a medical issue. The biggest flag is an observable change in the employee's behavior, attitude and/or appearance. Through a reasonable suspicion program, supervisors - and quite often other employees - document what they've seen or experienced that is concerning. These observations should be specific, not vague or generalized. They should be contemporaneous, describing something that's happening at the time of observation, not a generalized suspicion that an employee has been impaired in the past. And all observations must be articulable—something that can be readily explained, not simply a gut feeling.

The observation of paraphernalia is also something to be on the lookout for. Physical evidence of drugs or alcohol at your worksite likely means that someone is likely using on the job.



Observations should be:

- **SPECIFIC.** details are important.
- **CONTEMPORANEOUS.** Something happening now, not in the past.
- **ARTICULABLE.** Something you can explain/put your finger on.

Commonly Abused Substances

Different substances result in various physical and behavioral symptoms. Below are some common physical and behavioral symptoms associated with popular substances, as well as other observable evidence that someone may be using them.

| Substance | Physical Symptoms | Behavioral Symptoms | Other Evidence |
|--------------------------------------|---|--|---|
| Amphetamines | Dilated pupils, sweating, dizziness, dry mouth, blurred vision | Confusion, panic, talkativeness, hallucinations, anxiety, false sense of confidence | Pills, capsules or tablets; envelopes, bags or vials for storing the drug |
| Cocaine | Dilated pupils, running or irritated nose, profuse sweating, dry mouth, tremors, needle tracks, hyper excitability | Increased physical activity, isolation and secretive behavior, paranoia, hallucinations, confusion, false sense of power and control | Small folded envelopes, plastic bags or vials used to store cocaine; razor blades, cut-off drinking straws or rolled bills for snorting |
| Opioids (a/k/a narcotics) | Constricted pupils, sweating, nausea and vomiting, needle tracks, slowed reflexes, drowsiness and fatigue | Mood swings, impaired coordination, depression and apathy, stupor, euphoria | Needles, syringes, bent spoons, rubber tubing |
| Alcohol | Reduction of reflexes, slurred speech, loss of coordination, unsteady gait | Increased talkativeness, reduced emotional control, distorted judgment, impaired driving ability, major effects on thinking and memory | Liquor or wine bottle (sometimes concealed with paper bag), bottle caps, cough medicine bottles, after-shave, beer cans |
| Benzodiazepines | Drowsiness, unsteadiness while walking, blurred vision, poor coordination, amnesia | Hostility, irritability, disturbing dreams, reduced inhibition, impaired judgment | Bag or bottle of pills |
| Marijuana | Red eyes, stained fingertips, chronic fatigue, slowed speech, impaired motor coordination, altered perception, increased appetite | Impaired memory, time-space distortions, feeling of euphoria, paranoia, false sense of power | Small pipes, roach clip holders, cigarette papers, vape pens |

How Do You Design and Implement a Program?

Once you decide to make reasonable suspicion part of your drug-free workplace program, there are several key steps to creating and implementing your program.

1) Establish your company policy.

You'll need to make and incorporate certain decisions into your policy, such as:

- What constitutes reasonable suspicion—which circumstances will you test?
 - Who is responsible for enforcing your policy?
 - How will your policy be communicated to employees?
 - Where and how will employees get tested? In-house? At a facility? What specimen will you use?
 - In what situations will you send the employee for a medical evaluation? Generally, if the employee looks profoundly impaired, you should have the employee undergo a medical evaluation, and a test for substance abuse to rule out a medical issue. Some symptoms of medical conditions—including strokes, heart or lung problems, and diabetes-related complications to name a few—can mimic substance-related impairment.
 - What actions will you take for a positive drug/alcohol test or if an employee refuses testing?
 - How will you handle employees who are awaiting results? For example, some employers keep the employee fully off duty, or modify the employee's duties to refrain from any safety-sensitive work until they are cleared.
- If an employee's impairment proves to be a health/medical issue, know what reasonable accommodations may be required under the Americans with Disabilities Act (ADA).
 - What type of assistance will your company provide? Are there return-to-work agreements?



2) Determine your documentation method.

A best practice is to create or utilize a standard impairment observation worksheet, which includes checklists for observation categories as well as free form fields for commentary. There are many sample worksheets and templates available online, or you could work with your HR or legal team to customize your own.

3) Determine your testing method and protocol.

In general, you should test the employee as soon as possible, whether that's in-house or off site. If you will be sending employees out for testing, make sure to arrange for transportation—they should never drive themselves. If they refuse to undergo testing, you may want to escort them off the job site (along with any employment actions taken in line with your policy), and always arrange transportation—never let an impaired worker drive off.

4) Provide training.

Supervisors should be trained on your reasonable suspicion policy and what constitutes reasonable suspicion and would trigger a test. You can also provide some form of this training to all employees, so they too can identify if one of their coworkers is having an issue, as well as obtain a general awareness of your policy/protocol for themselves. Effective training will ensure that everyone in your company knows what to do and what to expect when a worker impairment is suspected.

5) Apply the policy consistently.

Follow your policy and processes for every employee (any level, any role) who has observable signs of impairment. No exceptions, no preferential treatment.



DO

- Let employees know up front that they are subject to being tested if there is a reasonable question of their ability to work.
- Train management on reasonable suspicion signs, symptoms and documentation.

DON'T

- Base any action on a prior incident.
- Exaggerate or use anecdotes.

[Source](#)

What Specimen Should You Use?

When it comes to reasonable suspicion drug testing, not all specimens are created equal. For this type of testing, you want a drug test that reveals if the employee is currently impaired at the time of the test and preferably one that is not vulnerable to subversion, or cheating. For these reasons, the best specimen for reasonable suspicion testing is oral fluid, through which saliva and cellular debris from the inside of the donor's mouth is tested for the presence of drugs.

Benefits

The benefits of oral fluid are that it is:

- Easily collected
- Collected under the observation of the tester
- Very accurate
- FDA-approved
- Not vulnerable to subversion – there is nothing reliable one can do to “beat” an oral fluid drug test

Window of detection

Oral fluid is great for detecting recent drug use. The window of detection is two to three days for all substances except marijuana. The oral fluid marijuana detection window is around 16 to 20 hours. This marijuana detection time frame is shorter than the impairment window – the duration of time an individual is impaired by drug use. That means if someone gets a positive result on an oral fluid drug screen, he or she was impaired at the time the sample was collected.



When someone gets a positive marijuana result on an oral fluid drug screen, it means he or she was impaired at the time the sample was collected.

Drugs it can screen for

The majority of oral fluid screens are 5-panel tests that look for cocaine, amphetamine, opiates, phencyclidine and cannabinoids (THC). Expanded panel tests are available for employers who need/want to test for additional prescription medications like benzodiazepines (Valium-type drugs) as well as others.

Cost

The cost for an oral fluid drug screening is \$30-35, if the employer has the capability to collect it themselves, or \$50-60, if the sample is collected by a third party. As with all screening methods, costs will also vary by the number of panels included in the test— the more drugs included, the higher the price.

Urine as a reasonable suspicion specimen

While oral fluid may be the most effective specimen for reasonable suspicion testing, urine is still the most frequently used specimen. Urine has a bit broader detection than oral fluid (about seven days more for most drugs with the exception of stimulants, amphetamines and cocaine, where the urine and oral fluid windows are the same), but the window is still short enough to be useful for this test reason. Urine as a specimen is tried and true; the big problem here is that donors have learned to subvert the test by manipulating the specimen in some way, therefore causing inappropriate false negative results.



Ways substance abusers subvert urine drug tests

- **Dilution** – drinking a lot of fluid prior to providing their specimen
- **Adulteration** – adding a foreign substance to the urine specimen that will metabolize (clean) the specimen of the evidence of drugs
- **Substitution** – providing a specimen that is not their urine (e.g., synthetic urine or a sample from someone else).

Urine can still be effectively used for reasonable suspicion testing as long as the employer conducts immediate testing and does not allow the employee time or opportunity to prepare for the collection (such as allowing the donor to go to the locker room and change).

Recommended Best Practices

- Reasonable suspicion drug and alcohol testing should be a part of your company policy.
- Educate your employees to make them aware that they are subject to reasonable suspicion drug testing and the associated consequences.
- All supervisory personnel should receive a minimum of two hours of training on reasonable suspicion signs, symptoms and documentation. Recurring annual training is highly recommended.
- Observe and document suspicious behavior — before, during or just after the employee's shift. Be specific and descriptive when describing the observed behavior. For example: Susan came to work two hours late today. Her eyes were bloodshot and her speech was slurred. Twenty minutes after she clocked in, she fell asleep in the break room. There was a strong odor of alcohol.
- It is strongly encouraged that at least two supervisory personnel concur that there is reasonable suspicion for a drug/alcohol test. This protects the company, supervisor and the employee.
- Drug and alcohol testing should be done promptly after removing the employee from duty. If the drug or alcohol test is not collected on-site, contact a collection site to conduct the test as soon as possible.
- The employee under suspicion should not be allowed to drive themselves to the collection site.



Reasonable suspicion drug testing can play an important role in helping to create and maintain drug-free workplace programs. When properly administered, it is a fair and reliable testing method that can help to both dissuade and detect drug and alcohol use.

Frequently Asked Questions on Reasonable Suspicion Testing

When you notice an individual has impaired functionality, do you need to have multiple individuals come to the same conclusion or do you just take one employee's word?

A best practice is to have a company representative/supervisor complete a standard checklist of signs of impairment, indicating why reasonable suspicion exists to require the employee to undergo a drug test and/or medical evaluation.

Can you fire a worker for legal marijuana use at work?

In nearly all states, employers may fire employees for being under the influence of, or impaired by marijuana at work or during work hours. In states with medical marijuana laws, the law either expressly allows employers to fire employees for off-duty use or doesn't address the issue.

The rule above assumes that the employee tested positive for marijuana on a legally administered drug test that did not violate state law. If the drug test itself violated the law, the employee cannot be fired based on the results. While federal law does not place restrictions on drug testing, the laws of many states do. Be sure to check with your legal counsel for further guidance.

Is reasonable suspicion training required?

The Department of Transportation requires federally regulated employers to conduct reasonable suspicion training. If you are not covered by the DOT then all supervisors making reasonable suspicion determinations should be trained on the signs and symptoms of drug/alcohol use in order to properly handle impairment issues and to avoid potential liabilities.

How do I tell the employee they need to do a drug/alcohol test?

First, you should clearly document the observed facts. Then the supervisor should bring the employee to a private area to discuss their concerns and present the relevant facts. Provide the employee with a consent/refusal form for the test. An employee who refuses a test when requested should be subject to disciplinary action pursuant to the company's guidelines. The employer needs to provide transportation to the clinic and to the employee's home after the test.

Frequently Asked Questions on Reasonable Suspicion Testing (continued)

If you are sending an employee to a clinic for reasonable suspicion testing, how do you approach transportation since they should not drive?

Ideally, you arrange for a company representative to drive the employee to the testing clinic or hire transportation from a vendor.

How soon should an employee be tested?

Reasonable suspicion tests should be conducted as soon as possible once impairment is suspected. The more time that elapses between the suspicion and the test, the more likely it is that the employee will test negative.

Alcohol metabolizes in the body very quickly, so reasonable suspicion alcohol tests must be conducted within eight hours of the suspicion. For reasonable suspicion drug tests, tests should be conducted within 24 to 32 hours. But the best practice is to conduct the testing as soon as possible.

What if an employee cannot be testing during the standard timeframe?

If the employee cannot be tested during the standard timeframes, then the employee should not be tested. Companies should record the reason the test was not performed and keep documentation for their records. Each company policy should dictate the course of action followed if testing cannot be performed.

What if an employee refuses to take a drug/alcohol test?

An employee who refuses a test when requested should be subject to disciplinary action pursuant to the company's guidelines. Refusal to submit to a test includes: the failure to provide adequate breath for testing without a valid medical explanation, the failure to provide adequate urine for testing without a valid medical explanation, engaging in conduct that hinders or invalidates the testing process, and leaving the scene of an accident.

Frequently Asked Questions on Reasonable Suspicion Testing (continued)

What impact does medical marijuana have on a reasonable suspicion program?

Several states that have medical marijuana statutes that require accommodation do not allow an employer to automatically terminate someone because they tested positive for marijuana on an employment drug test. However, all states say you can terminate an employee if he or she is impaired on the job site. The impairment window for marijuana is greater than 24 hours after a single use. Further, the observations made to compel the testing can be used along with the positive drug screen as proof of impairment.

How should you handle employees who were referred for a test, and are now awaiting results? Should you allow them to keep working or keep them off the job until the results are back?

For safety reasons, you will probably want to keep anyone who has a for-cause test off of work (or at least off safety-sensitive work) until the final result comes in.

How many panels should your drug test include?

The number of panels you use may vary depending on your industry. For example, health care organizations may wish to use the broadest panel test because their employees have access to the broadest range of drugs. For most employers, the traditional 5-panel drug screen is all that is needed since this panel was designed most specifically to look for illicit drugs. The panels you choose may also depend on the population you are dealing with. If you employ workers in an area where a particular drug is known to be of great interest, you may want to consider including that in your panel.

If a test comes back negative can the employee sue the company?

When followed correctly and consistently, a reasonable suspicion policy protects you from being sued. If your company policy clearly explains your reasonable suspicion procedures, has been effectively communicated to all employees, and followed accordingly, you reduce the likelihood of liability. Take the time to thank your employee for complying with the company's request. Most companies will compensate the employee for their lost time at work. Consult your state laws for further details and work with your legal counsel to be sure your policy is compliant.

Frequently Asked Questions on Reasonable Suspicion Testing (continued)

Can you fire an employee with a positive drug test?

This is something that should be addressed in your workplace drug testing policy. The employer should notify employees about the types of testing that will be required for reasonable suspicion testing and the disciplinary consequences for testing positive or for refusing to test.

Some states and cities have very specific drug and alcohol testing laws. It is critical for employers to become familiar with the state and local testing laws applicable to their workforce. Some jurisdictions regulate the types of testing that may be conducted, the specimens and drugs that may be tested, the requirements for notifying employees of positive test results, as well as the disciplinary consequences that may be imposed for testing positive.

Implementing or Strengthening a Reasonable Suspicion Policy

How HireRight can help

Reasonable suspicion testing can be one of the most challenging aspects of a drug-free workplace program; however, it can have a profound impact on the safety and productivity of your workforce.

If you're interested in developing or implementing a reasonable suspicion policy, or enhancing your existing program, there are many resources to assist you. Partners like HireRight can assist by:

- Sharing best practices on what an effective reasonable suspicion policy may include
- Working with you to help identify the right drug screening specimens to use for your business
- Helping you develop reasonable suspicion training for those in your organization who will enforce your policy.



About HireRight

HireRight is the premier global background screening and workforce solutions provider. We bring clarity and confidence to vetting and hiring decisions through integrated, tailored solutions, driving a higher standard of accuracy in everything we do. Combining in-house talent, personalized services, and proprietary technology, we ensure the best candidate experience possible. NAPBS accredited and based in Irvine, CA, we offer expertise from our regional centers across 200 countries and territories in The Americas, Europe, Asia, and the Middle East. Our commitment to get it right every time, everywhere, makes us the trusted partner of businesses and organizations worldwide.

Many thanks to Todd Simo, MD for providing insights for this ebook.

Dr. Simo served as HireRight's Medical Director starting in 2009 and was promoted to Chief Medical Officer in 2015. In addition to maintaining his role as CMO, Dr. Simo was also appointed to the role of Vice President of Business Development for HireRight's transportation and drug & health screening business in 2018.



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