

Standards for Workplace Drug and Alcohol Testing Act, 40 O.S. §§ 551-565, effective 11-1-11.

Any employer that requires an applicant or employee to undergo drug or alcohol testing shall first adopt a written policy setting forth the specifics of its drug or alcohol testing program. The employer shall provide a copy of its policy to each applicant upon his acceptance of employment by hand-delivery of a paper copy, mailing a paper copy, electronically transmitting a copy through e-mail or posting a copy in a prominent employee access area. The policy shall state the disciplinary actions that may be taken upon a refusal to undergo a test or for a positive test for the presence of drugs or alcohol. Ten days' notice of any implementation of a testing policy or change to such policy shall be given.

Employers (not public employers) may conduct drug and alcohol testing of applicants or employees under any of the following circumstances:

1. Applicant testing – Refusal or a positive test result is a basis for refusal to hire.
2. For-cause testing – Reasonable belief that an employee is under the influence is a basis for testing.
3. Post-accident testing – If employee or another person has sustained an injury while at work or the employer's property has been damaged, the employer may require testing.
4. Random testing – Employer may require an employee or all members of an employment classification or group to undergo testing at random.
5. Scheduled, periodic testing – Employer may require an employee to undergo testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination or is scheduled routinely as part of the employer's written policy.
6. Post-rehabilitation testing – Employer may require employee to undergo testing for up to 2 years commencing with the employee's return to work following a positive test or participation in a drug or alcohol dependency treatment program.

An employer may test for drugs or alcohol by any method which is reasonably calculated to detect the presence of drugs or alcohol, including, but not limited to, breathalyzer testing and testing by use of a single-use test device, known as an onsite or quick testing device. A breathalyzer test shall not be grounds for immediate termination absent a confirmation test.

Employers shall pay all costs of testing required by them.

If an employee or applicant requests a confirmation test of a sample within 24 hours of receiving notice of a positive test in order to challenge the results of a positive test, the employee or applicant shall pay all costs of the confirmation test, unless the confirmation test reverses the findings of the challenged positive test. In such case, the employer shall reimburse the individual for the costs of the confirmation test.

The State Board of Health shall promulgate the rules for the licensure and regulation of testing facilities. These rules are located at OAC 310:638.

An employer may take disciplinary action up to and including discharge against an employee who refuses to undergo testing or who tests positive for the presence of drugs or alcohol.

Records of all test results and related information are the property of the employer and shall be made available for inspection and copying by the applicant or employee upon his request. An employer shall not release such records to any person other than the applicant, employee or the employer's review officer, unless the applicant or employee, in writing following receipt of the test results, has expressly granted permission for the employer to release such records in order to comply with a valid judicial or administrative order. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

Any person aggrieved by a willful violation of the Act may institute a civil action within 1 year of the alleged willful violation. A willful violation requires proof by the preponderance of the evidence that the employer had a specific intent to violate the act.

A prevailing party may be awarded lost wages and an additional equal amount as liquidated damages. Reasonable costs and attorney fees may be awarded to the prevailing party whether plaintiff or defendant.