

DRUG & ALCOHOL TESTING BACKGROUND

Minnesota passed a workplace drug and alcohol testing statute in 1987. The statute underwent minor revisions in 1988 and 1991. Under Minnesota law, testing can occur when an employer has a reasonable suspicion that an employee: (1) is under the influence of drugs or alcohol; (2) has violated the employer's drug and alcohol policy; (3) has experienced an injury or caused another employee's injury; or (4) has caused a work-related accident or was operating a vehicle or machine that caused an accident. Random drug and alcohol testing is allowed for employees in safety sensitive positions. Finally, testing can occur after an employee completes drug or alcohol treatment, as part of a routine annual physical examination, or after a job offer has been made if all job applicants conditionally offered employment for the same position face testing.

Minnesota's statute currently contains one of the most detailed testing procedures in the nation. For drugs and alcohol, an initial screening is performed and, if that test comes back positive, a second confirmatory test is required. In addition, an employee can request and pay for a confirmatory retest of the original sample. Initial screening may be conducted on breath, blood or urine. Confirmatory tests may be performed on either blood or urine.

Drug tests may be performed only by a laboratory certified by the National Institute on Drug Abuse, accredited by the College of American Pathologists in Illinois, or licensed by the New York State Department of Health. Laboratories similarly approved by the latter two organizations may analyze only alcohol tests. These safeguards, along with quality control measures, written notification requirements and confidentiality provisions, were designed to protect the employee and employer.

U.S. Department of Transportation regulations. In addition to the state's procedure, the federal government requires drug and alcohol testing of employees in the transportation industry. In 1991, the federal government passed the Omnibus Transportation Employee Testing Act that changed several requirements for drug and alcohol testing. The U.S. DOT published its final rules in the October 1, 1994, edition of the Federal Register. Regulations went into effect January 1, 1995, for companies with 50 or more employees and January 1, 1996, for companies with fewer than 50 employees.

The DOT rules for alcohol testing require evidential breath testing devices (EBTs) to be used for the initial screening as well as the confirmatory test. Blood, saliva, urine, nonevidential breath or performance tests no longer are accepted. The rules also permit properly trained supervisory personnel to act as breath alcohol technicians (BATs) in situations where another BAT will not be available in a timely manner. In addition, law enforcement officers may act as BATs as long as a state or local law enforcement agency has certified them. The DOT summarized its reasoning for adopting these rule changes:

In summary, the Department made this proposal because EBTs are a well-established, reliable and accurate testing method; EBTs are minimally intrusive; EBTs can provide an on-the-spot result that allows employers to take action that prevents potential safety risks; and EBTs can produce a printed record of the test result that will prevent disputes about the accuracy and integrity of the testing process. (Source: Federal Register, Vol. 59, No. 31, Feb. 15, 1994, p. 7342.)

The drug testing revisions require a split sample method for collecting and analyzing urine samples. This change was made to provide an additional safeguard for employees.

These rules generated numerous comments from employers and representatives of employees. Some were concerned about the cost and availability of EBTs. Others, while supportive of EBTs as an option, wanted more flexibility in the choice of testing. In other words, they wanted to be able to select from a menu of acceptable tests to tailor the program to their specific needs.

In the 1996 session, Minnesota enacted changes to its drug and alcohol testing statute as part of a transportation deregulation bill. Many believe the modifications allow employers that are governed by regulations issued by the Federal Railroad Administration, the Federal Highway Administration and the

Federal Transit Administration to utilize the U.S. DOT procedures throughout the workplace. These employers no longer will have to use one set of procedures for transportation sector workers and another for the rest of the workforce. Others argue that the 1996 law changes only affect transportation-sector employees. This is the current position of the Minnesota Department of Labor & Industry.

On-site testing. Advances in technology have made on-site drug testing a viable alternative to initial screening tests normally sent to laboratories. These on-site tests can check for the presence of amphetamines, cocaine, morphine, PCP and marijuana. The Food and Drug Administration has approved some on-site tests for commercial use which means the tests are proven to be safe and effective. On-site tests unfortunately cannot be used under Minnesota law because certain laboratories must analyze even initial screening tests. The use of on-site tests would not change any of the employee safeguards of current law. They merely would give employers and employees a fast and accurate method of conducting an initial screen.