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How To: Oversee Pre-Employment Drug Testing

In general, drug testing is not required by law. Not only is it not required, but California's constitutional guarantee of an individual's right to privacy places additional restrictions on the ability of California employers to conduct drug testing.

However, certain employees in [transportation industries](#) must pass drug tests, and businesses that contract with the state or the federal government must certify that their [workplaces are drug-free](#).

If you wish to require pre-employment drug testing for applicants, you should follow these guidelines.

1. Know When You Can Test Applicants

Most employers can require an applicant to successfully pass a [pre-employment drug test](#) as a condition of hiring.

Decide whether drug testing is required for all positions or just those with potential safety concerns. Be consistent. Apply the testing requirement equally to either all job applicants or to all job applicants for a certain type of position or in a certain job class.

Check [local ordinances](#) in locations where you conduct business or have employees to determine whether any municipal regulations relate to drug testing.

2. Communicate Drug Testing Requirements

If your job offer is contingent on a drug test, be sure to note in the [employment letter](#) that the offer depends on the applicant successfully passing the exam. Pre-employment drug testing for marijuana is still permitted in California. However, it is a good idea to inform applicants in advance if marijuana will be tested and whether employment will be denied if the test is positive. For more information, see [Adult Use of Marijuana Act](#).

The testing facility should obtain the applicant's written consent to the drug test. If an applicant refuses to take a drug test, you can refuse to hire him or her.

3. Require Drug Test After Offer

Pre-employment drug testing should be performed after an [offer of employment](#) has been made. Don't test all applicants for the job, only those you are offering the position to and as a condition of hire. Waiting until after an offer has been made will also help the employer steer clear of pre-employment inquiries that could be considered unlawful, such as inquiring about a prescription drug that might show up in the drug testing.



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4. Use An Independent Testing Facility

It is not advisable for employers without the proper license to directly administer drug tests. Employers should use an independent testing facility instead, and the facility should be an appropriate medical environment with properly trained personnel and written protocols for collecting samples.

Although kits for drug testing are readily available, they should not be used. There is a risk that the sample might be compromised and the accuracy of the results may be questionable.

Employers who fail to use independent testing facilities may have the results of a positive test challenged.

5. Be Certain of Results

Be certain that the applicant successfully completed the drug test and that you have the results **before** you allow the person to start work. Plan in advance for how you will handle applicants that test positive for illegal drug use, including marijuana use. Treat all positive results the same to avoid charges of discrimination.

6. Handle Results Appropriately

The results of the pre-employment drug test should only be disclosed to a person who “needs to know” the information, such as a hiring manager or human resources manager. Consider designating a specific person who will receive the lab results. Plan in advance to protect the confidentiality of drug testing records and treat them as confidential medical information in files separate from personnel files.