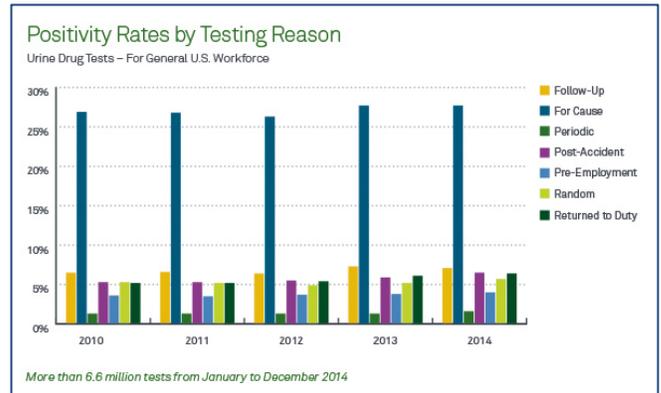


So Your Employee Tested Positive. Now What?

According to recent data from national drug testing laboratories, the rate of positive drug tests in America is inching upward for the first time in many years. In fact, the overall positive rate for all drug tests is approaching 5%. With numbers on the rise, it's only a matter of time before employers will have to navigate the regulations of dealing with a positive drug screen. Understanding that process in advance can save a considerable amount of time and energy for both you and your employee while also ensuring that everyone's rights are upheld.



Source: Quest Diagnostics

Definitions

Most non-federal drug screens in Iowa must be split specimen collections, defined as follows:

Split Specimen Collection: A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

Split Specimen: In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result

The laboratory shall store the second portion of any sample until receipt of a confirmed negative test result or for a period of at least forty-five calendar days following the completion of the initial confirmatory testing, if the first portion yielded a confirmed positive test result (Iowa Code 730.5 – 7.b)

Positive Tests

Iowa Code 730.5 defines an employer's responsibility in the event of a positive drug screen. For starters, employers have the right to make employment decisions based on drug test results: "An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive test result for drugs." (Iowa Code 730.5 – 7.f)

Prospective employees have fewer rights if they test positive. In short, employers must notify the applicant in writing of the results of the test, the name and address of the MRO who reported the result, and the applicant's right to request records related to the result. At that point, the employer can choose to rescind the job offer or take other action.

Current employees have more protections, and failing to follow any of the state-mandated regulations upon receipt of a positive test may potentially void an employer's ability to take employment-related action against the employee. If your goal is to avoid employing drug users, then you'd be well-served to familiarize yourself with the law, confirm that your written policy is in accordance, and prepare to seek legal counsel when dealing with a positive result.

Here's an overview of an employer's responsibilities after a positive result is received:

- 1. Notify the employee by certified mail, return receipt requested, of the following:**
 - a. Test results
 - b. Right to a second, confirmatory test of the split specimen at a lab of the employee's choice
 - c. Cost of a confirmatory test, payable by the employee to the employer
- 2. The employee has 7 days from the postmark to respond.**
 - a. Request a confirmation test, identify the lab, and pay for the test
- 3. The same MRO reviews the confirmation test**
 - a. Positive – follow company policy for disciplinary action or termination
 - b. Negative – Reimburse the employee for the cost of the confirmatory test, disregard the initial positive result, consider the test negative

If you receive a positive drug test result, consult the collection site, MRO, and/or laboratory (as well as legal counsel) to ensure you're following the law and fulfilling your employer obligations. Doing so can ensure you have the full rights to proceed in employment matters related to the test.

Other Testing Issues

Along with understanding and following the law in regard to positive tests, I strongly encourage employers to ensure their written policies address two very common situations that occur during collections. Since neither of these are discussed in detail in the Iowa law, our Medical Review Officers suggest defaulting to federal regulations when developing a policy or dealing with these collection issues:

1. Temperature

It is biologically impossible to produce a urine specimen that is below 90 or above 100 degrees Fahrenheit. Doing so means one of two things: The donor is not human, or they're cheating.

Federal regulations require that the original out of temperature specimen be sealed and sent to the lab, and then a second collection is performed under direct observation by a same-sex individual. Some employers skip this step, choosing instead to treat an out of temperature specimen as a refusal to test. In essence, the donor failed to provide a legitimate specimen and therefore is refusing to follow the employer's drug testing policy. Employers then either dismiss applicants who produce out of temp specimens or discipline / terminate current employees who do.

2. Dilute

Dilute specimens aren't as clear-cut as out of temp because biological reasons can contribute. Sometimes it's a simple matter of an applicant drinking too much water in preparation for the test, while for others it's a direct attempt to "water down" the urine to decrease detectable levels of an illegal substance. This is why blue dye is added to the toilet water in a collection restroom.

Federal regulations allow the employer to elect to re-test the individual, but not under observation. The employer can also choose to accept the result as "Negative-Dilute", which is the same as a negative. Our Medical Review Officers recommend a retest as soon as possible, with the second test result standing as final.

Sources:

Quest Diagnostics: <http://www.questdiagnostics.com/home/physicians/health-trends/drug-testing>

A Guide to Workplace Drug Testing: <http://www.state.ia.us/odcp/docs/Drug-FreeWorkplaceGuide7-2-12.pdf>

Iowa Drug Testing Law:

<https://coolice.legis.iowa.gov/Cool-ICE/default.asp?category=billinfo&service=iowaCode&input=730.5>