

SPRING 2021

CCDAPP Newsletter

Congratulations to the following individuals on their initial or renewal certification:

New Certification:

Scott Kitchens,
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CSAPA Renewal of Certification:

Barbara Martin
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13 is the average age children begin to experiment with drugs!

<https://www.alpinerecoverylodge.com/11-alcohol-drug-addiction-facts-didnt-know/>



Have workplace drug testing program questions?

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STATE MARIJUANA INITIATIVES

An increasing number of states have passed medical marijuana laws, making it legal under state law to use marijuana for certain medicinal purposes when the use is authorized with a “physician recommendation.” Several states have also passed recreational marijuana laws, with varying levels of decriminalization for possession and use. Regardless of state laws authorizing medical or recreational marijuana use, marijuana is still classified as a Schedule I controlled substance under the federal Controlled Substances Act, so under federal law marijuana cannot be “legally prescribed” for use (or used recreationally) in any state.

As a reminder, the Department of Transportation (DOT) has issued clarifications - DOT’s Drug and Alcohol Testing Regulation does not authorize “medical marijuana” or “recreational use” under a state law or initiative to be a valid medical explanation for a covered employee’s positive drug test result. There have also been no changes to the drug testing panel under the federal Drug-Free Workplace Program (DFWP). The DFWP will continue to test for Schedule I and Schedule II controlled substances at the established cut off levels listed in the Mandatory Guidelines.

Even though marijuana is a prohibited Schedule I drug, there are currently FDA approved medications - a Schedule III medication (Marinol), and two Schedule II medications (Cesamet and Syndros - a liquid) that can be prescribed and legally used under federal law.

If prescribed, these drugs could cause a laboratory positive marijuana metabolite result, but the prescription would constitute a legitimate medical explanation. A DOT-covered employee may not be medically qualified to perform safety-sensitive duties while taking these medications, but with a valid prescription they would not result in an MRO confirmed positive test.

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Changing Times, Changing Workplaces

By Yvette Farnsworth Baker, ESQ
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OraSure Technologies

One of the biggest disruptions to the workplace in 2020 was the seismic and almost instantaneous shift to working from home due to the COVID-19 pandemic. By June 2020, less than 30 percent of U.S. employees were working on their business premises.¹ While at the time most people anticipated that changes would be temporary, after a year of uncertainty one thing is clear: remote working will be a significant part of the future.

The future of the workplace

The past year has alleviated some major concerns about working from home. For one, the vast majority of employers and employees have reported that productivity has not suffered. In a 2020 survey by Global Workplace Analytics, 86 percent of respondents reported that they were fully productive while working from home.² Additionally, 78 percent of office workers reported in the same survey that they had the resources they needed to work successfully from home, despite the fact that remote work sprang on most industries rather abruptly.

It is also clear that employees want to continue to work remotely into the future. Seventy-six percent of respondents in the above-cited survey want to work from home permanently at least a few days per week once restrictions are lifted. Similarly, 89 percent of business executives believe that most or many employees will work from home at least one day per week on a permanent basis, according to a December 2020 survey by PwC.³

Companies are taking notice of the shift and its long-term ramifications. PwC reported that at the end of 2020, 87 percent of business executives planned to make changes to their company's real estate portfolio in 2021.⁴ In one example, retailer REI announced that it would sell its brand new, unused 8-acre corporate campus in Washington, so that the company could "lean into remote working as an engrained, supported, and normalized model."⁵ In the survey by PwC, 72 percent of executives reported that they would be investing in tools for virtual collaboration, and 64 percent said they planned to train managers to supervise a more virtual workforce.

How employees will connect

As working from home is here to stay, employers are looking for new ways to incorporate collaboration and teamwork into the new normal. Around half of U.S. business executives are looking to invest in: conference rooms with enhanced virtual connectivity (57 percent), communal space in the office (48 percent), and unassigned seating (45 percent).⁶ Workplaces look to transform to a space for employees to come together to collaborate, with employers then permitting individual work to be done remotely. The number one purpose of the workplace now, according to employees, is collaboration.⁷

Businesses are relying on technology to help connect workplace teams in the meantime. In 2020, Zoom had over 300 million meeting participants per day, Google Meets had over 100 million per day, and Microsoft Teams reported 75 million per day.⁸ Microsoft reported that its Microsoft 365 apps enabled 30 billion collaboration minutes in a single day in October 2020.⁹ And despite preferences for collaborating in-person, 87 percent of remote employees report they do feel more connected to their co-workers by using videoconferencing.¹⁰

The future of drug testing with remote employees

Employers can and should continue to implement drug testing policies even when employees work remotely. Beyond safety risks, substance-abusing employees cost employers in healthcare costs and higher insurance premiums, loss of productivity, absenteeism, and turnover. Across all industries, the average cost per year of a substance-abusing employee is \$7,000 in costs outside of workplace accidents.¹¹ Substance abusers perform at only 67% of their potential—making them 1/3 less productive than their non-substance abusing co-workers.¹² Employers should also be concerned about data security and company information privacy when considering the risks posed by substance-abusing employees working from home, as lapses in judgment is often a major factor in data breach.¹³

Continued on next page

Additionally, we know that substance abuse has increased during the COVID-19 pandemic. Thirteen percent of Americans reported starting or increasing substance abuse due to the pandemic, according to the Centers for Disease Control and Prevention.¹⁴ Overdoses have spiked since the onset of the pandemic. Activities that relieve stress such as social interaction and exercise have been more difficult to access due to safety concerns and restrictions.¹⁵ And it is reasonable to believe that working from home would facilitate a sharp rise in substance abuse among susceptible employees, as the temptation to use during the workday is much higher at home than in the office. Now more than ever employers need to be vigilant in monitoring substance abuse among employees.

Employers have many options available to them in implementing workplace drug testing with remote employees. Employees working from home can still be required to report to a collection site for sample collection. Employers might even consider looking into mobile collection services. Employees can also be required to report to work on-site for the purpose of oral fluid collection for drug testing.

Additionally, telehealth is available now for sample collection. Oral fluid testing kits can be sent to an employee. The employee can then log on to a videoconference platform for observed collection of their oral fluid sample. A trained observer monitors the sample collection, and the sample is then sent in for testing. Alternatively, a video recording of the collection can be reviewed at a later time to ensure collection accuracy. This is common with telehealth apps designed specifically for drug and alcohol testing purposes. While this method is relatively new, it has the potential to quickly rise in popularity with the increase in working from home and with the rise in oral fluid testing.

Employers will need to review and likely revamp their workplace drug testing policies to specifically address remote employees. Firstly, employees working from home should be directly informed that they are subject to drug testing. An ounce of deterrence is worth a pound of penalty, and employees will likely be unaware that they are subject to testing even when working remotely. Policies with reasonable suspicion testing should define ways that suspicion is to be determined in a remote work situation. Factors such as decreased productivity, absenteeism, erratic work times, and/or signs of impairment observed on conference calls or video conferencing are some ways to include signs of impairment for off-site employees. Policies may also address timelines that remote workers are required to adhere to for drug testing, whether for random tests, reasonable suspicion tests, or scheduled periodic tests.

Employers should always be sure to consult knowledgeable professionals in order to verify that any changes to their policies comply with state and federal law requirements. There may be limitations on testing methodologies, collections, and sample types (among others) that an employer will need to consider.

Conclusion

Working from home will be a significant part of the future of the workplace. Remote work will not eliminate the risks and costs of substance abuse, and employers will be well-served to take the time now to consider how to implement workplace drug testing most effectively with remote employees.

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The Pros and Cons of Workplace Drug Testing

Employers must provide a safe work environment, and they want to ensure their employees are productive, but is maintaining a drug-testing program in furtherance of these goals worth the hassle? The answer may depend on the workplace. Companies that value risk mitigation should really consider a drug-free-workplace program," Simo suggested. Drug testing is effective in preventing accidents, health issues and costs, absenteeism, and litigation, he said, noting that screening can also protect employees from injury and improve productivity.

Generally, employers choose one or more of the following times to drug test: Pre-employment; Random; Post-accident; and when observable behaviors trigger reasonable suspicion.

Pre-employment drug testing is the most common type, according to Quest Diagnostics, which provides drug-screening services. Most states allow pre-employment drug screens, though some require employers to provide notice to applicants. "Testing an applicant is different than testing an employee," said Kathryn Russo, an attorney with Jackson Lewis in Melville, N.Y. "They don't work for you yet."

Businesses with employees who work in safety-sensitive jobs may want to perform random screening for workers who drive, operate heavy equipment or work on dangerous construction sites. "If you're in a random testing pool, you never know when you'll get picked," Russo noted. "It's pretty effective as a deterrent." But "multistate employers must be really conversant with the laws in the locations where they operate because the laws vary so much," Russo said.

Employers also may want to conduct drug screens after accidents to determine if on-the-job intoxication may have contributed. Quest Diagnostics recommends that post-accident testing be done within 12 hours of the incident. "Different drugs may have different windows of detection," according to the company's website. "Generally, employees should not return to work until after test results have been received."

What if an employee appears to be under the influence? Simo recommended that all employers develop a program to test employees for reasonable suspicion when they exhibit behaviors that may indicate intoxication. "This testing can be done on an ad hoc basis at any occupational health clinic," he said. The observed behaviors and reasons for sending the employee for drug screening should be thoroughly documented.

Note that companies can have different drug-testing rules for different positions. "A drug test is really no different than a background investigation," according to Simo. "Depending on the position, the type of investigation that is conducted can be different."

In general, employers that want to do drug testing usually have some employees who are performing dangerous or safety-sensitive jobs. Drug-free-workplace programs are all about deterrence and risk mitigation.

Source: <https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/the-pros-and-cons-of-workplace-drug-testing.aspx>

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