

**Pre-Employment Drug Testing Laws by State**

The job market continues to be very tight, and companies are increasingly coming to terms with the fact that finding and hiring top talent isn’t as easy as it once was. With so many states (33 at last count) legalizing medical and/or recreational marijuana, the pros and cons of drug or alcohol testing job applicants has become something of a hot topic. Marijuana accounts for [nearly half of all positive drug test results](https://www.questdiagnostics.com/home/physicians/health-trends/drug-testing.html). **The rate of marijuana positives in the general U.S. workforce increased nearly 8% in urine testing (2.6% in 2017 vs. 2.8% in 2018) and almost 17% since 2014.** So, the question that you might be grappling with is: Do I really want to limit my talent pools by requiring that every prospective employee be tested? Because you can’t pick and choose; if you have a drug testing policy, it has to apply to all applicants, not just a select few. Check out our table for a high-level overview of state laws for applicant drug testing.

**State-by-State Pre-Employment Drug Testing Laws**

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| **State** | **Covered Employers** | **Provisions** | **Medical or Recreational Marijuana Legal** |
| **Alabama** | All | Testing permitted after applicant receives drug-testing policy and a conditional employment offer. | N/A |
| **Alaska** | All employers, including school districts or regional educational attendance areas. | Testing not restricted. Positive results or refusal may be grounds for not hiring. | Medical and Recreational |
| **Arizona** | All private employers, plus school districts and entities that furnish transportation to school districts. | Testing permitted after applicant receives drug testing policy. Refusal to submit to a drug test can be basis for not hiring. Testing is required for school bus driver certification. | Medical |
| **Arkansas** | N/A | No state laws; follows federal law where required. | Medical |
| **California** | State Agencies | Testing permitted for applicants to positions of sensitivity in state agencies if testing is job related. Testing is required for public transportation drivers. | Medical and Recreational |
| **Colorado** | N/A | No state laws; follows federal law where required. | Medical and Recreational |
| **Connecticut** | All private employers | Testing permitted after applicant receives drug-testing policy. Cannot test former employees unless they have been gone for at least 12 months. Testing is required for school bus driver certification. | Medical |
| **Delaware** | Public and private schools and school transportation; Department of Corrections. | Testing is required for school bus driver certification and for security positions at Department of Corrections. | Medical |
| **District of Columbia** | N/A | No state laws; follows federal law where required. | Medical and Recreational |
| **Florida** | Private employers with 3 or more employees. Public employers with safety-sensitive and law enforcement positions. | Testing permitted after applicant receives drug testing policy. Refusal to submit to a drug test can be basis for not hiring. | Medical |
| **Georgia** | State government employers, public schools, and companies that furnish school transportation; private employers. | Testing authorized for applicants of state government, public schools, and private companies. Refusal to submit to a drug test or a positive test result may disqualify applicant from state and public-school employment for two years. | N/A |
| **Hawaii** | All employers | Testing permitted after applicant receives drug testing policy and has opportunity to disclose current prescription and nonprescription drugs being taken. Testing required for civil service applicants with city of Honolulu. | Medical |
| **Idaho** | All employers | Testing permitted. | N/A |
| **Illinois** | N/A | No state laws; follows federal law where required. | Medical |
| **Indiana** | N/A | No state laws; follows federal law where required. | N/A |
| **Iowa** | Public and private employers | Testing permitted if applicant is informed at the time of application that a drug test is required. Ads and applications must carry notice of drug test. | N/A |
| **Kansas** | State government | Testing permitted for applicants to safety-sensitive jobs after a job offer has been made. Ads for safety-sensitive jobs must carry notice of drug test. | N/A |
| **Kentucky** | N/A | No state laws; follows federal law where required. | N/A |
| **Louisiana** | Public and private employers not subject to a federally mandated testing program. | Testing not restricted. | Medical |
| **Maine** | Public and private employers | Testing permitted after applicant receives drug testing policy. Refusal to submit to a drug test or a positive test result can be basis for not hiring. | Medical and Recreational |
| **Maryland** | All employers | Testing not restricted. | N/A |
| **Massachusetts** | N/A | No state laws; follows federal law where required. | Medical and Recreational |
| **Michigan** | N/A | No state laws; follows federal law where required. | Medical and Recreational |
| **Minnesota** | Public and private employers | Testing permitted after applicant receives drug-testing policy and a conditional employment offer and only if all job candidates are tested. | Medical |
| **Mississippi** | Public and private employers | Testing not restricted. | N/A |
| **Missouri** | N/A | No state laws; follows federal law where required. | Medical |
| **Montana** | Public and private employers | Testing permitted for applicants to intrastate transport jobs, hazardous environments jobs, or positions with security, public safety, or fiduciary responsibility. | Medical |
| **Nebraska** | Private employers with six or more employees and public employers | Testing not restricted. | N/A |
| **Nevada** | State agencies | Testing permitted for public safety jobs. | Medical and Recreational |
| **New Hampshire** | N/A | No state laws; follows federal law where required. | Medical |
| **New Jersey** | N/A | No state laws; follows federal law where required. | Medical |
| **New Mexico** | N/A | No state laws; follows federal law where required. | Medical |
| **New York** | N/A | New York City bans pre-employment screening for marijuana use except for safety and security sensitive jobs and jobs bound by a federal or state contract or grant. | Medical |
| **North Carolina** | Public and private employers | Testing not restricted. | N/A |
| **North Dakota** | N/A | No state laws; follows federal law where required. | Medical |
| **Ohio** | All employers | Applicant testing authorized with advance notice to applicant and after offer of employment has been made. | Medical |
| **Oklahoma** | Public and private employers | Applicant testing authorized with advance notice to applicant and after offer of employment has been made. Notice must be in writing, describing methods, procedures, and policies in detail. | Medical |
| **Oregon** | All employers | Testing permitted if reasonable suspicion exists that applicant is under the influence of alcohol or controlled substance. | Medical and Recreational |
| **Pennsylvania** | N/A | No state laws; follows federal law where required. | Medical |
| **Rhode Island** | Public and private employers | Private sector applicant testing permitted only after offer of employment has been made. Public sector testing permitted for jobs involving public safety or when required by federal law. | Medical |
| **South Carolina** | All employers S.C. Code § 1-13-30. | Testing not restricted. | N/A |
| **South Dakota** | State government | Testing permitted for applicants to safety- sensitive state jobs only after offer of employment has been made. Public announcements and ads must carry notice of drug testing requirements. | N/A |
| **Tennessee** | State Dept. of Corrections | Testing not restricted. | N/A |
| **Texas** | N/A | No state laws; follows federal law where required. | N/A |
| **Utah** | Private employers, local government entities, and state institutions of higher education | Testing not restricted in the private sector. Local governments and state colleges can test applicants with advance notice and a written policy. Refusal to submit to a drug test or a positive test result can be basis for not hiring. | Medical |
| **Vermont** | Public and private employers | Testing authorized with advance written notice to applicant, after conditional offer of employment has been made, and if test is part of pre-employment physical. | Medical and Recreational |
| **Virginia** | N/A | No state laws; follows federal law where required. | N/A |
| **Washington** | Private employers seeking to qualify for a 5% workers' comp. premium discount, with approval by state authorities. | Testing authorized with advance written notice and after conditional offer of employment has been made. | Medical and Recreational |
| **West Virginia** | N/A | No state laws; follows federal law where required. | Medical |
| **Wisconsin** | N/A | No state laws; follows federal law where required. | N/A |
| **Wyoming** | N/A | No state laws; follows federal law where required. | N/A |

**Federal Drug Testing Laws**

Job applicants or employees in positions such as airline pilots, bus drivers, railroad employees, taxi drivers, and truck drivers are regulated by the Department of Transportation and must comply with federal laws, which require applicants to take and pass a pre-employment urine test. If a person in one of these positions is ever in an accident on the job, they will also be required to take a post-accident drug test.

The Department of Defense (DOD) created drug testing laws for contractors who work in positions responsible for national security, [Drug-Free Workplace, 42 Code of Federal Regulations (CFR) 223.5](https://www.ecfr.gov/cgi-bin/text-idx?SID=0ade64cd292692848e5b0d2a955f8c4e&mc=true&node=pt48.3.223&rgn=div5#sp48.3.223.223_15). To comply with the rules, every DOD contractor who has any type of security clearance or access to classified information must have a drug-free workplace policy that includes:

* An [employee assistance plan (EAP)](https://www.paycor.com/hcm-basics/what-are-employee-assistance-plans) that coordinates with local resources such as a drug rehab facility
* A stipulation that an employee can self-refer and that supervisors also can refer for drug abuse treatment
* Training for supervisors to help them understand how to detect and respond to illegal drug use
* A formal and supervised employee drug testing policy

DOD rules also require contractors to confirm that drug testing policies are in compliance with applicable state’s laws and also ensure that all labor unions have agreed to the policies.

With a few exceptions (e.g., companies that are awarded federal contracts), private businesses aren’t mandated to test job applicants who make it to the hiring stage, but many do because they receive a discount on their Workers’ Compensation Insurance.

**The “Just Say No” Era**

The majority of today’s drug testing mindset dates back to the Reagan administration, when many companies implemented “drug-free workplace” policies under the United States government’s [Drug-Free Workplace Act of 1988](https://en.wikipedia.org/wiki/Drug-Free_Workplace_Act_of_1988). The act essentially says that any company that gets federal contracts or grants must be a drug-free workplace, or it could lose its federal funding. Pre-employment testing is a key part of the policy.

There’s no question that alcohol and drug use among certain professions can be a dangerous proposition. It can affect judgment and concentration and may put companies at risk for a lawsuit. The [National Council on Alcoholism and Drug Dependence](https://www.ncadd.org/) estimates that employee use of drugs and alcohol has resulted in annual losses of $81 billion. According to Executive Order 12564, federal employees who are involved in national security, law enforcement, protecting life and property, and public health are subject to mandatory drug testing.

Of course, state laws vary when it comes to conducting a test for drugs or alcohol in the workplace or as a pre-employment screening (which is why we created our easy-reference table).

**Types of Drug Tests**

Drug testing is typically conducted prior to tendering an offer of employment. A failed drug test could result in the job offer being withdrawn. Pre-employment drug tests typically scan for six substances:

* Amphetamines (speed, crank, meth)
* Ecstasy
* THC (marijuana, hash)
* Cocaine (crack)
* Opiates (codeine, morphine, heroin)
* PCP (angel dust)

**Pre-employment Drug Tests and the Constitution**

An employer’s test typically doesn’t violate an applicant’s rights, but the way the test was carried out (or how its results are used) can sometimes be a bit of a gray area. The U.S. Supreme Court has ruled that wholesale drug tests with no specific motivation for suspicion are unconstitutional. They also ruled that the results of an applicant or employee testing positive can’t be used in future criminal cases without the person’s consent. And a test can be challenged on constitutional grounds if the results are indiscriminately revealed or if testing is excessive or otherwise inappropriate. So, it’s easy to see why many employers are abandoning applicant drug testing altogether.

If your company is mandated to screen applicants, it’s important that you maintain compliance with federal laws as well as those in the states where you do business. Check out Paycor’s [Recruiting section](https://www.paycor.com/resource-center/category/recruiting) on our website to see all of the other steps in the recruiting and onboarding process.



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*The information provided in our chart is for educational purposes only; it is not legal advice. Always check regulations to help ensure compliance.*