



Drug Testing, Laws, and Regulations

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MARIJUANA IN THE WORKPLACE TOPS EMPLOYERS' CONCERNS

By Current Consulting Group Staff

Employers are still concerned about the legalization of marijuana and how it affects the workplace, according to a new survey conducted by the Current Consulting Group. As a result, the future of drug testing for marijuana remains somewhat uncertain. When asked: "What is your company's position on testing for marijuana?":

- 77% said, "We test and plan to continue testing for marijuana."
- 9% said, "We are not sure what to do about testing for marijuana."
- 9% said, "We have dropped marijuana from our drug-test panel."
- 5% said, "We are considering dropping marijuana from our drug-test panel in the next 12 months."

The top reasons why employers say they would drop marijuana from their drug-test panel include:

- "It makes it most difficult to hire new people" (50%),
- "We are concerned about lawsuits/legal liability if we test for marijuana" (40%) (Note: in a separate question, 5% said they had already faced legal challenges for testing for marijuana), and
- What employees do on their own time is not our company's business" (10%).

Another big reason why testing for marijuana may be in trouble is that many employers actually believe conditions in their workplaces improved or were unchanged after they discontinued testing for cannabis:

- 63% said they have seen no change in overall work performance since dropping marijuana.
- 38% said it has been easier to find new people to hire.
- 17% said employee morale has improved.
- 17% said productivity has increased.

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WHY DON'T MORE STATES ENACT DRUG TEST CHEATING LAWS?

By Bill Current, President and Founder of Current Consulting Group, LLC

Drug test cheating is a problem that won't go away. Drug test providers and their customers are concerned about the issue. In a recent survey conducted by the Current Consulting Group of employers who drug test, 68% of employers expressed some level of concern for drug testing cheating with 17% indicating that they were "very concerned." [1] No one knows the precise percentage, but many drug testing experts believe that at least 10% of all drug test samples have been adulterated, switched, or tampered with in some manner. [2]

That seems high, doesn't it? But consider this: according to a recent federal government report, more than 51% of all drug users are employed and 52.5 million Americans aged 12 and older admit to being regular marijuana users. [3] Yet, only 4.6% of all drug tests are positive according to one major laboratory. [4] Search the internet for "beat the drug test" and millions of sources will pop up offering advice and/or products and services to help would-be cheaters beat the system. Given all that, the rate of drug test cheating could be higher than 10%.



"drug testing experts believe that at least 10% of all drug test samples have been adulterated, switched, or tampered..."

Sage James of Colorado Mobile Drug Testing, a company owned and operated by Chuck Marting, wrote on a social media platform: "Only 8 collections this morning and 4 of those provided synthetic urine...this could definitely be an indication that passing recreational drug laws is a major issue for Colorado employers."

"It's not uncommon between our two offices to have 5-10 per day with synthetic urine," Marting said. "I've done a lot of teaching and training on it. Collectors need to ask questions of donors to learn if they have synthetic urine on them without creating a confrontation. We're hyper aware of the situation here and have been very successful in thwarting such efforts."

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[1] 2023 Current Consulting Group Employer Drug Testing Survey. Published 10/2023.

[2] 2023 Current Consulting Group Drug Testing Industry Survey. Published 5/2023.

[3] <https://www.samhsa.gov/data/release/2021-national-survey-drug-use-and-health-nsduh-releases>. Retrieved 11/1/2023.

[4] <https://www.questdiagnostics.com/business-solutions/employers/drug-screening/knowledge-center/drug-testing-index>. Retrieved 11/1/2023.

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<https://www.webmd.com/mental-health/addiction/news/2022/11/01/od-report-record-high-12-month-drug-overdose-death-toll>

UNEMPLOYMENT DENIAL: WHAT THE LAW SAYS

By Current Consulting Group Staff

The Federal government pays out billions of dollars each year in unemployment insurance. During the early months of the coronavirus pandemic, in 2020, this number rose to nearly \$23.73 billion. In times like the 2012 recession, it was even higher, near \$100 billion [1]. When employees leave a company and file a claim for unemployment benefits, that employer's unemployment tax rate increases. So even though employers do not directly pay a former employee's benefit checks, he or she pays more and more into the system each time a former employee wins an unemployment claim.

Unemployment compensation (UC) laws vary from state to state, but in many states these laws provide opportunities for employers to contest a former employee's claim. If an employee is let go due to intoxication, failing a drug test, or refusing a routine drug test, this is often grounds to deny a claim; however, an employer must be aware of the UC laws in his or her state and be ready to show evidence of misconduct on the part of the employee. This is where drug testing comes into play.

A considerable number of states will allow an employer to deny UC claims if the individual in question was discharged for failing a drug test that followed the state's voluntary drug testing law. This increases the incentives for employers to make sure their drug testing policies are compliant with state laws, even in voluntary states.



This is the case in Arizona where the voluntary law provides limited legal protection to compliant employers. Its law may not seem as enticing as others because it does not provide a workers' compensation premium discount, but when coupled with UC denial and lower unemployment tax rates, this particular voluntary statute seems more attractive.

This applies and goes even further in states such as Georgia. In Georgia, employers that follow the voluntary law receive a workers' compensation premium discount. Additionally, they benefit from a lower unemployment tax rate for denying UC claims. They even save money on workers' compensation (WC) payouts because both UC and WC laws require compliance with the voluntary law. In such states, knowing the law and how it can benefit an employer adds up to considerable money saved and a maximized return on investment.

[1]<https://www.statista.com/statistics/284857/total-unemployment-benefits-paid-in-the-us/#:~:text=In%20September%202023%2C%202.21%20billion,impact%20of%20the%20coronavirus%20pandemic>. Pulled 10/30/23.

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TOP 5 THINGS TO KNOW ABOUT DRUG TESTING IN DELAWARE

By Amanda Jones, Staff Writer & Editor for Current Consulting Group, LLC

Known as the first state, Delaware is a tiny but mighty force of industry. Those who are looking for an ideal spot for their business may want to give Delaware a try as it's one of only five states without sales tax [1]. They also do not impose a value-added tax (VAT), making it an appealing place for businesses (including more than 68% of Fortune 500 companies [2]). Delaware certainly provides incentives for bringing your business to their state. But do they provide the right tools to make your business safe from drugs and substance use?

Following are five things you need to know about what Delaware is doing in drug testing to keep their employees and businesses safe.

- 1. Drug Testing Law Type:** Delaware is a drug testing friendly state with few requirements or restrictions except in certain industries.
- 2. Random Testing:** Most industries do not have a statute in place requiring random testing. However, all safety-sensitive, security, and childcare employees are subject to random testing for illegal use of drugs.[3]
- 3. Workers'/Unemployment Compensation Denial:** There exists a voluntary law in Delaware that is a workplace safety regulation - it contains drug and alcohol testing requirements that employers must comply with if they want to receive up to a 19% discount on their workers' compensation insurance premiums, in addition to many other requirements outside of workplace drug and alcohol testing that employers must comply with in order to receive the discount. It is best to consult the law in full for all the details. Employers must apply for the Workplace Safety Program annually.

[1] <https://www.cnn.com/select/states-with-no-sales-tax/>

[2] <https://www.incf.com/blog/post/how-delaware-thrives-business-tax-haven>

[3] <https://legis.delaware.gov/SessionLaws/Chapter?id=17400>

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The Current Consulting Group provides extensive information about state drug testing laws that affect workplace drug and alcohol testing at [CurrentCompliance.org](https://www.CurrentCompliance.org).

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