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HEADS UP: Iowa is a drug testing friendly state though some restrictions apply.

KEY ISSUES AT A GLANCE:

Drug Testing Circumstances:	PRE-EMPLOYMENT AND EMPLOYEE TESTING PERMITTED, INCLUDING RANDOM
Specimens Permitted:	URINE, BLOOD, BREATH AND ORAL FLUID PERMITTED
Instant Testing:	PERMITTED; LAB CONFIRMATION REQUIRED FOR INITIAL SCREEN POSITIVES
SAMHSA Guidelines Required:	NOT SPECIFICALLY MENTIONED
Workers' Comp Discount:	NO
Workers' Comp Reduction:	YES
Unemployment Denial:	NO

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POLICY ISSUES	Status	Comments
WRITTEN POLICY	Required	Many conditions apply; must ensure applicants and employees have a chance to see it... also parents of minors who are employees. See Notes
NOTICE OF POLICY	Required	To both employees and job applicants
TESTING PERMITTED		
Applicant	Permitted	No restrictions
Reasonable suspicion (for cause)	Permitted	See definition in the Notes Section
Post-accident	Permitted	Accidents involving injuries that result in certain kinds of claims being filed; property damage of \$1000 or more. See Notes Section under Reasonable Suspicion #5
Periodic exam	Not Mentioned	
Return-to-duty	Not Mentioned	
Random	Permitted	Except for workers not subject to test pursuant to a collective bargaining agreement. See Notes.
Follow Up	Permitted	As follow up to rehabilitation
Other		
ALCOHOL TESTING	Permitted	Conducted per SAMHSA/DOT regs; Some conditions apply; 0.04 minimum for positive; may not terminate employee for first-time positive alcohol test unless he refuses rehab or fails to complete it
TRAINING REQUIRED	Required	Education for all employees; supervisors must have 2 hours initially and 1 hour annual follow up training
EMPLOYEE ASSISTANCE PROGRAM	Mentioned	Employees must be made aware of EAP services if provided; at minimum employer must provide information about local services available
DRUG TESTING PRACTICES & PROCEDURES	Status	Comments
SPECIMEN SPECIFIED	Mentioned	Only urine, saliva, breath, and blood; a blood test may only be conducted for post-accident when admin. by person providing treatment and not at the request of employer. See Notes.
DRUG PANEL	Defined	See Notes for definition of "Drug"
ON-SITE TESTING PERMITTED	Permitted	Screen only; lab confirmation of positives required
COLLECTION PROCEDURES	Required	See Testing Procedures in the Notes Section
DIRECT OBSERVATION		See Testing Procedures in the Notes Section
OPP. TO PROVIDE INFORMATION BEFORE TEST	Required	Must inform of substances to be tested for
CHAIN OF CUSTODY PROTOCOLS	Required	See Testing Procedures in the Notes Section
CERTIFIED LABORATORY	Required	SAMHSA-cert. lab for confirmation testing mentioned
SPLIT SPECIMEN REQUIRED	Required	See Testing Procedures in the Notes Section
CUT-OFF LEVELS SPECIFIED	Not Mentioned	

CONFIRMATORY TEST REQUIRED	Required	At a certified laboratory; GC/MS or other comparably reliable analytical method
MEDICAL REVIEW OFFICER	Required	
COST FOR DRUG TESTING PAID BY EMPLOYER	Required	Borne by employer for all drug tests required by employer; individual pays for confirmatory retest, which is reimbursed by employer if second test is negative... amount paid by employee must be consistent with cost employer would pay for a drug test; employer provides transportation or pays reasonable transportation costs to testing sites that are not at the work site
TESTING TIME CONSIDERED WORK	Mentioned	All testing time is considered work time
SPECIMEN, STORAGE BY LAB REQUIRED	Required	See statute for details
CONFIDENTIALITY	Required	Specific section contained in the statute
OUTCOMES	Status	Comments
NOTIFICATION OF TEST RESULT IN WRITING	Required	To employees by certified mail/return receipt requested with info. on retest opportunity; to applicants in writing with MRO contact information. State Supreme Court ruled this is a critical matter that requires attention and should be stated as so in the written notification to the donor.
NO ADVERSE ACTION UNLESS CONFIRMED	Required	Only for a confirmed positive result
DISCIPLINARY PROCEDURES	Mentioned	See "Disciplinary Procedures" in Notes
EMPLOYEE MAY REQUEST COPY OF TEST RESULT	Mentioned	Upon written request within 7 working days
OPPORTUNITY TO REBUT/EXPLAIN	Required	It is implied in the statute
OPPORTUNITY TO RETEST	Required	For employee positive results, paid by employee; if negative reimbursed by employer; must be reviewed by MRO
REHABILITATION FOR FIRST-TIME POSITIVE	Not Required	Implied but not required
COST OF REHABILITATION EMPLOYER	Not Required	Mentioned but not required. See Notes Section for rehabilitation requirements for alcohol test positives.
INCENTIVES & PENALTIES	Status	Comments
PROTECTION AGAINST LAWSUITS		Limited protections provided. See statute for details.
WORKERS' COMPENSATION PREMIUM DISCOUNT	No	
WORKERS' COMPENSATION REDUCTION/DENIAL	Yes	Separate law. Iowa Code Ann §85.16. See Notes
UNEMPLOYMENT COMPENSATION DENIAL	No	
FOR CAUSE TERMINATION FOR A POSITIVE RESULT	Mentioned	Mentions termination, suspension, rehab. and non hire; see Alcohol Testing above for more information
CIVIL ACTIONS, IF VIOLATION	Yes	Employer may be held liable; labs and MROs specifically mentioned for administrative civil remedies
CRIMINAL ACTIONS, IF VIOLATION	Not Mentioned	

NOTES & STATUTORY LANGUAGE

Case Law

Sims vs. NCI Holding Corporation underscores the importance of strict compliance with the statute in Iowa. Specifically addressed written notification of a drug test result and the donor's right to request a retest at his or her own expense.

Read an excellent review of the case at the following link: <http://www.dickinsonlaw.com/docs/publications/276.pdf>

Definitions

"Reasonable suspicion drug or alcohol testing" means drug or alcohol testing based upon evidence that an employee is using or has used alcohol or other drugs in violation of the employer's written policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. For purposes of this paragraph, facts and inferences may be based upon, but not limited to, any of the following:

- (1) Observable phenomena while at work such as direct observation of alcohol or drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use.
- (2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- (3) A report of alcohol or other drug use provided by a reliable and credible source.
- (4) Evidence that an individual has tampered with any drug or alcohol test during the individual's employment with the current employer.
- (5) Evidence that an employee has caused an accident while at work which resulted in an injury to a person for which injury, if suffered by an employee, a record or report could be required under chapter 88, or resulted in damage to property, including to equipment, in an amount reasonably estimated at the time of the accident to exceed one thousand dollars.
- (6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

"Safety-sensitive position" means a job wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph.

"Drug" means a substance considered a controlled substance and included in schedule I, II, III, IV, or V under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.

Written policy and other testing requirements

- a. (1) Drug or alcohol testing or retesting by an employer shall be carried out within the terms of a written policy which has been provided to every employee subject to testing, and is available for review by employees and prospective employees. If an employee or prospective employee is a minor, the employer shall provide a copy of the written policy to a parent of the employee or prospective employee and shall obtain a receipt or acknowledgement from the parent that a copy of the policy has been received. Providing a copy of the written policy to a parent of a minor by certified mail, return receipt requested, shall satisfy the requirements of this subparagraph.
- (2) In addition, the written policy shall provide that any notice required by subsection 7, paragraph "i", to be provided to an individual pursuant to a drug or alcohol test conducted pursuant to this section, shall also be provided to the parent of the individual by certified mail, return receipt requested, if the individual tested is a minor.
- (3) In providing information or notice to a parent as required by this paragraph, an employer shall rely on the information regarding the identity of a parent as provided by the minor.
- (4) For purposes of this paragraph, "*minor*" means an individual who is under eighteen years of age and is not considered by law to be an adult, and "*parent*" means one biological or adoptive parent, a stepparent, or a legal guardian or custodian of the minor.

b. The employer's written policy shall provide uniform requirements for what disciplinary or rehabilitative actions an employer shall take against an employee or prospective employee upon receipt of a confirmed positive drug or alcohol test result or upon the refusal of the employee or prospective employee to provide a testing sample. The policy shall provide that any action taken against an employee or prospective employee shall be based only on the results of the drug or alcohol test. The written policy shall also provide that if rehabilitation is required pursuant to paragraph "g", the employer shall not take adverse employment action against the employee so long as the employee complies with the requirements of rehabilitation and successfully completes rehabilitation.

c. Employers shall establish an awareness program to inform employees of the dangers of drug and alcohol use in the workplace and comply with the following requirements in order to conduct drug or alcohol testing under this section:

(1) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(2) If an employer does not have an employee assistance program, the employer must maintain a resource file of alcohol and other drug abuse programs certified by the Iowa department of public health, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file.

d. An employee or prospective employee whose drug or alcohol test results are confirmed as positive in accordance with this section shall not, by virtue of those results alone, be considered as a person with a disability for purposes of any state or local law or regulation.

e. If the written policy provides for alcohol testing, the employer shall establish in the written policy a standard for alcohol concentration which shall be deemed to violate the policy. The standard for alcohol concentration shall not be less than .04, expressed in terms of grams of alcohol per two hundred ten liters of breath, or its equivalent.

f. An employee of an employer who is designated by the employer as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3). An employer may have more than one pool of safety-sensitive employees subject to drug or alcohol testing pursuant to subsection 8, paragraph "a", subparagraph (3), but shall not include an employee in more than one safety-sensitive pool.

g. Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph "a", subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

(1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan.

(2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan

with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee's health care plan.

(3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph.

Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee's failure to comply with any requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employee pursuant to the rehabilitation.

h. In order to conduct drug or alcohol testing under this section, an employer shall require supervisory personnel of the employer involved with drug or alcohol testing under this section to attend a minimum of two hours of initial training and to attend, on an annual basis thereafter, a minimum of one hour of subsequent training. The training shall include, but is not limited to, information concerning the recognition of evidence of employee alcohol and other drug abuse, the documentation and corroboration of employee alcohol and other drug abuse, and the referral of employees who abuse alcohol or other drugs to the employee assistance program or to the resource file maintained by the employer pursuant to paragraph "c", subparagraph (2).

Alcohol Testing

Confirmation required of initial screen positives; law seems to indicate that an MRO must verify confirmed alcohol positives; positive level cannot be less than 0.04

Disciplinary Procedures

a. Upon receipt of a confirmed **positive drug or alcohol test result** which indicates a violation of the employer's written policy, or upon the **refusal** of an employee or prospective employee to provide a testing sample, an employer may use that test result or test refusal as a valid basis for disciplinary or rehabilitative actions pursuant to the requirements of the employer's written policy and the requirements of this section, which may include, among other actions, the following:

(1) A requirement that the employee enroll in an employer-provided or approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, participation in and successful completion of which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies.

(2) Suspension of the employee, with or without pay, for a designated period of time.

(3) Termination of employment.

(4) Refusal to hire a prospective employee.

(5) Other adverse employment action in conformance with the employer's written policy and procedures, including any relevant collective bargaining agreement provisions.

b. Following a drug or alcohol test, but prior to receipt of the final results of the drug or alcohol test, an employer may suspend a current employee, with or without pay, pending the outcome of the test. An employee who has been suspended shall be reinstated by the employer, with back pay, and interest on such amount at

eighteen percent per annum compounded annually, if applicable, if the result of the test is not a confirmed positive drug or alcohol test which indicates a violation of the employer's written policy.

Specimen (from the Governor's Office Guide to Workplace Drug Testing)

The collection of samples must be performed under (a) sanitary conditions, (b) with regard to the privacy of the individual providing the specimen, and (c) in a way to preclude contamination or substitution of the specimen. **Typically urine is the specimen collected for drug testing and breath is collected for alcohol tests. Iowa Code Section 730.5 was amended in 2004 to also permit oral fluids specimens for drug testing. Hair is not a permitted testing specimen under Iowa law.** The only time an employer may take action based on the results of a blood test for drugs or alcohol is when an employee is involved in an accident at work, and the blood test is administered by a care provider without direction from the employer.

http://www.iowa.gov/odcp/images/pdf/workplace_guide_update_Oct_2004.pdf

Testing Procedures

All sample collection and testing for drugs or alcohol under this section shall be performed in accordance with the following conditions:

a. The collection of samples shall be performed under sanitary conditions and with regard for the privacy of the individual from whom the specimen is being obtained and in a manner reasonably calculated to preclude contamination or substitution of the specimen. If the sample collected is urine, procedures shall be established to provide for individual privacy in the collection of the sample unless there is a reasonable suspicion that a particular individual subject to testing may alter or substitute the urine specimen to be provided, or has previously altered or substituted a urine specimen provided pursuant to a drug or alcohol test. For purposes of this paragraph, "*individual privacy*" means a location at the collection site where urination can occur in private, which has been secured by visual inspection to ensure that other persons are not present, which provides that undetected access to the location is not possible during urination, and which provides for the ability to effectively restrict access to the location during the time the specimen is provided. If an individual is providing a sample and collection of the sample is directly monitored or observed by another individual, the individual who is directly monitoring or observing the collection shall be of the same gender as the individual from whom the sample is being collected.

b. Sample collection for testing of current employees, except for the collection of a sample for alcohol testing conducted pursuant to paragraph "f", subparagraph (2), shall be performed so that the specimen is split into two components at the time of collection in the presence of the individual from whom the sample or specimen is collected. The second portion of the specimen or sample shall be of sufficient quantity to permit a second, independent confirmatory test as provided in paragraph "i". If the specimen is urine, the sample shall be split such that the primary sample contains at least thirty milliliters and the secondary sample contains at least fifteen milliliters. Both portions of the sample shall be forwarded to the laboratory conducting the initial confirmatory testing. In addition to any requirements for storage of the initial sample that may be imposed upon the laboratory as a condition for certification or approval, 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.

c. Sample collections shall be documented, and the procedure for documentation shall include the following:

(1) Samples, except for samples collected for alcohol testing conducted pursuant to paragraph "f", subparagraph (2), shall be labeled so as to reasonably preclude the possibility of misidentification of the

person tested in relation to the test result provided, and samples shall be handled and tracked in a manner such that control and accountability are maintained from initial collection to each stage in handling, testing, and storage, through final disposition.

(2) An employee or prospective employee shall be provided an opportunity to provide any information which may be considered relevant to the test, including identification of prescription or nonprescription drugs currently or recently used, or other relevant medical information. To assist an employee or prospective employee in providing the information described in this subparagraph, the employer shall provide an employee or prospective employee with a list of the drugs to be tested.

d. Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the possibility of sample contamination, adulteration, or misidentification.

e. All confirmatory drug testing shall be conducted at a laboratory certified by the United States Department of Health and Human Services' substance abuse and mental health services administration or approved under rules adopted by the Iowa department of public health.

f. Drug or alcohol testing shall include confirmation of any initial positive test results. An employer may take adverse employment action, including refusal to hire a prospective employee, based on a confirmed positive drug or alcohol test.

(1) For drug or alcohol testing, except for alcohol testing conducted pursuant to subparagraph (2), confirmation shall be by use of a different chemical process than was used in the initial screen for drugs or alcohol. The confirmatory drug or alcohol test shall be a chromatographic technique such as gas chromatography/mass spectrometry, or another comparably reliable analytical method.

Alcohol Testing

Notwithstanding any provision of this section to the contrary, alcohol testing, including initial and confirmatory testing, may be conducted pursuant to requirements established by the employer's written policy. The written policy shall include requirements governing evidential breath testing devices, alcohol screening devices, and the qualifications for personnel administering initial and confirmatory testing, which shall be consistent with regulations adopted as of January 1, 1999, by the United States department of transportation governing alcohol testing required to be conducted pursuant to the federal Omnibus Transportation Employee Testing Act of 1991.

Random (Unannounced) Testing

730.5.8(a)

Random or unannounced testing is permitted of the following groups of employees:

- a) The entire employee population at a particular work site of the employer
- b) The entire full-time active employee population at a particular work site
- c) All employees at a particular work site who are in safety-sensitive positions

The only exceptions are:

- a) Employees not subject to drug testing pursuant a collective bargaining agreement
- b) Employees not scheduled to be at work at the time the testing is to take place
- c) Employees excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees

Cost of Rehabilitation Employer

I.C.A. §730.5(9)

(g) Upon receipt of a confirmed positive alcohol test which indicates an alcohol concentration greater than the concentration level established by the employer pursuant to this section, and if the employer has at least fifty employees, and if the employee has been employed by the employer for at least twelve of the preceding eighteen months, and if rehabilitation is agreed upon by the employee, and if the employee has not previously violated the employer's substance abuse prevention policy pursuant to this section, the written policy shall provide for the rehabilitation of the employee pursuant to subsection 10, paragraph "a", subparagraph (1), and the apportionment of the costs of rehabilitation as provided by this paragraph.

(1) If the employer has an employee benefit plan, the costs of rehabilitation shall be apportioned as provided under the employee benefit plan.

(2) If no employee benefit plan exists and the employee has coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned as provided by the health care plan with any costs not covered by the plan apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars toward the costs not covered by the employee's health care plan.

(3) If no employee benefit plan exists and the employee does not have coverage for any portion of the costs of rehabilitation under any health care plan of the employee, the costs of rehabilitation shall be apportioned equally between the employee and the employer. However, the employer shall not be required to pay more than two thousand dollars towards the cost of rehabilitation under this subparagraph.

Rehabilitation required pursuant to this paragraph shall not preclude an employer from taking any adverse employment action against the employee during the rehabilitation based on the employee's failure to comply with any requirements of the rehabilitation, including any action by the employee to invalidate a test sample provided by the employee pursuant to the rehabilitation.

Workers' Compensation Denial

85.16 WILLFUL INJURY -- INTOXICATION.

No compensation under this chapter shall be allowed for an injury caused:

1. By the employee's willful intent to injure the employee's self or to willfully injure another.
2. *By the employee's intoxication, which did not arise out of and in the course of employment but which was due to the effects of alcohol or another narcotic, depressant, stimulant, hallucinogenic, or hypnotic drug not prescribed by an authorized medical practitioner, if the intoxication was a substantial factor in causing the injury.*
3. By the willful act of a third party directed against the employee for reasons personal to such employee.