

CHECKLIST | BEST PRACTICES FOR REASONABLE SUSPICION DRUG TESTING



Reasonable suspicion drug testing in the workplace can be a powerful tool for helping employers ensure workplace safety, employee productivity, company reputation and the integrity of a drug-free workplace policy. This type of testing is usually triggered by observed behaviors or actions that could indicate an employee is under the influence of drugs at work. Examples of these indications may include slurred speech, loss of balance, or even just a decline in performance or productivity. However, it is important for employers to ensure that the reasons leading to a decision to conduct drug testing based on suspicion are free of bias and meet all applicable compliance standards. This helps mitigate any risk of penalties or litigation related to the testing while maintaining employee trust and morale.

This checklist outlines key steps for conducting reasonable suspicion drug testing. By following the steps outlined in this checklist, reasonable suspicion drug testing can be conducted in organizations without compromising workplace safety or employees' rights.

This checklist is intended to be used as a guide, and not all of the following steps may be necessary for reasonable suspicion drug testing. In addition, some employers may need to follow state or local drug testing laws or regulations. Therefore, this checklist should be modified to meet an organization's unique needs and situation. Employers are encouraged to seek legal counsel to address specific issues and concerns.

Establishing Reasonable Suspicion Testing Policies and Procedures

Before performing any workplace drug testing, it is important for a company to have a framework in place for determining when testing may occur, what employees can expect when undergoing a test and who will be involved in the testing process. Having a framework can help avoid confusion and questions about what should be done when suspicion arises while ensuring all individuals know what kinds of behaviors may raise that suspicion in the first place. This framework can be contained in a comprehensive, written drug testing policy that clearly outlines the circumstances under which reasonable suspicion drug testing may be required. Keep in mind that certain laws, privacy regulations and specific industry standards may have implications for reasonable drug testing policies as well. Follow the steps below to help establish a reasonable suspicion testing framework for the company.

Establish Reasonable Suspicion Testing Policies and Procedures	Complete	Not Applicable
<p>Identify the primary purpose of the reasonable suspicion testing policy.</p> <p>Clearly articulate the objective of implementing a reasonable suspicion drug testing policy. Common reasons include:</p> <ul style="list-style-type: none">• Deterring substance abusers from working in certain positions• Maintaining workplace safety• Reducing potential liabilities• Promoting a drug-free environment <p>Identifying the primary purpose will also guide the development of appropriate procedures and protocols.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Establish Reasonable Suspicion Testing Policies and Procedures	Complete	Not Applicable
<p>Ensure that the chosen scope aligns with legal requirements and is justified by legitimate business needs.</p> <p>Ensure that the scope of the reasonable suspicion testing policy does not allow for individuals to be singled out for testing based on their physical characteristics or because of subjective opinions about certain behaviors. Keep in mind that physical symptoms commonly associated with intoxication can also be the result of a serious physical disability or medical condition and that individuals with these disabilities or conditions may be protected against discrimination under various laws.</p>		
<p>Identify behaviors and actions that may lead to a decision to conduct reasonable suspicion drug testing.</p> <p>While an employer’s processes should allow for some flexibility in determining what signs and signals will lead to an employee being subject to reasonable suspicion drug testing, it is helpful to outline some of the common signs supervisors may look for as valid indicators of intoxication.</p> <p>These may include physical symptoms, such as:</p> <ul style="list-style-type: none"> • Bloodshot eyes • Dilated pupils • Slurred speech • Unsteady gait • Shakes • Tremors • Uncontrollable sweating • Shivering • Fidgeting • Inability to sit still • Sleeping at work or difficulty staying awake <p>They may also include certain behavioral indicators, such as:</p> <ul style="list-style-type: none"> • Attendance problems • Tardiness • Decline in performance or productivity • Acting withdrawn from others <p>Psychological signs may include:</p> <ul style="list-style-type: none"> • Unexplained changes in personality or attitude • Sudden mood changes • Angry outbursts 	<input type="checkbox"/>	<input type="checkbox"/>

Establish Reasonable Suspicion Testing Policies and Procedures	Complete	Not Applicable
<ul style="list-style-type: none"> • Inappropriate laughing • Inability to focus or concentrate 		
<p>Determine who will make reasonable suspicion determinations.</p> <p>Designate trained supervisors, preferably those who have undergone specific reasonable suspicion training, to make determinations about whether reasonable suspicion drug testing is warranted. Supervisors should be knowledgeable about the signs and symptoms of drug impairment.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Establish a clear protocol for conducting reasonable suspicion tests.</p> <p>Designate reputable drug testing providers to conduct reasonable suspicion testing. Ensure these providers are aware of the company’s policies and procedures and that they will be available to provide testing on short notice and at specific times that may be relevant for the company. For example, if a company has third-shift employees, ensure the provider offers 24-hour services. Also, determine how samples will be collected, who will be involved in the testing and how employees will be informed when they are required to undergo a reasonable suspicion drug test.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Have a clear protocol for handling positive results.</p> <p>Decide how employees will be notified of any initial positive results and consider allowing opportunities for them to explain positive results. Also, consider medical reviews and confirmatory tests that verify the results of a positive initial sample and determine how these will be carried out. Establish who will pay for a confirmatory test and what a tested individual can expect while waiting for the results of a confirmatory test. Clearly outline the consequences of a positive result, which may include disciplinary action up to and including termination.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Stay informed of current drug testing laws and regulations.</p> <p>Regularly review and update the workplace drug testing policies to ensure they comply with current laws and regulations. Stay informed about emerging trends in drug use and testing methods.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Provide Communication and Training	Complete	Needs Attention
<p>Inform all employees of the reasonable suspicion policy.</p> <p>Ensure all employees know about and understand the reasonable suspicion drug policy. This may be accomplished by providing each employee with a copy of any written policy, giving presentations about the policy, posting notices about the policy and using other methods.</p> <p>Determine whether to ask or require employees to acknowledge the reasonable suspicion drug testing policy in writing or otherwise. This may be done by providing a statement on a job advertisement or job application indicating that applying for the job constitutes acknowledgment of the policy and consent to undergo drug testing, for</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p>example. A company may also obtain acknowledgment or consent prior to a newly hired employee starting work, immediately before conducting a reasonable suspicion drug test, or at other times. Language must be drafted to be clear that an employee who receives or signs the acknowledgment does so with a full understanding of the policy.</p>		
<p>Train supervisors on recognizing reasonable suspicion criteria and documenting reports and observations. Ensure supervisors know how to recognize and document specific observations or behaviors that lead them to believe an employee may be under the influence of drugs. They must understand how certain behaviors may result from a physical disability or medical condition and that individuals with these disabilities or conditions may be protected against discrimination under various laws. Encourage supervisors to consult with HR personnel or legal counsel to confirm that observed behaviors meet the threshold for reasonable suspicion testing.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Provide support and resources to employees. Consider offering resources such as employee assistance programs (EAPs) for employees who may be struggling with substance abuse issues. Encourage open communication and support a workplace culture that values employee well-being.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Obtain feedback from employees. Consider seeking employee input on safety issues and any other concerns related to reasonable suspicion drug testing and incorporating changes based on responses.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Encourage employees to report issues or concerns. Encourage employees to report any signs of intoxication they may observe in their co-workers and any other concerns that may lead to the need for reasonable suspicion drug testing in the workplace and provide multiple avenues for employees to provide this information. Ensure that systems are in place to maintain confidentiality and prevent retaliation against employees for reporting concerns.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Establishing Reasonable Suspicion

Before performing any reasonable suspicion drug test, it is important for supervisors to document specific observations, behaviors and other factors that lead them to believe an employee may be under the influence of drugs. Consider the following steps when establishing reasonable suspicion:

Gather and Document Information Supporting Reasonable Suspicion	Complete	Needs Attention
<p>Monitor employees and document observed behaviors. Monitor employees for and make note of any directly observed behaviors indicating intoxication. Focus on observable actions rather than subjective judgments to reduce risks of bias in decision-making.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Document any witness reports or other secondary information.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Gather and Document Information Supporting Reasonable Suspicion	Complete	Needs Attention
Interview any individuals who may claim to have witnessed an employee using drugs or engaging in behaviors or actions that indicate intoxication in the workplace. Make any necessary efforts to substantiate or confirm such claims.		
<p>Consider talking to the employee who is suspected of being intoxicated.</p> <p>Consider approaching the employee to determine whether any additional signs or signals of intoxication may be present. Consider either directly asking the employee if they are intoxicated or have used any substances, mentioning any observed behaviors and allowing an opportunity for the employee to explain.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Consult with other observers and professionals.</p> <p>Consider asking others to observe the employee’s behaviors and actions to provide their thoughts on potential causes. Consult with other trained supervisors, HR professionals or legal counsel to help ensure that any ideas or conclusions drawn from the employee’s behaviors and actions are not biased or subjective.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Determine reasonableness of the suspicion and document criteria considered.</p> <p>Consider all relevant facts and circumstances before deciding to test an employee, and ensure that these are all documented in writing. Note any alternatives to intoxication that may have been considered but were ruled out and why. For example, an employee may indicate that lack of sleep is responsible for an inability to focus, but other indications, such as slurred speech and bloodshot eyes, may indicate otherwise. Ensure that all criteria are considered and documented.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Document all steps taken to gather information and to confirm the need for reasonable suspicion testing.</p> <p>Ensure that every step of the process leading to the decision to test is outlined in writing.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Notifying the Employee That Reasonable Suspicion Drug Testing Is Required

Employers should keep privacy and safety concerns in mind when informing an employee that reasonable suspicion drug testing is required. They should also be ready to provide the employee with information that can help ensure efficiency and mutual understanding during and after the testing process. Employers can take the following actions to help ensure that the employee is properly informed:

Notify and Inform the Employee That They Will Be Tested	Complete	Needs Attention
<p>Determine how and when to provide notice to the employee who will be subject to testing.</p> <p>Consider all facts and circumstances to determine the best way to notify the employee of the requirement for reasonable suspicion testing. Carefully consider and address any privacy and safety concerns. Inform the employee of the reasons for the drug test and the specific observations that led to the decision to test.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Notify and Inform the Employee That They Will Be Tested	Complete	Needs Attention
<p>Choose a private place for the conversation and keep all medical information confidential.</p> <p>Follow all established procedures to safeguard the collected data, ensure confidentiality and restrict access to authorized personnel only. Comply with applicable privacy laws, including obtaining informed consent from employees when required.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Describe what the employee can expect during the testing process.</p> <p>Provide the employee with a clear understanding of the testing process, including what type of test will be conducted. Walk the employee through the testing steps and provide instructions for undergoing the test in an efficient and effective manner.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Discuss the consequences and any reapplication policies or procedures if the employee fails the drug test.</p> <p>Inform the employee about any consequences the organization will impose for positive results. Discuss how the organization will handle any reapplication/return-to-work/rehire opportunities following any termination or suspension due to a positive drug test. For example, a company may allow an employee who fails a drug test to return to work after a certain amount of time after undergoing rehabilitation. An employer may instead decide to make an employee ineligible for future rehire altogether.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Discuss how any final/confirmatory negative results of testing will be shared with the employee.</p> <p>If company policy includes confirmatory testing or medical reviews, inform the employee about these processes and how they may receive any additional positive results from them. For example, a company may send an employee a letter with the results or may have the testing facility provide the results, either with or without additional follow-up communication about what the results mean for the employee’s employment with the company.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Discuss the consequences for any situations involving an employee’s attempt to tamper with or “beat” a drug test.</p> <p>For example, employees who are accused of attempting to tamper with or cause a false negative on a drug test may be given an opportunity to explain the situation or to undergo another test with additional safeguards. A company may also decide to take disciplinary action against an employee based on information suggesting that the employee engaged in this type of activity.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Request acknowledgment of the discussion and consent for the test itself from the employee.</p> <p>Consider obtaining written acknowledgment of the discussion with the employee and written consent for testing from the employee. Determine whether to ask or require the employee to acknowledge the need for reasonable suspicion drug testing policy in writing or otherwise.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Conducting the Reasonable Suspicion Drug Test

Employers should follow their drug testing policy consistently with all employees who are required to undergo reasonable suspicion drug testing. They should also keep safety and privacy considerations in mind throughout the process. The following steps can help ensure reasonable suspicion testing does not pose unnecessary risks for the company:

Follow Established Testing Procedures	Complete	Needs Attention
<p>Ensure all reasonable suspicion drug testing steps conform to the established policy.</p> <p>Refer to the written policy at each step of the preparations for and actual process of reasonable suspicion drug testing. Consult with appropriate professionals regarding any questions or unique circumstances.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Choose and notify the drug testing provider.</p> <p>Choose and contact the drug testing provider who is to perform the reasonable suspicion drug test. Confirm that the provider is aware of and will follow the company's established policies and procedures. Also confirm that the provider's testing process complies with the policy and all applicable laws and regulations.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Arrange for transportation and complete any other necessary preparations.</p> <p>Take all actions necessary to ensure the employee's safety before, during and after the reasonable suspicion drug test. If testing occurs off-site, preparations should include arranging transportation to and from the testing site to avoid the potential for allowing the employee to drive under the influence. Also, determine where the employee may be taken after the testing if the test is positive or if any medical issues arise. Consider all facts and circumstances of the situation to determine any additional needs.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Provide clear instructions to the employee.</p> <p>Provide the employee with written instructions on what to do during and after the test. They must bring all necessary items to the testing site, such as identification, information about any valid prescription drug use and any other relevant items.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Respect the employee's privacy and dignity throughout the testing process.</p> <p>Ensure that drug test results are kept confidential and shared only with those who have a legitimate need to know. Maintain records in a secure and confidential manner, in compliance with applicable privacy laws and record retention laws, such as those regarding personnel records, medical records and others.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Be consistent and fair.</p> <p>Apply drug testing policies consistently to all employees to avoid claims of discrimination or favoritism. Treat all employees with respect and fairness throughout the testing process. Provide timely communication to the employee about test results and any subsequent consequences or actions.</p>	<input type="checkbox"/>	<input type="checkbox"/>

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As laws and regulations change, it is vital to regularly review and update reasonable drug testing policies and procedures to ensure ongoing compliance. Employers can stay informed about legal developments and industry best practices to maintain an effective and legally compliant drug testing program.

Use this checklist as a guide when conducting reasonable suspicion drug testing. For assistance, contact Horst Insurance.