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Drug Testing: The How and When

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Drug and alcohol abuse is a serious problem in workplaces across the United States, including in some veterinary practices, with significant financial implications. According to the National Drug-Free Workplace Alliance, U.S. Department of Labor statistics indicate the following:

- Alcohol and drug abuse cost American businesses \$81 billion in lost productivity in just one year
- Substance abusers are absent ten times as often as non-abusers
- Substance abusers are three times as likely to be late to work than non-abusers
- Substance abusers use medical benefits 300% more often than non-abusers
- Substance abusers file 30% to 50% of all workers compensation claims

One method to control the damage inflicted upon a business's bottom line is drug testing, but this is a controversial topic among veterinary practice owners. Controversy arises, in part, because of the sometimes confusing federal and state laws that dictate what a business can or cannot do in regards to testing, and in part because there is a risk of discrimination when policies are not effectively created and/or implemented.

Although no federal law specifically prohibits drug testing, the American with Disabilities Act (ADA) does restrict the scope and timing of the testing. Some states prohibit or restrict certain types of testing, so be sure to be familiar with your state's laws before creating your policies (<http://www.shrm.org/legalissues/stateandlocalresources/stateandlocalstatutesandregulations/documents/state%20drug%20testing%20laws.pdf>).

Note that, although the majority of private employees are not *required* to drug test, most of them do have the *right* to test.

Other information that you need to know includes:

- You cannot discriminate against an employee because he or she previously had a drug or alcohol problem
- Employees who are active alcoholics may be protected from discrimination if it is found that you have disciplined his or her performance or conduct more harshly than a non-alcoholic with similar levels of performance or conduct

- Although employees using illegal drugs are not protected by law, the use of the drugs must be “current,” means that usage “occurred recently enough to justify the employer’s reasonable belief that the involvement with drugs is an ongoing problem”

Pre-employment and during-employment testing

Overall, there are two broad categories of drug testing: as a pre-employment requirement, which helps to ensure that the best candidates are hired, and during-employment testing. The latter type of testing includes testing upon reasonable suspicion; post-accident testing; post-treatment testing; periodic testing; and random testing. Here are more specifics of each type of during-employment testing:

Testing upon reasonable suspicion: This is one of the most common reasons for during-employment testing. These tests are typically conducted when the employee shows obvious signs of not being fit for duty and/or has a documented pattern of unsafe behavior.

Post-accident testing: Accidents are a common trigger for drug testing, with employees involved in an accident – or even engaging in an unsafe practice with the potential to cause an accident – being tested to determine if drugs and/or alcohol were factors.

Post-treatment testing: Sometimes, it is clear that an employee has drug and/or alcohol challenges, and she or he subsequently enrolls in rehab. As a condition of continuing employment, a practice may require regular screenings.

Periodic testing: These are tests that are announced, and then implemented at predetermined intervals of time. Some practices, as one example, require testing as part of an annual medical exam.

Random testing: These are unannounced screenings for safety and security reasons. Although one of the most common types of testing, some states do not allow this type, plus it is the type most likely to open up a practice to claims of discrimination.

In most states that *do* allow random testing, the employer would have to show a legitimate need for this type of testing. In most veterinary practices, the reason would be to prevent usage or theft of controlled substances in the hospital. However, is random testing the best way to prevent usage or theft? Let’s take a closer look.

A red flag in veterinary practices is when an employee makes errors during a procedure. Did he or she ingest controlled substances stolen from the practice? This may motivate the veterinarian to want to drug test this employee – but this situation most likely already falls within the scope of testing upon reasonable suspicion.

Moreover, this employee may be stealing the controlled substances and then selling them to other people, and random testing would not be useful in that circumstance. If this is the concern,

a better option would be to set up a checks and balances system that limits the number of people who have access to these substances and ensure that they always check them out in pairs.

Benefits of a drug-free workplace

There are numerous financial benefits to drug testing and a drug-free workplace. For example, because a drug-free workplace has fewer accidents – with a decrease, overall, in workers compensation claims by up to 50% -- your practice can benefit from employee comp insurance discounts and perhaps even health insurance discounts. Other benefits include a lowered risk for drug theft or abuse in the clinic and better attendance and timeliness, which improves the likelihood of a profitable practice. Moreover, potential employees with drug/alcohol dependencies will likely search for employment elsewhere when they hear of well-structured and consistently-implemented drug testing policies.

Why you might decide not to test

Although each of these types of drug testing has sound reasoning behind implementation and although the benefits of testing are significant, there are also legitimate reasons why a practice may choose NOT to test. These include:

- Discrimination risk: it can be challenging to create a policy that allows for random selection; one solution is to outsource this testing to an outside agency with experience in how to manage risk.
- Administrative hassle: extra work is creating because a practice will need to keep track of when tests are conducted, what is tested for, who performed the test, along with the results, all in confidential files.
- Potential privacy invasion, (for example, most employees find urine tests invasive) which may:
 - create unnecessary resentment
 - negatively affect productivity, leading to lost revenue
- Cost of drug testing
- Risk of false results, as tests cannot always pinpoint how recently a substance was taken. Moreover, most drug tests are performed in a way that doesn't distinguish between medical marijuana use and recreational use, and not all prescription drug abuse is detected.

If you decide to implement drug testing

- 1) Check individual state laws before creating policies
- 2) Consider using guidelines set by the Substance Abuse and Mental Health Services Administration (SAMHSA)
- 3) Establish clear and fair substance abuse policies
- 4) Communicate the policy to ALL employees/potential employees

- 5) Decide what to outsource. Research and locate vendors who can handle whatever drug-testing procedures you decide to outsource to reduce the levels of responsibility undertaken by the practice.
- 6) Clearly define consequences and communicate them to all employees/potential employees
- 7) Educate managers and supervisors so that they can spot potential signs of abuse and respond appropriately
- 8) Be consistent in implementing and carrying out drug testing as well as following through on consequences
- 9) Maintain complete confidentiality
- 10) Keep accurate records
- 11) Review the policies with employees annually at an office meeting