

**A GUIDE TO
WORKPLACE DRUG TESTING
IN IOWA**

Prepared by the

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Note: This information is for general informational purposes only, and does not constitute legal advice. You are encouraged to seek legal counsel before implementing a drug-free workplace policy.

To Test Or Not To Test?

The purpose of the state's drug testing law—Iowa Code Section 730.5 (& Administrative Code Section 641)—is to enhance worker safety, by creating workplaces that are free of drugs and substance abuse. One tool available to private sector employers is drug testing (inclusive of alcohol testing), that often is coupled with educational efforts as part of a comprehensive drug-free workplace program.

Each employer must first decide if drug and/or alcohol testing is appropriate for them. Under Iowa law, workplace drug or alcohol testing is optional for private sector employers. Before making a decision on drug testing, several factors should be considered.

- A. Types of private sector workplace drug testing permitted in Iowa.
 - 1. Unannounced testing of workers randomly selected from pools of employees, consisting of (a) the entire employee population at a particular work site, (b) the entire full-time active employee population at a particular work site, or (c) all employees at a particular work site who are in a pool of employees in a safety-sensitive position.
 - 2. Testing of employees during, and after completion of drug or alcohol rehabilitation.
 - 3. Testing of employees for reasonable suspicion, which may include (a) direct observation of substance abuse or related impairment while at work, (b) abnormal conduct or significant deterioration in performance while at work, (c) a credible report of alcohol or drug use, (d) evidence of tampering with a drug test, (e) evidence that an employee has caused an accident while at work causing sufficient injury or damage to require a report to OSHA, or (f) evidence that an employee has made, sold, possessed or used drugs while at work.
 - 4. Testing of prospective employees, post offer but prior to the start of their employment.
 - 5. Testing of employees, as required by federal law or regulation or by law enforcement.
 - 6. Testing of employees in the investigation of workplace accidents that cause sufficient injury or damage to require a report to OSHA.

- B. Employer responsibilities when drug testing in Iowa.
 - 1. The employer must establish a detailed written drug testing policy—prior to testing—and provide it to every employee subject to testing.
 - 2. The employer must establish—prior to testing—and maintain either an Employee Assistance Program or a resource file where workers can access help for substance abuse problems.
 - 3. The employer must provide supervisors with a minimal amount of annual training (2 hours the first year, and 1 hour each year thereafter).

4. In the event of a positive alcohol test in which the alcohol concentration exceeds the level established by the employer—and under certain other conditions—the employer may be required to pay up to \$2,000 in rehabilitation costs for the employee in question, depending on employee benefit plan coverage. This requirement applies only to employers with at least 50 employees and only if the employer has employed the employee for at least 12 of the preceding 18 months, is a first-time violator of the employer’s substance abuse policy, and agrees to receive rehabilitation.
5. A laboratory doing business for an employer that conducts drug or alcohol tests must file an annual report with the Iowa Department of Public Health by March 1 of each year concerning the number of positive and alcohol test results during the previous calendar year.

Put It In Writing

Private sector drug or alcohol testing is optional in Iowa. However, employers who choose to test can do so only after developing and disseminating a written policy. Here are some things to keep in mind when developing a written policy.

1. Drug or alcohol testing must be conducted within the terms of a written policy.
2. The written policy must be provided to every employee subject to testing, and be available for review by employees and prospective employees. Typically, employees and prospective employees are asked to sign a certification that they have read and understand the policy, as a condition of their employment. Many times, the employer’s Drug-Free Workplace Policy will be included in an employee manual. Additionally, some employers may choose to post the policy in a common area.
3. In the case of a minor, the employer must provide a copy of the written policy to a parent of the employee or prospective employee and receive acknowledgement from the parent that a copy of the policy has been received.
4. The employer’s written policy must provide uniform requirements for disciplinary or rehabilitative actions that will be taken against an employee or prospective employee who tests positive for alcohol or drugs, or who refuses to provide a testing sample. An employer may not take any action against an employee that is not stated in the written policy.
5. If the written policy provides for alcohol testing, the employer must establish a standard for alcohol concentration that will constitute a violation of 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.

An employee or prospective employee who tests positive for drugs or alcohol, or who refuses to provide a testing sample—in violation of the employer’s written policy—may be subject to disciplinary and/or rehabilitative actions, including, but not limited to:

1. Employer-provided or approved rehabilitation, treatment or counseling (*see conditional requirement in the case of certain positive alcohol tests).
2. Suspension of an 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, including relevant collective bargaining agreement provisions.

Remember, these actions—individually or in combination—are options available to private sector employers, and can only be executed if they are so stated in the employer’s written policy.

Supervisor Training

In order to conduct private sector drug or alcohol testing in Iowa, an employer must require supervisors involved with testing to attend a minimum of two hours of initial training and a minimum of one hour of training every year thereafter.

This training must include, but is not limited to:

1. Recognition of evidence of employee alcohol and other drug abuse.
2. Documentation and corroboration of employee alcohol and other drug abuse.
3. Referral of employees who abuse alcohol or other drugs to Employee Assistance Programs or to a resource file maintained by the employer.

Many of the state-licenses substance abuse agencies offer workplace training for a modest fee, negotiated on an agency-by-agency basis.

Employee Resources

Employers must establish an awareness program, to inform employees about the dangers of drug and alcohol use in the workplace, and comply with the following requirements.

1. If an employer has an Employee Assistance Program, employees must be informed of the benefits and services offered by the program. An employer must post notice of the program in conspicuous places and explore alternative means of publicizing the services. Additionally, the employer must inform employees how they can access and utilize the program.

2. If an employer does not have an Employee Assistance Program, the employer must maintain a resource file of certified substance abuse programs available to assist employees with personal or behavioral problems. The employer must notify employees of the existence of the resource file, and provide information on how to access services listed in the file.

The Essentials Of Drug Testing

The following procedures must be followed when conducting private sector drug or alcohol testing in Iowa.

1. 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.
2. Drug testing samples (urine or oral fluids) must be collected so that specimens are split into two components at collection time. The testing laboratory must store the second of the two components for at least 45 days, for the purposes of a second confirmatory test, if one is required. Alcohol testing samples (breath) must be collected according to U.S. D.O.T. rules that allow for confirmatory testing.
3. Samples must be collected, labeled, stored and transported in ways that protect against contamination, adulteration or misidentification.
4. Employees or prospective employees must be given an opportunity to provide any information that may be considered relevant to the test (e.g. identification of prescription or over-the-counter medicine currently or recently used, or other relevant medical information). An employer must provide employees with a list of the drugs to be tested.
5. All confirmatory testing must be conducted at a laboratory certified by the U.S. Department of Health and Human Services or approved under rules adopted by the Iowa Department of Public Health.
6. If a confirmed positive drug or alcohol test for a current employee is reported to the employer by the medical review officer, the employer must notify the employee in writing by certified mail of (a) the test results, (b) the employee's right to request and obtain a confirmatory test and (c) the fee payable by the employee for the costs of a confirmatory test. In the event of a negative confirmatory test, the employee must be reimbursed by the employer for testing expenses, and the test cannot be considered a positive test for the purposes of disciplinary action.

Frequently Asked Questions

Q Can an employer test a “problem employee” right now, if the employer suspects the employee is using drugs or alcohol at work?

A Drug or alcohol tests of individual employees may be conducted only if the employer’s Drug-Free Workplace Policy allows for *reasonable suspicion* testing AND the reasonable suspicion threshold is met, as defined in Iowa law. Employees cannot be singled out for testing, simply because they are difficult to manage.

Q Can an employer be required to pay for the rehabilitation of an employee who tests positive for marijuana?

A No, not if the employer doesn’t provide for rehabilitation in the Drug-Free Workplace Policy. While state law does not require employer-paid rehabilitation for employees who test positive for illegal drugs, employers can choose to provide it.

Q Can an employer be required to pay for the rehabilitation of an employee who tests positive for alcohol?

A Yes, but only under certain conditions. The alcohol concentration must exceed the level established by the employer, the employer must employ at least 50 people, the employee must have been employed by the employer for at least 12 of the preceding 18 months, the employee must be a first-time violator of the employer’s substance abuse policy, and the employee must agree to receive rehabilitation. Under these conditions, the employer may be required to pay up to \$2,000 in rehabilitation costs for the employee in question, depending on employee benefit plan coverage.

Q What recourse does a former employee have, if he/she was fired following a positive drug or alcohol test?

A First of all, the employee can request and pay for a confirmatory test. If this second test of the initial sample comes back negative, the test is ruled negative and no action is taken. In this case, the employee is reimbursed by the employer for the costs of the second test. If the second test comes back positive, the results of the first test are upheld. In this case, an employee who continues to believe that he/she has been wronged may seek relief, first at the administrative and eventually at the district civil court level.

Q Can an employer charge employees for the cost of a drug or alcohol test?

A No, except when an employee requests a second confirmatory test (see above) that comes back positive. In fact, tests of employees must be conducted during or adjacent to their regularly scheduled work times.

Q If an employee is on over-the-counter or prescription cold medicine at the time of a drug or alcohol test, what should they do?

A Employers must afford employees the opportunity to list legal medicines they are taking, and employees must report these medicines PRIOR to testing so that they are considered when analyzing and reporting the results.

Contacts/Resources

General drug/alcohol testing questions relating to "state" law:

Governor's Office of Drug Control Policy
(Dale Woolery)
Phone: 515-242-6391
Fax: 515-242-6390
E-Mail: dale.woolery@iowa.gov

Iowa Department of Public Health
(Dean Austin)
Phone: 515-281-3641

General drug/alcohol testing questions relating to "federal" DOT regulations:

U.S. DOT, Federal Motor Carriers Safety Administration
(Terry Stevenson)
Phone: 515-233-7411

Drug/Alcohol educational materials & local substance abuse agency referral:

Iowa Substance Abuse Information Center
Phone: 866-242-4111 (toll-free)
www.drugfreeinfo.org

Other resources:

Iowa Code-Section 730.5: www.legis.state.ia.us/Code.html

Administrative Code-Section 641: www.legis.state.ia.us/IAC.html

730.5 Private sector drug-free workplaces.

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. "*Alcohol*" means ethanol, isopropanol, or methanol.

b. "*Confirmed positive test result*" means, except for alcohol testing conducted pursuant to subsection 7, paragraph "f" , subparagraph (2), the results of a blood, urine, or oral fluid test in which the level of controlled substances or metabolites in the specimen analyzed meets or exceeds nationally accepted standards for determining detectable levels of controlled substances as adopted by the federal substance abuse and health services administration. If nationally accepted standards for oral fluid tests have not been adopted by the federal substance abuse and health services administration, the standards for determining detectable levels of controlled substances for purposes of determining a confirmed positive test result shall be the same standard that has been established by the federal food and drug administration for the measuring instrument used to perform the oral fluid test.

c. "*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.

d. "*Employee*" means a person in the service of an employer in this state and includes the employer, and any chief executive officer, president, vice president, supervisor, manager, and officer of the employer who is actively involved in the day-to-day operations of the business.

e. "*Employer*" means a person, firm, company, corporation, labor organization, or employment agency, which has one or more full-time employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written, in this state. "*Employer*" does not include the state, a political subdivision of the state, including a city, county, or school district, the United States, the United States postal service, or a Native American tribe.

f. "*Good faith*" means reasonable reliance on facts, or that which is held out to be factual, without the intent to be deceived, and without reckless, malicious, or negligent disregard for the truth.

g. "*Medical review officer*" means a licensed physician, osteopathic physician, chiropractor, nurse practitioner, or physician assistant authorized to practice in any state of the United States, who is responsible for receiving laboratory results generated by an employer's drug or alcohol testing program, and who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with the individual's medical history and any other relevant biomedical information.

h. "*Prospective employee*" means a person who has made application, whether written or oral, to an employer to become an employee.

i. "*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.

j. "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.

k. "Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites, which shall include only urine, saliva, breath, and blood. However, "*sample*" does not mean blood except as authorized pursuant to subsection 7, paragraph "*l*".

l. "Unannounced drug or alcohol testing" means testing for the purposes of detecting drugs or alcohol which is conducted on a periodic basis, without advance notice of the test to employees, other than employees whose duties include responsibility for administration of the employer's drug or alcohol testing program, subject to testing prior to the day of testing, and without individualized suspicion. The selection of employees to be tested from the pool of employees subject to testing shall be done based on a neutral and objective selection process by an entity independent from the employer and shall be made by a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers in which each member of the employee population subject to testing has an equal chance of selection for initial testing, regardless of whether the employee has been selected or tested previously. The random selection process shall be conducted through a computer program that records each selection attempt by date, time, and employee number.

2. Applicability. This section does not apply to drug or alcohol tests conducted on employees required to be tested pursuant to federal statutes, federal regulations, or orders issued pursuant to federal law. In addition, an employer, through its written policy, may exclude from the pools of employees subject to

unannounced drug or alcohol testing pursuant to subsection 8, paragraph "a" , employee populations required to be tested as described in this subsection.

3. *Testing optional.* This section does not require or create a legal duty on an employer to conduct drug or alcohol testing and the requirements of this section shall not be construed to encourage, discourage, restrict, limit, prohibit, or require such testing. In addition, an employer may implement and require drug or alcohol testing at some but not all of the work sites of the employer and the requirements of this section shall only apply to the employer and employees who are at the work sites where drug or alcohol testing pursuant to this section has been implemented. A cause of action shall not arise in favor of any person against an employer or agent of an employer based on the failure of the employer to establish a program or policy on substance abuse prevention or to implement any component of testing as permitted by this section.

4. *Testing as condition of employment - requirements.* To the extent provided in subsection 8, an employer may test employees and prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring. An employer shall adhere to the requirements of this section concerning the conduct of such testing and the use and disposition of the results of such testing.

5. *Collection of samples.* In conducting drug or alcohol testing, an employer may require the collection of samples from its employees and prospective employees, and may require presentation of reliable individual identification from the person being tested to the person collecting the samples. Collection of a sample shall be in conformance with the requirements of this section. The employer may designate the type of sample to be used for this testing.

6. *Scheduling of tests.*

a. Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period. The time required for such testing by an employer shall be deemed work time for the purposes of compensation and benefits for employees.

b. An employer shall pay all actual costs for drug or alcohol testing of employees and prospective employees required by the employer.

c. An employer shall provide transportation or pay reasonable transportation costs to employees if drug or alcohol sample collection is conducted at a location other than the employee's normal work site.

7. *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 urine sample and collection of the urine 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 urine sample is being collected.

b. Collection of a urine sample for testing of current employees 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*". 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 test result for drugs or alcohol.

(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.

(2) 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.

(3) Notwithstanding any provision of this section to the contrary, collection of an oral fluid sample for testing shall be performed in the presence of the individual from whom the sample or specimen is collected. The specimen or sample shall be of sufficient quantity to permit a second, independent, confirmatory test as provided in paragraph "i". In addition to any requirement 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 unused 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 portion yielded a confirmed positive test result.

g. A medical review officer shall, prior to the results being reported to an employer, review and interpret any confirmed positive test results, including both quantitative and qualitative test results, to ensure that the chain of custody is complete and sufficient on its face and that any information provided by the individual pursuant to paragraph "c", subparagraph (2), is considered. However, this paragraph shall not apply to alcohol testing conducted pursuant to paragraph "f", subparagraph (2).

h. In conducting drug or alcohol testing pursuant to this section, the laboratory, the medical review officer, and the employer shall ensure, to the extent feasible, that the testing only measure, and the records concerning the testing only show or make use of information regarding, alcohol or drugs in the body.

i. (1) If a confirmed positive test result for drugs or alcohol for a current employee is reported to the employer by the medical review officer, the employer shall notify the employee in writing by certified mail, return receipt requested, of the results of the test, the employee's right to request and obtain a confirmatory test of the second sample collected pursuant to paragraph "b" at an approved laboratory of the employee's choice, and the fee payable by the employee to the employer for reimbursement of expenses concerning the test. The fee charged an employee shall be an amount that represents the costs associated with conducting

the second confirmatory test, which shall be consistent with the employer's cost for conducting the initial confirmatory test on an employee's sample. If the employee, in person or by certified mail, return receipt requested, requests a second confirmatory test, identifies an approved laboratory to conduct the test, and pays the employer the fee for the test within seven days from the date the employer mails by certified mail, return receipt requested, the written notice to the employee of the employee's right to request a test, a second confirmatory test shall be conducted at the laboratory chosen by the employee. The results of the second confirmatory test shall be reported to the medical review officer who reviewed the initial confirmatory test results and the medical review officer shall review the results and issue a report to the employer on whether the results of the second confirmatory test confirmed the initial confirmatory test as to the presence of a specific drug or alcohol. If the results of the second test do not confirm the results of the initial confirmatory test, the employer shall reimburse the employee for the fee paid by the employee for the second test and the initial confirmatory test shall not be considered a confirmed positive test result for drugs or alcohol for purposes of taking disciplinary action pursuant to subsection 10.

(2) If a confirmed positive test result for drugs or alcohol for a prospective employee is reported to the employer by the medical review officer, the employer shall notify the prospective employee in writing of the results of the test, of the name and address of the medical review officer who made the report, and of the prospective employee's right to request records under subsection 13.

j. A laboratory conducting testing under this section shall dispose of all samples for which a negative test result was reported to an employer within five working days after issuance of the negative test result report.

k. Except as necessary to conduct drug or alcohol testing pursuant to this section and to submit the report required by subsection 16, a laboratory or other medical facility shall only report to an employer or outside entity information relating to the results of a drug or alcohol test conducted pursuant to this section concerning the determination of whether the tested individual has engaged in conduct prohibited by the employer's written policy with regard to alcohol or drug use.

l. Notwithstanding the provisions of this subsection, an employer may rely and take action upon the results of any blood test for drugs or alcohol made on any employee involved in an accident at work if the test is administered by or at the direction of the person providing treatment or care to the employee without request or suggestion by the employer that a test be conducted, and the employer has lawfully obtained the results of the test. For purposes of this paragraph, an employer shall not be deemed to have requested or required a test in conjunction with the provision of medical treatment following a workplace accident by providing information concerning the circumstance of the accident.

8. *Drug or alcohol testing.* Employers may conduct drug or alcohol testing as provided in this subsection:

a. Employers may conduct unannounced drug or alcohol testing of employees who are selected from any of the following pools of employees:

(1) The entire employee population at a particular work site of the employer except for employees who are not scheduled to be at work at the time the testing

is conducted because of the status of the employees or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

(2) The entire full-time active employee population at a particular work site except for employees who are not scheduled to be at work at the time the testing is to be conducted because of the status of the employee, or who have been excused from work pursuant to the employer's working policy.

(3) All employees at a particular work site who are in a pool of employees in a safety-sensitive position and who are scheduled to be at work at the time testing is conducted, other than employees who are not scheduled to be at work at the time the testing is to be conducted or who have been excused from work pursuant to the employer's work policy prior to the time the testing is announced to employees.

b. Employers may conduct drug or alcohol testing of employees during, and after completion of, drug or alcohol rehabilitation.

c. Employers may conduct reasonable suspicion drug or alcohol testing.

d. Employers may conduct drug or alcohol testing of prospective employees.

e. Employers may conduct drug or alcohol testing as required by federal law or regulation or by law enforcement.

f. Employers may conduct drug or alcohol testing in investigating accidents in the workplace in which the accident 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.

9. 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 test result for drugs or alcohol 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).

10. *Disciplinary procedures.*

a. Upon receipt of a confirmed positive test result for drugs or alcohol 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 test result for drugs or alcohol which indicates a violation of the employer's written policy.

11. *Employer immunity.* A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguards provided for under this section, for any of the following:

a. Testing or taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test.

b. Failure to test for drugs or alcohol, or failure to test for a specific drug or controlled substance.

c. Failure to test for, or if tested for, failure to detect, any specific drug or other controlled substance.

d. Termination or suspension of any substance abuse prevention or testing program or policy.

e. Any action taken related to a false negative drug or alcohol test result.

12. *Employer liability - false positive test results.*

a. Except as otherwise provided in paragraph "*b*", a cause of action shall not arise against an employer who has established a program of drug or alcohol testing in accordance with this section, unless all of the following conditions exist:

(1) The employer's action was based on a false positive test result.

(2) The employer knew or clearly should have known that the test result was in error and ignored the correct test result because of reckless, malicious, or negligent disregard for the truth, or the willful intent to deceive or to be deceived.

b. A cause of action for defamation, libel, slander, or damage to reputation shall not arise against an employer establishing a program of drug or alcohol testing in accordance with this section unless all of the following apply:

(1) The employer discloses the test results to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee or the tested applicant for employment, an authorized substance abuse treatment program or employee assistance program, or an authorized agent or representative of the tested employee or applicant.

(2) The test results disclosed incorrectly indicate the presence of alcohol or drugs.

(3) The employer negligently discloses the results.

c. In any cause of action based upon a false positive test result, all of the following conditions apply:

(1) The results of a drug or alcohol test conducted in compliance with this section are presumed to be valid.

(2) An employer shall not be liable for monetary damages if the employer's reliance on the false positive test result was reasonable and in good faith.

13. *Confidentiality of results - exception.*

a. All communications received by an employer relevant to employee or prospective employee drug or alcohol test results, or otherwise received through the employer's drug or alcohol testing program, are confidential communications and shall not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except as otherwise provided or authorized by this section.

b. An employee, or a prospective employee, who is the subject of a drug or alcohol test conducted under this section pursuant to an employer's written policy and for whom a confirmed positive test result is reported shall, upon written request, have access to any records relating to the employee's drug or alcohol test, including records of the laboratory where the testing was conducted and any records relating to the results of any relevant certification or review by a medical review officer. However, a prospective employee shall be entitled to records under this paragraph only if the prospective employee requests the records within fifteen calendar days from the date the employer provided the prospective employee written notice of the results of a drug or alcohol test as provided in subsection 7, paragraph "i", subparagraph (2).

c. Except as provided by this section and as necessary to conduct drug or alcohol testing under this section and to file a report pursuant to subsection 16, a laboratory and a medical review officer conducting drug or alcohol testing under this section shall not use or disclose to any person any personally identifiable information regarding such testing, including the names of individuals tested, even if unaccompanied by the results of the test.

d. An employer may use and disclose information concerning the results of a drug or alcohol test conducted pursuant to this section under any of the following circumstances:

(1) In an arbitration proceeding pursuant to a collective bargaining agreement, or an administrative agency proceeding or judicial proceeding under workers'

compensation laws or unemployment compensation laws or under common or statutory laws where action taken by the employer based on the test is relevant or is challenged.

(2) To any federal agency or other unit of the federal government as required under federal law, regulation or order, or in accordance with compliance requirements of a federal government contract.

(3) To any agency of this state authorized to license individuals if the employee tested is licensed by that agency and the rules of that agency require such disclosure.

(4) To a union representing the employee if such disclosure would be required by federal labor laws.

(5) To a substance abuse evaluation or treatment facility or professional for the purpose of evaluation or treatment of the employee.

However, positive test results from an employer drug or alcohol testing program shall not be used as evidence in any criminal action against the employee or prospective employee tested.

14. *Civil penalties - jurisdiction.*

a. Any laboratory or medical review officer which discloses information in violation of the provisions of subsection 7, paragraph "h" or "k", or any employer who, through the selection process described in subsection 1, paragraph "l", improperly targets or exempts employees subject to unannounced drug or alcohol testing, shall be subject to a civil penalty of one thousand dollars for each violation. The attorney general or the attorney general's designee may maintain a civil action to enforce this subsection. Any civil penalty recovered shall be deposited in the general fund of the state.

b. A laboratory or medical review officer involved in the conducting of a drug or alcohol test pursuant to this section shall be deemed to have the necessary contact with this state for the purpose of subjecting the laboratory or medical review officer to the jurisdiction of the courts of this state.

15. *Civil remedies.* This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section, is liable to an aggrieved employee or prospective employee for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or prospective employee, the county attorney, or the attorney general.

In an action brought under this subsection alleging that an employer has required or requested a drug or alcohol test in violation of this section, the employer has the burden of proving that the requirements of this section were met.

16. *Reports.* A laboratory doing business for an employer who conducts drug or alcohol tests pursuant to this section shall file an annual report with the Iowa department of public health by March 1 of each year concerning the number of

drug or alcohol tests conducted on employees who work in this state pursuant to this section, the number of positive and negative results of the tests, during the previous calendar year. In addition, the laboratory shall include in its annual report the specific basis for each test as authorized in subsection 8, the type of drug or drugs which were found in the positive drug tests, and all significant available demographic factors relating to the positive test pool.

87 Acts, ch 208, §1; 90 Acts, ch 1188, §1; 90 Acts, ch 1233, §42; 94 Acts, ch 1023, §120; 98 Acts, ch 1011, §1; 98 Acts, ch 1100, §81; 98 Acts, ch 1138, §32, 33, 35; 99 Acts, ch 60, §1 - 8; 99 Acts, ch 114, §56, 59; 2004 Acts, ch 1081, §1 - 11

Subsection 1, NEW paragraph b and former paragraphs b - i redesignated as c - j

Subsection 1, former paragraph j amended and redesignated as k

Subsection 1, former paragraph k redesignated as l

Subsection 7, paragraphs a and b amended

Subsection 7, paragraph f, unnumbered paragraph 1 amended

Subsection 7, paragraph f, NEW subparagraph (3)

Subsection 7, paragraph i amended

Subsection 9, paragraph b amended

Subsection 10, paragraph a, unnumbered paragraph 1 amended

Subsection 10, paragraph b amended