

RETURNING EMPLOYEES TO WORK

BY BILL CURRENT

During a national crisis, substance abuse increases dramatically.

The COVID-19 pandemic is responsible for, perhaps, the greatest economic collapse of all time. Since March 1, 2020, thousands of businesses have been forced to close their doors, at least temporarily, causing literally millions of Americans to become unemployed. Now, months later, employers are anxious to reopen their businesses and those who lost jobs are eager to find employment and get back to work.

Studies show that during a national crisis, substance abuse increases dramatically.¹ Now is not the time to consider suspending a drug testing program; it's actually time to recommit to pre-employment and random testing, and consider alternative testing methods that make it possible to continue testing regardless of any obstacles that may arise.



Return-to-Work Drug Testing

The old saying goes: “An ounce of prevention is worth a pound of cure.” Maybe in drug testing terminology a more appropriate way to say this would be: “Drug testing done right helps employers avoid a whole lot of problems down the road.” Consider the following:

“A survey of business executives underscored the benefits of drug testing from a company’s perspective. For example, 77% of the respondents said that, since implementing drug testing, they were seeing a better caliber of job applicants. A ‘better public image’ was cited by 58%, while 56% said they were experiencing fewer workplace drug problems. Also noteworthy was that 54% had noticed an improvement in employee morale.”²

Pre-employment drug testing not only identifies would-be employees with drug problems before they get on the payroll, it also prevents some of them from even applying for the job.

“Almost 30 percent of workers who reported current illicit drug use, and only 5.9 percent of workers who reported no current illicit drug use, said that they would be less likely to work for an employer who tests for drugs at hiring.”³

Random testing has also proven to be a powerful deterrent to substance abusing job seekers applying for work with companies that employ this practice. The same report stated:

“Moreover... when asking about random drug testing, 40 percent for those reporting current illicit drug use said they were less likely to work for a company that conducted random testing.”⁴

For employers that are federally regulated, it is important to remember that it is essential to meet required random rates, regardless of the current pandemic. Although in many industries work has slowed, employers should continue testing throughout the year rather than backloading all tests in the fourth quarter. Consider the following chart, detailing the potential testing needs should you choose to delay random testing.

A typical oral fluid collection is employee-driven—significantly reducing the possibility of any exposure to COVID-19.

Understanding the Results of Delaying Random Testing

Random Drug Testing Rate: 50%	Small Company (Approximately 30 Employees)	Medium Company (Approximately 600 Employees)	Large Company (Approximately 6,000 Employees)
YEARLY TESTING TOTAL	15	300	3,000
AVERAGE PER QUARTER	4	75	750
NO TESTS 2ND QUARTER	5 each quarter	100 each quarter	1,000 each quarter
NO TESTS 2ND OR 3RD QUARTER	9 in 4th quarter	225 in 4th quarter*	2,250 in 4th quarter

* For a medium size company that chooses not to test in the second or third quarter of the year, that would equate to 225 tests that would need to be completed in the fourth quarter.

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Drug Testing in the COVID Era

During the COVID-19 pandemic some collection sites have shut, at least temporarily, while others have reduced their hours of operation causing employers to experience problems getting urine collections done. Additionally, there have been regular reports of employees and job applicants who have simply refused to visit off-site collection facilities for fear of being exposed to the coronavirus.

The inherent ease of a typical oral fluid collection makes it possible for a collection to take place virtually anywhere in a clean environment. Because there is no need to use a secured restroom or toilet stall, an oral fluid collection can take place in an office, outdoors at a remote construction site, or virtually anywhere else. Conversely, urine collections require the privacy of a bathroom stall, which creates the risk of exposure to the virus via unsanitized toilets, toilet handles, sinks, faucet handles, stall doors, door knobs, and any other surface typically touched by people who use a restroom.

Additionally, a typical oral fluid collection is employee-driven, meaning donors physically conduct the collection themselves without the collector ever touching the collection articles and containers. This significantly reduces the possibility of any exposure to the COVID-19 virus via a donor's saliva because the collector never comes in contact with the donor's sample. While professional technicians at offsite facilities may be used to collect oral fluid samples, it is optional and depends on the circumstances such as concerns about the cost of using such services or possible exposure to the coronavirus.

Generally, following the Centers for Disease Control and Prevention (CDC) guidelines and other common-sense practices can give everyone involved in the collection process an assurance of knowing that all precautions were taken to ensure the safeness and cleanliness of the collection area and the individuals involved. The CDC guidelines include, among other things, social distancing (maintaining at least six feet distance between people), the use of face masks or facial coverings, rubber gloves and, in the case of health care providers, a gown.⁵

There are two primary types of COVID-19 tests—viral or molecular tests and antibody tests.

COVID Testing – Returning to Work

The Equal Employment Opportunity Commission (EEOC), the federal agency that regulates the Americans with Disabilities Act (ADA), has determined that because COVID-19 is a “direct threat” under the ADA, the EEOC will permit employers to conduct some types of COVID-19 tests, check employees’ temperature and send home workers who have tested positive for the coronavirus or who are exhibiting COVID-19 symptoms.

Regarding pre-employment COVID testing, the EEOC has stated:

“An employer may screen job applicants for symptoms of COVID-19 after making a conditional job offer, as long as it does so for all entering employees in the same type of job. This ADA rule allowing post-offer (but not pre-offer) medical inquiries and exams applies to all applicants, whether or not the applicant has a disability.”⁶

There are two primary types of COVID-19 tests—viral or molecular tests and antibody tests. A viral or molecular test reveals if a person has a live infection. An antibody test reveals if a person had a previous infection. Most testing methods require either a blood, nasal or oral fluid sample, and the sample collection should be conducted or be supervised by a trained professional technician.

Guidance for workplace COVID testing seems to be changing regularly. Employers should routinely check the EEOC and CDC websites for specific regulatory updates (what’s permitted and not permitted) and defer to their respective state governments for workplace COVID testing guidance.





An individual who has COVID-19 or symptoms associated with it should NOT be in the workplace.

Employee Health Protocols

All 50 states have issued “reopen” guidelines that provide specific advice and, in some cases, requirements for employers to follow as workplaces open again. These guidelines include what should be done to ensure workers are healthy and free of a COVID-19 infection, and what to do when a worker has COVID-19 symptoms and/or tests positive, and later wants to return to work.

According to the CDC, employees who have symptoms (e.g., fever, cough or shortness of breath) should notify their supervisor and stay home.⁶ Additionally, such individuals should not return to work until they meet the following conditions:

- At least three days (72 hours) have passed since recovery (resolution of fever without the use of fever-reducing medications);
- The individual has improvement in respiratory symptoms (e.g., cough, shortness of breath); and
- At least seven days have passed since symptoms first appeared.⁷ (Different states may have their own specific return-to-work criteria.)

Regarding returning workers providing a note from a doctor, the EEOC has stated:

“Such inquiries are permitted under the ADA either because they would not be disability-related or, if the pandemic influenza were truly severe, they would be justified under the ADA standards for disability-related inquiries of employees.”⁸

The bottom line the CDC has stated: “According to current CDC guidance, an individual who has COVID-19 or symptoms associated with it should not be in the workplace.”⁹

Conclusion: What You Should Be Doing Now

No one can predict when the pandemic will be completely under control, but the day will surely come. In the meantime, there are important things employers can do to be prepared for the new “normal,” whatever it may look like. For instance:

- Review your state’s “reopen” guidelines. Every state has issued its own unique set of instructions to help employers prepare for a post-pandemic workplace. Study all applicable guidelines and ensure your workplace COVID testing policy and employee health protocols align with those state requirements.
- Review and update your drug testing policy, including applicable state laws, marijuana laws, and workers’ and unemployment compensation laws.
- Get caught up on all Department of Transportation (DOT) required supervisor training or refresher training utilizing online, easy-to-use courses. Also, provide online DOT-required education for all covered employees.
- Provide non-DOT supervisor training and employee education, as well.
- Enhance and expand your drug testing program by adding alternative testing methods to your existing urine drug testing program that allow self-collection and social distancing. This includes lab-based oral fluid testing and saliva alcohol screening.
- Consider alternative collection methods such as on-site and telehealth video-observed sample collections.

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