



UNDERSTANDING DRUG ABUSE & IMPAIRMENT

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WHAT IS ORAL FLUID TESTING?

BY LINDA RICHARDSON, C-SAPA, C-SI



3 EASY STEPS TO COLLECTION



SWAB



SNAP



SEAL

Believe it or not, oral fluid testing has been around for over 20 years and is quickly becoming the methodology of choice for many employers. Oral fluid has proven to be highly accurate and the best testing methodology for many issues currently facing employers. So, what exactly is oral fluid testing and how should it be used in the workplace?

How Does Oral Fluid Testing Work?

Oral fluid testing looks at the saliva and other oral fluid secretions and is representative of what is in the bloodstream. Drugs are detectable in an individual's oral fluids within minutes of ingestion, as compared to urine, which requires several hours before certain drug metabolites are detectable. Oral fluid collections are as easy as they sound – a simple absorptive device is placed in the donor's mouth for a determined amount of time. These simple collections easily eliminate privacy concerns while still allowing observation throughout the entirety of the collection to ensure that there is no attempted adulteration. Collections only take a few minutes and then for lab based oral fluid, the samples are sent to the laboratory to undergo testing.

Testing begins with screening for a variety of drug types (depending on an employer's panel preferences and applicable state laws/federal regulations). Specimens that screen negative require no further testing. Positive specimens are tested a second time, undergoing testing via confirmation assay which looks at drug content. The entire process takes from 24-48 hours after receipt by the laboratory, after which positive results are typically sent to the Medical Review Officer (MRO).

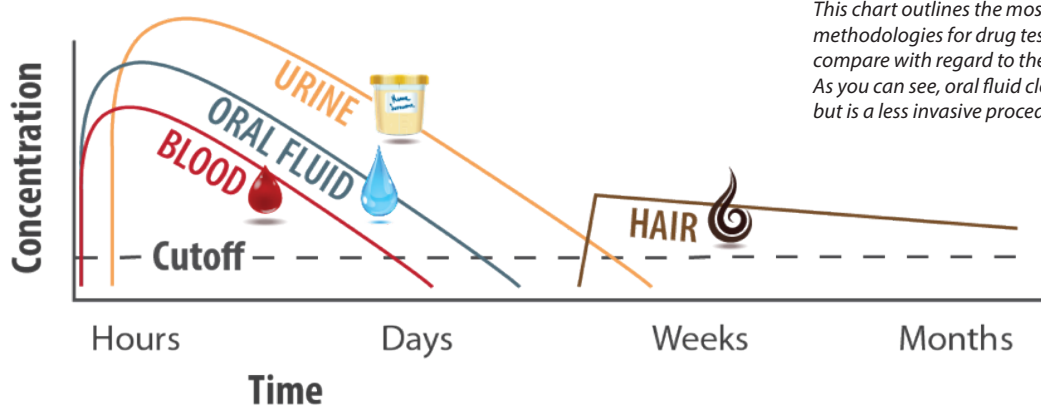
When Should I Use Oral Fluid Testing?

Because an oral fluid test looks at substances currently in the body, it is particularly useful when an employer wishes to determine recent use. Oral fluid is often used in post-accident situations to determine if drugs were in the individual's person at the time of the accident.

Another appropriate application for oral fluid drug testing would be pre-employment testing. In the job market today, there are more positions available than people to fill them, which means employers are competing for employees. One of the quickest ways to lose a potential candidate is if the hiring process takes too long. Thanks to oral fluid testing's easy collection process, the hiring process can move quickly to allow employers to hire the best candidate available to them.

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WHAT MAKES ORAL FLUID STAND OUT?



This chart outlines the most popular methodologies for drug testing and how they compare with regard to the window of detection. As you can see, oral fluid closely relates to blood, but is a less invasive procedure.

The unique advantage to oral fluid is looking at whether an employee/applicant recently used drugs, particularly when looking at marijuana use. Oral fluid is the best practice in many situations that call for the determination between recent and historic use and therefore easier to link to the possibility of impairment.

Overall, drug test positivity rates increase significantly when using oral fluid compared to urine testing. The data suggests that perhaps urine testing is not the “gold standard” anymore and employers should take notice of the positive test results that are being missed in the workplace. This could mean additional exposure for the employer and exposure often equals cost.

Next Steps for Employers

Prior to implementing an oral fluid testing program in the workplace, employers should ensure that they are permitted to use oral fluid under their state laws and/or federal regulations. Currently, 47 states permit oral fluid testing in at least one circumstance. The upcoming Substance Abuse and Mental Health Services Administration (SAMHSA) mandatory oral fluid guidelines for federally-regulated drug-free workplaces will permit many employers in states that do not currently permit oral fluid testing to begin using this testing methodology. It is likely that the Department of Transportation (DOT) will follow SAMHSA by issuing oral fluid testing guidelines, further opening the door for traditionally safety-sensitive industries to use this testing methodology.

As the best method for detecting recent use, oral fluid is becoming more valuable in the workplace in the age of legal marijuana. With its high positivity rates, easy collections, and close relationship to blood, oral fluid provides solutions to many of the problems employers face today.

LET'S TAKE A LOOK AT WHETHER THE POSITIVITY RATE INCREASES OR DECREASES WHEN USING ORAL FLUID VERSUS URINE TESTING.

DRUG TEST	ANALYSIS (%)	
	URINE	ORAL FLUID
Amphetamine	0.68	0.66
Cocaine	0.31	0.73
Marijuana	0.84	8.8
Methamphetamine	—	0.43
Opiates	0.19	0.57
PCP	0.03	0.06

Source: Quest Diagnostics Drug Testing Index, 2017



ORAL FLUID: MAKING THE SWITCH

BY ANDREW CURRENT

Because of the nature of oral fluid drug testing, collection costs are often eliminated.

As society's stance on drugs has loosened, impairment has become a pressing safety concern. This is true everywhere, from the workplace to the roadways, in the United States and abroad. For example, Canada's legalization of marijuana made headlines and the rollout has created new issues for local police who have to contend with drivers under the influence of drugs. The response has been new roadside screening procedures. The approved method is oral fluid testing.¹

"I got trained on how to use the oral fluids screening device. The device itself tests for THC, which is the impairing component in marijuana," said a local policewoman.²

The need for screening on the roadside is not a new development, but one that is becoming the norm when police departments in the United States contemplate how to combat individuals driving while under the influence. For example, Michigan state police have also turned to oral fluid testing to detect individuals that are under the influence.³ The National Transportation Safety Board, the government agency charged with investigating transportation accidents, has also endorsed oral fluid testing as the best option to respond to the marijuana epidemic.⁴

The same benefits apply to the workplace and begs the question: Why should employers make the switch to oral fluid drug testing?

Effectiveness and Cost

Oral fluid drug testing offers a snapshot of an individual's drug use within 15 minutes of substance ingestion. It should be noted that many drug users consume orally. If the suspicion is that an individual is high on the job, then knowing what they have had in their mouth is a good indicator. Additionally, the bloodstream distributes drugs throughout the body within minutes, spreading drug metabolites throughout the body and into an individual's oral fluids. Again, if someone has used recently, regardless of method of ingestion, it will end up in their mouth. What is more, oral fluid testing comes up positive more often than urine. According to one recent study, oral fluid positivity rates are two times higher than those of urine.⁵

Because of the nature of oral fluid drug testing, collection costs are often eliminated. This is because oral fluid, even lab-based, can be easily and reliably collected with basic training by company personnel. The individual being tested simply swabs the inside of his or her mouth. The person overseeing the collection then takes the swab, snaps it into its collection casing, seals it, and send it to the lab. This eliminates the traditional step of finding a collection facility, making an appointment, sending employees/applicants, waiting around for the individual to produce a urine sample, etc. As such, oral fluid drug testing is less expensive, in addition to more effective, than traditional drug testing methods.

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Making the Switch

Once an employer understands the benefits of oral fluid, switching is simple. Most of the components of the existing drug testing program stay in place. The main steps are this:

1 IDENTIFY DRUG TESTING OBJECTIVES.

Will oral fluid testing replace all testing? Random testing? Post-accident? Or act as an additional testing specimen? Identifying exactly what the workplace needs will determine the extent to which oral fluid is implemented.

2 UPDATE THE POLICY.

Many state laws require written policies before testing can be conducted. Even where this is not a legal requirement, it is a best practice that should not be ignored.

3 CONTRACT FOR SERVICES.

Contact your sales representative or account manager to add oral fluid testing to your contract and place an order for devices.

4 TRAIN SUPERVISORS.

Since collections are so easy, it makes sense to have supervisors do them. Training for oral fluid collections can be done online and is available 24/7/365.

5 ANNOUNCE THE NEW PROGRAM TO EMPLOYEES.

Provide employees with an updated copy of the drug testing policy and provide a forum to answer any questions about the change.



Conclusion

Drug testing remains an important part of an employer's assessment and workplace safety toolkit. As the acceptance of drug use creeps into society, oral fluid drug testing provides a practical solution for detecting recent drug use. Making the switch is painless and provides proven results.

**6.3 million
employees
under the influence**
Do they work for you?



OraSure Technologies

Approximate number based on 2016 data for civilian noninstitutional population. Quest Diagnostics, Drug Testing Index, Spring 2018 and Bureau of Labor Statistics, The Economics Daily, 2016.

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5. *Compare Positivity by Testing Category—Oral Fluid Drug Tests for U.S. General Workforce (finding a positivity rate for oral fluid just over 10% in 2017) with Annual Positivity Rates—Urine Drug Tests for Combined U.S. Workforce (finding a positivity rate for urine just over 5% in 2017)*, Quest Diagnostics, Drug Testing Index.

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UNDERSTANDING DRUG ABUSE & IMPAIRMENT

BY YVETTE FARNSWORTH BAKER, ESQ.

Even employees with a valid prescription that is used as directed may be unable to perform their job functions while taking the prescribed medication.

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While testing for illegal drug use is the backbone of an effective workplace drug testing policy, policies that go no farther than identifying illegal drug use can still fail in their goal. With the widespread prevalence of the opioid epidemic, prescription drug abuse, and the legalization of marijuana, workplace drug testing policies need to address the abuse of legally obtained substances and impairment on the job to be truly effective.

Use Versus Abuse

Differentiating between drug use and drug abuse is critical with legal substances such as prescription medications and alcohol. Many prescription drugs are highly addictive and use that began as a medical necessity can quickly turn to addiction. As well, use of other substances, such as alcohol, may be acceptable in certain circumstances but can escalate to abuse that affects the safety of the workplace and the well-being of an employee. These abuses lead to an increased risk of problems and an inability to control use.

There are several steps to identifying substance abuse by employees. The first is through drug screening and use of a Medical Review Officer (MRO) to confirm valid prescriptions. Keep in mind that even employees with a valid prescription that is used as directed may be unable to perform their job functions while taking the prescribed medication. As well, employees can be abusing the drugs they are prescribed. An employee may use their prescription medication at times or in quantities that make them unfit to perform their job effectively and safely. This is especially dangerous for safety-sensitive positions, which can include not only DOT safety-sensitive roles but other employees who handle sensitive data, stock shelves, travel for work, etc.

On the other hand, disability law requires employers to allow prescription drug use by employees that is in appropriate, prescribed quantities that does not affect safety or their ability to perform the functions of their position. Employers cannot lawfully ban prescription medications or require that all medications be reported to management. There is a balance required by law between maintaining the safety and effectiveness of the workplace and upholding the rights of employees with medical needs.

Employers should craft workplace policies and implement processes to identify drug abuse and to differentiate between appropriate use and abuse. Employers can work closely with professionals in workplace drug testing, law, and human resources to follow applicable disability law(s) while also establishing policies and practices that address drug abusing employees in the workplace.

Impairment

Like drug abuse, drug impairment is another tricky line to identify. In what circumstances can a person have used an intoxicating substance but not be impaired by it? The easiest way to understand this difference is by looking at the history of alcohol testing.

Science has told us for over a century that alcohol use affects the functioning of the brain and body and can cause people to engage in risky behaviors. As early as the 1910's, tests were used to identify alcohol metabolites in an individual's system and indicate when they had consumed alcohol. However, these metabolites could be identified in a person's system even after the intoxicating effects of alcohol had worn off.

Oral fluid testing is currently the most suitable drug test for capturing recent use of marijuana.

As time went on, the scientific community was able to identify what level of blood or breath alcohol concentration (BAC) has an impairing effect. By 2004, all 50 states had established BAC limits of 0.08% for driving. If a person tests at or above 0.08%, they are impaired by alcohol. If they test above zero but less than 0.08%, they have ingested alcohol but were not definitively impaired by alcohol at the time of the testing. Since 2004, some states have adjusted their BAC minimums, but the highest threshold for determining impairment remains 0.08.

To prove impairment for purposes of Driving Under the Influence (DUI) crimes, law enforcement has two methods. The first is to prove that a person tested over the "per se" impairment level of .08% BAC by using a bodily fluids test. The second is to prove that the person was impaired. This is generally done by observing the person's behavior or appearance, be it driving pattern, performance of roadside tasks, bloodshot eyes, etc. When law enforcement cannot use a bodily fluids test, perhaps because the person refused to take the test or equipment was not available in a timely manner, they use evidence of impairment.

In the workplace, knowing the signs of impairment can be extremely useful and can help an employer:

- SHOW that an employee is using a lawful substance, such as a prescription medication, in a manner that makes them unfit for the job.
- DETERMINE probable cause to drug test an employee.
- IDENTIFY performance issues when faced with drugs such as marijuana, which stay in the system for a long time after use.

Continued on back cover...

ASK THE EXPERTS:

WHAT DO I DO?

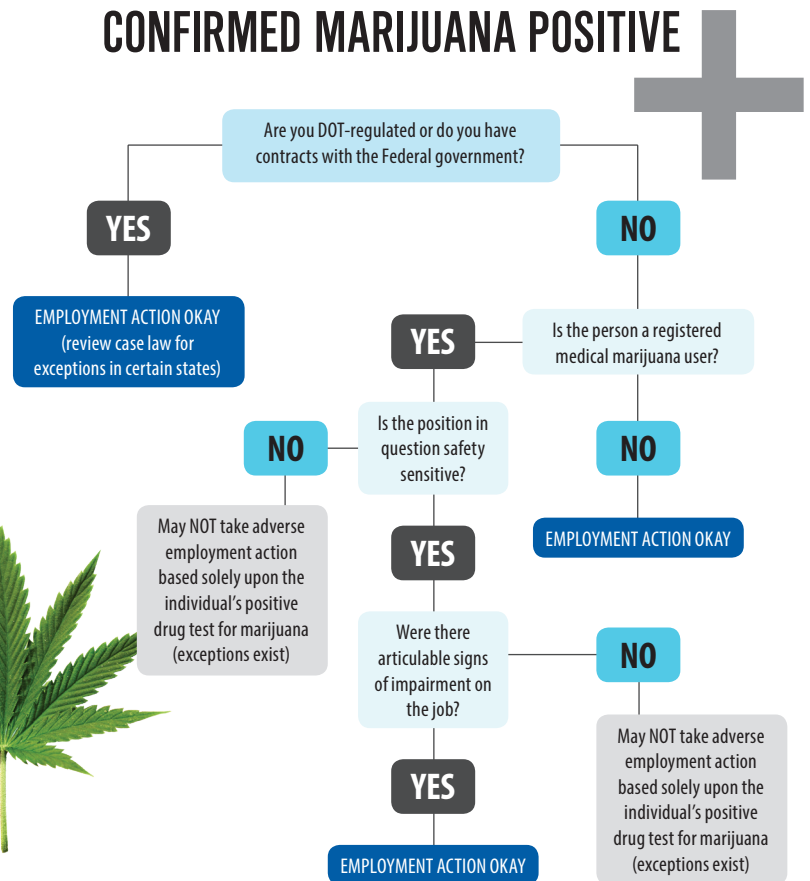
Post-Employment Marijuana Confirmed Positive Decision Tree

Dealing with a positive test result can lead to many questions. Here is a handy guideline* for handling a tricky situation.



*This is a general guideline, consult applicable laws and case law in your state(s) of operation before taking action based on a marijuana confirmed positive drug test result.

CONFIRMED MARIJUANA POSITIVE





WORKPLACE MARIJUANA USE



As of the date of this publication, marijuana is legalized for medical use in 34 states and the District of Columbia, as well as 10 states and the District of Columbia for recreational use. Legalization efforts have not slowed, and with legalization marijuana use in the U.S. continues to rise. Employers are tasked with maintaining workplace productivity and safety whilst navigating increased employee marijuana use, frequent case law, and legislative updates. Unlike other drugs, marijuana's precarious position between legal and illegal makes it unique.

Marijuana: Both Legal and Illegal

The federal government continues to classify marijuana/cannabis as a Schedule I drug. Under the federal Controlled Substances Act (CSA), Schedule I drugs are those that are determined to have a high potential for abuse and have no currently accepted medical use. Although a review of marijuana's status as a Schedule I drug was conducted in 2016, the Drug Enforcement Agency (DEA) chose to keep marijuana classified as Schedule I, where it remains today.

In addition to not being prescribable by doctors, Schedule I drugs cannot be distributed by pharmacies. Possession and distribution of a Schedule I substance can be criminally prosecuted in a federal court, and research and/or clinical studies on these substances are extremely limited. Additionally, as Schedule I substances are illegal, the Food and Drug Administration (FDA) has no oversight or regulation on marijuana or marijuana-containing substances.

In recent history, the federal government has generally chosen not to prosecute those who possess and distribute marijuana in compliance with state laws. Thus, marijuana inhabits an in-between zone of legality: legal and illegal at the same time. Although the government overlooks possession in compliance with state laws, it continues to treat marijuana as an illegal substance in terms of oversight, distribution, federal disability law protection, and more. Federally-regulated drug-free workplaces still require employees to test negative for marijuana, as well as other illegal drugs.

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Prescription Marijuana

There is a common misconception in today's society that medical marijuana use is the same as prescription drug use. Because marijuana remains federally illegal, medical marijuana lacks the government insight and clinical trials that prescription medications are subject to. Doctors who "recommend" marijuana to patients operate with little information about dosage, THC levels, and more. This can lead to a lack of quality control, leaving vulnerable patients at risk of ingesting mold, fungi, bacteria, pesticides, carcinogens, and many more dangerous toxins. Although medical marijuana is popular, it has not been subject to the rigorous testing the prescription drugs must undergo before they are permitted to be utilized as treatment.

Two exceptions to this rule exist - Marinol® and Syndros®. The FDA approved these two THC-containing drugs due to the reported benefits of medical marijuana. These drugs are used to treat patients with cancer, glaucoma, Aids, and HIV. Although these approved medications contain little THC, they still may be prohibited in certain positions/industries (e.g. safety-sensitive).

Marijuana and Alcohol

Although recreational marijuana use and alcohol use are often compared, alcohol impairment is well established while marijuana impairment is not. While a simple breath or saliva test can tell an employer that an employee used alcohol very recently, doing the same for marijuana is much more difficult. Currently, oral fluid testing is the best method for employers that wish to detect marijuana use, as it measures recent use and excludes historic use. Other testing methodologies, such as urine, are unable to discern recent use from use that happened days to weeks ago. While oral fluid testing measures recent use, there is no currently available test that measures marijuana impairment.

The impact that THC has on an individual varies from person to person, and legality arrived long before a standard level of impairment has been tested in the US. Additionally, due to the lack of federal oversight for marijuana, THC levels in products often vary widely, meaning that users rarely know how much THC they are actually consuming. Until marijuana production, manufacturing, labeling, and distribution becomes standardized, use, safety, and wellness will continue to be a foggy area.



cannot be grounds for discipline and/or termination, or simply state that a medical marijuana using employee cannot be discriminated against in disciplinary procedures, hiring, or termination. Currently, protections for marijuana use in the workplace do not extend to recreational users in 49 states and the District of Columbia, with Maine being the sole exception. Arizona is an example of a state with medical marijuana protections, providing that a medical marijuana using employee can only be disciplined for a marijuana-positive drug test if s/he was impaired by marijuana during work hours or brought/used marijuana in the workplace.

Additionally, case law has emerged that offers medical marijuana users further protections. *Barbuto v. Advantage Sales and Marketing*, for example, held that the Massachusetts state disability discrimination law applies to medical marijuana use. This ruling only holds in Massachusetts, but employers should be aware of any prior and/or progressing cases in their state(s) of employment that may impact their rights when it comes to marijuana-using employees.

Best Practices

Communication is key for employers – communicate your company policy regarding marijuana use regularly and clearly so as to alleviate any confusion that employees may have. Workplace safety and productivity should remain a top priority, and policies should restrict marijuana use to the extent permitted by law. In all states and industries, policies must, at a minimum, prohibit marijuana use in the workplace as well as marijuana impairment during work hours.

Employers should continue testing for marijuana, using a testing method, such as oral fluid, that indicates recent use. In states with medical marijuana protections, workplace policies should require employees to verify their medical marijuana authorization to a Medical Review Officer. Policies should prohibit marijuana use by employees in safety-sensitive positions, and employers and managers should be trained to identify marijuana impairment. Additionally, employers should work with HR to develop a policy for employees who request accommodation of legal medical marijuana use for a disability, taking care to comply with state disability discrimination laws.

State Laws and Workplace Marijuana Use

As marijuana is not legalized on the federal level, states treat workplace marijuana use differently when legalizing the substance for medical and/or recreational use. Some laws protect employer's rights, some defer to medical marijuana-using employee's rights, and still case law complicates the matter further. It is essential that employers understand applicable state and case laws in order to remain compliant with their drug-free workplace policies and practices.

Generally speaking, when a state marijuana law does not mention employers at all, the status quo remains in place, meaning that employers may test and discipline for marijuana use in the same manner as other illegal drugs, subject to the requirements of state drug testing laws. Colorado is an example of a state where the status quo remains static, with the state law stating that employers are not required to accommodate the use of medical marijuana in the workplace.

Alternatively, some states protect medical marijuana using employee's rights. Some laws state that a medical marijuana using employee's positive marijuana test alone

Oral fluid is the best method for employers that wish to detect marijuana use, as it measures recent use and excludes historic use.

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Marijuana

Testing for marijuana is becoming problematic with widespread marijuana legalization. Marijuana is a drug whose metabolites stay in a person's system for days to weeks after impairment has worn off. Additionally, the scientific community has not reached a consensus about a marijuana cut-off level that conclusively indicates impairment. For most drug tests, it is extremely difficult to know if marijuana use is abuse and/or demonstrates impairment.

Although there is no test that can measure impairment from marijuana, oral fluid testing is currently the most suitable drug test for capturing recent use of marijuana. Oral fluid does not retain marijuana metabolites like other bodily samples do, and so a positive marijuana test in oral fluid evidences recent marijuana use, meaning an employer can positively say that an applicant/employee has ingested marijuana in the past 18 to 24 hours.

In the past, it was not necessary to prove marijuana impairment instead of marijuana use because marijuana was an illegal drug and any use at any time was grounds for

workplace discipline. However, with marijuana legalization on the rise, several states now prohibit an employer from disciplining an employee based on solely a positive marijuana test if the employee using medical marijuana legally. Employers in some states must prove additional factors before disciplining an employee for testing positive, such as impairment on the job, use at work, a safety-sensitive position, or lack of a medical marijuana card. This makes an understanding of use versus abuse and use versus impairment vital, particularly as marijuana use increases nationwide.

Action Items

There are several important steps that employers can take to combat drug abuse among employees. Employers should regularly review their workplace drug testing policies. Workplace policies can address not only illegal drug use but prescription drug abuse. An MRO can assist with identifying false prescriptions, outdated prescriptions, or use of another person's prescription. Policies can also utilize signs of impairment at work. Employers should take care to understand the laws surrounding marijuana in their state(s) and to be sure that

their policies conform to the requirements of their state(s) laws .


Additionally, employers should consider what testing methods are most appropriate for their workplace. Capturing recent use is best done through oral fluid or blood testing. Using a variety of testing methods often allows employers to meet the varied needs determined by different circumstances. But again, employers need to know the state laws surrounding workplace drug testing for the states in which they operate, as not all testing methods are permitted in all states.

Above all, employers need to be sure they are addressing the very real risk of drug abuse and impairment in the workplace. Physical safety of employees and the public, safety of sensitive data, legal liability, and productivity are all placed in jeopardy when drug abuse is not curbed or monitored in the workplace.

➔ To review state laws pertaining to oral fluid testing, please visit the following page:

<http://www.currentcompliance.org/wp-content/uploads/2018/12/State-by-State-Oral-Fluid-Guide.pdf>

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