



DRUG TESTING PANELS

WHAT ARE THEY AND
HOW DO I CHOOSE
THE RIGHT ONE?



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DRUG PANELS

WHAT ARE THEY AND HOW DO I CHOOSE THE RIGHT ONE?

BY YVETTE FARNSWORTH BAKER, ESQ.

Lab-based oral fluid testing offers customizable panel options for testing.

Drug testing involves some important decision-making and one impactful decision is choosing a drug panel. The term “drug panel” means a combination of drugs or category of drugs included in a drug screen test. Many drug testing methodologies, such as oral fluid, allow for customizable panels, so there is flexibility when deciding on your panel. There are many drugs that can be tested for and various considerations when choosing the panel that is right for your needs.

What drugs are included in a panel?

There are ten different drug classifications that are most common in a drug panel. Most tests do not screen for all ten, but include some combination of them according to an employer’s interests and needs. The ten common drugs for a panel are:

- Marijuana (THC)
- Cocaine
- Amphetamines
- Opioids
- Phencyclidine (PCP)
- Benzodiazepines
- Barbiturates
- Methadone
- Quaaludes
- Propoxyphene

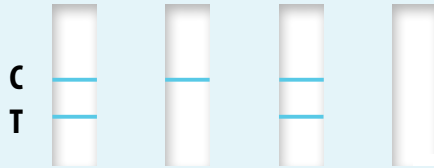
Most drugs on this list are families of drugs that will detect several different drugs within that classification depending on the sample type used. Marijuana testing, for example, will detect not just marijuana, but can also pick up THC from other cannabis products such as cannabidiol (CBD) or hashish. Amphetamines can detect methamphetamines (meth), speed and MDMA, as well as ADHD prescription drugs like Ritalin and Adderall. Opioid testing can detect multiple types of opioids including heroin, morphine, codeine, oxycodone, hydrocodone and opium. Benzodiazepine testing will detect Valium, Xanax and Ativan. Barbiturates include phenobarbital.

Customizing a panel

Not all drug panels include testing for all ten substances listed above. Common drug panels include five or seven panels. Lab-based oral fluid testing offers customizable panel options for testing. Employers can select which drugs they want to include in their panels based on their needs and circumstances.

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Panels you choose will have a major impact on the safety, security, and efficacy of your workplace.



Depending on the device, rapid testing may be less customizable than lab-based testing, but still offers some options when choosing drug panels. Rapid testing generally comes with pre-determined panels. Rapid testing is also known as instant testing and point of care or point of collection testing (POCT), and can include rapid cups and rapid oral fluid devices. The Department of Transportation (DOT) requires at least a 5-panel test to include: marijuana, cocaine, amphetamines, opioids and PCP. Many state workplace drug testing laws also follow DOT's panel requirements. Examples of other panel options include a 4-panel test that removes marijuana or PCP testing, a 7-panel test that screens for various prescription drug abuses and a 10-panel test that covers most drugs of abuse. A 12-panel test is available, which can include expanded testing for additional opioids and amphetamines or can include fentanyl and ketamine.

State law requirements

Some state drug testing laws require specific drug panels to be used. Many states follow DOT's panel requirements. Others permit testing for any illegal drug or any controlled substance. Some states specify the drugs that can be included in a panel or detail restrictions on panels.

One example of a state law with drug panel specifications is Mississippi's voluntary law, found at Mississippi Administrative Code 15-16-4, Rule 53.4.1. This law permits a workplace drug test to include marijuana, cocaine, opiates, amphetamines, PCP, alcohol and other controlled substances. The law does specify, however, that testing for such substances can be done only if an "appropriate federal agency" has established an approved protocol and positive threshold for each such substance. So, testing of certain substances may be limited depending on whether federal guidelines exist for that substance.

A few limited jurisdictions have begun to restrict marijuana on pre-employment drug panels. The cities of New York and Philadelphia recently enacted laws that prohibit pre-employment marijuana testing (Philadelphia's law does not take effect until 2022). Both cities include exemptions for certain job positions, including positions that require a Commercial Driver's License (CDL). New York City also includes exemptions for positions requiring employees to regularly operate heavy machinery. These laws are outliers at this point in time. Most state or local laws that limit workplace marijuana testing only restrict the adverse employment action that can be taken following a positive test but still do permit testing to occur.

How to choose a drug panel

When choosing a drug panel, there are several factors to consider.

The first and most important factor is to look at is legal requirements, which will include state and local laws, and professional requirements such as DOT or Substance Abuse and Mental Health Services Administration (SAMHSA).

Be sure to pay special mind to marijuana laws, workers' compensation laws and unemployment compensation laws, which are generally found separately from workplace drug testing laws. If you can, consult with an expert on drug testing laws to be sure that you understand the requirements of the states and industries in which you operate. Once you know what panels are permitted and/or required, you can begin considering the necessities of your workplace.

Secondly, consider the nature of the different job positions in your workplace. Is driving or heavy machinery involved? Are there other safety-sensitive positions? Do employees interact with clients or the public? Do employees handle sensitive data or information? How many employees are

physically present in the workplace? Answering these questions will help you assess the safety risks inherent in your workplace.

Next, consider other factors that will go into your decision. What is the culture around your workplace? What substances are being abused in your community? Are you concerned about prescription drug abuse in addition to illegal substances? Do you have concerns about productivity, absenteeism, tardiness and health care costs? Has the pandemic increased substance abuse in your workplace or your community? What level of risk are you willing to assume for employees working under the influence? Will you be using solely lab-based testing or do you utilize rapid testing as well? The answers to these questions should play a part in determining which panels are right for your workplace.

[CHECK OUT OUR STATE-BY-STATE GUIDE FOR MORE INFORMATION ON USING ORAL FLUID IN YOUR STATE.](#)

For limited or basic concerns about drug abuse, consider a 4- or 5-drug panel. If you have concerns about prescription drug abuse, consider a 7-drug panel. For safety-sensitive workplaces, including law enforcement, look into a 10- or 12-drug panel. And research more customizable options to include specific screening that addresses your concerns. The panels you choose will have a major impact on the safety, security and efficacy of your workplace. It is a decision that all employers would do well to study with the help of a knowledgeable professional.




REMOVING MARIJUANA

FROM YOUR DRUG
TESTING PANEL

A NEW TREND?

BY BILL CURRENT AND KATHERINE MILLER

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AMAZON, one of the largest and most successful companies in the world, arguably just became a great place to land a job if you're a drug user.

On June 1, 2021, Amazon announced that it will no longer drug test as many applicants and employees for marijuana.ⁱ Additionally, the company stated that it will be using its considerable influence to convince congressional lawmakers to legalize marijuana federally. Amazon is the latest large company to drop marijuana from their testing panel—companies such as AutoNation made the decision a number of years ago and it's likely that other companies have enacted similar measures without making public announcements.ⁱⁱ

Only time will tell what impact removing marijuana from a drug test panel will have generally and on any specific company. However, this much we already know: employees under the influence of marijuana at work are less productive and more prone to causing accidents, filing workers' compensation claims and more likely to be absent from work.ⁱⁱⁱ In other words, marijuana users are more expensive to employ than their non-marijuana using co-workers.

So, let's clarify three critical questions:

1. **Are employers eliminating all testing for marijuana?**
No. In fact, much of what most companies are eliminating is pre-employment testing for marijuana. Post-hire testing following incidents or testing of those in safety-sensitive positions will continue, including at Amazon.
2. **Are employers challenging the U.S. Department of Transportation's (DOT) regulations that require employers in various transportation industries to drug test for several substances, including marijuana?** No. Across the U.S., even companies that have dropped other tests for marijuana continue to comply with DOT requirements for pre-employment and post-hire testing for marijuana.

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Marijuana users are more expensive to employ than their non-marijuana using co-workers.



Workplace testing for marijuana is legal in all 50 states.

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3. Why are some employers supporting efforts to get the federal government to legalize marijuana?

We would not presume to speak for such employers, but we know from various reports that some employers are complaining that the legalization of marijuana is making it more difficult to find qualified workers to hire.^{iv} In other words, more people are failing their pre-employment drug test.^v We also know that a growing number of states that legalize marijuana are placing restrictions on what employers can do when an applicant or employee tests positive for marijuana, often requiring employers to prove the individual was impaired and not simply positive on a drug test. A recent-use detection drug testing method like oral fluid testing can help with this.

Predicting the future

Ultimately, we can safely predict the following about employers that choose to drop marijuana from their testing panel:

- They will have less trouble finding people to hire because they will, in many instances, no longer screen out marijuana-using job applicants.
- The company will likely see a negative impact on the safety and security of its workplaces. There's no way around that fact. Less accountability will lead to more marijuana users on the payroll, more people high on the job, with all the well-documented consequences of such a scenario.^{vi}
- Some employers may choose to eventually re-instate pre-employment testing for marijuana.

Trends in drug panels

In a 2021 survey of 348 employers conducted by the Current Consulting Group, 47.6% indicated they were concerned about the legalization of marijuana's impact on safety in the workplace and 32.2% indicated they were at least a little concerned about safety.^{vii} That is nearly 80% who, probably on a regular basis, are dealing with problems related to employees being at work under the influence of marijuana.

Only 9% of respondents in the same survey indicated they were considering removing marijuana from their drug test panel in the next 12 months. And of that group, 12.5% said it was because testing for marijuana was not permitted in their states, which is not true. In reality, workplace testing for marijuana is legal in all 50 states. There may be conditions that must be met and pre-employment testing for marijuana may be limited to certain safety-sensitive occupations, but testing for marijuana is permitted in every state.

Employers who choose to eliminate marijuana from their testing panels may want to consider adding to their panel in other areas, such as adding an expanded opiate panel. For years opioid use has been on the rise, recently reaching an all-time yearly high of 81,000 drug overdose deaths, resulting in expanded safety concerns for employers as opioid use and abuse increased during the COVID-19 pandemic at an accelerated pace.^{viii}

Trends in state laws and city ordinances

Increasingly, legislators are shifting laws from more traditional, employer-focused laws to laws that instead choose to offer greater



protections to employees. New York City and Philadelphia, for example, have both recently passed city ordinances that severely limit an employer's right to conduct pre-employment testing for marijuana. Both cities include a safety-sensitive carve-out for positions that employers can and should continue testing applicants for marijuana. In both cities,

employers required to comply with regulations such as those put forth by the federal DOT are not required to comply with the city ordinance.

Currently, Nevada is the only state that has a similar law that limits the actions an employer can take based on a positive pre-employment test for marijuana. AB 132, passed in 2019, prohibits employers from failing or refusing to hire prospective employees because of a drug test indicating the presence of marijuana metabolites. Employers can continue pre-employment marijuana testing—it is only action based on a marijuana positive test that is prohibited in certain circumstances. Similar to New York City and Philadelphia, Nevada's law includes a safety-sensitive carve-out.

It is likely that Nevada, New York City and Philadelphia are only the beginning. Already in 2021, a number of similar bills have been proposed both on the state and the city levels. Legislators seem to recognize the need for continued marijuana testing for current employees and applicants for safety-sensitive positions, at a minimum.

Why continue testing for marijuana?

Misinformation is a common problem throughout the country when it comes to the legalization of marijuana. If a company is considering removing marijuana from its drug test panel, consider these reasons to continue testing for marijuana:

- **Legalizing marijuana has led to more people smoking marijuana.** There has been a dramatic increase in marijuana use as the legalization of the drug spreads across the country. In 2020, the federal government reported that the percentage of Americans 12 and older who admitted to using marijuana in the past year increased from 15.9% to 17.5% in just one year.^{ix} That's what statisticians refer to as a "statistically significant" increase. Additionally, marijuana is the most commonly used addictive drug after tobacco and alcohol.^x
- **Legalizing marijuana has led to more employees and applicants testing positive for marijuana.** According to one major drug testing laboratory: "Marijuana positivity surged in states with legal recreational use statutes 118.2% from 2012-2020 (2.2% in 2012 versus 4.8% in 2020). In states with only medical marijuana statutes, marijuana positivity increased 68.4% (1.9% in 2012 versus 3.2% in 2020). In states with no medical or recreational marijuana statutes, marijuana positives increased 57.9% percent (1.9% in 2012 versus 3.0% in 2020)."^{xi}
- **Legalizing marijuana has led to more traffic accidents and drug-related fatalities.** Various reports show that an increase in marijuana-related traffic fatalities, for example, corresponds directly with the legalization of marijuana in a state. For instance,

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Continued testing for marijuana can help reduce costs while protecting safety.



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"The latest AAA Foundation research found that between 2008 and 2012—the five-year period before the drug was legal—an estimated 8.8% of Washington drivers involved in fatal crashes were positive for THC. That rate rose to 18% between 2013 and 2017."^{xii}

Additionally, an estimated 65% of all workplace accidents and 38–50% of all workers' compensation claims are due to drug and alcohol use, including marijuana.^{xiii}

Conclusion

More marijuana usage. More workers testing positive. More accidents. More fatalities. Also consider the fate of alcohol in the U.S. Although a federally legal substance, society still recognizes that alcohol use has an impairing effect and can result in significant safety hazards. Because of this, employers are still required to test for alcohol use in many instances, regardless of the legal status of alcohol use.

Marijuana, similarly, although legal in many states, has an impairing effect on users and can result in significant safety hazards. Each employee with an untreated substance use disorder costs an employer an average of \$8,817 annually—continued testing for marijuana can help reduce these costs while protecting safety.^{xiv}

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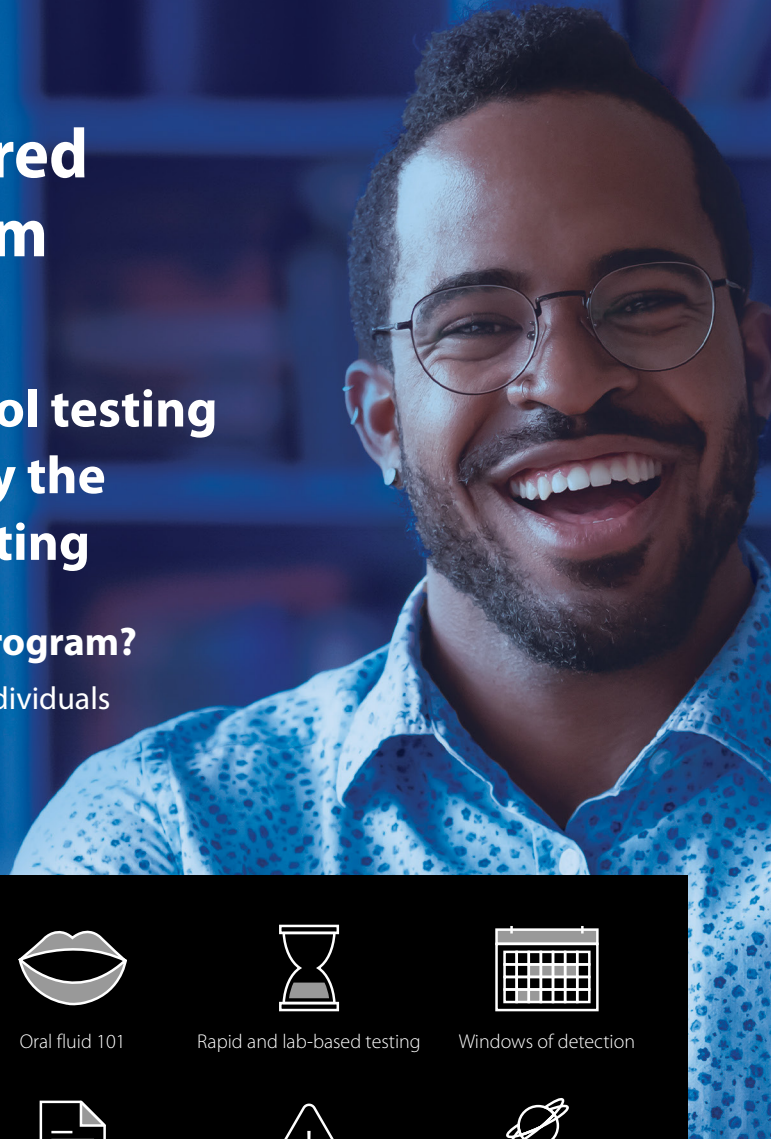


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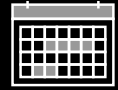
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1 2020 Drug testing survey by CCG of U.S. based companies only.
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CRAFTING THE RIGHT POLICY FOR YOUR DRUG TEST PANEL

BY SHARON BOTTCHER

A successful drug-free workplace program includes several essential components, including testing. Testing gives an employer the ability to determine if employees or job applicants are using drugs. It can identify evidence of recent use of alcohol, prescription drugs and illicit drugs.

When you decide to test your employees, it is important to choose a testing panel appropriate to meet your program needs, industry standards and applicable laws. The term “panel” refers to a drug or family of drugs included in a drug test. There are several panel options to choose from and the most common panels include 5-, 7- or 10-substances.

The traditional 5-panel

The most accepted panel is testing conducted according to the Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines used by the Department of Transportation (DOT) for safety-sensitive positions that are regulated by DOT agencies (the Federal Motor Carrier Safety Administration (FMCSA), the Federal Aviation Agency (FAA), the Federal Transit Authority (FTA), the Federal Railroad Administration (FRA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the United States Coast Guard (USCG)). These five illicit drugs include:

- Amphetamines
- Cocaine
- Marijuana
- Opioids
- Phencyclidine (PCP)

Some state drug testing laws mirror the federal regulations and thus mandate the use of the federal drug test panel.

The 7- and 10-drug panels

Most private employers are not limited in the number of substances they can test for and may include other drugs that individuals legitimately and/or therapeutically take based on a physician’s prescription. Often the 5-drug panel is expanded to a 7- or 10-drug panel.

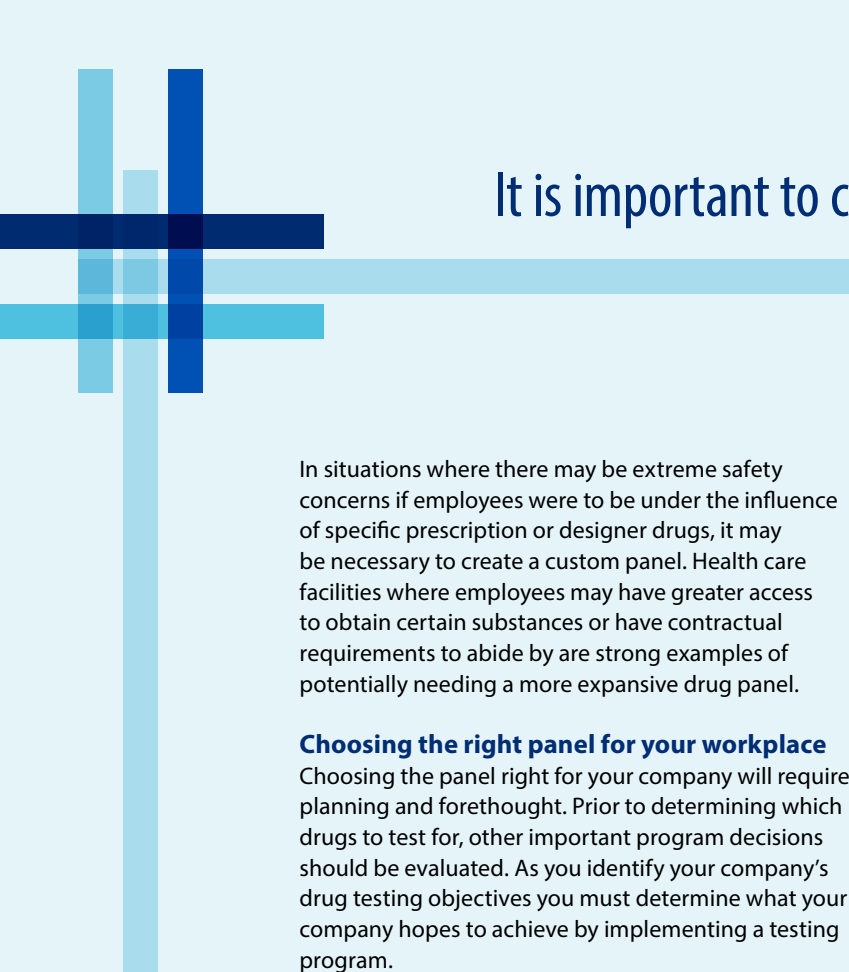
The 7-panel usually adds on benzodiazepines and barbiturates. Barbiturates and benzodiazepines are “downers” often prescribed for sedation purposes and are prone to being habit forming and can result in fatal overdoses.

A typical 10-panel adds on methaqualone, methadone and propoxyphene. Methaqualone is used recreationally as a muscle relaxant and aphrodisiac. Methadone and propoxyphene can be used as pain relievers and can cause extreme exhaustion, slowed heartbeat and confusion. These “add on” drugs are highly addictive and have very dangerous side effects.

Testing can also be done for:

- Hallucinogens (LSD, mushrooms, mescaline, peyote)
- Inhalants (paint, glue, hairspray)
- Anabolic steroids (synthesized, muscle-building hormones)
- Fentanyl, meperidine and tramadol

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It is important to choose a testing panel appropriate to meet your program needs.

In situations where there may be extreme safety concerns if employees were to be under the influence of specific prescription or designer drugs, it may be necessary to create a custom panel. Health care facilities where employees may have greater access to obtain certain substances or have contractual requirements to abide by are strong examples of potentially needing a more expansive drug panel.

Choosing the right panel for your workplace

Choosing the panel right for your company will require planning and forethought. Prior to determining which drugs to test for, other important program decisions should be evaluated. As you identify your company's drug testing objectives you must determine what your company hopes to achieve by implementing a testing program.

Some important questions to consider when deciding the appropriate panel to use as part of your program are:

- Will you test for and accept medical marijuana use?
- Are you mandated to comply with federal DOT regulations?
- Are you required to mirror DOT testing regulations per state law?
- Are you interested in participating in a program that allows an employer to receive a discount on workers' compensation premiums?
- Are you interested in a program to deny unemployment or workers' compensation claims?

Each of these factors will determine many program requirements including which substances can or should be included in a testing panel.

Equally important is to consider the last time you evaluated or updated your testing program. Fluctuations in world events, company goals and state laws can affect various elements of your program. A prime example is the current opioid crisis. America is in the throes of an opioid crisis and that alone should cause enough concern to review and analyze your current drug test panel. It is possible your testing panel

may need to be updated to reflect semi-synthetic opioids (i.e., hydrocodone, oxycodone, etc.) or other prescription medications. Alternatively, there may be drugs included in your panel that are no longer relevant. Studies have shown propoxyphene and methaqualone positivity rates are nearly non-existent and it may be reasonable to consider excluding these substances from your testing panel.¹

One last worthy mention regarding updating panels is the substantial changes in marijuana state laws that affect workplace drug testing. Now that several states have legalized medical and/or recreational marijuana use, some jurisdictions have enacted laws prohibiting employers from testing for marijuana under certain circumstances. In other states, marijuana testing should be performed in limited circumstances. This leads into the importance of ensuring the testing panels comply with state and federal drug testing laws. There are a considerable number of states that delineate which substances can be included in a testing panel, while others leave that decision up to the employer.

Conclusion

Whichever drug panel best suits your needs, it is best for the drug test panel to be outlined in a written drug and alcohol testing policy. The purpose of the policy is to not only meet the requirements of applicable laws and regulations, but also to describe any restrictions and requirements on workplace testing and inform employees and applicants of the company stance on the use of substances such as alcohol, legalized marijuana and prescription drugs. It is imperative that employees understand what drugs are prohibited and what the consequences are for policy violations to ensure that they can abide by the testing policy.

While a non-DOT-covered company has much more flexibility to design their drug testing program and drug-test panel than a company regulated under the DOT, a policy must be customized and built on the unique organizational requirements and developed to comply with all applicable federal, state or local laws.

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