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# DRUG TEST CHEATING

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In 2018, the Mississippi Legislature introduced the now-dead “Urine Trouble Act” in an attempt to prohibit the sale of urine and synthetic urine for the purpose of defeating a drug test.<sup>1</sup> All puns aside, this is just one example of states’ efforts to address a rising concern over people trying to cheat a drug test, whether it is for employment purposes or otherwise. While cheating has always existed in drug testing, it is disturbing for employers. The good news is, there are ways for employers to avoid being taken advantage of by would-be cheaters.

“While we recognize the fairness, effectiveness and accuracy of urine tests, we also all realize that there is a tremendous cheating problem out there,” said Patrice Kelly, director of the Office of Drug, Alcohol, and Compliance within the U.S. Department of Transportation.<sup>2</sup> “Oral fluids and hair offer great promise because both of them are observed collections and arguably in many cases are less intrusive.”

This article will present statistics on the prevalence of drug test cheating, the most common methods cheaters use, and how oral fluid can present an alternative solution for drug-free workplace programs.

## Prevalence

It is difficult to point to exactly how many people attempt to adulterate a drug test. One reason is that there is no way to identify those who succeed unless they come forward. However, anecdotal evidence supports the observance that drug test cheating poses a significant problem for employers. For example,

the owner of one testing site described performing 75 to 100 drug screens each week, of which he averaged three weekly attempts to cheat.<sup>3</sup> “To me it’s a sign of desperation,” said the owner.<sup>4</sup>

Another example comes from the U.S. Nuclear Regulatory Commission. In 2017, it conducted drug testing on over 148,000 individuals.<sup>5</sup> Of those tested, 1,143 resulted positive for drugs or alcohol, or refused to submit to a test.<sup>6</sup> Of those who failed their test, 298 were because they attempted to cheat.<sup>7</sup> The percentage of cheaters in that group of failed tests has increased year over year, from over 15 percent in 2012 to over 26 percent in 2017.<sup>8</sup> Fortunately, 200 of those people were identified during pre-access testing, meaning that they were denied access to a nuclear facility.<sup>9</sup> Unfortunately, the other 98 were identified through testing methods employed after they had gained access to a nuclear facility.<sup>10</sup>

This upward trend corresponds with results reported by a national drug testing laboratory, who found the percentage of invalid urine results in federally-regulated workplaces increased from almost doubled from 0.15 percent in 2017 to 0.27 percent in 2018.<sup>11</sup> Similarly, the percentage increased in non-federally-regulated workplaces, from 0.15 percent in 2017 to 0.21 percent in 2018.<sup>12</sup> While the percentage remains low overall, the upward trend is significant and presents an increased risk for employers with drug-free workplace programs.

## Methods

A study released in 2010 found that the three most common methods of drug test cheating were dilution, substitution, and adulteration.<sup>13</sup> Of those, the majority of people used dilution (58 percent), with a 71 percent success rate.<sup>14</sup> Dilution of a urine specimens happens when a donor drinks large amounts of water in hopes that the level of drugs in the sample will be beneath the detection threshold.

Next, 25 percent of cheaters used substitution, with a 100 percent success rate according to a recent Medscape study.<sup>15</sup> This means either asking a friend to provide a clean sample or going online to buy synthetics that the cheater can sneak into the testing facility. “There’s a whole cottage industry out there on the Net of substitute urines you can buy under different brand names,” said the study’s author.<sup>16</sup> Finally, approximately 17 percent used adulteration, with a 75 percent success rate.<sup>17</sup> This consists of mixing household or commercially available substances such as bleach into one’s sample in hopes that it will throw off the test.

## Solutions

While there are processes to prevent cheating at the point of collection and there are specimen validity tests the lab can perform to determine whether a sample has been diluted, substituted, or adulterated, as shown in the study above, cheaters have a good track record for succeeding. The best way to prevent an individual from cheating is to observe the collection. Therein lies the drawback to urinalysis, because without some sort of suspicion triggering event, collectors do not go into the bathroom with the donor. Even when there is a triggering event, state laws often require collectors to be of the same gender as the donor. If the collector and donor happen to be of the opposite gender, then an observed collection is out of the question. In addition to needing a same-gender collector, many employers are squeamish about the privacy issues that arise when performing observed urine collections.

Alternative testing methods provide a solution for employers struggling with cheating. Oral fluid is especially useful because there are no privacy concerns that would prevent an observed collection. While products exist online that have a proven track record of fooling urinalysis,

such products for oral fluid simply do not exist currently. Other prevalent cheating methods are also thwarted by oral fluid testing because there is no opportunity to substitute one’s oral fluid with that of his or her willing friend. There is no opportunity to add in household products before delivering one’s sample to the collector because the collector watches the entire collection event. While oral fluid does not offer a solution for all testing programs, it does provide a valid solution in many workplace settings, such as pre-employment, post-accident, random, and any other testing where recent use or on-the-job impairment are a concern.

## Conclusion

With the surge of marijuana laws and other decriminalization movements, the taboos that have kept drugs at the fringes of the workplace will decrease. As access increases, so, too, will those who feel entitled to a job despite an on-going habit or dependency on impairing substances. In those moments of desperation, more and more applicants and employees will turn to drug test cheating. Having a plan in place now that anticipates such efforts is essential.



1. House Bill 1080, Mississippi Legislature (visited August 23, 2019) (<http://billstatus.ls.state.ms.us/2018/pdf/history/HB/HB1080.xml>).

2. Miller, E., OMB to Review Hair Drug-Testing Proposal, Transport Topics (June 11, 2019 2:30 PM) (last visited August 23, 2019) (<https://www.ttnews.com/articles/omb-review-hair-drug-testing-proposal>).

3. Nelson, M., More cheaters trying to pass company drug tests?, ABC 15 Arizona (October 26, 2018 7:43 AM) (last visited August 23, 2019) (<https://www.abc15.com/news/national/more-cheaters-trying-to-pass-company-drug-tests>).

4. Id.

5. U.S. Nuclear Regulatory Commission, Drug Testing at Commercial

Nuclear Power Plants and Fuel Facilities, Presentation to the Drug Testing Advisory Board at slide 7 (December 4, 2018) ([https://www.samhsa.gov/sites/default/files/meeting/documents/dtab\\_harrisdrugtesting\\_508.pdf](https://www.samhsa.gov/sites/default/files/meeting/documents/dtab_harrisdrugtesting_508.pdf)).

6. Id.

7. Id. at slide 13.

8. Id.

9. Id.

10. Id.

11. Id. Workforce Drug Testing Positivity Climbs to Highest Rate

Since 2004, According to New Quest Diagnostics Analysis, Quest Diagnostics (last visited August 23, 2019).

12. Id.

13. Fox, S., Study Highlights Prevalence of Drug Test Cheating and How to Combat It, Medscape (December 6, 2010) (<https://www.medscape.com/viewarticle/733659>).

14. Id.

15. Id.

16. Id.

17. Id.