



Employee Background and Drug Screening:
Managing the Risks of Hiring

Risk Control



CNA



Do you know your employee's background prior to hire? After all, his or her background can be your liability without an adequate investigation. Negligent hiring litigation is a growing problem. Still, some businesses spend little time verifying the accuracy of employment applications. Today's litigious society has created an environment that requires management to be prepared for employees' behavior once he or she comes to work. Employers lose 79% of all negligent hiring suits. According to a 2003 article in *USA Today*, the average plaintiff award in employment law cases exceeds \$1.6 million. Damages are awarded because of employer negligence and failure to perform a reasonable search into the employee's background prior to hiring. Courts have ruled that an employer has a general duty to check criminal records for employees who will interface with the public or who could have a foreseeable opportunity to commit a violent crime against someone in the course of their employment. Selecting skilled, dependable employees is the first step in establishing an organization's health and safety culture. Selecting the right people for the right job avoids long-term financial and operational problems. Background checks do not simply protect the company from litigation; they help protect the health and safety of your employees.

In order to gain insight into an applicant's experience, communication skills and abilities to perform the job, effective interviewing requires proper planning. The Americans with Disabilities Act (ADA) has strict guidelines pertaining to questions that may, or may not, be asked during the interview. CNA Risk Control consultants bring the policies, materials, professional advice and simple employment "pre-steps" to create a stronger long-term employer/employee relationship.

Background screenings include:

- **Credit records** — About an individual's creditworthiness.
- **Criminal background checks** — Regarding the occurrence of theft and embezzlement and workplace violence episodes.
- **Drug and alcohol tests** — Regarding potential safety/health problems. These checks can help control absenteeism and increase productivity in the workplace.

Drug Abuse Is a Serious Workplace Issue

The Center for Substance Abuse Prevention (CSAP) of the Substance Abuse and Mental Health Services Administration (SAMHSA) estimates that more than \$100 billion in workplace losses can be attributed to accidents, lost productivity and related problems of alcohol and drug abuse.

Alcohol and drug abuse have been estimated to cost American businesses \$81 billion in lost productivity in just one year — \$37 billion due to premature death and \$44 billion due to illness. Drinking is the primary driver (U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration, 1995 *Substance Abuse and Mental Health Statistics Sourcebook*). Alcoholism is estimated to cause 500 million lost workdays annually (National Association of Treatment Providers, 1991).

According to the May 2005 report, *General Workplace Impact*, published by the U.S. Department of Labor, the vast majority of current illicit drug users in the U.S. are employed (an estimated 6.5% of full-time and 8.6% of part-time workers). The report states that alcohol is the most widely abused drug among working adults, and more than 60% of workers know someone working under the influence of alcohol or other drugs. The highest, reported by occupation, were:

- Food preparation workers, waiters, waitresses and bartenders.
- Construction workers.
- Service occupations.
- Transportation and material moving workers.

Drug Screens

The Drug-Free Workplace Act was passed by Congress in 1988. It mandates that federal grantees and federal contractors (with a value of \$25,000 or more) shall follow guidelines seeking a drug-free workplace. While the act does not require drug testing of employees, special circumstances allow for it.

Currently, a urine test is the accepted method for federally regulated programs. The Department of Transportation and the Department of Defense have specific regulations that exist for this type of screening and should be followed accordingly.

Under the ADA, drug/alcohol screening is not considered a medical evaluation and, therefore, can be administered prior to a job offer.

Prior to hiring there are several drug screens available for consideration:

- **Urine screen** — Allows detection of drugs but can only determine that a subject has used a given substance in the recent past. It is not accurate enough to determine impairment or whether the subject was under the influence of a given substance at the time of the test. Thus, recreational or very occasional drug users could be detected, even though they don't use "on the job." Urine screens are typically not used for detecting alcohol.
- **Blood tests** — More invasive than urine screens, blood tests measure the amount of alcohol (and other tested drugs) present at the time of the test and can be used in formal proceedings to give evidence as to whether or not the subject was "under the influence."
- **Saliva and hair tests** — May soon enter the workplace as less intrusive ways of detecting substance use. The validity and reliability of these tests are currently being determined.
- **Breath-alcohol procedure** — Is becoming standard practice for alcohol detection (but not other drugs). It can determine blood alcohol level, providing an assessment of current impairment.

Note: The Food and Drug Administration (FDA) allows marketing of a sweat patch as a method in drug testing. The patch is worn for one to two weeks and absorbs sweat that is tested for the presence of illegal drugs. Approved initially only for use in the criminal justice field (e.g., the testing of parolees or people on probation), it is likely that manufacturers of the patch will push for workplace testing.

Controlling your Risks

The impact of one person's work decision can result in co-workers laboring harder with more production errors and creating the potential for an injury. According to the U.S. Department of Labor, employees using illicit drugs can change employment up to three times in one year and have 16 times more work absences. Drug and alcohol abuse is clearly a bottom line issue for employers.

Screening of job applicants is the best way to minimize the effects of drug abuse and criminal behaviors on your organization. The following programs can be used in developing a drug- and alcohol-free workplace:

1. **Written background screening and substance abuse policy** — Prepare and distribute a written statement for signed acknowledgement by all employees that illegal drug use will not be tolerated and may initiate personnel actions. Detail that drug (and alcohol) abuse creates economic and social consequences that are unacceptable in the workplace environment.
2. **Documented drug screening program** — Create an implementation guide for the established drug screening policy and clearly outline all relevant responsibilities, processes, methodologies and procedures.
3. **Employee awareness and communication program** — Commit to ongoing communications. A drug-free workplace orientation for all employees is an excellent method of communicating corporate policies, as well as the economic, health and legal liabilities associated with illicit drug (and alcohol) use that brought about the policy.
4. **Managerial/supervisor training** — Teach managers and supervisors how to coach employees who exhibit signs, symptoms, behavior changes and performance problems. Intervene with appropriate and approved company strategies.
5. **Test administrator training and certification** — Establish and update on-site and/or remote (Web-based) training. Certify proper administration of drug tests and associated record keeping as needed. Assure that all vendors provide factory-direct training and have dedicated technical support resources.

There are many employment screening services available from local private investigators to large corporate security companies. Consider a service that has developed a convenient online interface to help automate the routine aspects of employment screening. CNA recommends a turnaround time of three days or less for most drug screens and background reports.

6. **Drug (and alcohol) screening devices** — Select your screening device with ease of use in mind. While on-site tests can be conducted using various biological specimens (e.g., urine, hair, blood, oral fluid, sweat), oral-based tests provide ease of use and higher acceptance rates from both employees and test administrators. They also provide greater overall effectiveness for workplace environments. Oral-based screening can be done at virtually any location, while under direct observation of the test administrator. Cheating is minimized.

Furthermore, oral-based screening is more appropriate for determining marijuana use, as it provides detection from immediate use up to a maximum of twenty-four hours. Oral fluid can also detect cocaine, opiates, methamphetamines, etc., sooner than urine, yet also detects for a period of time, post-ingestion, similar to urine.

Note: Screening for marijuana, opiates (including Oxycontin®/Oxycodone), methamphetamines (including ecstasy) and cocaine will sufficiently cover approximately 97-98% of the illicit drugs typically found in a workplace environment, per drug screening techniques and results published by major private and public screening laboratories.

7. **Confirmatory laboratory screening and medical review officer** — Consider a confirmatory laboratory test for all non-negative, on-site tests, using GC/MS (gas chromatography/mass spectrometry) procedures. Develop a chain of custody documentation and MRO (Medical Review Officer). With this confirmation test, appropriately identify, package and send the sample to the test laboratory. Remember the MRO (a medical doctor or osteopath) makes the final (positive or negative) determination for drug abuse after reviewing the laboratory results and communicating with the donor, as required.

Keep in mind that current prescriptions for medication and/or recently taken over-the-counter medication may produce non-negative results.

8. **Employer actions/sanctions** — Ensure a safe, secure and competitive work environment. Have a zero-tolerance policy for drug abuse. Effectively communicate the consequences for those who violate this corporate policy in advance of the drug/alcohol screening. Consider how your Employee Assistance Program (EAP) will blend with this program. For example, will employees be offered an opportunity (company or self-funded) to participate in an EAP for a “first offense,” or are they potentially subject to termination?
9. **Employee Assistance Program (EAP)** — Provide counseling and referral programs, conducted and/or managed directly by the employer or by a third-party contractor. Keep all program information confidential and communicate associated costs for such services.
10. **Drug screening program monitoring, reporting and evaluation, including ROI analysis** — Establish a baseline of the current status of your organization relative to the level of drugs and/or alcohol abuse. If drug screening has not been done in the past, or not been done to a sufficient level, an initial random test of the employee population serves as an important baseline for future analysis and reporting.

If a screening for drug abuse in the workplace is being done, review corporate records for the past two to three years and compute the incidence rates relative to key performance indicators. Consider the following:

- Non-negative and positive percentage rates for drug screening and confirmatory testing.
- Absenteeism.
- Tardiness.
- Employee retention/turnover.
- Healthcare benefit utilization.
- Workers’ Compensation claims and associated ratings.
- Inventory shrinkage/employee theft.
- Drug screening tests — total and cost per employee.
- Direct and indirect savings — total and cost per employee.



Preparatory Steps

The following steps should be considered to complement your employee background and drug screening program:

1. Seek legal employment counsel to determine all county, state and federal laws within your operating states.
2. Place prominent signs around your company that state you conduct background checks and drug testing.
3. Place a notice on your Web site stating the same, in multiple languages.
4. When advertising for a job opening, place the following words after the ad: "background checks required."
5. Give notices and background screening authorization forms to applicants before they complete the employment application.
6. Advise all applicants that your company performs background checks and obtain their authorization in advance. Write a background screening policy and distribute to all employees.
7. Insist that your temporary employment agency perform criminal background checks and get copies of the reports before employing any temporary worker.
8. Require vendors and independent contractors who are on your premises to perform background checks on their employees.
9. Determine if Web-based services can assist you in convenient, simple compliance of your substance abuse program.

Managing the workplace is everyone's concern. CNA Risk Control can help you keep it free from substances that could result in harm to employees.

Please see attached CD-ROM for more detailed information.



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