

# How To Reduce Workplace Liability: The Drug and Alcohol Liability-Reduction Checklist

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We've all heard the saying "Some things change and some things stay the same." When managing a workplace, the situation can become dangerous and costly when laws and best practices change, yet the organization policy and practices have stayed the same.

That's why it is a good idea to review your drug and alcohol policy and practices from time to time--like now--to see if your liability may have drifted up over time. This will give you a chance to correct that situation before it's too late.

Of course your organization is not exactly like any other, so to reduce your liability to the absolute minimum would require individual consultation. (We do that too, and you can contact us here to find out more.) But for purposes of this article, you can be well on your way to minimizing your liability if you go through the following checklist of questions and recommendations.

## 1. Are you DOT regulated?

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"I don't know"

A big distinction in the world of drug and alcohol testing is whether your organization is affiliated with one of the following agencies:

- Federal Aviation Administration (FAA)
- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Railroad Administration (FRA)
- Federal Transit Administration (FTA)
- Health and Human Services (HHS)
- United States Coast Guard (USCG)
- Nuclear Regulatory Commission (NRC)
- Pipeline and Hazardous Materials Safety Administration (PHMSA)

If the answer is Yes, then you are regulated by the Department of Transportation, known as DOT.

“Yes”

This means you need to be especially aware of having a robust training and testing program in place, as well as clear written policies. More on this below.

“No”

Even if you are known as “non mandated” and do not fall under DOT regs, you have a decision to make. You can choose to follow all of the DOT regulations, or some of them, or go your own way.

Some companies choose to make it their policy to follow the DOT regs, because they set a high standard when it comes to creating a drug-free workplace. The benefit to you is that you will have the most documentation if you’re following DOT guidelines. In addition, if you’re following the DOT protocols, then you can rely to some extent on future DOT guidance about how to deal with marijuana and other drug-related issues as they evolve.

Your organization may be such that you feel it’s necessary to follow less-strict rules than what DOT issues. We urge you to make these decisions carefully. Instead of asking: “What should our policy be about [fill in the blank]”, we suggest you ask: “What is our strongest case for deviating from the DOT guidelines relating to [fill in the blank]?”

And if you do decide to deviate from DOT guidelines, we urge you to protect yourself and run those decisions by an expert who is well versed in workplace liability.

## 2. Do you have a written drug and alcohol testing policy?

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“No”

We strongly suggest that you get a written policy in place as soon as possible, for several reasons:

1. It sends a message to existing and new employees about what is allowed and prohibited in your workplace.
2. It allows you to reinforce how workplace safety is important to the employer.

3. It makes clear what employees should do if they see something potentially problematic. Without a policy, they could easily later say: “We were never told to look out for such things, never mind where to report them.”
4. A policy can become a good vehicle for discussion. For example, employees who aren’t aware of “safety sensitive” positions and are aware of the news media may conclude that marijuana is now not a problem in the workplace, and not a problem to use on their own time.
5. You can also explain resources available to your employees if they are seeking help for issues but are not sure where it is safe to turn.
6. Finally, you can make it crystal clear what are the consequences for violating your policies, thus avoiding the excuse of “They never told us.”

If you would like help with creating a drug and alcohol policy that is tailored to your situation, we’d be happy to do that for you.

Call us at 888-403-3928 and we can discuss your needs.

“Yes”

That’s good, but read the next question...

### 3. Has it been updated to include state and federal marijuana laws?

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“Yes”

That’s also good! It sounds like you are staying on top of this quickly changing issue as it relates to having a policy in place.

“No”

It’s definitely time to update your policy. You can be sure that your employees have a range of assumptions, all the way from “drugs have no place at work or anywhere else” all the way to “Now that marijuana is legal, no one can tell me that I can’t smoke it on my own time.” You need to explain in writing not only what is allowed and prohibited, but also how testing will work.

#### 4. Do you have an active drug and alcohol training program in place?

“No”

Unfortunately, it’s often after an accident that fingers of blame get pointed. Without your having a training program in place, you can expect some of those fingers to point right at you. Yes, we’re all adults and all should practice common sense. However, not only do people come from varied backgrounds and practices, but they also hear all kinds of things in the news and on social media.

It’s your responsibility as an employer to get your people on the same page when it comes to what is allowed and prohibited in your workplace. It’s clearly one of the best things you can do to minimize liability, because it shows you took the issue seriously. You made sure that everyone was walked through the written policies, and you gave people a chance to ask questions and push back, based on their previous understanding.

This is not only powerful evidence that you had an active program in place, but you’ll never know how many potential accidents this training prevented from ever happening at your workplace.

“Yes”

That’s good, but read the next question...

#### 5. How often are existing employees trained?

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If you answer “We don’t have a schedule” then you should consider adopting one. Organizations are too busy and complex these days to hope that someone will remember to run training regularly. It’s much more likely to happen when it is someone’s job responsibility at set intervals.

If you do have a schedule, check to see if training has indeed been happening at that frequency. The only thing worse than having no policy for training intervals is to have one—and not be sticking to it. It’s also worth evaluating whether you’ve seen a spike in people testing positive, or in workplace accidents. If that’s the case, definitely take a look at both your training intervals, and the nature of the training curriculum. Both may need an upgrade.

## 6. When do new employees get trained?

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Here too, it's important to have a policy in place for when new employees are introduced to your policy through training. Especially for "safety sensitive" employees—whether DOT regulated or not—your drug and alcohol testing should occur before employees begin their duties.

## 7. Do you have a drug and alcohol testing program in place?

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"No"

It's true that we're biased because we do drug and alcohol testing. However, we still think that it's only common sense that policies and training need to be backed up by verification. Otherwise, a few individuals may nod and agree at all the right times, and then continue to do what they feel like doing. It only takes one such person to put your entire organization in jeopardy. Naturally, we are willing to help you to set up a testing program that is effective and not disruptive.

"Yes"

That's great that you have a testing program in place. As with our training advice above, you should regularly check to see that testing is in fact happening at the frequency stated in your written policy. Also, use the testing results to gauge whether things are working well, or whether you may need to increase or improve training in order to reduce the incidence of tests that come back positive. Feel free to contact us at 888-403-3928.

Again, your situation is unique and you may have needs or questions that are not covered above. If that's the case, please contact us at 888-403-3928 and we can discuss them.

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