

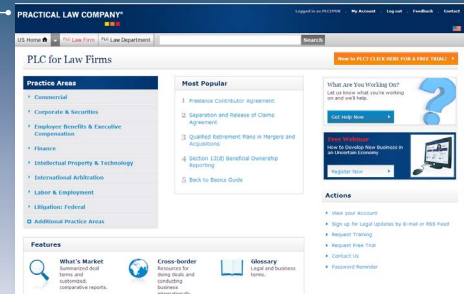


Drug Testing Laws: Kansas

Francis X. Neuner, Jr. and Megan D. Meadows, Spencer Fane Britt & Browne LLP, with PLC Labor & Employment

A Q&A guide to drug testing law for private employers in Kansas. This Q&A addresses employers' rights and restrictions when conducting workplace drug and alcohol testing of job applicants and current employees, as well as testing based on suspicion of intoxication or randomized testing. Federal, local or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see *Drug Testing Laws: State Q&A Tool*).

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OVERVIEW OF STATE DRUG TESTING LAW

1. What laws govern drug testing in employment and pre-employment in your state (whether derived from statute, regulation or case law)? For each source of law please state:
 - Which employers, industries (for example transportation) or entities (for example government contractors) are covered or exempted.
 - Whether employers must have a minimum number of employees to be covered in each case.

In Kansas, there is no statute governing pre-employment drug testing or drug and alcohol testing with respect to private employers. However, Kansas law does recognize employer policies that require drug testing as a condition of employment (*Frye v. IBP, Inc.*, 15 F. Supp. 2d 1032 (D. Kan. 1998); Kan. Stat. §§ 44-706(b)(2) and 44-501(b)(2)(A) (2012)).

Although beyond the scope of this Q&A, there is a statute concerning the regulation of drug screening programs for Kansas state employees that fall under certain categories, including safety sensitive positions and state mental health workers (Kan. Stat. § 75-4362 (2012)).

2. For each law identified in *Question 1*, under what circumstances is testing authorized or prohibited. For example:
 - Pre-employment.
 - Random.
 - Reasonable suspicion of intoxication.
 - Other circumstances.

There is no Kansas law governing the circumstances under which testing is authorized or prohibited with respect to private employers.

3. For each law identified in *Question 1*, what kind of testing is authorized or prohibited (for example, urine, blood or hair)?

There is no Kansas law specifying authorized or prohibited testing.

4. Do the laws identified in *Question 1* regulate which substances can be tested for (for example, heroin and cocaine)?

There is no Kansas law regulating which substances can be tested for.

DRUG TESTING PROTOCOLS

5. How must drug tests be conducted in your state (for example, must individuals giving urine samples be visually monitored)?

There is no Kansas law regulating how drug tests must be conducted.

6. What is the protocol required by state law, if any, if the drug test comes back positive (for example, is there a re-testing procedure)?

There is no protocol required by Kansas law for responding to a positive drug test.

7. Who must pay for the drug test and any follow-up drug test?

Kansas does not regulate who is responsible for the costs of drug testing.

8. Where can/must drug tests take place (onsite or otherwise)?

There is no Kansas law regulating where drug tests must take place. However the *Kansas Attorney General* issued an *advisory opinion* stating that an employer's use of on-site drug testing kits is not contemplated or prohibited by the statute regulating laboratories for controlled substance testing (*Kan. Stat. § 65-1,108 (2012)*).

9. Which state agency (if any) enforces drug testing laws?

Because there is no applicable law, there is no Kansas state agency that enforces drug testing laws.

CONSEQUENCES FOR EMPLOYERS

10. Is there a private right of action for violations of state drug testing law(s)? If so, what is an employer's possible exposure under that law?

Because there is no applicable law in Kansas, there is no private right of action for violations.

11. Apart from private rights of action, what are the consequences for employers if they violate state drug testing law (for example fines, injunctions or criminal penalties)?

Because there is no applicable law in Kansas, there are no consequences for violations.

12. What can employers do or not do with drug testing results? For example, are there procedural requirements or limitations regarding termination, discipline or recordkeeping?

There is no Kansas law governing what employers may or may not do with drug testing results.

LEGAL PROTECTIONS FOR EMPLOYEES

13. What legal protections are recognized by statute, regulation, case law or otherwise to protect employees or applicants who test positive for drugs or alcohol?

There are no Kansas state laws protecting applicants who test positive for drugs or alcohol.



For the links to the documents referenced in this note, please visit our online version at <http://us.practicallaw.com/8-522-8579>.

For more information on drug testing laws, search for the following resources on our website.

Practice Notes:

- *Workplace Violence Workplace Violence* (<http://usld.practicallaw.com/topic7-505-7511>)

Checklists

- *Employee Drug and Alcohol Testing under the Americans with Disabilities Act Checklist Employee Drug and Alcohol Testing under the Americans with Disabilities Act Checklist* (<http://usld.practicallaw.com/topic6-502-0919>)
- *Medical Examinations and Inquiries in Employment Checklist Medical Examinations and Inquiries in Employment Checklist* (<http://usld.practicallaw.com/topic1-502-2063>)
- *Minimizing Workplace Violence Checklist Minimizing Workplace Violence Checklist* (<http://usld.practicallaw.com/topic8-505-8874>)

Articles: know-how

- *Drug Testing Laws: State Q&A Tool Drug Testing Laws: State Q&A Tool* (<http://usld.practicallaw.com/topic9-504-3410>)
- *Hiring Requirements: State Q&A Tool Hiring Requirements: State Q&A Tool* (<http://usld.practicallaw.com/topic4-505-9583>)

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