

Chapter 3

Post-Accident Drug and Alcohol Testing in the Coal, Oil and Gas, and Energy Industries

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§ 3.01. Introduction.

The past several years have seen a great deal of activity at both the federal and state levels with respect to drug and alcohol testing in the employment context. Federal regulation focuses generally on the mandatory or required testing of applicants and employees in certain safety-sensitive positions in some of the “transportation-related” industries and the nuclear power industry. State regulation covers a broad spectrum of prohibited, permitted, and encouraged forms of drug and alcohol testing. This chapter will provide an overview of the types of drug and alcohol testing recognized under federal and state law and will focus on the treatment of “post-accident” testing as may be relevant to the coal, oil and gas, and energy industries.

§ 3.02. Drug and Alcohol Testing Generally.**[1] — Types of Testing.**

Due primarily to the development of drug and alcohol protocols in the private sector, and due in part to federal regulation in the “transportation-related” industries, the circumstances under which testing is conducted in the employment context have focused on certain specific events or conditions. Many of these “reasons for testing” are universally recognized. They have become part of the testing nomenclature.

Pre-employment testing – testing that is part of the application process before an employment offer is made or part of a “conditional” hiring process, when an employment offer is made contingent on the applicant passing a drug and alcohol test.

Testing for cause – testing when an employer has probable cause or reasonable suspicion to believe an employee is using or impaired by drugs or alcohol.

Post-accident testing – testing when an employee is involved in an on-the-job accident that causes some type of physical injury or property damage.

Fitness for duty/Rehabilitation testing – testing during an employee’s participation in a drug or alcohol rehabilitation program or when the employee returns to work after completion of such a program (and sometimes in connection with a return to work after some other type of extended leave).