

Why Do You Require Post Accident Testing?



Janet Matteo – February 2012

The greatest financial benefit from [drug testing](#) comes from post-accident testing.

A post-accident drug test is the most important drug test an employer will require. This test can lead to huge financial savings! USA [Mobile Drug Testing](#) compliance specialists are available to help employers with an effective and compliant drug testing program.

After an injury, many employers require their employees to have a drug screen performed immediately after medical treatment. This testing is performed to allow the employer and insurance carrier to dispute the compensability of the injured worker's claim. Typically, to defeat a workers compensation claim an employer must show two things: first, that the employee was intoxicated at the time of the injury and second that the intoxication caused or contributed to that injury.

In New York you can challenge a workers compensation claim if there is evidence that the employee was intoxicated at the time of the accident, and if that intoxication "contributed" to the cause of the accident

One thing is for sure, defeating a workers compensation claim is not automatic, and many times a judge and/or jury may be involved. Who administered the testing? If it was the employer, did they know how to properly administer the test? How can they establish that it was not contaminated? If it was for alcohol, was the machine calibrated properly? Have company policies, DOT regulations and State Laws been followed? It is not unusual that the employer does not have the proper expertise to properly administer testing after an accident.

How you handle post-accident testing and workers' compensation claims is paramount to establishing the intoxication defense and preventing claimants from rebutting the statutory presumptions. The following procedures can help you protect your ability to use the intoxication defense.

- **Have a Written and Promulgated Drug-Testing Policy.**
The policy should contain a statement that all employees are subject to drug testing and that a refusal to take a drug screen will result in a presumption that the test would have been positive. Furthermore, the drug policy should be signed by the employee and be

universally enforced. If the policy is not enforced, the claimant can argue that no policy exists.

- **Training & Education**

Your [drug free workplace](#) program must have a training and education component. Employees and supervisors must know the policy, the consequences of violating the policy and the harmful effects of drugs/alcohol in the workplace. Supervisors must be able to make decisions for reasonable suspicion testing and must know the company policy inside and out.

- **Always Test an Employee Immediately Following the Accident.**

Test after even minor accidents. A court can deny the intoxication presumption if the test occurs too late after the accident.

- **Take a Written Statement From an Injured Employee After an Accident.**

The statement should ask specifically whether the employee had consumed any alcohol within 24 hours of the accident or any non-prescribed controlled substances, including cocaine or marijuana, within 30 days of the accident. Have the employee sign the statement.

- **Take Written Statements of Co-workers.**

If you suspect drug use by the injured employee, ask the co-employees whether they noticed any unusual behavior. Never discuss the results of any drug tests with the injured worker's co-employees.

- **Have Drug Tests Collected and Performed by a Reputable Vendor.**

A medical drug test performed for treating a patient is different from an employment drug test. The employment drug test procedure must follow company policy, Federal and/State law and specifically quantifies the drug and alcohol levels. Furthermore, the testing entity should follow the Federal guidelines the collection and testing procedures.

- **Approve Emergency Care for an Injured Employee, Despite Positive Drug Results.**

The injured employee will be entitled to reasonable emergency medical care until he is stabilized or discharged.

- **Do Not Encourage the Use of Alcohol.**

An exception to the intoxication defense occurs when employers provide the intoxicating beverage and encourage its use or if the intoxication occurs in pursuit of the employer's interest. Have a written policy against using alcohol, even in work-related activities.

Employers should note that even if the injured employee is found or presumed to be intoxicated, they are responsible for any reasonable emergency medical care until the employee is stabilized or discharged. USA Mobile Drug Testing compliance specialists recommend three main things needed to successfully prove intoxication: a compliant workplace drug-testing program, a properly administered drug-test and a positive test result. Prepare now for lower workers comp costs and potential denial of claims achieving a return on investment for your drug free workplace program.

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