

**SUMMARY OF LAWS GOVERNING WHEN EMPLOYERS MAY CONDUCT DRUG TESTING IN
VERMONT:**

21 V.S.A. § 512. Drug testing of applicants; prohibitions; exceptions

- Under subsection (b), an employer may require an applicant to submit to a drug test if:
 - The applicant has been given a conditional offer of employment conditioned on the applicant receiving a negative test result.
 - The applicant has received written notice of the drug testing procedure and a list of the drugs to be tested. The notice may not be waived and must state that therapeutic levels of medically prescribed drugs will not be reported.
 - The drug test must be administered in accordance with § 514.

21 V.S.A. § 513. Drug testing of employees; prohibitions; exceptions

- Under subsection (c), an employer may require an employee to submit to a drug test if:
 - The employer “has probable cause to believe the employee is using or is under the influence of a drug on the job.”
 - The employer provides or makes available to the employee an employee assistance program, which is a bona fide rehabilitation program for alcohol or drug abuse.
 - The employee may not be terminated because of a positive test result if the employee participates in and successfully completes the employee assistance program. Please note, however, that an employee may be suspended for up to three months while he or she is completing the program, and the employee may be terminated if, after completing the employee assistance program, he or she tests positive for drugs pursuant to another drug test carried out under this section.
 - The drug testing is administered in accordance with 21 V.S.A. § 514.
- An employer may require random or company-wide tests **only** when such testing is required pursuant to federal laws or regulations.

21 V.S.A. § 514. Administration of Tests

- Both § 512 and § 513 require that any drug testing be administered in accordance with § 514.
- Section 514 sets forth requirements related to:
 - the drugs to be tested;
 - the employers’ written drug testing policy;
 - the use of blood samples;
 - the use of designated laboratories for testing;
 - the establishment of a chain of custody for samples and test results;
 - urinalysis procedures;
 - laboratory reports;
 - negative test results;
 - the information to be supplied in a report of test results;
 - the preservation of samples;
 - medical review officers; and
 - the designation of an individual to collect specimens for testing.

Other Provisions of Vermont Employment Law:

- For purposes of Vermont’s Fair Employment Practices Act, under 21 V.S.A. § 495d(6)(B), a “qualified individual with a disability” does not include “any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.”
 - IMPORTANT, only applies to current use or abuse of substances.
- For purposes of workers’ compensation, under 21 V.S.A. § 649, “Compensation shall not be allowed for an injury caused by . . . by or during [an employee’s] intoxication. . . .” An employer claiming that injuries should not be covered pursuant to § 649 has the burden of proving that the employee’s injury was caused by or during the employee’s intoxication.

Summary of Applicable Federal Laws

- **Department of Transportation Drug and Alcohol Testing Program.**
 - The Omnibus Transportation Employee Testing Act of 1991 and the regulations related to it require drug testing of employees before employment, at random, under reasonable suspicion, and after accidents. *See* 49 U.S.C.A. §§ 5331, 31306.
 - See DOT Agency/USCG Drug Alcohol Program Facts for more details regarding affected employees and required testing.
- **Department of Defense Drug Free Workforce Regulations.**
 - Under 48 C.F.R. 252.223-7004, employees of a contractor that have been granted access to classified information; or employees in other positions that involve national security, health or safety, or require a high degree of trust and confidence are subject to drug testing.
 - Requires a contractor to establish a program that provides for drug testing of employees in sensitive positions based on considerations that include the nature of the work being performed under the contract, the employee’s duties, the efficient use of contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.
- **The Drug Free Workplace Act of 1988.**
 - Requires certain federal contractors and grant recipients to certify that they will provide a drug-free workplace. In addition, contractors and grant recipients must: (1) notify employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and indicating the sanctions for violations; (2) establish a drug-free awareness program; (3) sanction or require the participation in a drug rehabilitation program for any employee convicted under a criminal drug statute; and (4) make a good faith effort to maintain a drug-free workplace.
 - Does not require drug testing.
- **Americans with Disabilities Act.**
 - Under 42 U.S.C. § 12114(a), “a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.”
 - An individual is considered a “qualified individual with a disability” if he or she:
 - 1 has successfully completed drug rehabilitation and is no longer engaging in the illegal use of drugs;
 - 2 is participating in a rehabilitation program and is no longer using drugs; or
 - 3 is erroneously regarded as engaging in such use but is not engaging in such use.

