

**Probable Cause State Drug Testing Laws**

**District of Columbia**

**1-620.22. Departments of Human Services and Mental Health; Testing of employees; When & who to test; Notice; Treatment**

- (a) The Department of Mental Health and Department of Human Services employees and prospective employees shall be tested for drug and alcohol use including:
- (2) Employees who have had a probable cause referral;
    - (e) Conditions giving rise to probable cause must be observed and documented. Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a probable cause referral.

**1-620.33. Mandatory drug & alcohol testing for certain District employees who serve children; motor vehicle operators.**

Any District government employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the conditions in this subchapter, to the testing of the employee's urine breath for the purpose of determining drug or alcohol content whenever a supervisor has probable cause or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person's alcohol concentration was 0.08 grams or more per 210 liters of breath, or while under the influence of an intoxicating liquor or any drug or combination thereof.

**3906. District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Testing methods.**

**3906.6**

Probable cause or reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in this section. In the case of a reasonable suspicion referral, as confirmed by a second supervisor, or a post-accident employee, a supervisor shall escort the employee to the vendor's test site for specimen collection or a breathalyzer.

**3908. District government employees and mandatory drug and alcohol testing; Safety-sensitive positions; Reasonable suspicion testing.**

**3908.1**

The immediate supervisor or manager of an employee occupying a safety-sensitive position shall make a reasonable suspicion referral for testing of an employee in a safety-sensitive position when there is a reasonable suspicion that the employee is

under the influence of illegal drugs or alcohol to the extent that the employee is too impaired to perform his or her duties.

**3908.2**

Prior to contacting the appropriate personnel authority to make a referral under this section, the supervisor or manager shall:

Have probable cause or reasonable suspicion that the employee is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired; gather all information and facts to support this suspicion; and Receive a second opinion from another supervisor or manager.

**3908.3**

A reasonable suspicion referral may be based on direct observation of illegal drug use or possession, physical symptoms of being under the influence of illegal drugs, or intoxicated by alcohol, a pattern of erratic behavior, work performance indicators of drug or alcohol abuse, or any other reliable indicators.

**Kansas**

**44-706. Unemployment benefits; Grounds for Disqualification for benefits**

(A) There was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

(v) There was probable cause to believe that the individual used, had possession of, or was impaired by alcoholic liquor, the cereal malt beverage or the controlled substance while working.

**44-501. Workers compensation and use of chemical tests**

(d)(2) Employer not liable where injury, disability or death was contributed to by employee use or consumption of alcohol or drugs, chemicals or other compounds or substances; Conditions required in order for chemical tests to be admissible as evidence to prove impairment;

(A) Probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working;

(3) For purposes of satisfying the probable cause requirement of subsection (d)(2)(A) of this section, the employer shall be deemed to have met their burden of proof on this issue by establishing any of the following circumstances:

(A) The testing was done as a result of an employer mandated drug testing policy, in place in writing prior to the date of accident, requiring any worker to

submit to testing for drugs or alcohol if they are involved in an accident which requires medical attention;

(B) the testing was done in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and was not at the direction of the employer; however, the request for GCMS testing for purposes of confirmation, required by subsection (d)(2)(E) of this section, may have been at the employer's request;

(C) the worker, prior to the date and time of the accident, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident requiring the worker to obtain medical treatment for the injuries suffered. If after suffering an accident requiring medical treatment, the worker refuses to submit to a chemical test for drugs or alcohol, this refusal shall be considered evidence of impairment, however, there must be evidence that the presumed impairment contributed to the accident as required by this section; or

(D) the testing was done as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post accident testing program and such required program was properly implemented at the time of testing.

## **Maine**

### **683. Procedures for drug testing; Probable cause testing of employees.**

2. An employer may require, request or suggest that an employee submit to a substance abuse test if the employer has probable cause to test the employee.

(a) The employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel shall make the determination of probable cause.

(b) The supervisor or other person must state, in writing, the facts upon which this determination is based and provide a copy of the statement to the employee.