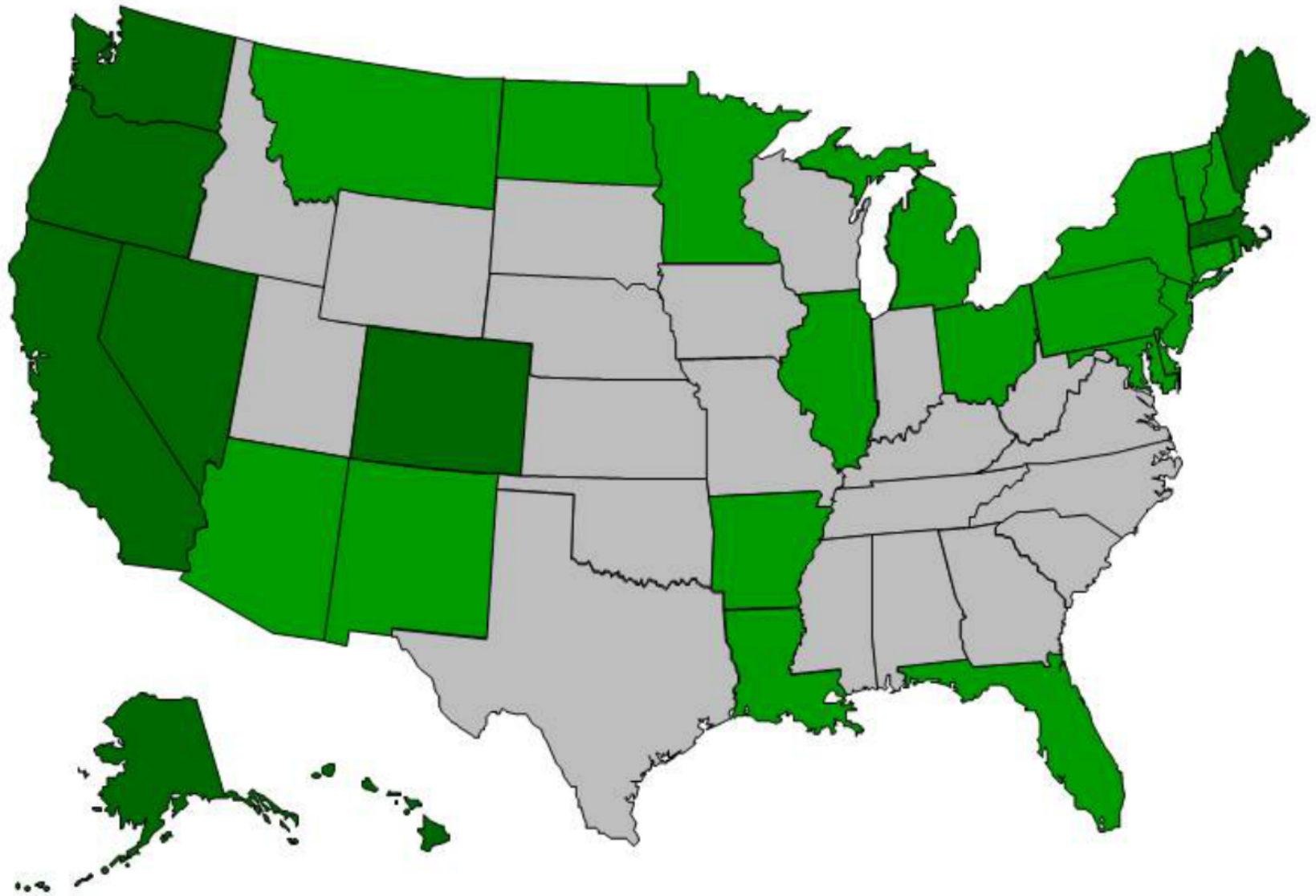


TIPS & BEST PRACTICES
FROM THE EXPERTS

My**HR**Help™

Medical Marijuana in the Workplace

Presented by: GORDON&REES
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Marijuana Legalization Status

- Marijuana legalized for recreational use
- Medical marijuana legalized

How does the decriminalization and legalization of marijuana impact employer's drug-free workplace policies and drug testing?

- Drug Free Workplace Act
- ADA
- Look to your jurisdiction
- Drug-Free Workplace Policy

What drugs are illegal?

- Defined by the Controlled Substances Act
- State laws



Relationship Between ADA and Medical Marijuana Use

- ADA is a federal statute.
- Federal government has classified marijuana as an illegal substance.
- Current use of illegal drugs is not protected under ADA.
- Testing for illegal drugs does not constitute as a medical examination under ADA.
- Look to state marijuana and disability laws.

Current Use of Drugs Not Protected by ADA

What constitutes “current” use?

- Recent use indicating that the individual is actively engaged in use of illegal drugs
- Former users may be protected by the ADA



State and Federal Law Protections for Employees With Past Substance Abuse Issues

What constitutes a disability?

- Addiction
- Casual Use



Bob works as a file clerk at Acme Inc. who uses marijuana on the weekend, and his drug use does not have any adverse impact on his job performance. Is Bob covered by the ADA?

A. Yes

B. No

B. No

Prior Substance Abuse May Make Someone Unqualified to Perform Job Duties

- Sensitive job duties: pharmacist, physician
- Prior violation of workplace conduct rules
- Job requirements: driver's license

Look to Your Jurisdiction

- Review state laws for every jurisdiction in which you operate/have employees
- Rapidly changing
- No consistency



State Specific Laws

Employer Protections

Status Discrimination

- Patient
- Caregiver

Under the Influence

- Presence of metabolites or components

Reasonable Accommodations

- Nevada
- New York

Drug Testing

- Timing
- Reason
- Response

Etc.

- Opportunity to explain
- No marijuana smoking signs
- Ask about convictions



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Model Policy

Notwithstanding state laws permitting the use of recreational and medical marijuana, marijuana is still illegal under federal law and therefore prohibited under the Company's Drug-Free Workplace policy. Employees who use, sell, or possess marijuana or its paraphernalia at work, or have marijuana in their system when reporting to work or undertaking any work for the Company will be considered a violation of the Drug-Free Workplace policy and will subject the employee to disciplinary actions to the fullest extent permitted by law.

Drug Free Workplace Policy

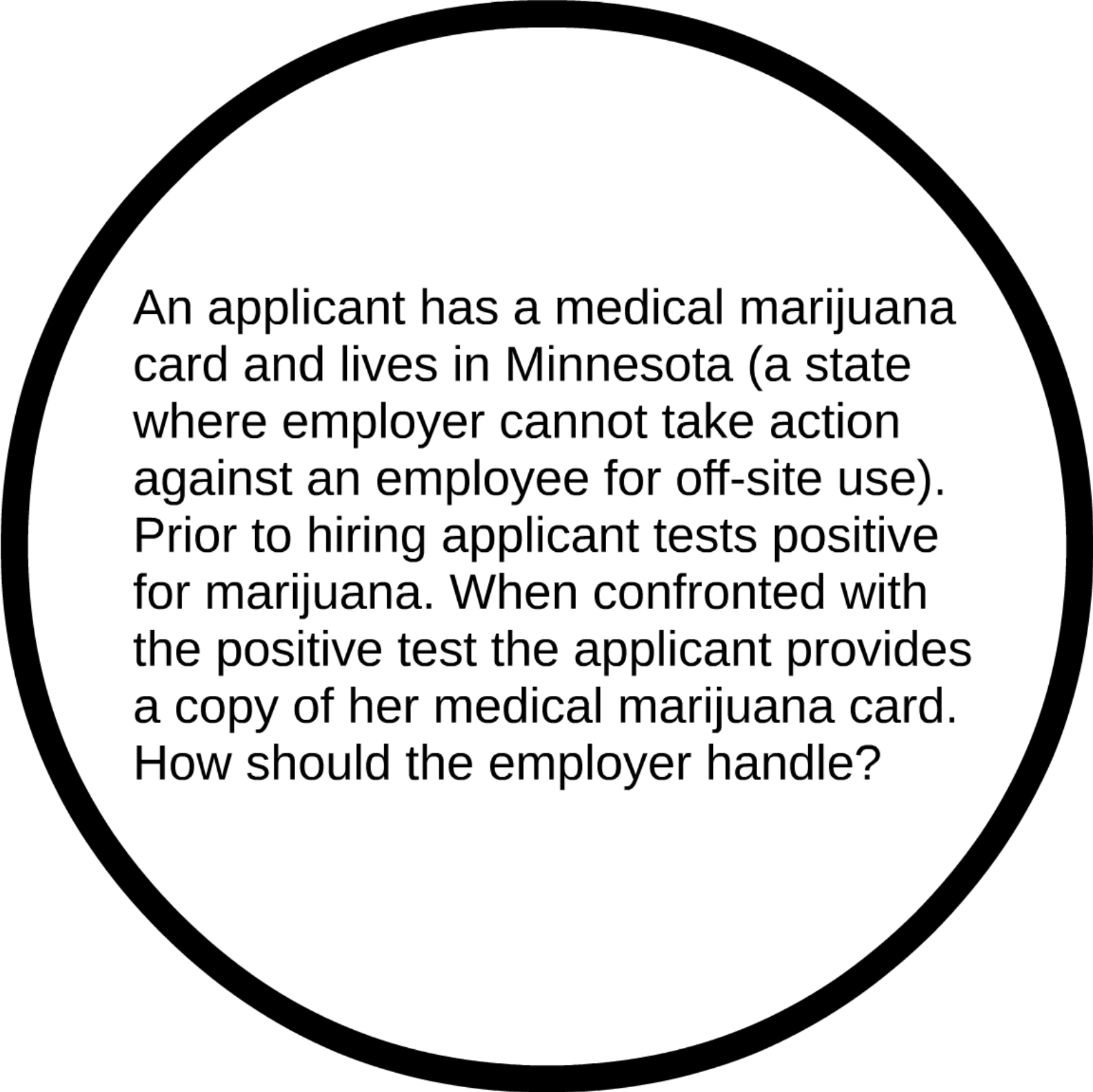
An applicant has a medical marijuana card and lives in Minnesota (a state where employer cannot take action against an employee for off-site use). Prior to hiring applicant tests positive for marijuana. When confronted with the positive test the applicant provides a copy of her medical marijuana card. How should the employer handle?

Same situation but now the applicant is applying for a position in Washington where employers can implement zero tolerance drug use policy.

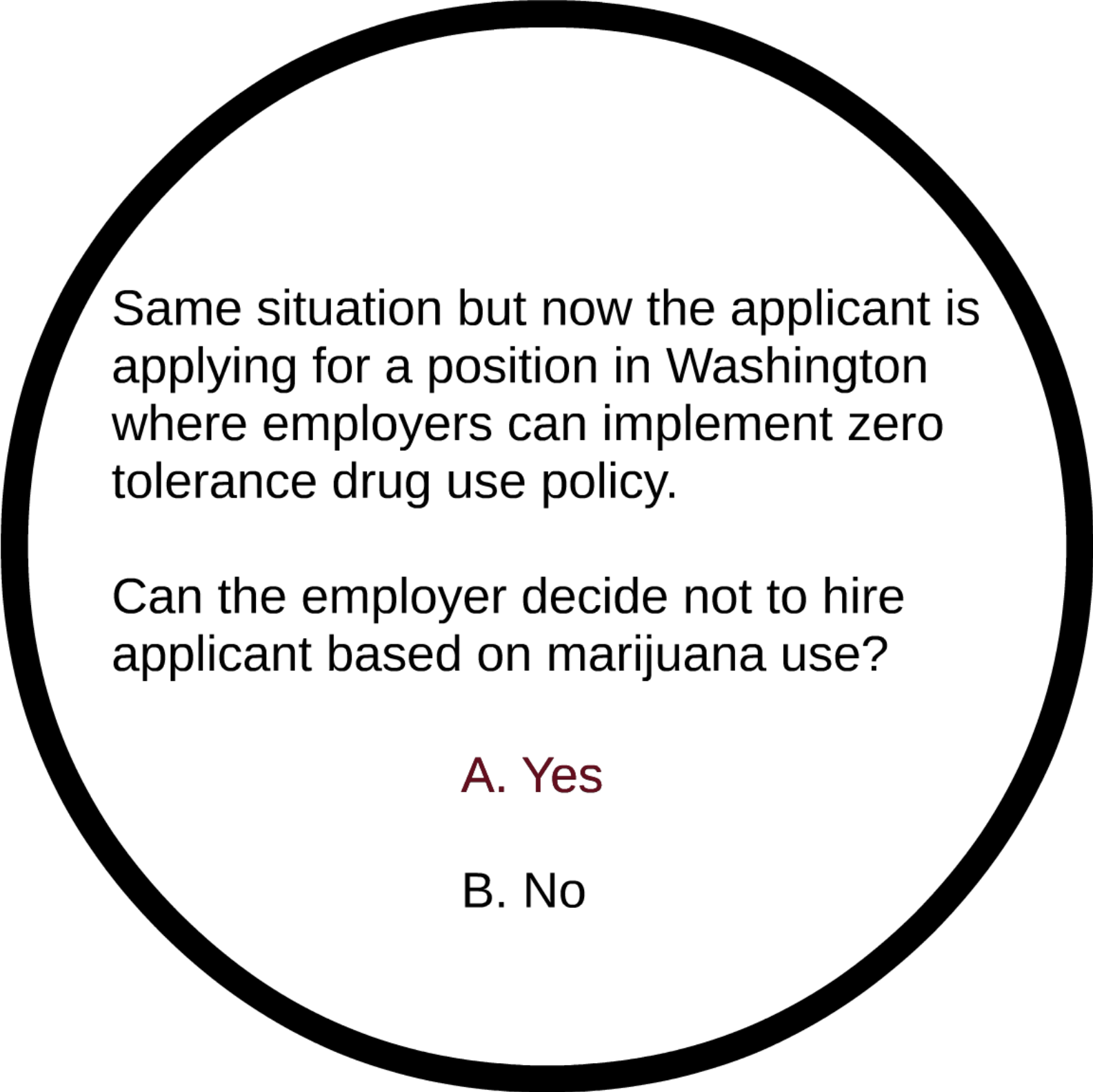
Can the employer decide not to hire applicant based on marijuana use?

A. Yes

B. No



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Train Supervisors

Marijuana Drug Testing

Clear Testing Policy

- Pre-Employment
- Random
- Under Influence
- Post-Accident
- Reasonable Suspicion



Pre-Employment Drug Tests

Advantages

- Improved productivity
- Improved attendance
- Deterrence
- Maintain safe workplace and reduce workplace accidents
- Ensure safety of the public
- Minimize liability and reputational risk for employer
- Reduce health insurance costs
- Reduce theft
- Reduce workplace violence
- Required by some industries



Risks

- Lack of applicants
- Privacy concerns
- Costs of testing
- Potential impact on employee morale
- False negatives/false positives
- Drug testing does not determine impairment or current drug use
- Burden of managing several state laws



Limitations

- State restrictions
- Disabilities Act ("ADA") and other federal non-discrimination statutes





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Drug Tests

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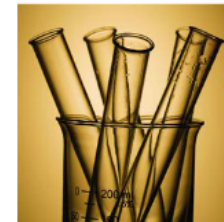
Post-Hire: How Do Employers Discourage Drug Use?

Policies and Procedures

- Employers may generally prohibit the use of illegal drugs at the workplace.
- Employers may generally require that employees not be under the influence of drugs.
- Employers may require that transportation employees meet requirements established by various federal agencies, including the Departments of Transportation and Defense and the Nuclear Regulatory Commission.

Drug Test During Employment

- Include description of testing program in drug and alcohol policy
- Different restrictions for different jurisdictions



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Minnesota applicant with a marijuana card has been hired by the employer. The supervisor suspects the employee is under the influence at work.

Can the supervisor require the employee to undergo a drug test?

A. Yes

B. No

A. Yes

Must Follow State Law

Minnesota

- Conduct testing. Minn. Stat 181.953
- Opportunity to explain