

Drug and Alcohol Testing

By Gregg P. Skall

A question which frequently arises with broadcasters is the issue of drug and alcohol testing. Drug use on the job and the job-related effects of drug use off the job have become prominent concerns among many FCC licensees. Many are adopting programs to test the blood or urine of employees and job applicants for drug and alcohol use.

Drug testing in the private sector is less constrained than it is among government employers who must comply with the search and seizure provisions of the Fourth Amendment to the U.S. Constitution. However, there is no such constraint applying to private employers not acting as an instrument or agent of the government. Accordingly, there is no federal restriction on a properly posted drug testing policy for employees. Several state constitutions, though, guarantee privacy rights and a number of states have enacted specific legislation dealing with drug testing policies. Many of the state constitutional provisions have been held to be limited to government action, and therefore apply only to government employers. However, in a number of the states which have legislated in this area, specific procedures have been established to protect the rights of employees and job applicants. Typically, those statutes require procedures such as the following:

Collection of Samples. Samples must generally be collected in a scientific and sanitary manner while preserving the individual dignity and privacy of the person providing the sample. Special procedures are often required to assure that the identity of the donor is not mixed with another person.

Laboratories. Some states regulate the laboratories who may perform drug and alcohol testing and require that a confirmation of positive results must be made with a second examination utilizing gas chromatography or other equivalent scientifically accepted methods.

Samples. The chain of custody of the sample must meet legal evidentiary standards to assure that the samples have not been tampered with, and any sample which produces a positive examination must be retained for 90 days to allow further tests and a challenge to the initial findings.

Violations of drug testing procedures, where they have been enacted, carry civil penalties and some states afford a specific cause of action for the employee if the employer's methods and policies do not comply with the state statute or regulations. Some states have also provided for a reduction in benefits under the workman's compensation law if a death or injury results from or is related to the use of alcohol or non-prescribed controlled drugs in the work place.

Maintaining a drug and alcohol policy is an excellent idea for all broadcasters, provided it has been researched according to state law. The drug and alcohol policy should be posted properly in bulletin sites normally used for providing information to employees and distributed to each of them individually. It should also be made a permanent part of the employee manual.