
SUBSTANCE USE TESTING POLICY

Covering Applicants Applying for Work in Maine



Maine Department of Labor
Bureau of Labor Standards
mdol@maine.gov
(207) 623-7900

Substance Use Testing Policy

Table of Contents

Definitions	3
Contact Information	4
Scope of Testing	5
Substances to Be Tested	6
Consequences of Testing	6
Testing Procedures	7
Collection Facility	7
Point of Collection Testing	7
Sample Collection	8
Sample Storage	8
Chain of Custody	9
Testing Laboratory	10
Applicant Notification	10
Appeal Process	11
Appeal Form	12
Appendix A	13
Policy Submission Checklist	14
Policy Submission Process	14

Substance Use Testing Policy

DEFINITIONS

Applicant – any person seeking employment from an employer. The term includes any person using an employment agency's services.

Employer – any person, partnership, corporation, association or other legal entity, public or private, that employs one or more employees. The term also includes an employment agency.

Negative test result – a test result that indicates:

- a. A tested-for substance is not present in the tested sample; or
- b. A tested-for substance is present in the tested sample in a concentration below the cutoff level.

Non-Impairment Agreement – a written document that states an employee will not report to work when impaired; this includes medical marijuana or prescription medications.

Non-negative test result – a test result that indicates the presence of a tested-for substance in the tested sample above the cutoff level of the test.

Point of Collection Test (POCT) – means an initial screening test performed at the site where the sample is collected using a non-instrumented testing device approved for that purpose by the federal Food and Drug Administration.

- a. The collection of any sample for use in a substance test must be conducted in a medical facility and supervised by a licensed physician or nurse.
- b. No employer may administer directly any substance test to any of its employees.

Positive test result – a test result that indicates the presence of a tested-for substance in the tested sample above the cutoff level of the test.

- a. Confirmed positive test means a confirmation test result that indicates the presence of a tested-for substance above the cutoff level.

Safety-sensitive task or occupation – a work task or an employee occupation that based on its nature, machinery used, location, surroundings, or its influence upon other operations or individuals could potentially pose a threat to the safety of a worker, a co-worker, customers or others.

Substance test – means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of specific substances. The term does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath, so-called breathalyzer tests.

- a. "*Screening test*" means an initial substance test performed through the use of immunoassay technology or a federally recognized substance test, or a test technology of similar or greater accuracy and reliability approved by the Maine Department of Health and Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of specific substances.
 1. A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a non-instrumented, point-of-collection test device approved by the federal Food and Drug Administration.
- b. "*Confirmation test*" means a second substance test that is used to verify the presence of a specific substance indicated by an initial positive screening test result and is a federally recognized substance test or is performed through the use of liquid or gas chromatography-mass spectrometry.
- c. "*Federally recognized substance test*" means any substance test recognized by the federal Food and Drug Administration as accurate and reliable through the administration's clearance or approval process.

Substance Use Testing Policy

CONTACT INFORMATION

COVERED ESTABLISHMENT

Company name: Somerset County Government
Street address: 41 Court Street
Mailing address: Skowhegan, ME 04976
Phone number: 207-858-4719

SUBSTANCE USE TESTING POLICY CONTACT

Contact name: Dawn DiBlasi
Contact title: County Administrator
Contact phone number: 207-858-4719
Contact email: ddiblas@somersetcounty-ME.org
Annual Survey Contact info (if different from company policy contact): same as above

LOCATIONS COVERED

Location 1: County Jail and Sheriff's Dept., 131 East Madison Road, Madison, ME 04976
Location 2: [Click here to enter text.](#)
Location 3: [Click here to enter text.](#)
Location 4: [Click here to enter text.](#)
Location 5: [Click here to enter text.](#)

- Applicants will be notified at the time of initial application that they may be tested for substance use and will be advised where they may review the policy and statute.
- Prior to testing, an applicant as defined in this policy shall be provided with a copy of the policy.
- All applicants can review the Maine Substance Use Testing Law here: <http://www.mainelegislature.org/legis/statutes/26/title26sec681.html>

I certify that this policy complies with the Maine Substance Use Testing Law (26 M.R.S.A. Sec. 681-690) and the Maine Department of Labor Rules relating to Substance Use Testing (adopted October 27, 1989).

Dawn M. DiBlasi, County Administrator
Signature of Authorized Company Official

March 18, 2021
Date

Substance Use Testing Policy

SCOPE OF TESTING

Applicant Testing

An **applicant** is defined by this program and state law as any person seeking employment from an employer. The term includes any person using an employment agency's services. For the purpose of this program, an applicant will not be any person separated from employment by this employer while receiving a mandated benefit from or on account of this employer, including but not limited to Workers' Compensation, Unemployment Compensation and Family Medical Leave and for a period of 30 days beyond the termination of the benefit, nor will an applicant be any person separated from employment by this employer while receiving a non-mandated benefit from or on account of this employer for a period of 30 days beyond the separation.

: Corrections Officers and Sheriff's Dept. Employees

Substance tests will be administered only to those applicants who are in the above classification or position titles who have been offered employment with the Company or who have been offered a position by the Company on a roster of eligibility from which applicants shall be selected for employment.

Employment with Somerset County is conditional upon passing the applicant drug screen. The County has put notice of this on its employment application and in the employee handbook/employment policies.

Use of Prescription Medications and/or Medical Marijuana in the Workplace

Somerset County is a drug free workplace. Somerset County hereby prohibits its employees from being under the influence of alcohol or marijuana or engaging in the unlawful manufacture, distribution, dispensation, possession, or use of illegal drugs in the workplace.

Substance Use Testing Policy

SCREENING AND CONFIRMATION TESTS

- All screening tests will be conducted using the *Enzyme Multiplied Immunoassay Test (EMIT)*
- All confirmation tests will be conducted using the *Gas Chromatography/Mass Spectrometry (GC/MS)* methodology.
- Applicants will be tested for use of the indicated substances.
- All screening and confirmation levels must be at or above the levels listed in **Appendix A** of this policy.

SPECIMEN COLLECTION TYPE TO BE USED:

- Urine Hair follicle Breath alcohol
 Oral fluids/saliva Sweat patch

SUBSTANCES TO BE TESTED FOR: choose all that apply

- Amphetamine/Methamphetamine/MDMA
MDA/MDEA
 Cocaine and/or metabolites
 Marijuana and/or metabolites
 Opiates and/or metabolites
 Phencyclidine
 Barbiturates
 Benzodiazepines
 Methadone
 Methaqualone
 6-Acetylmorphine (heroin)
 Alcohol

CONSEQUENCES OF TESTING

1. Action to be taken for refusal to submit to a test

An applicant will not be hired.

2. Action to be taken while awaiting results of a test

An applicant will not be hired.

3. Action to be taken based on confirmed-positive result

An applicant will not be hired.

Substance Use Testing Policy

TESTING PROCEDURES

1. Sample Collection Facility or Facilities

Workplace Health, 149 North Street, Waterville, ME 04901

2. Point of Collection Testing (POCT) is being used x YES NO

The POCT is an initial screen test performed at the point of collection (POC)/collection site through the use of a non-instrumented, POC testing device approved by the federal Food and Drug Administration. This type of testing can only be used for urine or oral fluids sample collection. The POCT procedures outlined in this policy do not replace or supersede any other drug-testing policies or requirements.

POCT is a process that has been put into place in order to complement the existing drug-testing procedures; it is screening conducted at the point-of-collection site rather than a laboratory in order to determine the presence of tested-for substances (see list of substances to be tested).

No employer may directly administer any substance test to its employees.

In order to ensure confidentiality of employees during the POCT process, testing will take place offsite at the collection site or within a medical facility/first aid station on-site, supervised by either a licensed doctor or nurse. Tests must be conducted by individuals who are trained in the POCT process for the sample type and collection devices used, following approved Chain-of-Custody procedures. Staff who will perform POCT will be instructed in the proper manner of collecting samples, reading results and maintaining a proper chain of custody. At a minimum, the training will consist of the following:

Precautions – Specific storage information for the POCT testing device that will be utilized.

The Testing Procedure – Sample collection, sample integrity, understanding the temperature strip and instructions for use.

Determination of Drug Screen Result – Negative results, non-negative results, and invalid results.

Negative Result Procedure – Notify the donor of the result and offer that he/she may observe the disposal of the sample collected, cup and/or POCT testing device.

Non-negative Result Procedure – Requires proper Chain-of-Custody procedures. The sample must remain in the donor's site until the tamper evident tape is applied to the sample and the donor has completed the donor information and donor affidavit on the chain of custody form.

Invalid results – Must be re-tested with a fresh POCT testing device; provided that if the applicant is found to have twice substituted, adulterated, diluted or otherwise tampered with the sample, the applicant shall be deemed to have refused to submit to a substance test.

Collection Problems and Collector Response – Procedures to follow for refusal to test, urine does not meet temperature requirements, shy-bladder process, and/or suspected specimen tampering.

Any sample that results in a negative test will be destroyed. Any sample that results in a positive result will be sent to the approved laboratory following approved Chain-of-Custody procedures for confirmation testing as described in Section 5 of the Policy.

Substance Use Testing Policy

3. Sample Collection

A. Procedure to segregate a portion of the sample at applicant's request:

At the request of the applicant, at the time the test sample is taken, a portion of the sample collected, sealed, and labeled according to State regulations and these procedures, will be segregated for that applicant's own testing. This sample will be stored by the laboratory and chain of custody shall be maintained as provided in this policy.

Within five days after notice of the test result is given to the tested person, the applicant shall notify the employer and the facility of the testing laboratory selected for the applicant's own testing. The laboratory so-selected must be licensed by the Maine Department of Health and Human Services. The employer's laboratory shall promptly send the segregated portion of the specimen to the selected laboratory, subject to the same Chain-of-Custody and security requirements as observed for the employer's specimen.

The applicant will be required to pay for the segregation of a second sample, as well as the expense of said additional testing, only if and when the applicant notifies the employer that the applicant actually wishes the test to be made and the applicant notifies the employer of the choice of laboratory to which the second sample is to be sent.

B. Collection Procedure

The employer will not require an applicant to remove any clothing for the purpose of collecting a specimen sample, except that the employer will require that an applicant leave any personal belongings other than clothing and any unnecessary coat, jacket or similar outer garments outside the collection area.

No applicant may be required to provide a urine sample while being observed, directly or indirectly, by another individual.

If the collector believes the applicant to have substituted, adulterated, diluted or otherwise tampered with the sample, the specimen will be rejected, and the applicant will be given an opportunity to provide a second specimen. For urine samples, the applicant will remain under observation at the medical facility and may be given liquids until the second specimen is provided.

If the second specimen fails to meet any assessment standard, the applicant is considered to have refused testing.

4. Sample Storage

A. At collection point

Samples will be collected in new, clean containers manufactured for the purpose of substance use specimen collection. Immediately after assessment, the container will be sealed with tamper-proof tape and labeled in the presence of the applicant. The seal will cover the cap and extend over the sides of the container. The label will contain the date and time of collection, and the identifying number of the applicant.

All information on the label will be written clearly and with indelible ink. Samples will be transported or shipped promptly to the testing laboratory in a secure fashion, so as to prevent tampering. If shipment or transport is not feasible, the specimen shall be refrigerated within one hour, at less than 6°C for no more than three days, or frozen at -20°C or less, for no more than two weeks before shipment.

Substance Use Testing Policy

B. At laboratory

All positive specimens will be retained by the laboratory in the original containers in secure storage at freezing temperatures (-20°C or less) for at least 12 months. Should legal challenge occur, the specimen will be retained throughout the period of resolution of that challenge.

5. Chain of Custody

A. Labeling and Packaging

Immediately upon collection of each sample, a Chain-of-Custody record will be established for that sample, indicating the identity of each person having control over the sample, and the times and dates of all transfers or other actions pertaining to the sample.

B. Transport

Samples will be picked up from the facility within 24 hours of collecting the sample and will be transported in a secure fashion, so as to avoid tampering. Each person who takes custody of the sample in the course of transport will record on the Chain-of-Custody log the date, time, transporter's name and employer's name, origin and destination of the sample.

C. At laboratory

When a sample arrives at the lab, the person receiving the sample shall record the time of receipt and the location of each sample in the lab's storage system. Any technician or other person who removes the sample from storage or opens the sample shall record the date, time, his or her name and purpose for removal or opening of the sample.

Substance Use Testing Policy

6. Identify Testing Laboratory

Clinical Reference Laboratory, 8433 Quivira Road, Lenexa, KS 66215

7. Procedure to Notify Applicant

The applicant will be notified by personal telephone call and confirmed by mail unless the applicant otherwise instructs. All laboratory reports, including the screening, confirmation and quality control data shall be reviewed and in the event of a confirmed positive, the applicant will have an opportunity to speak with a healthcare professional in order to validate the reason for the positive result (i.e. a valid prescription) prior to the final report being sent to the employer. The final report will be sent to **Title of employer representative to receive report**.

The report will identify the name of the laboratory, the drugs and metabolites tested for, whether the test results were negative or confirmed positive and the cutoff levels for each substance. The report will include any available information concerning the margin of accuracy and precision of the test methods employed.

- A. Unless agreed upon by the applicant, no report shall show the quantity of substance detected, but only the presence or absence of that substance relative to the cutoff level.
- B. No report will show that a substance was detected in a screening test, unless the presence of the substance was confirmed in the confirmatory test. Test results will be randomly delayed from two to five days so that the employer cannot gauge screening test results from the time results are reported. In addition, all testing will be billed to the employer at a single rate per sample tested (which may be periodically adjusted by the laboratory).
- C. No substance may be reported as present if the employer did not request analysis for that substance.
- D. Reports of samples segregated at the applicant's request for testing by the applicant's choice of laboratory, will be provided to the applicant and the employer.

Unless the applicant consents, all test results and any information acquired by the employer in the testing process is confidential and may not be released to anyone except the applicant tested.

This requirement applies to the personnel of all laboratories involved and to the employer. However, this does not prevent the disclosure of results or information if:

- a. Release of information is required or permitted by state and federal law including release under 26 M.R.S. Sec. 683 (8) (D), or
 - b. The use of this information is part of any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results. The results of any test may not be required, requested or suggested by the employer to be used in any criminal proceeding as provided by 26 M.R.S. Sec. 685 (3) (B).
- E. The laboratory shall retain records of confirmed positive results in a numerical or quantitative form for at least two years.

Substance Use Testing Policy

8. Procedure to Appeal

If the applicant chose to segregate a portion of their sample and elects to submit that sample to a laboratory of their choice, the results of the second test will be controlling. To appeal the results of a confirmed positive result in lieu of testing the segregated sample, the applicant must fill out and sign the attached "Substance Use Test Appeal" form, submitting information explaining or contesting the results, within five (5) working days after notice of a confirmed-positive test result.

The appeal process will be conducted without cost to the applicant. The applicant will then be scheduled to meet within 14 days with **list title(s) of person(s) who will review the appeal**. The applicant will explain the basis for the appeal and may be asked questions. After the meeting concludes, a written report of findings and conclusions will be prepared, and a copy sent to the applicant.

Substance Use Testing Policy

SUBSTANCE USE TEST APPEAL FORM

If you have reason to question the accuracy of a substance test to which you have submitted, you may file an appeal by filling out this form.

Name of person appealing: _____

Date sample provided: _____

Where was sample provided? _____

What are the reasons for your appeal of the test's accuracy? (please be specific)

Date: _____

Signature of Person Appealing

_____ will schedule a time to meet with you within 14 days from the time this Appeal is received by the employer.

Substance Use Testing Policy

APPENDIX A DRUG SCREENING AND CONFIRMATION LEVELS

<u>Substances</u>	<u>Urine</u> (ng/mL except in alcohol)		<u>Oral Fluids</u> (ng/mL)		<u>Hair Follicle</u> (pg/mg)		<u>Sweat Patch</u> (ng/patch)	
	<i>Screen</i>	<i>Confirm</i>	<i>Screen</i>	<i>Confirm</i>	<i>Screen</i>	<i>Confirm</i>	<i>Screen</i>	<i>Confirm</i>
6-Acetylmorphine (heroin)	Only if morphine >2000 ng/mL ¹	10 ng/mL	N/A	4 ng/mL	N/A	200 pg/mg ²	N/A	N/A
Alcohol	0.02 g/100mL	0.02 g/100mL	N/A	N/A	N/A	N/A	N/A	N/A
Amphetamine/ Methamphetamine MDMA	500 ng/mL	250 ng/mL	50 ng/mL	50 ng/mL ³	500 pg/mg	300 pg/mg ⁴	25 ng/patch	25 ng/patch
Barbiturates	300 ng/mL	300 ng/mL	N/A	N/A	N/A	N/A	N/A	N/A
Benzodiazepines	300 ng/mL	200 ng/mL	N/A	N/A	N/A	N/A	N/A	N/A
Cocaine and/or metabolites	150 ng/mL	100 ng/mL	20 ng/mL	8 ng/mL	500 pg/mg	Cocaine, 500 pg/mg metabolite 50 pg/mg ⁵	25 ng/patch	25 ng/patch
Marijuana and/or metabolites	50 ng/mL	15 ng/mL	4 ng/mL	2 ng/mL	1 pg/mg	0.05 pg/mg ⁶	4 ng/patch	1 ng/patch
Methadone	300 ng/mL	300 ng/mL	N/A	N/A	N/A	N/A	N/A	N/A
Methaqualone	300 ng/mL	300 ng/mL	N/A	N/A	N/A	N/A	N/A	N/A
Opiates and/or metabolites (codeine and morphine)	2000 ng/mL	2000 ng/mL	40 ng/mL	40 ng/mL	200 pg/mg	200 pg/mg	25 ng/patch	25 ng/patch
Phencyclidine	25 ng/mL	25 ng/mL	10 ng/mL	10 ng/mL	300 pg/mg	300 pg/mg	20 ng/patch	20 ng/patch
MDA	N/A	250 ng/mL	N/A	300 pg/mg	N/A	300 pg/mg	N/A	25 ng/patch
MDEA	N/A	250 ng/mL	N/A	300 pg/mg	N/A	300 pg/mg	N/A	25 ng/patch

¹ Only tested if morphine is present at a concentration of at least 2000 ng/mL.

² Must also contain amphetamine at a concentration greater than or equal to 50 pg/mg.

³ Specimen must also contain amphetamine at the screening concentration.

⁴ Methamphetamine sample must also contain amphetamine at a concentration of at least 50 pg/mg.

⁵ Cocaine concentration at confirmatory cutoff AND Benzoyllecgonine/cocaine ratio is at least 0.05 OR a Cocaethylene concentration of at least 50 pg/mg OR a narcocaine concentration of at least 50 pg/mg.

⁶ Delta-9-tetrahydrocannabinol-9-carboxylic acid.

Substance Use Testing Policy

Policy Submission Checklist

- Is a signed certification that the submission complies with all applicable statutes and regulations included? This can be part of the submission letter.
- Are copies of forms, information sheets or other materials used by applicants relating to substance testing included?

Policy Submission Process

To submit the policy to the Maine Department of Labor, please send a copy of:

- A written Substance Use Testing Policy with Page 5 signed by an authorized company official certifying that the policy complies with all applicable statutes and regulations.
- Blank samples of any and all forms, information sheets, or other materials used by applicants relating to the substance use testing program.
- A copy of the training certificate or curriculum used for POCT training, if applicable.

To:

Maine Department of Labor
Bureau of Labor Standards
45 State House Station
Augusta, ME 04333

OR via email:
mdol@maine.gov