

ILLINOIS EMPLOYMENT LAW

Drug and Alcohol Testing Laws



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STATE RESOURCES

Illinois Department of Public Health – Medical Cannabis Patient Registry Program [website](#)

Illinois [Cannabis Regulation and Tax Act](#)

Illinois [Compassionate Use Act](#)

Illinois [Human Rights Act](#)

Illinois [Substance Abuse Prevention on Public Works Act](#)

Federal Law

In addition to state law, federal regulations apply to employers in the commercial transportation industry. More information is available [here](#).

Although Illinois does not have a statute or regulation that addresses workplace drug or alcohol testing by private employers in general, the state’s Human Rights Act includes some guidance on workplace drug policies for employers. In addition, employers in certain industries may be subject to testing requirements under laws specific to their industries or projects. For example, Illinois’ Substance Abuse Prevention on Public Works Project Act imposes requirements on employers that have public works contracts.

LEGALIZED MARIJUANA

As of Jan. 1, 2014, Illinois’ Compassionate Use of Medical Cannabis Pilot Program Act ([Compassionate Use Act](#)) allows certain individuals, called **registered qualified patients (RQPs)**, to obtain the state’s permission to possess and use medical marijuana.

Effective Jan. 1, 2020, a new law called the [Illinois Cannabis Regulation and Tax Act](#) (CRTA) will also allow individuals who are age 21 and over to purchase, possess, use and grow limited amounts of marijuana for recreational purposes in the state.

RECREATIONAL MARIJUANA – EFFECTIVE JAN. 1, 2020

The CRTA amends the Illinois Right to Privacy in the Workplace Act (RPWA) to include marijuana as a “lawful product.” In general, this means that some employers could face penalties or lawsuits under the RPWA if they take adverse employment actions based **solely** on the fact that an RQP or an individual who is age 21 or older tests positive for marijuana.

However, the CRTA allows employers to adopt “reasonable zero tolerance or drug-free workplace” policies and “employment policies concerning drug testing, smoking, consumption, storage or use of marijuana in the workplace or while on call,” as long as they are applied in a nondiscriminatory manner. It also specifies that employers are never required to permit an employee to use or be impaired or under the influence of marijuana while he or she is:

- In the employer’s workplace;
- Performing his or her job duties; or
- On call.

For these purposes, an employee is deemed to be “on call” if he or she is scheduled, with at least 24 hours’ notice, to be on standby or otherwise responsible for performing

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tasks related to his or her employment either at the employer’s premises or any other previously designated location. The term “workplace” is defined as an employer’s premises and vehicles, regardless of whether they are leased, rented or owned. An employer’s premises includes any building, real property and parking area that is under the employer’s control and any area used by an employee while in performance of his or her job duties.

MEDICAL MARIJUANA

Under the Compassionate Use Act, employers are prohibited from:

- Penalizing an individual solely based on his or her status as an RQP; and
- Penalizing an RQP solely for testing positive for marijuana.

However, these prohibitions do **not** apply if failing to penalize an individual for these reasons would:

- Put the employer in violation of federal law; or
- Cause the employer to lose a monetary or licensing-related benefit under federal law or rules.

In addition, the Compassionate Use Act does **not prohibit or limit** an employer from:

- Adopting reasonable regulations regarding the consumption, storage or timekeeping requirements for RQPs related to the use of medical marijuana;
- Enforcing a policy regarding drug testing, zero-tolerance or a drug free workplace, as long as the policy is applied in a nondiscriminatory manner; or
- Disciplining an RQP for violating a workplace drug policy; or
- Taking adverse employment actions based on a good faith belief that a RQP used, possessed or was impaired by marijuana while on the employer’s premises or during the RQP’s hours of employment.

MARIJUANA IMPAIRMENT

Under both the CRTA and the Compassionate Use Act, employers may consider an employee to be impaired or under the influence of marijuana if he or she manifests specific, articulable symptoms while working that decrease or lessen his or her performance of his or her job.

These may include:

- Symptoms affecting speech, physical dexterity, agility, coordination or demeanor;
- Irrational or unusual behavior;
- Negligence or carelessness in operating equipment or machinery;
- Disregard for the safety of the employee or others;
- Involvement in an accident that results in serious damage to equipment or property;
- Disruption of a production or manufacturing process; or
- Carelessness that results in any injury to the employee or others.

If an employer elects to discipline an employee because of the employer’s good faith belief that he or she was impaired or under the influence of marijuana, it must afford the employee a reasonable opportunity to contest the basis of the determination.

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ILLINOIS HUMAN RIGHTS ACT

The Illinois Human Rights Act makes it unlawful for **employers with 15 or more employees** to discriminate against individuals based on race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation or unfavorable discharge from military service. The law also prohibits **all employers** in the state from discriminating against individuals based on disability.

The Human Rights Act does not specifically encourage, prohibit or authorize employers to conduct workplace testing or to make employment decisions based on test results. It does, however, authorize employers to:

- Prohibit illegal use of drugs and alcohol at the workplace by all employees; and
- Require employees to comply with all federal regulations regarding alcohol and drug abuse.

In addition, employers may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the employer holds other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism.

REQUIREMENTS FOR PUBLIC WORKS CONTRACTORS

Employers are subject to the Illinois' Substance Abuse Prevention on Public Works Project Act (Public Works Act) if they are contractors or subcontractors performing a public works project. Under the Public Works Act, an employer must have a written substance abuse prevention program in place before beginning work on a public works project. This written program must:

- Prohibit employees from using, possessing, distributing, delivering or being under the influence of any drug or alcohol while performing work on a public works project; and
- Require employees who perform work on the public works project to submit to pre-hire, random, reasonable suspicion and post-accident drug and alcohol testing.

The program must also include a procedure for notifying an employee that he or she may not perform work on the public works project until meeting certain conditions, when the employee :

- Violates the program;
- Test positive for a drug; or
- Refuses to submit to required testing.

An employer must file its written program with the public body engaged in the construction of the public works and also make it available to the general public.

TESTING PROCEDURES

Under the Public Works Act, all drug and alcohol testing must be performed by a laboratory that is certified for Federal Workplace Drug Testing Programs by the Substance Abuse and Mental Health Service Administration of the federal Department of Health and Human Services. All substance abuse prevention programs must contain at least a nine panel urine drug test plus a test for alcohol. Testing an employee's blood may only be used for post-accident testing, but blood testing is not mandatory where a urine test is sufficient.

REASONABLE SUSPICION TESTING

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice.

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The Public Works Act requires employees to undergo testing if their supervisors have reasonable suspicion that they are under the influence of alcohol or a drug at work. “Reasonable suspicion” means a belief, based on behavioral observations (such as slurred speech or decreased motor skills) or other evidence, that is sufficient to lead a prudent or reasonable person to suspect that the employee is under the influence.

When reasonable suspicion exists, the employee who is suspected of being under the influence must be removed from the job site and placed on inactive status pending the employer's receipt of his or her test results. During this time, the employee may not be allowed to operate a vehicle or other equipment for any purpose. The employer must provide the employee with transportation to the testing facility and may send a representative to accompany him or her. The employee also has a right to request that a representative or designee be present at the time of testing.

If the test result is positive for drugs or alcohol, the employee must be subject to termination. If the test result is negative, the employee must be placed on active status and put back to work. Following a negative test result, the employee must be paid for all lost time, including all time needed to complete the testing and any overtime according to the employee's contract.

POST-ACCIDENT TESTING

Under the Public Works Act, an employer must perform substance abuse testing on any employee who caused, contributed to or was otherwise involved in an accident. The law defines an accident as an incident that:

- Occurs while the employee is performing work on a public works project; and
- Results in death, personal injury or property damage.

COST OF TESTING

An employer is responsible for the cost of developing, implementing and enforcing its substance abuse prevention program, including the cost of drug and alcohol testing of its employees under the program, except when these costs are covered under a collective bargaining agreement.

EMPLOYEE ACCESS TO PROJECTS

An employer must immediately remove an employee from work on a public works project if:

- The employee is found to have used, possessed, distributed, delivered or be under the influence of any drug or alcohol while performing work on a public works project;
- The employee tests positive for a drug or refuses to submit to required drug or alcohol testing; or
- An officer or employee of the contracting agency has a reasonable suspicion that the employee is under the influence and requests that the employer immediately remove the employee for reasonable suspicion testing.

An employee who is barred or removed from work on a public works project may return to work only after the employer provides the contracting agency with documentation showing that:

- The employee has tested negative for drugs and is not under the influence of alcohol;
- The employee has been approved to return to work; and
- Drug and alcohol testing and the handling of test specimens were conducted in accordance with federal guidelines.

Upon successfully completing a rehabilitation program, an employee must be reinstated to his or her former employment status if suitable work is available.

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OTHER DRUG TESTING LAWS

In addition to state law, transportation employees in Illinois, such as drivers of commercial motor vehicles, must comply with federal law. The U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration's (FMCSA) drug and alcohol testing regulations govern workplace drug testing for these employees. For more information on the FMCSA's alcohol and drug testing regulations, visit the [FMCSA website](#).

MORE INFORMATION

Please contact TROXELL for more information on drug testing laws in Illinois.