

Employers Should Have Reasonable Suspicion for Drug Testing Workers

Can I drug test my employee who is acting strangely and not answering questions correctly? His behavior is very suspicious.

Every California employer can require pre-employment drug testing as one of the last steps in the hiring process. Once someone is an employee, however, he/she has a higher expectation of privacy.

Reasonable Suspicion

Employers may conduct “reasonable suspicion” drug testing, but this is a delicate area and observations that “Joe is acting weird” do not substantiate such a test.

Reasonable suspicion means that the employer has a genuine reason to believe that an employee has been taking drugs. This reason should be based on facts, knowledge, and logic. It should not be a guess, nor should it be based on a report from another employee who perhaps has reason to get “Joe” in trouble. It is best to have supervisors trained in the signs of usage.

Examples of usage are different for different drugs, but some indications include:

- Bloodshot eyes, pupils larger or smaller than usual;
- Changes in appetite or sleep patterns;
- Changes in work performance;
- Sudden weight loss or weight gain;
- Deterioration of physical appearance, personal grooming habits;
- Unusual smells on breath, body or clothing; and/or
- Tremors, slurred speech, or impaired coordination.

The signs of usage, however, vary with the drug, and the indications noted above are far from exhaustive. Certain testing clinics will conduct classes, and the Internet provides information on many levels. Knowledge is key.

Drug Testing

Also, escorting the employee to be tested is critical if you think he/she is under the influence. Further, the employee may have a medical condition and the first concern should be for the health of the employee.

Last, the employer must have a stated policy that a reasonable suspicion drug testing will be conducted if the employer thinks an employee is using drugs. As noted earlier, current employees have an expectation of privacy. The policy supersedes this expectation.