

Are Your Workplace Drug Testing Policies Legally Sound?



It's illegal for workers to use or be impaired by drugs while they're on duty. Legalization of recreational marijuana didn't change that. Nor did it directly impact drug testing rules. As before, [legality of drug testing](#) is a balance between an employer's right to maintain a safe workplace and a worker's right to privacy. The basic rules:

- Because testing is so [privacy-invasive](#), it's justified only for workers who have safety-sensitive jobs;
- Random testing, or testing without cause, is allowed only for safety-sensitive workers in dangerous workplaces where there's documented evidence of worker drugs/alcohol problems at the particular site;
- For-cause testing of safety-sensitive workers, such as after workplace accidents, is justifiable if testing triggers are narrow in scope, essential to safety and fairly enforced.

The reason we know this is because courts, arbitrators, labour boards and other tribunals have told us. Testing laws come not from legislation or regulation but litigation. **Punchline:** The best way to judge your own [testing policies](#) is by comparing them to real-world cases.

We can help you out with that. HRI has been reviewing the cases and summarizing results in Scorecards—both annually (including for [2020 to 2021](#)) and [cumulatively](#) since the date of legalization on October 17, 2018. The Scorecard explains the facts of each case, how the court or arbitrator ruled and the significance of the ruling. So, give it a look.