



Post-Accident Drug/Alcohol Testing

Missouri Employers Mutual



MO DWI Statute

- 287.120 – liability of employer set out etc
- 6. (1) Where the employee fails to obey any rule or policy adopted by the employer relating to a drug-free workplace or the use of alcohol or nonprescribed controlled drugs in the workplace, the compensation and death benefit provided for herein shall be reduced fifty percent if the injury was sustained in conjunction with the use of alcohol or nonprescribed controlled drugs.

MO DWI Statute

- (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the employer's rule or policy is the proximate cause of the injury, then the benefits or compensation otherwise payable under this chapter for death or disability shall be **forfeited**.

MO DWI Statute

- 6. (3) An employee's **refusal** to take a test for alcohol or a nonprescribed controlled substance, as defined by section 195.010, at the request of the employer shall result in the **forfeiture** of benefits under this chapter if the employer had sufficient cause to suspect use of alcohol or a nonprescribed controlled substance by the claimant or if the **employer's policy clearly authorizes post-injury testing**.

MO DWI Statute

- (4) Any **positive** test result for a nonprescribed controlled drug or the metabolites of such drug from an employee shall give rise to a rebuttable presumption, which may be rebutted by a preponderance of evidence, that the tested nonprescribed controlled drug was in the employee's system at the time of the accident or injury and that the injury was sustained in conjunction with the use of the tested nonprescribed controlled drug if:
 - (a) The initial testing was administered within **twenty-four hours** of the accident or injury;
 - (b) **Notice was given to the employee** of the test results within **fourteen calendar days** of the insurer or group self-insurer receiving actual notice of the confirmatory test results;
 - (c) The employee was given an opportunity to perform a **second test** upon the original sample; and
 - (d) The initial or any subsequent testing that forms the basis of the presumption was **confirmed by mass spectrometry** using generally accepted medical or forensic testing procedures.

OSHA Regulation

OSHA Regulations

- **29 C.F.R. 1904.36 Prohibition against Discrimination:** An employer can not discriminate against an employee for reporting a work related injury.
- Comments from the Federal Register:
- The rule prohibits employers from using drug testing as a form of adverse action against employees who report injuries
 - Do not drug test if:
 - Injury very unlikely to have been caused by drug use; or
 - The method of drug test does not identify impairment but only use at some time in the recent past.



Accident Reporting Policy

- Must have a strong written accident reporting policy in place
- Prove to OSHA inspector employees have been trained on reporting a claim
- Post in readily available location accident reporting procedures

OSHA

- Have you Heard This:
 - No bee stings
 - Occupational injury
 - Didn't cause injury
 - Can't across the board test

Wasp Sting

Theatre director, 66, who was allergic to wasps fell to his death after being stung as he drunkenly tried to remove a wasps' nest from the roof of his home while wearing slippers in the rain

- Michael Gibson, 66, died after he was stung by a wasp and fell from a ladder
- He was removing a wasps' nest from the roof of his home in Louth, Lincolnshire
- But after he had climbed the ladder, he was stung and fell to the ground

OSHA VS. W.C. Laws

OSHA v. MO Work Comp

- If an employer conducts drug testing to comply with the requirements of a state or federal law or regulation, the employer's motive would not be retaliatory and the rule would not prohibit such testing.
- Section 4(b)(4) of the Act prohibits OSHA from ***superseding or affecting workers' compensation laws.*** 29 U.S.C. 653(b)(4)



Discrimination?

- If you pick and choose who is tested are you facing discrimination?
- Do you trust foremen/supervisors to make the decision?
- How much more will an EEOC claim cost versus a drug test or potential fine?

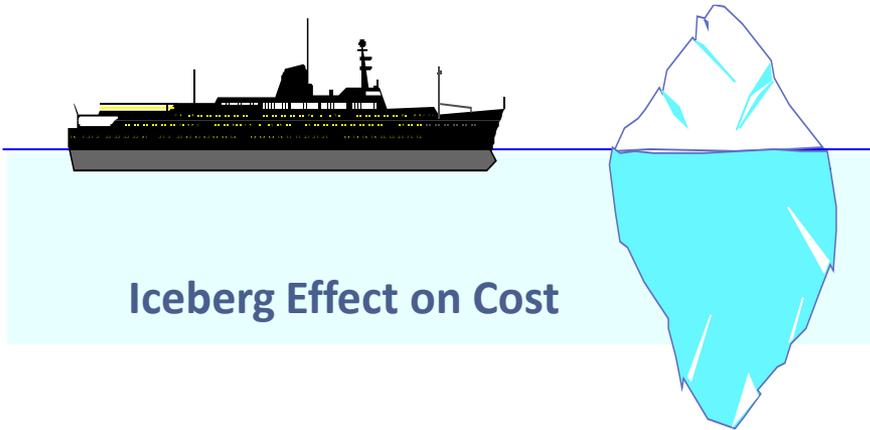
Must Do

- Have a written and enforced safety policy in place.
- Test all employees who seek care within 24 hours
- Notify employee of positive test within 14 days
- Positive tests must be tested in an approved facility
- Don't pick and choose

Costs

- Emod – Experience Modifier
- Three years of experience
- Frequency & severity of injuries count
- Emod over 1.00 may put employer out of business
- Medical largest costs

Understanding the Real Cost of Accidents

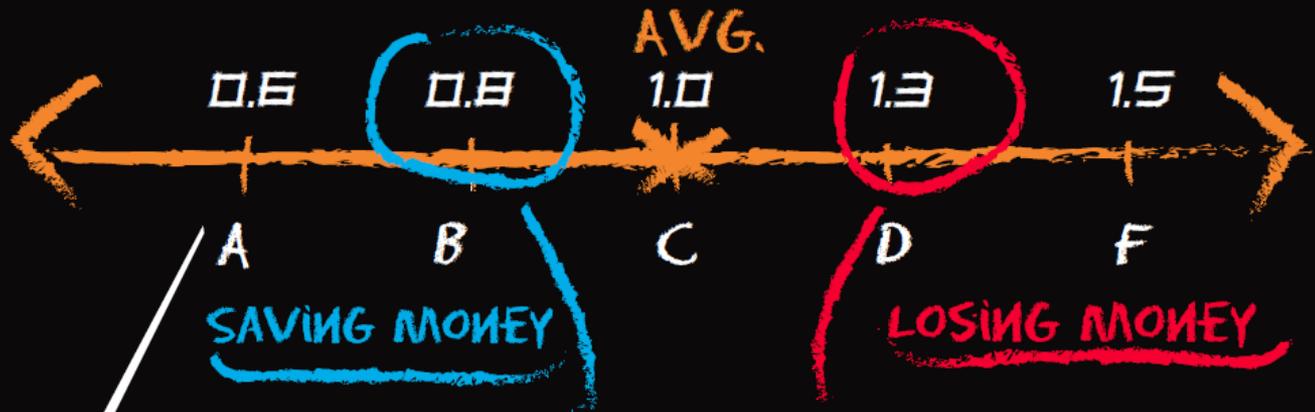


Direct Costs \$1

Indirect Cost \$4- \$10

Making the Grade

UNDERSTANDING THE E-MOD



An e-mod of 0.8 means your loss experience is 20 percent better than others in your industry. You could receive a **premium discount of 20%** due to anticipated losses lower than others in your industry.

An e-mod of 1.3 means your loss experience is 30 percent worse than others in your industry. You could pay a **premium surcharge of 30%** to cover anticipated losses higher than others in your industry.

Emod Example

- Real life example of what happens when an employer does not test – costs, emod, morale etc.

Who Will Test

- List of providers

Already Knew

- Example of real life claim

Marijuana Legal???

- Alcohol is legal
- What does your policy say?
- Personnel policy just like any other policy
- Testing limit in the future
- Employer and employee's right to a safe work environment

Willie Says:

- Willie Nelson: Pot is Good For America
- Melissa Etheridge & Band of Heathens have marijuana-infused wine
- Marketed as: even, mellow high with a slight energy boost

Willie Nelson's Weed Company Raises \$12 Million

Purpose

- Indicators
- Signs and symptoms
- Protocols post-accident
- Chain of custody
- What drug panel to choose

Drug Use ?

Frequent tardiness or absenteeism

Inconsistent job performance

Frequent small accidents resulting in minor damage

Absences explanations unexplained

Theft at worksite or from other employees

Medical Treatment Protocols

- How do you treat if someone tests positive
- How does it effect recovery
- Will you treat if employee doesn't stop
- How often do you test after the injury to verify they have stopped

Types of testing

- Hair
- Saliva
- Blood
- Urine
- Benefits of each

Panel Testing

- Type of panel determined by local culture and cost
- Storage
- Access
- Follow up testing

Just an example

A **seven panel drug test** is often administered by companies or individuals who are concerned an employee might be abusing prescription drugs. In industries where alertness is required or heavy machinery is operated, some companies use the seven panel drug test to gauge the presence of prescription drugs with potentially fatiguing side effects – drugs that, although legal, may impair a machine operator's ability to do their job, particularly if abused.

A **standard 7 panel drug urine test** typically looks for marijuana, cocaine, opiates, pcp, amphetamines, benzodiazepines, & barbiturates.

A **ten panel drug screen** is often administered to test employees of law enforcement and occupational medicine, as well as to examine if a person on legal probation is violating the terms of that probation. Further, many civil servants are required to pass a 10 panel drug screen, particularly if their job entails dangerous work or work where the employee is responsible for the safety of others.

A **standard 10 panel drug urine test** typically looks for cocaine, marijuana, PCP, amphetamines, opiates, benzodiazepines, barbiturates, methadone, propoxyphene, & Quaaludes.

A **twelve panel drug** is often administered as an extension to the 10 panel test and looks for either the presence of extended opiates and prescription painkillers, or can look for traces of other controlled substances if that is dangerous to the workplace.

A **standard 12 panel drug urine test** typically looks for cocaine, marijuana, PCP, amphetamines, opiates, benzodiazepines, barbiturates, methadone, propoxyphene, Quaaludes, Ecstasy/MDA, & Oxycodone/Percoset.

Regulated

- Is there a difference between regulated and non-regulated testing?
- Such as DOT versus W.C.
- forensic vs company testing

Purpose

- Indicators
- Protocols to follow post-accident
- Chain of custody
- What drug test to use

Chain of Custody

- Legal procedure not medical no privacy issues HIPPA
- Point to point collection
- Be aware of your collection facility
- protocols

Part 2

- Testing
- Identify
- What to do

Important

- When confronting the employee do not be accusatory or disrespectful
- Be blunt and only the facts
- Explain the process of testing but do not allow the process to be altered
- Always keep employee with you in sight
- until get to collection center and they take over

Signs and Symptoms

- Personal hygiene reduces Meth –teeth
- Overreaction or paranoia to suggestion or criticism
- Weight loss
- Long sleeves on hot days
- Unsteady gait
- Easily angers more tense with co-workers

Signs

- Change in friendliness or demeanor
- Money issues needs advance for multiple reasons
- Frequent absence in work area bathrooms smoke etc..
- New friends show up at work or around

Communication

- Must communicate need for testing
- Must have written and enforced policy
- Don't offer drugs/alcohol in the work place
- Second chance or not your choice

Questions

- Questions
 - Time to ask the important questions or one's you are scared to ask
 - We know hypotheticals really happened
 - If you think we haven't seen it – we have

The End

Thank You

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