

STATE LAW CHART - EXPLANATION KEY

Purpose of Chart

The information provided in the state law chart is for general education and reference only and is intended to provide a framework for understanding/exploring the legislative and regulatory requirements that affect the implementation of drug-free workplace programs in individual states.

This information is being presented after a review of reputable information available through four sources that monitor law and drug-free workplace issues:

- Porter, Wright Morris & Arthur, LLC
- The Institute for a Drug-Free Workplace
- Best Practices Institute
- U.S. Department of Labor's Working Partners for an Alcohol- and Drug-Free Workplace

It has been compiled, interpreted and organized for the "*WORKING to Prevent Underage Drinking: Workplace is the key!*" project by a private drug-free workplace consulting and training firm, *Working Partners®*. This firm works operationally on a daily basis with clients who conduct alcohol and drug testing across the U.S.

By its nature, this information can be subject to change from the time researched and presented here. Additionally, in certain instances it may involve opinion, and therefore in those instances is subject to interpretation.

THIS INFORMATION IS NOT INTENDED TO PROVIDE LEGAL OR PROFESSIONAL GUIDANCE. When necessary, especially if one is reviewing this information for the purpose of operating a drug-free workplace and/or drug-testing policy/program, we advise that you consult directly with *Working Partners®* (Columbus, Ohio) or another experienced professional and/or legal counsel for confirmation in context with your objectives.

Organization of Information

The State Law Chart presents state-specific information for four categories of state laws which affect the implementation of drug-free workplace programs. These are:

- A. Some Employee Education requirements (depending upon the testing objectives)
- B. Required testing of certain positions/contracts
- C. Workers' Compensation benefits of premium discount programs
- D. Testing must meet statutory laws

There is a column corresponding to each of these categories. If a state has that type of rule or law, it has an X in the appropriate column. Further explanation of each column is below. States in **Bold** are those that have representation in *the Leadership To Keep Children Alcohol Free Foundation*. These representatives are not only committed to the prevention of underage drinking, but also politically knowledgeable.

Explanation of Columns

Column A: Some Employee Education requirements (depending upon the testing objectives)

States have an X in this column if there is a statutory requirement for employers to include employee education (or in the case of Iowa, supervisor training) in an employment environment where any alcohol and/or drug testing will occur.

A state may include employee education coupled with employment alcohol and/or drug testing as a requirement for a variety of reasons including:

1. A state safety compliance requirement for specific industries;
2. In order to be eligible to receive certain performance contracts with the state;
3. To better position for legal and liability protections in a workers' compensation claim; and/or
4. To qualify for a discount on workers' compensation premiums.

Relevance when approaching state contacts: In states where there is already a requirement for employee education, it is anticipated that there is an understanding of its value. Thus, it is anticipated that this may be a sympathetic environment in which the underage drinking prevention curriculum can be introduced and embraced.

Column B: Required testing of certain positions/contracts

States with an X in this column require drug and alcohol testing of employees under certain circumstances, such as when:

1. They work in an industry that is required to do testing (generally due to the industry's high-risk nature); and/or
2. They work under a contract in which the state requires workers to be tested.

Some states have an X in Column B and have statutory requirements for employee education when alcohol and drug testing is used (thus also have an X in Column A). Other states with required testing do *not* have an education requirement.

Relevance when approaching state contacts: In either circumstance (industry-specific or contract requirements for testing), it is more likely that there is a state contact person with basic knowledge and understanding about the challenges and legalities of employment alcohol and drug testing. Furthermore, this individual will likely know the reactions of employees subjected to testing and recognize the benefits of giving employees fair notice, information and the opportunity to ask questions through employee education. In addition, he/she may grasp the value of offering employees information which is meaningful to them personally, such as underage drinking prevention strategies in the case of parents. Often, employees' sense of benefit and appreciation for education relevant to their lives helps offset discomfort about required testing.

Column C: Workers' Compensation benefits or premium discount programs

States with an X in this column provide employers with safety and/or workers' compensation protections, such as limitations of legal and liability exposure, for applying varying degrees of drug-free workplace operations. Some states (designated by XX) go beyond such benefits and grant workers' compensation premium discounts for employers who adopt programs meeting certain guidelines including the administration of alcohol and drug testing of employees under certain circumstances.

In some states with an X in this column, the benefit to an employer may be the ability to deny a workers' compensation claim if intoxication of the injured worker can be proven. In such a case, alcohol testing is an objective, scientific way to determine if the person has alcohol in his/her system at a level that state has designated for intoxication. A different state may lower the workers' compensation payment to an injured employee if he/she was under the influence of alcohol or another drug (as proven through employment testing).

Relevance when approaching state contacts: As in states with required testing of certain positions/contracts (Column B), it is anticipated that states with workers' compensation benefits or premium discount programs will have a state contact person with basic knowledge and understanding about the challenges and legalities of employment alcohol and drug testing. For states with an X in this column, the task is to find someone knowledgeable about the workers' compensation protections and benefits an employer might realize if he/she adopts employment testing (possibly a state department of insurance, workers' compensation claims, etc.). Then, if employee education is not one of the components necessary when employees are subject to testing, the next task is to establish the value of such. From there, the value of education meaningful to the employees' lives, such as underage drinking prevention strategies in the case of parents, can be stressed.

Column D: Testing must meet statutory laws

States with an X in this column have statutory rules dictating specifics when any employment alcohol and drug testing is to be conducted.

Relevance when approaching state contacts: Again, these types of laws increase the likelihood that there will be someone within the state system who has basic knowledge and understanding about the challenges and legalities of employment alcohol and drug testing in that state (possibly the state's legal department, administrative services, EEOC office, etc.). This can be a good starting point for a discussion to learn whether employee education is considered part of what "should be done" in conjunction with employment testing. Such a discussion may lead to sharing the value of employee education as a supported activity to give employees fair notice, information, and the opportunity to ask questions about alcohol and drug testing. From there, the value of education meaningful to the employees' lives, such as underage drinking prevention strategies in the case of parents, can be stressed.

A state with no X in any column

If a state has no Xs, it means no rule or law (requirements, incentives, and restrictions) was discovered as of the date of this document that would impact an employer’s approach to a drug-free workplace program or implementing employment alcohol and/or drug testing. In this event, the first step is to reach out to whomever seems most appropriate to confirm that indeed the state does *not* have governing requirements already established. When there are truly no guiding requirements, it is less likely there will be a knowledgeable and therefore sympathetic state contact person.

In such cases you may in fact be the one making a case – perhaps for the first time – about the benefits of drug-free workplace programs. You may have the opportunity to educate about what states can do to promote drug-free workplace programs and familiarize your contact with what other states are already doing.

Within this Toolkit, there are five documents that will be particularly helpful as you prepare to make a presentation to uninformed sources:

- Drug-Free Workplace Benefits
- Toolkit Overview (*Getting Started* section)
- State Law Chart – Explanation Key (this document)
- State Law Chart
- State Law Discussion Guide

Relevance when approaching state contacts: Remember that money or the “bottom line” is often a great door-opener when asking for an audience with someone on the topic of drug-free workplace programs or employment alcohol and drug testing. Addressing states’ statutory or regulatory financial benefits/incentives for businesses can serve as a natural connecting point to address other workplace losses. The bridge can easily be made to losses in productivity and jeopardized safety at the hands of an employee under the influence of alcohol or drugs – or distracted by concern about underage drinking of his/her child.