Substance Abuse Testing By Maine Employers

2013

Mark B. Dawson
Bureau of Labor Standards
Maine Department of Labor

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Telephone (207) 623-7900    TTY Users Call Maine Relay 711    FAX (207) 623-7937

This publication is available at:
http://www.maine.gov/labor/labor_stats/publications/substanceabuse/
Scope

The Maine Department of Labor (MDOL) is submitting this report to the Joint Standing Committee on Labor, Commerce, Research and Economic Development in accordance with the Maine Substance Abuse Testing Law, Title 26 M.R.S.A. §690. The Maine Substance Abuse Testing Law is intended to protect the privacy rights of employees, yet allow an employer to administer testing, to ensure proper testing procedures, to ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment, and to eliminate drug abuse in the workplace. The law was initially enacted in 1989 and was amended by the Legislature in 1995, 1999, 2001, 2003, 2005, 2007, 2009 and 2011.

This report pertains only to employer testing activities under Maine law. It is not a comprehensive study of workplace substance abuse testing because it does not include individuals who are tested under federal testing programs, which are outside the scope of state testing law. Further, it does not include non-federal employee testing data from some employers who have been exempted under the most recent amendment to the Maine law.

Practice

The administration of the Maine Drug Testing Law is a collaborative effort of the following agencies:

**Maine Department of Labor, Bureau of Labor Standards (BLS)**
Reviews and approves substance abuse testing policies.
Collects the annual reports of substance abuse testing.
Analyzes testing data and publishes this annual report.

**Department of Health and Human Services, Health and Environmental Testing Laboratory**
Responsible for the licensing of laboratories that Maine employers can use for testing of controlled substances. For a list of approved testing laboratories, contact the Maine Department of Labor.

**Department of Health and Human Services, Office of Substance Abuse**
Any employer with more than 20 full-time employees must have a functioning Employee Assistance Program (EAP) prior to testing their employees, as stated in Title 26 M.R.S.A. §683, 1. The EAP must be certified by the Department of Health and Human Services and certification must be renewed every two years.

Any employer desiring to undertake substance abuse testing of current or prospective employees, other than those tested under federal regulations, must submit a substance abuse testing policy to the Maine Department of Labor. An employer may not commence testing until the MDOL has notified the employer that the policy has been approved and the employer has given proper notice to its employees.
Policy templates developed by the Maine Department of Labor help employers develop substance abuse policies for their workplaces and make it easier for the MDOL to review company policies. The policy templates are available on the MDOL website: www.maine.gov/labor/labor_laws/substance_abuse_testing. (The template is suggested wording that an employer can use to begin the policy development process. This template should not be confused with the model policy suggested in LD 1669, which would create one master policy for implementation by each employer.)

Survey

Each employer with a drug testing policy approved by the Maine Department of Labor (see Appendix 1) is required to report its testing activities annually. This is accomplished via a mandatory survey conducted by the Department. Survey notices are mailed to all employers with active policies in mid-December each year and data collection continues into January. Exempt employers are also invited to participate in the survey to the extent of any drug testing they perform on non-federally regulated applicants or employees.

Information gathered from the survey includes the number of tests by type (applicant, probable cause or random/arbitrary), the substances tested for, and the number of positive tests for each substance. Survey data are processed directly into this report.

Results by Type of Test

Table 1 below provides the results of employer drug testing in 2013 based on the types of drug tests that were taken. They include:

Applicant Testing

Applicant testing is for individuals who have been offered employment with a company or placed on a roster of eligibility for employment. Testing is conducted before the individual is hired.

Employee Testing—Probable Cause

Probable cause testing is conducted where reasonable grounds exist to believe that an existing employee may be under the influence of a substance of abuse.

Employee Testing—Random/Arbitrary

Random testing is a method of selection in which all employees have an equal potential of selection by random chance. Some employers with random testing policies select from their pool of safety or performance sensitive positions, while most employers include all employees in the selection process. Arbitrary testing is based on criteria unrelated to substance abuse, such as the anniversary of hire date.
Table 1: Results by Test Type
Maine, 2013

<table>
<thead>
<tr>
<th></th>
<th>Applicant Tests</th>
<th>Applicant Percent Positive</th>
<th>Probable Cause Tests</th>
<th>Probable Cause Percent Positive</th>
<th>Random/Arbitrary Tests</th>
<th>Random/Arbitrary Percent Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Tests</td>
<td>23,284</td>
<td>44</td>
<td></td>
<td>897</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Invalid Tests*</td>
<td>37</td>
<td>0.2%</td>
<td>0</td>
<td>0.2%</td>
<td>1</td>
<td>0.1%</td>
</tr>
<tr>
<td>Total Positive Results</td>
<td>1068</td>
<td>4.6%</td>
<td>3</td>
<td>6.8%</td>
<td>29</td>
<td>3.2%</td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>869</td>
<td>3.7%</td>
<td>1</td>
<td>2.3%</td>
<td>23</td>
<td>2.6%</td>
</tr>
<tr>
<td>Cocaine</td>
<td>43</td>
<td>0.2%</td>
<td>0</td>
<td>0.0%</td>
<td>2</td>
<td>0.2%</td>
</tr>
<tr>
<td>Amphetamines</td>
<td>78</td>
<td>0.3%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Opiates</td>
<td>34</td>
<td>0.1%</td>
<td>1</td>
<td>2.3%</td>
<td>2</td>
<td>0.2%</td>
</tr>
<tr>
<td>Methadone</td>
<td>12</td>
<td>0.1%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Phencyclidine</td>
<td>15</td>
<td>0.1%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Benzodiazepines</td>
<td>11</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Alcohol</td>
<td>1</td>
<td>0.0%</td>
<td>1</td>
<td>2.3%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Barbiturates</td>
<td>4</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Methaqualone</td>
<td>3</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
<td>0</td>
<td>0.0%</td>
</tr>
</tbody>
</table>

*Invalid tests include those with discrepancies that could involve specimen acquisition, sample protection, chain of custody, security, or validation of testing / analytical equipment or procedures. In some cases, invalid tests can be re-taken*
Results by Industry

Table 2 shows testing results for each industry, based on the North American Industrial Classification System (NAICS) code. The Services industry conducted the most tests in 2013. The Trade industry had the highest percentage of positive results. The highest subsector is the wood products manufacturing industry.

<table>
<thead>
<tr>
<th>Industry</th>
<th>Policies</th>
<th>Test</th>
<th>Positives</th>
<th>Percent Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Industry</td>
<td>474</td>
<td>24,169</td>
<td>1,097</td>
<td>4.5%</td>
</tr>
<tr>
<td>Construction</td>
<td>62</td>
<td>1,601</td>
<td>52</td>
<td>3.2%</td>
</tr>
<tr>
<td>Heavy Construction</td>
<td>15</td>
<td>845</td>
<td>23</td>
<td>2.7%</td>
</tr>
<tr>
<td>Other Construction</td>
<td>47</td>
<td>756</td>
<td>29</td>
<td>3.8%</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>118</td>
<td>3,838</td>
<td>182</td>
<td>4.7%</td>
</tr>
<tr>
<td>Electronic/Electrical Equipment</td>
<td>9</td>
<td>167</td>
<td>10</td>
<td>6.0%</td>
</tr>
<tr>
<td>Food Products</td>
<td>9</td>
<td>241</td>
<td>11</td>
<td>4.6%</td>
</tr>
<tr>
<td>Plastics and Rubber</td>
<td>9</td>
<td>88</td>
<td>5</td>
<td>5.7%</td>
</tr>
<tr>
<td>Paper Products</td>
<td>15</td>
<td>712</td>
<td>18</td>
<td>2.5%</td>
</tr>
<tr>
<td>Wood Products</td>
<td>24</td>
<td>482</td>
<td>79</td>
<td>16.4%</td>
</tr>
<tr>
<td>Other Manufacturing</td>
<td>52</td>
<td>2,148</td>
<td>59</td>
<td>2.7%</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>173</td>
<td>7</td>
<td>4.0%</td>
</tr>
<tr>
<td>Health Care and Social Assistance</td>
<td>28</td>
<td>2,982</td>
<td>46</td>
<td>1.5%</td>
</tr>
<tr>
<td>Professional/Scientific/Tech Services</td>
<td>30</td>
<td>174</td>
<td>3</td>
<td>1.7%</td>
</tr>
<tr>
<td>Other Services</td>
<td>113</td>
<td>4,572</td>
<td>184</td>
<td>4.0%</td>
</tr>
<tr>
<td>Trade</td>
<td>90</td>
<td>10,311</td>
<td>607</td>
<td>5.9%</td>
</tr>
<tr>
<td>Retail</td>
<td>43</td>
<td>9,552</td>
<td>539</td>
<td>5.6%</td>
</tr>
<tr>
<td>Wholesale</td>
<td>47</td>
<td>759</td>
<td>68</td>
<td>9.0%</td>
</tr>
<tr>
<td>Transportation and Public Utilities</td>
<td>27</td>
<td>518</td>
<td>16</td>
<td>3.1%</td>
</tr>
<tr>
<td>Transportation and Public Utilities</td>
<td>27</td>
<td>518</td>
<td>16</td>
<td>3.1%</td>
</tr>
</tbody>
</table>
Table 3 shows the results of testing in 2013 by substance. Many employers use a common five-panel test including Cannabinoids, Amphetamines, Cocaine, Opiates, and Phencyclidine. In 2013 tests, 4.5 percent of tests had a positive result. Cannabinoids accounted for 81.2 percent of all positive test results.

<table>
<thead>
<tr>
<th>Substance</th>
<th>Employers Testing</th>
<th>Total</th>
<th>Total Positives</th>
<th>Percent Positive</th>
<th>Percent of Positives</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Substances</td>
<td>317</td>
<td>24,225</td>
<td>1,100</td>
<td>4.5%</td>
<td></td>
</tr>
<tr>
<td>Cannabinoids</td>
<td>316</td>
<td>25,807</td>
<td>893</td>
<td>3.5%</td>
<td>81.2%</td>
</tr>
<tr>
<td>Cocaine</td>
<td>313</td>
<td>23,657</td>
<td>45</td>
<td>0.2%</td>
<td>4.1%</td>
</tr>
<tr>
<td>Amphetamines</td>
<td>312</td>
<td>24,202</td>
<td>78</td>
<td>0.3%</td>
<td>7.1%</td>
</tr>
<tr>
<td>Opiates</td>
<td>312</td>
<td>24,239</td>
<td>37</td>
<td>0.2%</td>
<td>3.4%</td>
</tr>
<tr>
<td>Phencyclidine</td>
<td>306</td>
<td>21,604</td>
<td>15</td>
<td>0.1%</td>
<td>1.4%</td>
</tr>
<tr>
<td>Barbiturates</td>
<td>176</td>
<td>10,445</td>
<td>4</td>
<td>0.0%</td>
<td>0.4%</td>
</tr>
<tr>
<td>Benzodiazepines</td>
<td>175</td>
<td>11,776</td>
<td>11</td>
<td>0.1%</td>
<td>1.0%</td>
</tr>
<tr>
<td>Methadone</td>
<td>165</td>
<td>9,386</td>
<td>12</td>
<td>0.1%</td>
<td>1.1%</td>
</tr>
<tr>
<td>Methaqualone</td>
<td>145</td>
<td>8,589</td>
<td>3</td>
<td>0.0%</td>
<td>0.3%</td>
</tr>
<tr>
<td>Alcohol</td>
<td>54</td>
<td>2,564</td>
<td>2</td>
<td>0.1%</td>
<td>0.2%</td>
</tr>
</tbody>
</table>

Cannabinoids:
- Hashish*
- Marijuana*
- Tetrahydrocannabinol (THC) *

Depressants:
- Barbiturates*
- Benzodiazepines*
- Glutethimide
- Methaqualone*

Hallucinogens:
- Amphetamine Variants*
- LSD
- Mescaline and Peyote
- Phencyclidine (PCP, angel dust)*
- Phencyclidine Analogs

Narcotics:

Contr
olled
Subst
ance
s and
Drug
Nam
es:
- Codei
ne
- Heroin*
- Hydro
morph
one
- Mepe
ridine
(Pethi
dine)
- Metha
done*
- Morphine*
- Opium*

Stimulants:
- Amphetamines*
- Cocaine*
- Methylphenidate
- Phent
emetr
ine

* Substances currently approved for drug testing under Maine law.
Year-by-Year Results

Regulation of testing for use of controlled substances has been in effect under Maine law since September 30, 1989. Since then results have been collected every year. The number of employers with approved policies has increased steadily since that time. The highest percentage of positive tests was 4.9 percent, occurring in 2007 and 2002. The lowest percent positive was 2.0 percent, occurring in 1993. Note that there is a steady increase in the share of positive tests for applicant and probable cause testing. Maine law prohibits probable-cause testing for the first probable-cause event, so probable-cause testing requires an employee to have at least two probable-cause events in order for an employer to require a drug test.
<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Employers w/ Policies</th>
<th>Total Tests</th>
<th>Total Positives</th>
<th>Total Percent Positive</th>
<th>Applicant Tests</th>
<th>Applicant Positives</th>
<th>Applicant Percent Positive</th>
<th>Probable Cause Tests</th>
<th>Probable Cause Positives</th>
<th>Probable Percent Positive</th>
<th>Random Tests</th>
<th>Random Positives</th>
<th>Random Percent Positive</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>487</td>
<td>24,225</td>
<td>1100</td>
<td>4.5</td>
<td>23,284</td>
<td>1,068</td>
<td>4.6</td>
<td>44</td>
<td>3</td>
<td>6.8</td>
<td>897</td>
<td>29</td>
<td>3.2</td>
</tr>
<tr>
<td>2012</td>
<td>452</td>
<td>17,229</td>
<td>634</td>
<td>3.7</td>
<td>15,938</td>
<td>602</td>
<td>3.8</td>
<td>20</td>
<td>3</td>
<td>15.0</td>
<td>1,271</td>
<td>30</td>
<td>2.4</td>
</tr>
<tr>
<td>2011</td>
<td>433</td>
<td>16,439</td>
<td>545</td>
<td>3.4</td>
<td>15,580</td>
<td>532</td>
<td>3.4</td>
<td>12</td>
<td>3</td>
<td>25.0</td>
<td>847</td>
<td>16</td>
<td>1.9</td>
</tr>
<tr>
<td>2010</td>
<td>433</td>
<td>21,388</td>
<td>931</td>
<td>4.4</td>
<td>20,267</td>
<td>897</td>
<td>4.4</td>
<td>39</td>
<td>6</td>
<td>16.2</td>
<td>1,082</td>
<td>28</td>
<td>2.6</td>
</tr>
<tr>
<td>2009</td>
<td>412</td>
<td>17,399</td>
<td>666</td>
<td>3.8</td>
<td>16,719</td>
<td>631</td>
<td>3.8</td>
<td>16</td>
<td>6</td>
<td>37.5</td>
<td>664</td>
<td>29</td>
<td>4.4</td>
</tr>
<tr>
<td>2008</td>
<td>384</td>
<td>23,437</td>
<td>1,086</td>
<td>4.7</td>
<td>22,477</td>
<td>1,045</td>
<td>4.7</td>
<td>13</td>
<td>2</td>
<td>15.4</td>
<td>947</td>
<td>37</td>
<td>3.9</td>
</tr>
<tr>
<td>2007</td>
<td>350</td>
<td>16,439</td>
<td>1,110</td>
<td>6.8</td>
<td>15,736</td>
<td>1,076</td>
<td>5.0</td>
<td>5</td>
<td>4</td>
<td>80.0</td>
<td>936</td>
<td>30</td>
<td>3.2</td>
</tr>
<tr>
<td>2006</td>
<td>325</td>
<td>18,112</td>
<td>853</td>
<td>4.7</td>
<td>17,364</td>
<td>824</td>
<td>4.7</td>
<td>18</td>
<td>2</td>
<td>11.1</td>
<td>730</td>
<td>27</td>
<td>3.7</td>
</tr>
<tr>
<td>2005</td>
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<td>17,742</td>
<td>749</td>
<td>4.2</td>
<td>16,876</td>
<td>706</td>
<td>4.2</td>
<td>18</td>
<td>9</td>
<td>50.0</td>
<td>863</td>
<td>34</td>
<td>3.9</td>
</tr>
<tr>
<td>2004</td>
<td>287</td>
<td>17,428</td>
<td>826</td>
<td>4.7</td>
<td>16,702</td>
<td>803</td>
<td>4.8</td>
<td>6</td>
<td>1</td>
<td>16.7</td>
<td>720</td>
<td>22</td>
<td>3.1</td>
</tr>
<tr>
<td>2003</td>
<td>271</td>
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<td>761</td>
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<td>15,345</td>
<td>727</td>
<td>4.7</td>
<td>29</td>
<td>7</td>
<td>24.1</td>
<td>755</td>
<td>27</td>
<td>3.6</td>
</tr>
<tr>
<td>2002</td>
<td>252</td>
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<td>642</td>
<td>4.9</td>
<td>12,595</td>
<td>624</td>
<td>5.0</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>523</td>
<td>18</td>
<td>3.4</td>
</tr>
<tr>
<td>2001</td>
<td>239</td>
<td>16,492</td>
<td>730</td>
<td>4.4</td>
<td>15,947</td>
<td>716</td>
<td>4.5</td>
<td>8</td>
<td>1</td>
<td>12.5</td>
<td>537</td>
<td>13</td>
<td>2.4</td>
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<tr>
<td>2000</td>
<td>226</td>
<td>18,827</td>
<td>765</td>
<td>4.1</td>
<td>18,164</td>
<td>748</td>
<td>4.1</td>
<td>12</td>
<td>1</td>
<td>8.3</td>
<td>651</td>
<td>16</td>
<td>2.5</td>
</tr>
<tr>
<td>1999</td>
<td>200</td>
<td>20,725</td>
<td>691</td>
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<td>20,118</td>
<td>660</td>
<td>3.3</td>
<td>9</td>
<td>4</td>
<td>44.4</td>
<td>598</td>
<td>27</td>
<td>4.5</td>
</tr>
<tr>
<td>1998</td>
<td>164</td>
<td>11,888</td>
<td>352</td>
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<td>11,459</td>
<td>343</td>
<td>3.0</td>
<td>4</td>
<td>0</td>
<td>0</td>
<td>425</td>
<td>9</td>
<td>2.1</td>
</tr>
<tr>
<td>1997</td>
<td>147</td>
<td>13,097</td>
<td>392</td>
<td>3.0</td>
<td>12,616</td>
<td>375</td>
<td>3.0</td>
<td>7</td>
<td>1</td>
<td>14.3</td>
<td>474</td>
<td>16</td>
<td>3.4</td>
</tr>
<tr>
<td>1996</td>
<td>134</td>
<td>10,854</td>
<td>346</td>
<td>3.2</td>
<td>10,493</td>
<td>330</td>
<td>3.1</td>
<td>7</td>
<td>3</td>
<td>42.9</td>
<td>354</td>
<td>13</td>
<td>3.7</td>
</tr>
<tr>
<td>1995</td>
<td>116</td>
<td>9,708</td>
<td>236</td>
<td>2.4</td>
<td>9,484</td>
<td>231</td>
<td>2.4</td>
<td>11</td>
<td>3</td>
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# Appendix 1 – Employers with approved substance abuse testing policies

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# Appendix 1 – Employers with approved substance abuse testing policies

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Appendix 1 – Employers with approved substance abuse testing policies

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## Appendix 1 – Employers with approved substance abuse testing policies

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## Appendix 1 – Employers with approved substance abuse testing policies

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## Appendix 1 – Employers with approved substance abuse testing policies

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# Appendix 1 – Employers with approved substance abuse testing policies

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### Appendix 1 – Employers with approved substance abuse testing policies

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### Appendix 1 – Employers with approved substance abuse testing policies

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<th>2013 Survey Response</th>
<th>Invoked Exemption per 26MRSA §681.8.C</th>
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