

Building a Successful Post-Accident Drug Screening Program in Louisiana


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Agenda

- Introduction
 - Statistics
 - Louisiana Workers Compensation Act
 - Louisiana Drug Testing Act
 - Accidents Caused By Intoxication
 - Medical Marijuana
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Substance Abuse Statistics

General Population

- In 2023, 3.1% of people (8.9 million) misused opioids in the past year, which is similar to 2022 and 2021 (3.2% and 8.9 million, 3.4% and 9.4 million respectively).
- Among the 134.7 million people aged 12 or older who currently used alcohol in 2023, 61.4 million people (or 45.6%) had engaged in [binge drinking](#) in the past month.
- Marijuana was the most commonly used illicit drug, with 21.8% of people aged 12 or older (or 61.8 million people) using it in the past year.

► Source: [SAMHSA Releases Annual National Survey on Drug Use and Health | HHS.gov](#)



Post-Accident Drug Testing Statistics All Drugs

- ▶ Increase of 22.6% from 2018 to 2022
- ▶ Post-accident positivity compared to pre-employment tests was higher by 58.7% for marijuana and 230% for cocaine.

Source: [Quest-DTI-20223-2022-data.pdf \(safex.us\)](#)



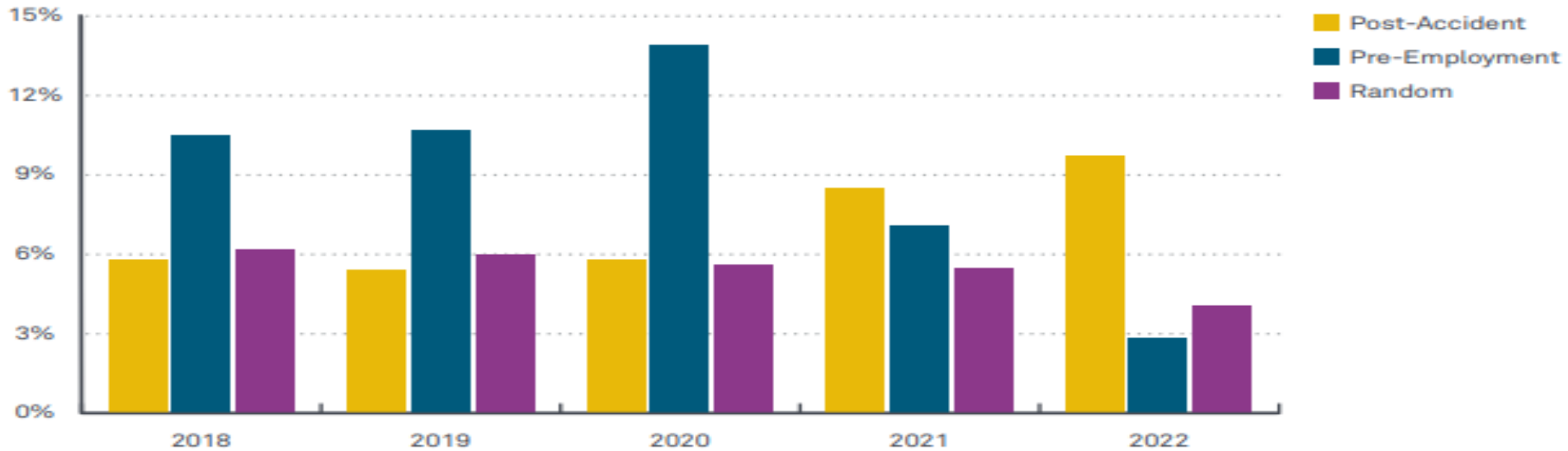
Post-Accident Drug Testing Statistics Marijuana

- ▶ 7.3% of employees tested positive for marijuana in 2022
- ▶ Increase of 9% from 2021
- ▶ Increase of 204.2% from 2012 to 2022

Source: [Quest-DTI-20223-2022-data.pdf \(safex.us\)](#)

Positivity Rates by Testing Reason | *Annual Report*

Oral Fluid Drug Tests – For General U.S. Workforce



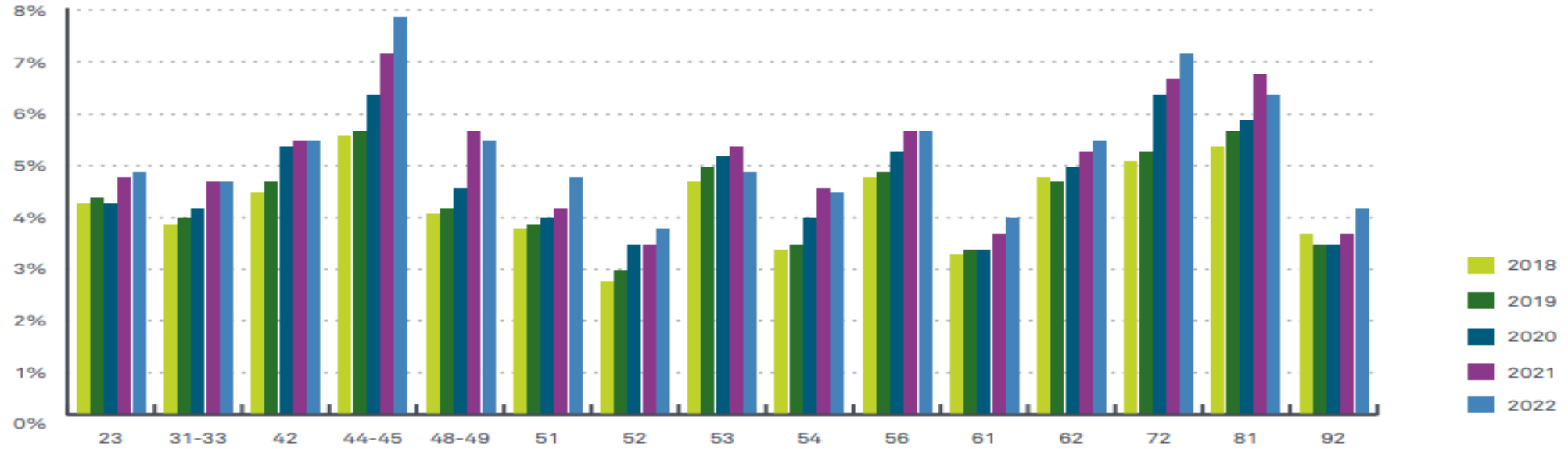
More than 1.4 million tests from January to December 2022

Testing Reason	2018	2019	2020	2021	2022
Post-Accident	5.8%	5.4%	5.8%	8.5%	9.9%
Pre-Employment	10.5%	10.7%	13.9%	7.1%	2.8%
Random	6.2%	6.0%	5.6%	5.5%	4.2%

Positivity by Industry
Using the North American Classification System

Overall Positivity Rates | *Industry Insights*

Urine Drug Tests - General U.S. Workforce



Industry	2018	2019	2020	2021	2022
Accommodation and Food Services ⁷²	4.9%	5.1%	6.2%	6.5%	7.0%
Administrative Support, Waste Management and Remediation Services ⁵⁶	4.6%	4.7%	5.1%	5.5%	5.5%
Construction ²³	4.1%	4.2%	4.1%	4.6%	4.7%
Educational Services ⁶¹	3.1%	3.2%	3.2%	3.5%	3.8%
Finance and Insurance ⁵²	2.6%	2.8%	3.3%	3.3%	3.6%
Health Care and Social Assistance ⁶²	4.6%	4.5%	4.8%	5.1%	5.3%
Information ⁵¹	3.6%	3.7%	3.8%	4.0%	4.6%

Industry	2018	2019	2020	2021	2022
Manufacturing ³¹⁻³³	3.7%	3.8%	4.0%	4.5%	4.5%
Other Services (except Public Administration) ⁸¹	5.2%	5.5%	5.7%	6.6%	6.2%
Professional, Scientific and Technical ⁵⁴	3.2%	3.3%	3.8%	4.4%	4.3%
Public Administration ⁹²	3.5%	3.3%	3.3%	3.5%	4.0%
Real Estate, Rental and Leasing ⁵³	4.5%	4.8%	5.0%	5.2%	4.7%
Retail Trade ⁴⁴⁻⁴⁵	5.4%	5.5%	6.2%	7.0%	7.7%
Transportation and Warehousing ⁴⁸⁻⁴⁹	3.9%	4.0%	4.4%	5.5%	5.3%
Wholesale Trade ⁴²	4.3%	4.5%	5.2%	5.3%	5.5%

Louisiana Workers' Compensation Act

La. R.S. 23:1081 provides that an injured employee is not entitled to workers' compensation benefits when the employee is injured as a result of his own intoxication if:

- ▶ Testing must be conducted pursuant to the employer's written substance abuse policy. Ensure staff are aware and educated on the policy.
- ▶ Testing complies with procedures established by law or regulation (specifically the Louisiana Drug Testing Act)



Louisiana Workers' Compensation Act (Continued)

- Employer has the burden of proving the intoxication.
- Once the employer has met the burden of proving that the employee was intoxicated at the time of the accident it is also presumed that the employee's injury was caused by his intoxication.



Louisiana Workers' Compensation Act (Continued)

- ▶ No compensation for injury caused by:
 - ▶ Employee's willful intention to injure himself or another
 - ▶ Employee is initial physical aggressor in unprovoked physical altercation, unless:
 - ▶ Excessive force was used in retaliation against initial aggressor



Louisiana Workers' Compensation Act (Continued)

- ▶ No compensation for injury caused by (Continued) :
- ▶ Employee's intoxication at the time of injury, unless:
 - ▶ Intoxication resulted from activities in pursuit of employer's interests
 - ▶ Employer procured intoxicating beverage or substance and encouraged its use during work hours



Louisiana Workers' Compensation Act (Continued)

Alcohol Intoxication

- ➔ Presumed intoxicated if alcohol in blood by weight was 0.08%
- ➔ Presumed not intoxicated if percentage is 0.05% or less
- ➔ No presumption between levels of 0.05% and 0.08%



Louisiana Workers' Compensation Act (Continued)

Drug Use

- ▶ Evidence of on or off-the-job drug use
- ▶ Testing per employer substance abuse policy in compliance with the Louisiana Drug Testing Act
- ▶ Drug use is non-prescription, controlled substances – Schedules I, II, III, IV and V.
- ▶ Any drug use at the time of accident whether on or off-the-job established a presumption of intoxication.



Louisiana Workers' Compensation Act (Continued)

- ▶ Failure of Employee to Submit to Test –
Presumption
 - ▶ Employer has the right to require an injured employee to submit to an alcohol and drug test after an alleged job-related accident.
 - ▶ If employee fails to submit to the test – intoxication is presumed.



Louisiana Workers' Compensation Act (Continued)

- ▶ Presumption of Intoxication
 - ▶ Alcohol and drug tests must be conducted per employer's substance abuse policy and be performed in accordance with the rules established by the Office of Workers' Compensation Administration.
 - ▶ If employer meets the burden of proving intoxication, then it is presumed the accident was caused by intoxication.

Louisiana Workers' Compensation Act (Continued)



- ▶ Employee's Right to Provide Information
 - ▶ Employee must be allowed the opportunity during the sample collection phase to provide information they deem relevant to the test.
 - ▶ Ex. Taking prescription medications
- ▶ An employee may be terminated for current drug use
 - ▶ Employers should be careful not to terminate an employee merely because of a workers' compensation claim

Employer's Responsibility for Medical Care

- ▶ Employer responsible for emergency care for intoxicated worker.
- ▶ Responsibility ends when worker is stabilized and ready for discharge.



Justification for Drug Testing

Per The Louisiana Workers' Compensation Act and Louisiana Security Law



Investigate
Possible Employee
Impairment



Investigate
Workplace
Accidents



Investigate
Workplace Theft



Maintain Safety or
Security



Maintain
Productivity or
Quality

Louisiana Drug Testing Act

- ▶ Louisiana Drug Testing Act applies to testing for marijuana, opioids, cocaine, amphetamines, and phencyclidine “PCP”
- ▶ Testing must be performed in one of the following settings:
 - ▶ SAMHSA-certified (Substance Abuse and Mental Health Services Administration)
 - ▶ CAP-FDT or CAP-FUDT certified (College of American Pathologist – Forensic Drug Testing)






Collection Guidelines

- ▶ Specimens must be collected, stored and transported in compliance with guidelines pursuant to workers' compensation law.
- ▶ Must be collected by a "collection site person"
- ▶ Sample must be transferred using a documented chain-of-custody procedure.
- ▶ Initial screening performed on the sample.
- ▶ Confirmatory test must be performed if initial screening result is positive.




Collection Guidelines (Continued)

- ▶ Confirmatory test must be performed by SAMHSA or CAP certified laboratory.
 - ▶ If confirmatory test is positive result must be reported to a medical review officer for review.
 - ▶ Medical review officer must be a licensed physician responsible for interpreting and evaluating results.
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Accident Caused by Worker's Intoxication

- ▶ Intoxication defense was difficult to prove prior to 1989
 - ▶ Employer had the burden of proving that the injury was caused by the worker's intoxication
 - ▶ Intoxication was confined to situations where the employee is under the influence of alcohol, narcotics, or some other substance that impairs the capacity to think
 - ▶ Drinking prior to the accident or even being visibly affected by intoxicants at the time was not enough to deprive the employee of his compensation claim



Accident Caused by Worker's Intoxication (Continued)

- ▶ 1989 amendments altered the defense in two fundamental ways
 - ▶ A presumption of intoxication was made a part of the statute, based on the blood alcohol content percentages
 - ▶ Once intoxication was established, causal connection was presumed, subject to being rebutted by the employee
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Medical Marijuana

- ▶ 2022 law prohibits negative consequences for medical marijuana use
 - ▶ Applies to public employees and applicants with a clinical diagnosis
 - ▶ Recommended by a licensed physician in accordance with state law
- ▶ Although Louisiana law allows for use of medical marijuana, employers have the authority to prohibit use in the workplace.
 - ▶ No legal protections against restrictions or disciplinary actions



Medical Marijuana (Continued)

- ➔ Policies and Procedures:
 - ➔ Must address medical marijuana usage
 - ➔ Ensure staff are educated and aware
 - ➔ Review with legal counsel if needed

