

Why 2024 Will Be the Year of Oral Fluid Testing

By **Bill Current** Of The **Current Consulting Group**

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Meet the Presenter



Bill Current

Bill Current is the author of “Why Drug Testing: Updated and Expanded for 2020,” as well as 9 other books on substance-related issues.

He founded the Current Consulting Group in 1998 and it has become the number one recognized brand name in compliance and business development consulting in the drug testing industry.

Agenda

- Why employers are interested in oral fluid testing
- How providers can proactively discuss oral fluid testing with clients looking for solutions to specific problems
- What to know about oral fluid testing and marijuana
- What employers should do to update their drug testing policies to add oral fluid testing and remain compliant with applicable state laws
- What the new DOT oral fluid guidelines mean for non-DOT covered employers



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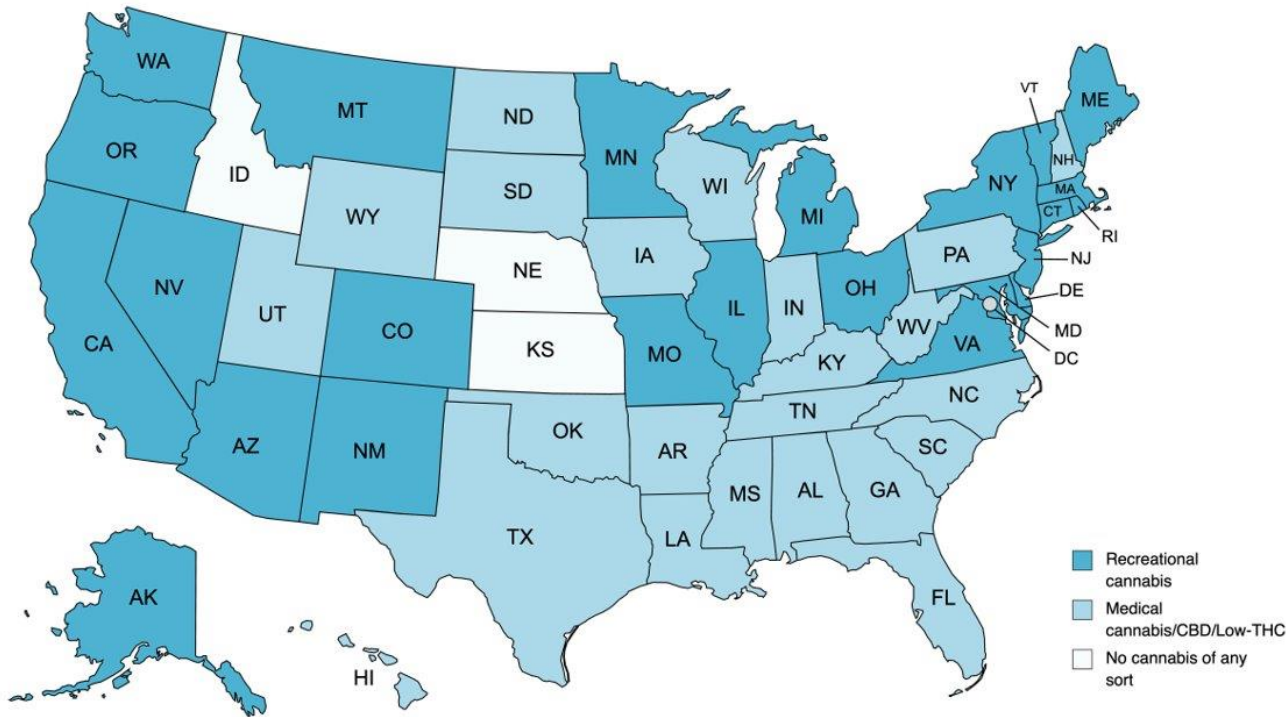
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Introduction

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Three Key 2023 Trends Impacting 2024



- First, **DOT issued final regulations for lab-based oral fluid testing** (pending the certification of at least two labs).
- Second, **the legalization of marijuana** at the state level continued to spread (e.g., MN, OH) and caused many employers to focus on recent-use detection rather than lifestyle drug use.
- Third, new laws in **CA and WA** significantly impact how employers test for marijuana in 2024 and beyond.



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Why Employers Are Interested in Oral Fluid Testing

Oral Fluid Gains Popularity

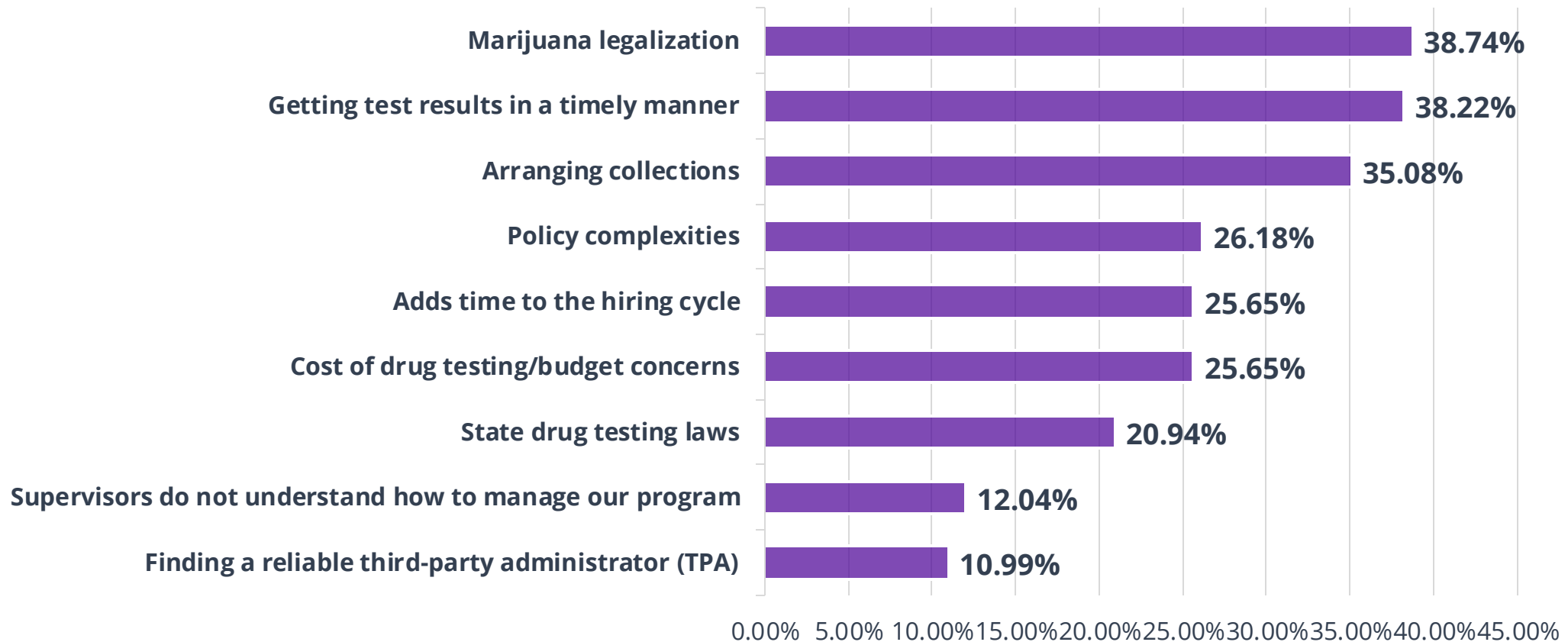
- In **Current Consulting Group's 2022** Drug Testing Industry Survey, co-sponsored by Wondfo, providers who now say they offer oral fluid testing—**surged from just 36% in 2019 to 85.6% in 2022.**
- In **Current Consulting's 2023** survey, when providers were asked what drug testing method would be most used in the future:
 - 46% said urine, and
 - **46% said oral fluid.**
- Ten years ago, it's hard to imagine that oral fluid testing would've registered a response anywhere close to urine's percentage.
- **Today they are neck-and-neck**



Source: Current Consulting Group's 2022 & 2023 Drug Testing Industry Survey

Employers' Drug Testing Challenges

In the 2023 employer survey, the primary challenges faced by employers in conducting drug tests included the following:



This Is What We Know...



- The **legalization of marijuana** has caused some employers to question whether they have the right to test for marijuana.
- Yet, **as marijuana use increases, drug testing remains a critical** component of an overall safe workplace program.
- Testing applicants and employees for marijuana is **legal in every state** though conditions exist in some states.
- However, **how a company tests for marijuana and what they do with positive test results** are issues that require close attention to ensure compliance with local laws.

States that Allow for Oral Fluid Testing

- **Virtually all states permit oral fluid testing**
 - Possible exceptions for lab-based oral fluid include Maine, Vermont, and Hawaii.
- **Virtually all states permit rapid-result, point-of-collection testing.**
 - Possible exceptions include states with **laboratory licensing laws (e.g., New York)**.
 - Other exceptions may include states with **voluntary laws (e.g., FL, GA, TN)**, where restrictions would only apply to companies participating in the state's voluntary drug testing program, or
 - State **workers' or unemployment comp regulations** that allow employers to deny benefits based on a positive drug test result.



Where Oral Fluid Testing May Be the Only Option



California AB-2188

As of January 1, 2024, it is:

- “**Unlawful** for an employer **to discriminate** against a person in **hiring, termination, or any term or condition of employment**, or otherwise penalizing a person”...
- **If the discrimination** is based upon, among other things:
 - “An **employer-required drug screening test** that has found the person to have **non-psychoactive cannabis metabolites** in their hair, blood, urine, or other bodily fluids.”
 - Though some exceptions apply.

Other Testing Methods...



California AB-2188 states:

“As science has improved, employers now have access to multiple types of tests that do not rely on the presence of nonpsychoactive cannabis metabolites. These alternative tests include impairment tests, which measure an individual employee against their own baseline performance and tests that identify the presence of THC in an individual’s bodily fluids.”

Where Oral Fluid Testing May Be the Best Option

Washington SB 5123

As of January 1, 2024, **employers cannot discriminate** against an **applicant** during the hiring process if the discrimination is based on:

- An individual's use of cannabis **off-the-job** and **away from the workplace**.
- A required drug test that indicates the presence of **"non-psychoactive cannabis metabolites"** in the hair, blood, urine, or bodily fluid.

The law includes a long list of exceptions.



Where Oral Fluid Testing May Be the Best Option

Washington SB 5123 states:

“This bill **does not**...

- prohibit an employer from basing initial hiring decisions on **scientifically valid drug screening conducted through methods that do not screen for non-psychoactive cannabis metabolites...**”



The Bottom Line?

The bottom line for employers in California and Washington is that **oral fluid testing makes it possible to continue testing for marijuana** since it tests for the psychoactive parent THC

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How Providers Can Discuss Oral Fluid Testing with Clients Looking for Solutions to Specific Problems

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Oral Fluid Testing

Advantages

- Collect almost **anytime, anywhere**
- No need for private restrooms or same gender collectors
- **Adulteration** is nearly impossible
- Legally **defensible**
- **Recent-use detection covering "potential impairment" window**
- Makes **proctored testing** possible
- Reduces **time away from work**
- POCT oral fluid makes **same day hiring decisions** possible
- **Endorsed by SAMHSA and DOT**

Considerations

- **Prohibited** in some states (3), unless the employer is conducting it on DOT-regulated employees ("Preemption")
- Inventory management, which a provider can help manage
- **Dry mouth** a possibility
- **Shorter window of detection (pro/con)**

Key Differences Between Lab-based and POCT

Lab-based Oral Fluid Testing

- Results within **24-72 hours**
- Laboratory **analysis** and **result interpretation**
- **Initial screening** and **confirmation testing bundled**
- **Long history** to draw from
- Cut-off levels vary
- **Simple collections**

POCT (Rapid Oral Fluid Testing)

- Near **immediate results**
- (Generally) human read
- Best for **rapid initial screening**
- **FDA cleared** & new **E&I labeling** (relatively new)
- Cut-off levels vary
- **Simple collections**
- **Quick** speed to hire

As with other testing methods, state laws may affect the use of oral fluid as a sample and/or the use of rapid testing. **Make sure you are informed about the laws of the state(s) in which you operate**



Lab-based Testing Considerations



- **Turnaround Time: Results and Hiring**
 - Results can take 1 to 5 days or longer, which may impact the timing of hiring decisions
- **Cheating**
 - Subversion/tampering/cheating may be more likely where urine collections are performed for lab-based tests.
- **High Costs**
 - Combination of collection site fees and lab-based testing can be more costly than POCT over time





Return on Investment of Using Oral Fluid



Lab-based Cost Factors	Urine	Oral Fluid
Price End-User Pays for Collection Only	\$15	\$0
Price End-User Pays for Lab Analysis* (or Bundled Price including collection, confirmation, and MRO)	\$18	\$25
Confirmation Price Built Into the Lab Analysis Fee	\$0	\$0
MRO Fee (positive & negative)*	\$5	\$0
Price Paid by Customer for Lab-base Test	\$38	\$25

Other Soft-Dollar Costs

	Hourly Rate	Urine (1.50 hrs.)	Oral Fluid (0.25 hrs.)
Lost-Work Time (<u>Worker</u> Hourly Rate x Hour)	\$10.10	\$15.15	\$2.53
Lost-Work Time (Fringe Rate of 40% x Hour)	\$0	\$0	\$0
Lost Work Time (<u>Supervisor</u> Hourly Rate x hour)	\$24	\$36	\$6
Lost-Work Time (Fringe Rate 40% x Hour)	\$0	\$0	\$0
Total Cost of Lost Work Time		\$51.15	\$8.53

The Real Cost of a Drug Test is Revealed....

	Urine	Oral Fluid
Price Paid by Customer for Test	\$38	\$25
Total Cost of Lost Work Time	\$51.15	\$8.53
Actual Cost	\$89.15	\$33.53

Oral Fluid Savings 62.4%

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What to Know About Oral Fluid Testing and Marijuana

Marijuana Testing



- Marijuana testing is **legal in 49 states**
 - New York is the only state that prohibits marijuana testing (though there are some exceptions in NY)
- However, **some states require evidence of recent use** before an employer can take adverse employment action
- As mentioned, some states (CA, WA) are **restricting employer action** based on testing that detects **marijuana metabolites** rather than the parent drug
- State law patterns for restrictions on marijuana testing may be used for the **legalization of other drugs**, such as psilocybin



What Is Oral Fluid Testing?



- Looks at substances currently in the body
 - Drugs appear within **minutes** of ingestion
- Collected using a **device placed in the mouth** or by providing a sample directly into a vial
- **Easy, quick, AND directly observed** collections



Sample Type and Detection of Parent THC Drug vs. Metabolites

THC Type	Psychoactive/ Non-Psychoactive Form	Sample Type
Metabolite THC-COOH	Non-psychoactive form	Urine, hair
Parent THC or Delta-9	Psychoactive form	Oral fluid, breath

Oral Fluid Testing and the Federal Government

Both the **Substance Abuse and Mental Health Services Administration (SAMHSA)** (in October 2019) and the **US Department of Transportation (DOT)** (in May 2023) have issued final regulations for laboratory-based oral fluid testing.

One of the reasons these federal agencies chose to endorse oral fluid testing is because:

*“The scientific basis for the use of oral fluid as an alternative specimen for drug testing has now been **broadly established** and the advances in the use of oral fluid in detecting drugs have made it possible for this alternative specimen to be used in federal programs with the **same level of confidence that has been applied to the use of urine.**”*

Attributes of Oral Fluid Testing

- Samples are **easier to collect** than other methods
- Can be collected nearly **anywhere and at any time**
- Do not necessarily require the services of a professional technician
- Because a private bathroom stall is not required, each oral fluid collection is 100% observed, which **eliminates the potential use of subversion products** available on the market today
- **Instant oral fluid testing**, which is not permitted for federal drug testing but is permitted in both California and Washington, makes same-day hiring a possibility for employers struggling to find qualified workers and who would prefer to continue screening applicants for marijuana before making a final hiring decision

Many Testing Methods Available Today



Urine
Testing

Instant
Urine
Testing

Hair
Testing

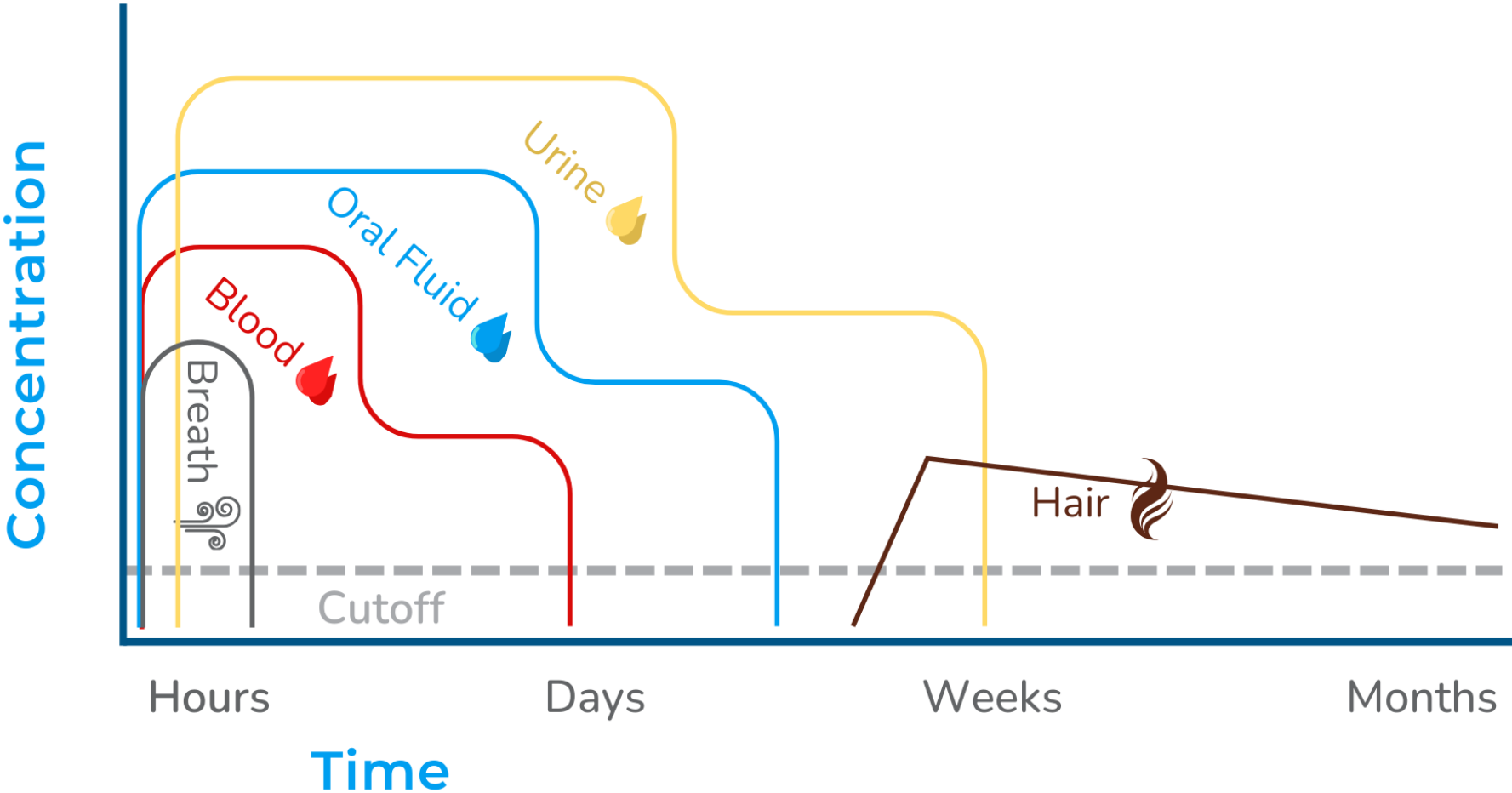
Lab-based
Oral Fluid
Testing

Instant
Oral Fluid
Testing

Urine and Oral Fluid Side-by-Side

	Urine	Oral Fluid
Lab-based or rapid-result (or POCT)	Both	Both
Window of Detection	24-72 hours	24-48 hours
Recent-Use Detection	Lag time of several hours after initial usage	Within several minutes after usage of any drug
Legal by States	Lab: 50 states POCT: where permitted	Lab: 47 states POCT: where permitted
SAMHSA Regs	Yes	Yes
Detection of Other Drugs	Virtually all drugs + alcohol	Virtually all drugs + alcohol

Understanding the Window of Detection



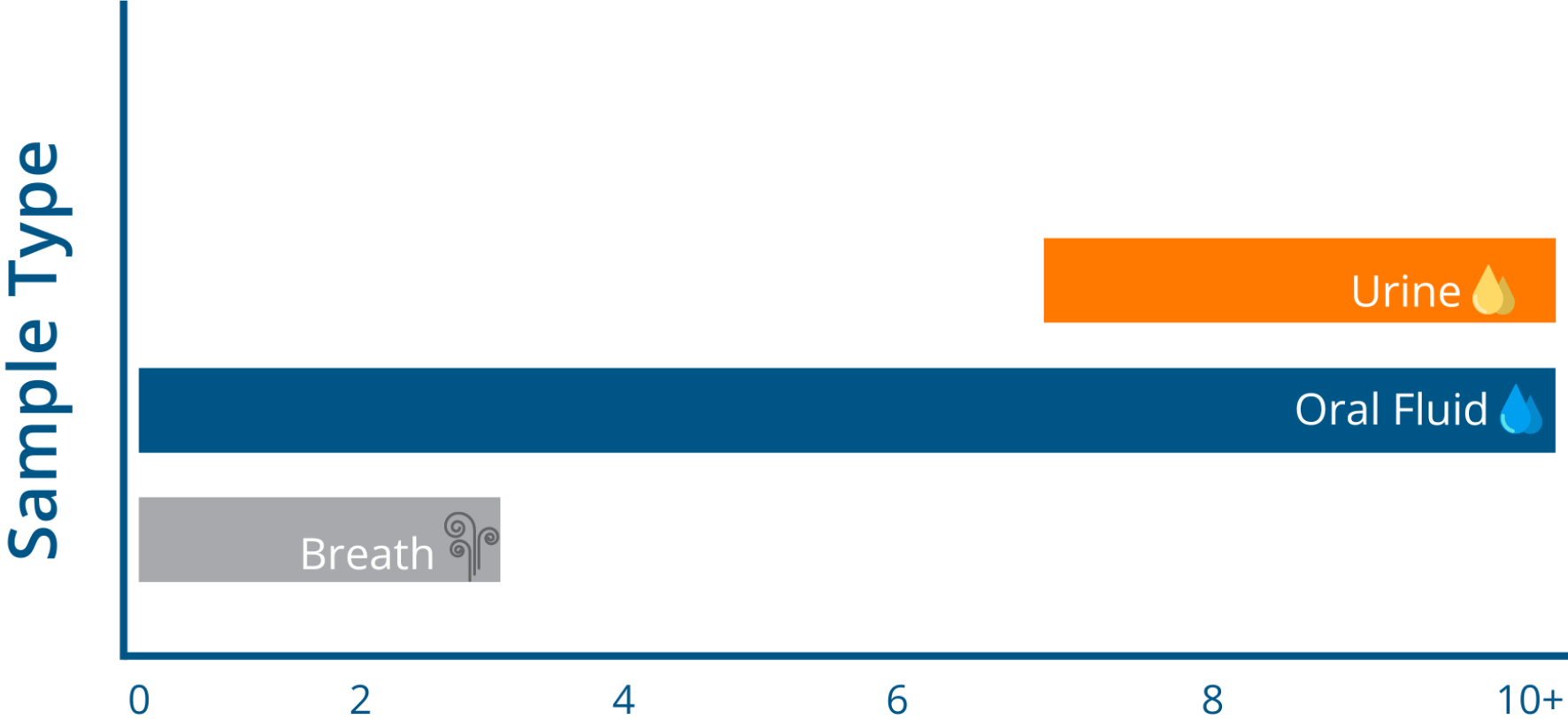
Marijuana Impairment Is Important to Understand

A report from the **University of Sydney** published in Neuroscience & Biobehavioral Reviews analyzed **80 separate studies** to determine when people would be impaired after cannabis use

- Depending on how much THC is taken, how it's taken, and the person taking it, they found **cognitive impairment could last between 3 and 10 hours**
- Our analysis indicates that impairment may last up to 10 hours if high doses of THC are **consumed orally**
- A more typical duration of impairment, however, is **4 hours**, when **lower doses of THC are consumed via smoking or vaporization and simpler tasks are undertaken** (e.g., those using cognitive skills such as reaction time, sustained attention and working memory)
- This impairment may extend up to 6 or 7 hours if **higher doses** of THC are inhaled and **complex tasks**, such as driving, are assessed

Source: <https://www.sydney.edu.au/news-opinion/news/2021/04/12/scientists-put-stopwatch-on-cannabis-thc-intoxication-lambert-drug-driving.html>

Understanding the Window of Impairment





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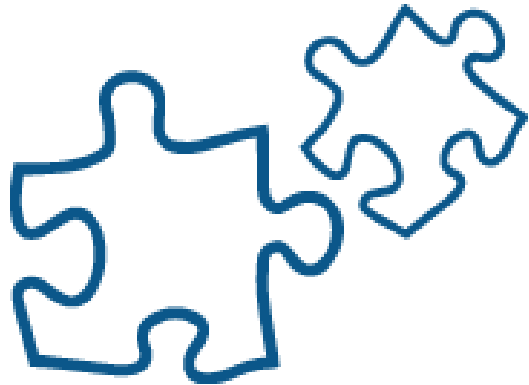
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Updating Employer Drug Testing: Oral Fluid Compliance

How Laws and Regulations Work Together



- Federal regulations **always** trump state laws
- State laws **always** trump city ordinances
- When in doubt, **follow the narrowest definition** provided
 - Laws, regulations, case law, and unemployment/workers' comp laws **can often be contradictory**
- Drug-free workplace policies need to **ensure compliance with specific state laws**
- **Multi-state employers** should have **custom policies/addenda** for each state in which they operate
 - **Template/blanket policies** are typically not compliant with specific state laws
- Compliant policies not only insulate you from potential legal outcomes but also ensure that you are eligible for all legal incentives

Factors to Consider



- State drug testing laws
- Other state laws that impact drug testing
- Federal laws and regulations
- When to conduct drug testing
- Who is subject to drug testing
- How drug testing is conducted, including:
 - Lab vs. POCT
 - Urine vs. oral fluid vs. hair



Marijuana Legally Defensible Drug Testing Considerations



- Currently, **oral fluid** may be the **only legally defensible option** in highly restricted states like California and Washington, which prohibit discrimination based on drug test results that indicate non-psychoactive metabolites (found in urine specimens, among others)
- **Oral fluid only detects** the parent drug (psychoactive **THC**), which is **essential** within the context of highly restrictive state laws

5 Things You Should Do

1. Know the laws—Comply with the laws
2. Be as comprehensive as possible and keep your policy up to date
3. Use a testing method endorsed by SAMHSA, if possible
4. Use a SAMHSA-certified lab and/or an FDA-cleared POCT device
5. Don't ignore legal marijuana laws





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What the New DOT Oral Fluid Guidelines Mean for Non-DOT Covered Employers

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Non-Regulated Employers

- The good news is—
You can begin conducting oral fluid testing now!
- Speak with **Wondfo** to help you with the following:
 - 1) **Identify** your drug-testing objectives
 - 2) **Update** your policy with specific rapid-result and/or lab-based oral fluid testing language
 - 3) **Determine** how you will collect oral fluid samples (on-site using your own trained employees and/or professional technicians or at an off-site collection facility)
 - 4) **Prepare** supervisors/managers
 - 5) **Ensure** all vendors are ready to provide their services
 - 6) **Announce** the program to your employees



Non-DOT Covered Employers Can Apply the New DOT Regulations



- **REVIEW policies** and **update them to include oral fluid** testing and all applicable information
- **CREATE standing orders** with TPAs and the collection sites who will service them
 - This will ensure **each collector knows what kind of collection** each employer wants performed (i.e., urine or oral fluid) and when (e.g., by test type)
 - The standing order also needs to cover **what happens when a directly observed collection is needed, AND**
 - What test does the employer want if it is a **shy bladder or dry mouth situation**



Conclusion

Moving Forward...



- **HHS must certify two** laboratories with **one or more specific oral fluid collection device(s)** for oral fluid to be used for DOT testing purposes
- Work with your laboratory **to determine what devices** it will use and when they will be ready
- **Before collectors are trained**, they will need to know which device will be approved for the relevant laboratory

Do employers have to choose between using oral fluid testing exclusively and urine testing exclusively?

- No! — Drug testing is not a **one-size-fits all**
- Different testing methodologies can be used for different situations:
 - **Historic/Recent/Immediate** use
 - **Alternative** for shy bladder issues or dry mouth issues

Where Does This Leave Us?



- While oral fluid is approved for both SAMHSA and DOT, it's **not currently available** for employers covered by the DOT regs
- Labs, collectors, and vendors should **begin preparing for the addition of oral fluid now**
- Once HHS approves **two laboratories** for the use of oral fluid, oral fluid testing can begin for DOT-regulated employers, though **no DOT testing can proceed without collectors who are qualified to collect under the DOT regulation**
- **Non-DOT employers** can start using oral fluid testing now (oral fluid testing is not new, it has been used by employers for decades)

Is Oral Fluid Right For Your Company?

If you're worried about....

- Detecting recent use
- Legal marijuana laws
- Privacy/gender concerns
- Adulteration/cheating
- Shy bladder
- Lost productivity
- Overall cost of drug testing

Then...

Oral fluid may be the answer!



Questions?



Wondfo USA Co Ltd. is headquartered in Willowbrook, IL and is a leading manufacturer of point-of-care tests providing rapid diagnostic and chronic disease management solutions to support the health and well-being of people everywhere. Our mission is to provide solutions that save lives as well as improve quality of life.

SAFElife toxicology products provide a wide range of tests and configurations to monitor drug use and/or misuse for a variety of settings. Oral saliva tests are used to detect substances within hours of use, while urine tests are used to detect substances within days of use.

Please visit <https://wondfousa.com/find-your-test/safelife/> for more information.

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