

## Drug Testing and Independent Contractor Agreements: A Report from Other States

Devastated by the opioid crisis, the state of West Virginia just passed a law that makes it much easier to drug test employees. Meanwhile, the Wall Street Journal reported today that more U.S. workers are testing positive for illicit drugs than at any time in the last 12 years. Although Illinois employers are free to handle drug testing any way they want, (there is no statute in Illinois), the new West Virginia law is a good model for Illinois employers who want to adopt a drug testing policy.

### **Adopt a Written Policy.**

Taking effect on July 7, 2017, the West Virginia law is called the [Safer Workplace Act](#) and it requires employers to disseminate a written policy before they can drug test employees. A written policy serves at least two purposes: first, prior notice acts as a deterrent and will prevent some employees from reporting to work intoxicated or impaired. Second, a written policy provides a form of “due process,” since it warns employees that they could be disciplined if they are impaired at work.

### **Be Clear About the Circumstances that Will Prompt Testing.**

Illinois employers should decide in advance when and why they plan on drug testing. For example, most employers drug test after a safety violation or an accident, but some employers choose to drug test if they notice a decline in productivity. These distinctions should be in an employer’s written policy. Because drug testing is expensive, many employers test only “for cause,” but there is nothing prohibiting Illinois employers from adopting a random testing program. The crucial point is to determine the parameters of an employer’s drug testing program prior to needing it, and then writing it down and disseminating it.

### **Logistical Challenges Should Be Worked Out in Advance.**

The West Virginia statute requires employers to pay employees for any time spent testing as compensable work time. The law also requires employers to “pay all actual costs for drug and/or alcohol testing,” along with any transportation costs to a testing location away from an employee’s normal work site. These common sense requirements should be adopted by any Illinois employer that chooses to drug test its employees.

### **Written Independent Contractor Agreements in NYC and Illinois.**

Finally, effective May 15, 2017, New York City businesses are required to reduce all independent contractor agreements to writing, and ensure that all independent contractors are timely paid within 30 days of completion of the work under the new [Freelance Isn’t Free Act](#). The New York City law has a variety of other idiosyncrasies that apply only to New York parties, however, putting an independent agreement in writing is something that every Illinois company should do. Such a writing should include: a scope of services provision, a term, a description of the relationship between the parties, an indemnification provision, and other customized terms.

Other states continue to aggressively regulate the employer/employee relationship. Illinois employers can cherry pick the best ideas adopted by other states, while discarding the bad ones.

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If you have any questions about the matters addressed in this *CCM Alert*, please contact the following CCM author or your regular CCM contact.

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