



# NEWSLETTER

## ARTICLES INSIDE:

What is the Deal with Oral Fluid Drug Testing?

How to Add Oral Fluid Testing to a Drug Testing Policy



610-509-0567



info@redplanettesting.com



redplanettesting.com

# What is the Deal with Oral Fluid Drug Testing?

For many years, oral fluid testing was considered an “emerging technology” as lab-based urine testing dominated the drug testing industry. But that appears to be changing thanks in large part to the Department of Transportation’s (DOT) 2023 issuance of final regulations for lab-based oral fluid testing.

## What Impact Do DOT Regulations Have on the Workplace?

In Current Consulting Group’s 26th Annual Drug Testing Industry Survey, when survey participants were asked: “Do you believe that DOT’s issuance of final regulations for lab-based oral fluid testing resulted in more interest among employers for oral fluid testing?” 67.6% said yes versus 29.7% who said no.<sup>1</sup>

Further evidence comes from CCG’s 2023 industry survey, when the impact of the new DOT regulations was still fresh. When survey participants were asked: “In the future, what drug testing specimen will be used the most?”, 46% said urine (down from 50% in 2022) while 46% indicated it will be oral fluid (up slightly from 45%), indicating that interest in oral fluid testing was on the rise.<sup>2</sup>

## Why is There So Much Interest in Oral Fluid Drug Testing?

An uncertain economy, an ever-present competitive hiring environment, and restrictions placed on drug testing through legal marijuana laws in many states, have combined to motivate employers to look for alternative drug testing methods that make it possible to address these specific challenges while still screening individuals for dangerous drugs. When you consider the characteristics of oral fluid testing, it is easy to see how they are a perfect match for the times.



## Consider the following:



- Oral fluid samples are easy to collect and can be performed by professional collectors or trained employees depending on a company's preference and budget.
- Collections can take place virtually anywhere, including at the workplace or wherever job interviews are being conducted, making same day hiring decisions possible.
- Precautions typical with urine testing to prevent drug-test cheating such as securing a restroom or putting blue dye in the toilet water are not necessary with oral fluid testing.
- Every oral fluid collection is 100% observed as the collector and donor are always together throughout the entire collection process. This not only prevents drug test cheating methods common with urine testing, but it also gives the donor the assurance that their sample has not been mis-handled in any way.
- Because the drugs themselves (often referred to as the “parent” drug) are detectable in an oral fluid sample, substances become detectable within minutes after usage making oral fluid testing ideal for situations that require recent-use detection. Urine tests, on the other hand, only reveal the presence of drug metabolites which take 6-7 hours after usage to become detectable in urine.
- Most drugs, including marijuana, can be accurately detected in oral fluid.
- Oral fluid testing has a window of detection of about 24 hours, though it can be shorter or longer depending on the drug, the cut-off levels, and the drug testing method being used (lab-based vs. rapid-result).

## Conclusion

When it comes to anything that is new, there are three questions that have to be answered including is it affordable, is it practical and is it legal. For oral fluid drug testing, the answer is emphatically yes to all three. For businesses experiencing the uncertain economy, an ever-present competitive hiring environment, and restrictions placed on drug testing through legal marijuana laws in many states oral fluid drug testing is a solution that could keep the workplace drug free and legally compliant.

At Red Planet our lab-based Oral Fluid drug test is an FDA cleared, oral drug test (screening AND confirmation). It is high quality, low cost, only takes 5 minutes and it is easy on everyone. Contact us to [learn more](#).

1 The 26th Annual Drug Testing Industry Survey Results. May 2024. <https://www.currentconsultinggroup.com/wp-content/uploads/2024/09/2024-DTI-Survey-CCG-Newsletter.pdf>

2 The 25th Annual Drug Testing Industry Survey Results. May 2024. <https://www.currentconsultinggroup.com/wp-content/uploads/2024/03/2023-Drug-Testing-Industry-Survey-2.pdf>



# Marijuana Laws and the Workplace

## The Federal vs. State Conflict

- Federal Law (DOT-regulated employers):
  - Marijuana remains illegal under federal law
  - DOT prohibits cannabis use for safety-sensitive positions
- State Laws (Non-DOT workplaces):
  - Some states protect employee rights regarding cannabis use
  - Others allow zero-tolerance policies



## New State Restrictions on Marijuana Testing

- Post-hire testing restrictions:
  - Employers may need "reasonable suspicion" before testing
- Revised impairment definitions in certain states
- Employers must review and adjust policies accordingly

## DOT-Regulated vs. Non-DOT-Regulated Workplaces

- DOT-regulated employers (Federal rules apply):
  - Must follow federal drug-free workplace requirements
  - Marijuana use is prohibited for safety-sensitive roles
- Non-DOT workplaces (State laws vary):
  - Some states require proof of impairment before disciplinary action
  - Others allow employers to enforce strict policies



## Nebraska Legalizes Medical Cannabis



- November 2024: Nebraska voters approved medical cannabis legalization
- Two legalization initiatives passed, but no workplace-specific provisions were included
- Employers must determine how to handle cannabis use under existing policies
- Potential impact on pre-employment and post-accident testing

## Pittsburgh Bans Employment Discrimination for Medical Cannabis Patients

- September 2024: Pittsburgh passed a law prohibiting workplace discrimination
- Employers CANNOT:
  - Refuse to hire based on medical cannabis patient status
  - Require pre-employment or post-hire cannabis testing
- Employers CAN:
  - Prohibit employees from performing life-threatening tasks under the influence
  - Prohibit medical cannabis patients from performing duties which could result in a public health or safety risk if the individual is under the influence







# How to Add Oral Fluid Testing to a Drug Testing Policy

## Updating a Policy for Oral Fluid

For any company adding or switching to oral fluid testing, there is some advance work, in addition to choosing a device, that must be done. For instance, drug testing service providers such as your laboratory and Medical Review Officer must be made aware of the change to your program. How and where samples will be collected must be determined. If you plan to perform tests on site with employees conducting the collections, they must be trained in how to properly use the actual device that will be part of your program. If you plan to have samples collected at an off-site facility, you must ensure the facility you plan to use offers oral fluid collection services.

Of all the advance work that must be done, updating a drug testing policy is critical and the key to the success of your oral fluid testing program. In many cases, this will involve a complete overhaul of an existing policy and will require the assistance of a policy expert.

The following are 10 sections of your policy that will require your attention:

**1. Oral fluid testing essentials** — This is optional, but because oral fluid testing will be new to many people in your company, a brief introduction may be helpful. Unique qualities of oral fluid testing such as the window of detection, ability to detect drugs immediately after usage, and 100% observed collections are among the details every employee should be made aware.

**2. State drug testing laws** — Lab-based oral fluid testing is permitted in all but three states (HI, ME, VT) and rapid-result oral fluid testing is permitted in most states that allow rapid urine testing, though there are several exceptions. The policy should include addendums for each applicable state with legal conditions that apply to oral fluid testing, which will vary from state to state.

**3. Federal/DOT regulations** — If your policy is for DOT testing purposes, it is important to know that the DOT oral fluid testing regulations contain very detailed requirements for collections, lab analysis, confirmation tests, and MRO verifications, among other points, which should be reflected in a policy to be used for DOT purposes.

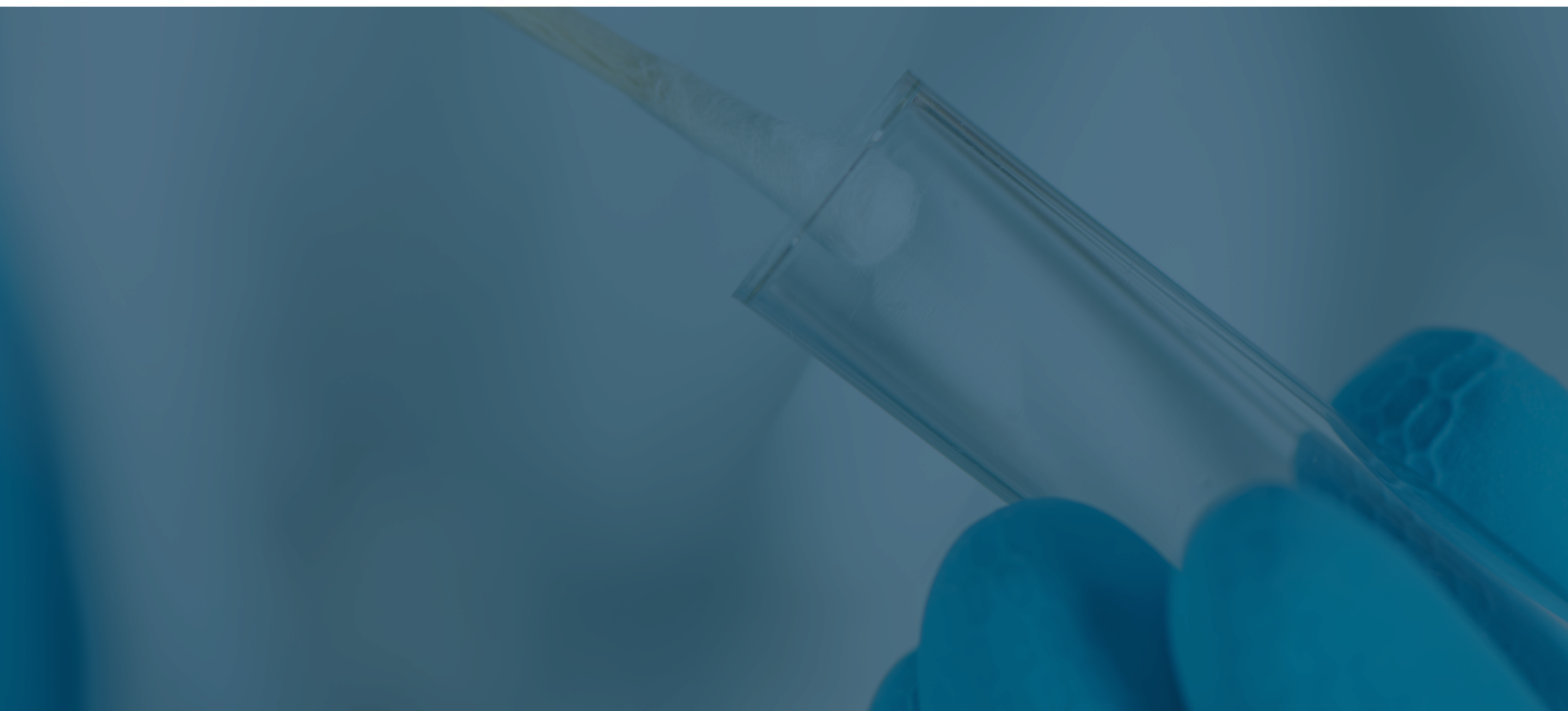
**4. When oral fluid testing will be used** — Some companies may wish to utilize multiple testing methods creating a hybrid approach (urine and oral fluid or hair and oral fluid). The policy should specify when oral fluid testing will be used (e.g., pre-employment only or under specific circumstances with employees such as post-accident and reasonable suspicion, etc.). (Note: for DOT purposes, oral fluid tests will be required for observed collections involving transgender or non-binary individuals.)

**5. Who will be subject to oral fluid testing** — Will oral fluid testing be used for job applicants only or employees in safety-sensitive positions? Or all employees? This should be specified in the policy.

**6. How collections will be performed** — This is optional, but a policy can explain where collections will take place (e.g., at the workplace or at an off-site facility).

**7. Which drugs you'll test for, specifically marijuana** — The most common drugs of abuse such as marijuana, cocaine and opiates are detectable in oral fluid. The policy should state which drugs will be part of oral fluid tests. Some state drug testing laws specify what drugs employers must or may include in their drug-test panel.

**8. How tests will be performed (lab vs. rapid result)** — There are significant procedural differences between lab-based and rapid-result testing, and the policy should be specific when explaining where tests will be conducted. When using rapid-result devices, the policy should state who will interpret the result, a trained employee, a professional technician, or a reader system that interprets the result and reports it to the employer electronically. (Note: While the DOT regulations only permit lab-based oral fluid testing, employers may choose to use rapid-result oral fluid testing for non-DOT purposes.)





**9. Confirmation testing and MRO verification** — All initial screen non-negatives should be confirmed at a certified laboratory; in fact, federal regulations and many state drug testing laws require confirmation testing. This also applies to rapid-result tests that are non-negative. Thanks in large part to the new DOT oral fluid regulations, many more MROs will be trained in how to verify confirmed positive oral fluid test results, and their services are essential to the legal defensibility of any drug testing program.

**10. Results reporting** — The policy should describe how oral fluid drug test results will be reported to the donor and any recourse donors have to contest a confirmed, verified positive result. (This, of course, applies to any testing method.)

## Conclusion

In a 2024 nationwide survey of employers, when asked if they were planning to add a testing methodology to their program in the next 12 months, 17% of employers said “lab-based oral fluid” and 10% said “instant oral fluid testing,” the two highest responses.<sup>1</sup>

And for employers planning to use oral fluid testing, their drug testing policy should serve as the blueprint for their program. As such, it is important that it be updated before implementing any changes to an existing program and kept up to date on a regular basis.

A major benefit of working with Red Planet is that we offer a variety of different products from many different manufacturers and use several different labs, including SAMHSA-certified labs, based on the product and the needs of our customers. Learn more about how oral fluid can be included in your drug testing program by [contacting us here](#).

1. The 8th Annual Current Consulting Group Employer Drug Testing Survey. October 2024.





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