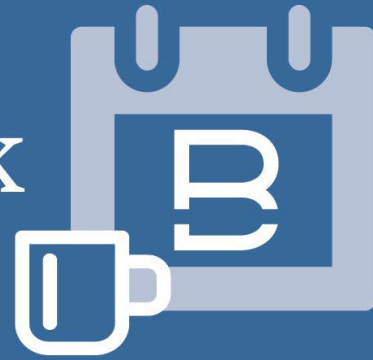


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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New Testing Options Under DATWA

[Benjamin H. Formell](#)

In the coming weeks, some of the flurry of changes to the Minnesota employment space will begin to take effect and change the legal landscape for employers. One of the immediately impending changes, effective August 1, 2024, will be in the area of drug and alcohol testing under the Drug and Alcohol Testing in the Workplace Act (“DATWA”).

Specifically, moving forward, employers will be permitted to use oral-fluid testing to measure for the presence of drugs, alcohol, cannabis, or other metabolites, so long as the test used can detect at the same or superior levels of the previously existing lab programs under DATWA. Previously, employers were required to use an independent lab for all drug testing.

DATWA’s existing reliability and safeguard provisions are still in place, but chain-of-custody rules and written-notice requirements will not apply to oral-fluid testing conducted by the employer under the new rule. A person tested under this new provision must be notified of the result at the time of the saliva test. Within 48 hours of a positive test, an employee has the option of requesting a no-charge test by an independent lab as permitted previously under DATWA. DATWA continues to apply to all employers, employees, and job applicants.

Oral-fluid testing involves the analysis of a person’s saliva to detect the presence of controlled substances. Oral-fluid testing is generally considered as offering superior ability to test for recent substance use, over something like a hair or urine sample for example. As a result, the new testing requirements may provide employers with an improved ability to detect and address recent substance use by their employees.

Employers should consider whether these changes are well-suited to their particular business and industry.

Where costs and logistics of independent lab testing previously may have presented hurdles to effectively testing employees for impairing substances, these changes will make it significantly easier for employers to tailor testing to their specific needs. Employers will also have greater flexibility in the kind of substance detection they need. Employers will need to put procedures in place and update their handbooks and policies accordingly to capture the benefit of this significantly streamlined process for testing employees.

At [Bassford Remele](#), we regularly counsel employers on maintaining compliant testing policies and protocols for drugs, alcohol, and cannabis. Feel free to reach out if you need assistance in this evolving area!

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