



**CONSTANGY
BROOKS, SMITH &
PROPHETE LLP**

Standing Firm: Workplace Solutions for Opiate Use and Abuse



A wider lens on workplace law

Meet the Presenter

THOMAS M. EDEN III

PARTNER AT CONSTANGY, BROOKS,
SMITH & PROPHETE, LLP



Bar & Court Admissions

Alabama, 1980
Georgia, 1981

U.S. District Courts, AL & GA
11th Circuit Court of Appeals
U.S. Supreme Court

Education

**Cumberland School of Law,
Samford University,
Birmingham Alabama**
J.D., *cum laude*

**Auburn University,
Auburn, Alabama B.A.,**

Tommy Eden's law practice is principally in the areas of Management Labor and Employment Law; he concentrates in Drug Testing Law (DOT Regulated and Non-Regulated) throughout the United States; Preparation of Drug Free Workplace Policies in all 50 states which specifically deal with medical and recreational marijuana issues, recent cardholder protection cases and opioids in the workplace; Tommy is a frequent speaker and trainer on these subjects and heads up Constangy's Workplace Drug & Alcohol Testing Practice Group.



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Meet the Presenter

LEIGH TYSON
PARTNER AT CONSTANGY,
BROOKS, SMITH &
PROPHETE, LLP



**Traditional Labor Practice
Group Co-Chair**

Education
University of Georgia
School of Law

Vanderbilt University

For over fifteen years, Leigh Tyson has practiced in all areas of labor and employment law, with an emphasis on National Labor Relations Board issues. Leigh also conducts internal investigations and represents and counsels clients in discrimination matters, including those arising under Title VII and the FMLA. Leigh is co-chair of Constangy's Labor Relations Practice Group.

In addition to representing clients across the country in a wide range of industries, Leigh is also the host of Constangy's first video series, "Close Up on Workplace Law," where she interviews other Constangy attorneys about current issues affecting employers. She is also a frequent author and speaker on legal issues of interest to employers.



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Legal Disclaimer

This presentation is for educational purposes only and is not intended as a substitute for the legal advice of an attorney knowledgeable in the field of work place drug and alcohol testing.

The presenter makes no assurances regarding the accuracy or completeness of the following information. Legislative, regulatory or case law.



"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."



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Standing Firm! Training Overview

1. Know the safety sensitive and other work-related risks associated with opioid use and other impairing substances;
2. How to upgrade your job descriptions to include critical essential function safety language directly applicable to opioid use and other impairing substances;
3. How to make it all about safety in supervisory training and safety sensitive job classifications;



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Standing Firm! Training Overview Continued

4. Decide now on your drug free workplace policy options when dealing with opioid use and other impairing substances;
5. Understand the inter-play between the ADA and workplace drug testing employer obligations; and
6. Put all the puzzle pieces into place to form a compliant legal strategy to stand firm when dealing with opioid use in your workplace.



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Prince dies of opioid overdose



- Prince died of accidental overdose of opioid fentanyl, medical examiner says on CNN



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Standing Firm!

What should be an Employer's 7 Point Focus



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Standing Firm! Part 1

Know the safety sensitive and other work-related risks associated with opioid use and other impairing substances;



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Opiates – Work related impact of Opioid Intoxication

- Somnolence (Sleepiness, the state of feeling drowsy, ready to fall asleep, nodding off)
- Extreme Fatigue
- Decreased ability to concentrate
- Dizziness and mental confusion
- Slowed reflexes and impaired coordination
- Increased response time to stimuli

All opiates are physically and psychologically addictive and can cause severe withdrawal symptoms



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Workplace Related Impairing Effects of Marijuana Include:

- Inability to accurately gauge lengths of time and distance
- Impairment of hearing and vision and short term memory
- Inability to cope with sudden changes in surrounding and/or emergency situations
- Loss of balance
- Visual and/or auditory hallucinations
- Non-caring, uncommitted, unconcerned attitude
- Decreased cognitive reasoning
- Decreased motor coordination
- Inability to concentrate or remain focused on a single thought or idea
- Increased drowsiness, fatigue and lethargy



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NEWS RELEASE

BUREAU OF LABOR STATISTICS
U.S. DEPARTMENT OF LABOR



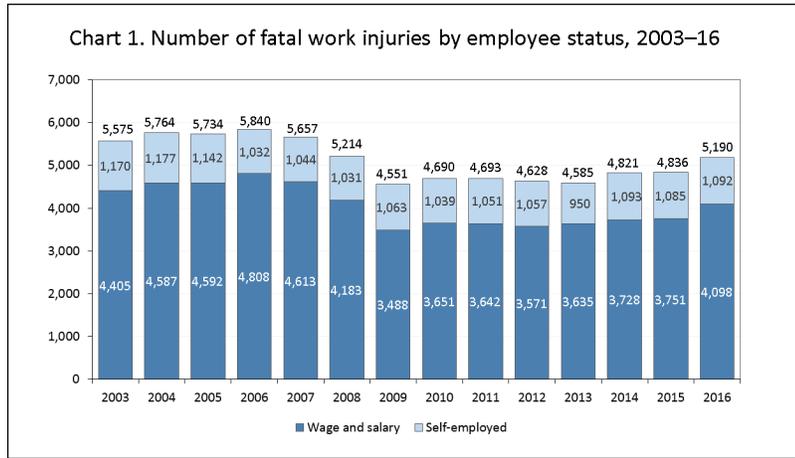
- Release Date: Tuesday, December 19, 2017
- “There were a total of 5,190 fatal work injuries recorded in the United States in 2016, a 7-percent increase from the 4,836 fatal injuries reported in 2015”
- **NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES IN 2016**
- Link to BLS News release:
<https://drive.google.com/file/d/1vpAPCWNB1u5i3ERKTXzS4xpvf1J1KsXj/view?usp=sharing>



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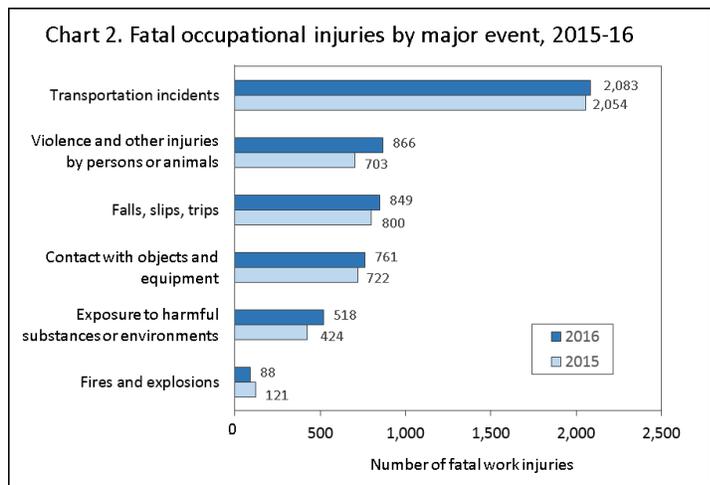
Number of Fatal Work Injuries by Employee Status



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Types of Incidents that resulted in Workplace Fatalities



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Number of Fatal Work Injuries by Employee Status - Details

- Fatal work injuries involving violence and other injuries by persons or animals increased by 163 cases to 866 in 2016. Workplace homicides increased by 83 cases to 500 in 2016, and workplace suicides increased by 62 to 291. This is the highest homicide figure since 2010 and the most suicides since CFOI began reporting data in 1992.
- Fatal work injuries from falls, slips, or trips continued a general upward trend that began in 2011, increasing 6 percent to 849 in 2016 and 25 percent overall since 2011. Falls increased more than 25 percent in 2016 for roofers, carpenters, tree trimmers and pruners, and heavy and tractor-trailer truck drivers.
- Overdoses from the non-medical use of drugs or alcohol while on the job increased from 165 in 2015 to 217 in 2016, a 32-percent increase. Overdose fatalities have increased by at least 25 percent annually since 2012.



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New OSHA Penalties

- OSHA's new maximum fines apply to all citations issued after Jan. 2, 2018.
- Penalty amounts adjusted for inflation as of Jan. 2, 2018:
 - Serious -- \$7,000 → \$12,934
 - Willful/Repeat -- \$70,000 → \$129,336
 - Failure to Abate -- \$7,000 → \$12,934
- Since Aug. 1, the average initial penalty for all companies for a serious violation is \$5,087, up from \$3,285. For companies with more than 250 employees, the average went to \$10,065. See Bloomberg BNA Occupational Safety and Health Reporter, 3/9/17.



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Why Stand Firm?

- Increased workplace fatalities is the true cost of opiate and other impairing substances in the workplace
- Increased OSHA fines should also be an incentive to Stand Firm!



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Standing Firm! Part 2

Becoming knowledgeable with the marijuana laws and applicable cases in the states where employees report for duty

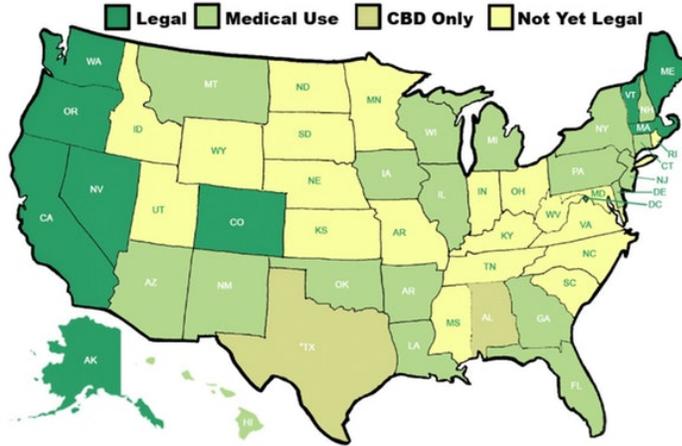


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Vermont Legalizes Recreational Marijuana on January 22, 2018

Legal Status of Marijuana in the U.S.



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Market Realist

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Source: Herb.co, Wikipedia e law



Medical Marijuana Laws

*Laws with Cardholder Protections

- Alaska
- *Arkansas
- Colorado
- Florida
- Georgia
- Iowa
- Michigan
- Montana
- New Mexico
- Oregon
- Virginia

- *Connecticut
- Hawaii
- *Maine
- *Massachusetts
- New Hampshire
- *Nevada
- North Dakota
- Ohio
- *Rhode Island
- Washington
- Washington, D.C.

- *Arizona
- California
- *Delaware
- *Illinois
- Maryland
- *Minnesota
- * New York
- New Jersey
- *Pennsylvania
- Vermont
- Wisconsin

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Recreational Marijuana Laws

*Laws with Employment Protections

- Alaska
- *Maine
- Massachusetts
- Nevada
- Colorado
- Washington
- California
- Oregon
- Vermont



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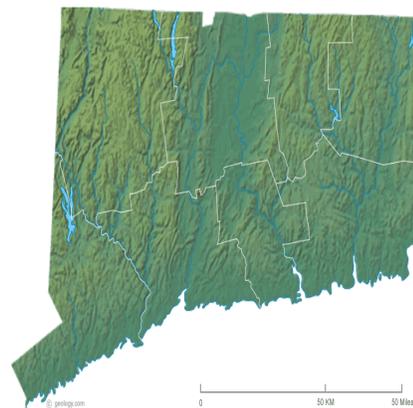
Connecticut

STATE WITH EXPLICIT EMPLOYEE PROTECTION

Conn. Gen. Stat. §21a-408 et seq.; Dept. of Consumer Protection Reg. §21a-408-1 et seq.

Employment Protections:

- Prohibits refusing to hire, discharging, penalizing, or threatening employee solely on basis of person's status as qualifying patient or primary caregiver
- Allow discipline based on use or impairment on the clock



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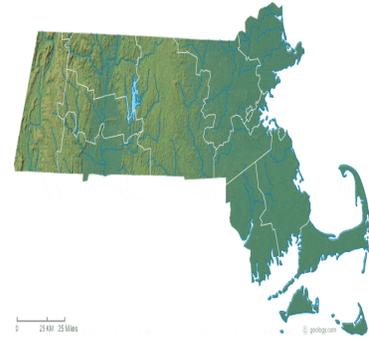
Massachusetts

STATE WITH EXPLICIT EMPLOYEE PROTECTION

Act for the Humanitarian Medical Use of Marijuana

Employment Protections:

- “Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment;” (law silent on off-duty use)
- “No punishment under state law for qualifying patients;” provides “protection from state prosecution and penalties”
- “Any person meeting the requirements under this law shall not be penalized under Massachusetts law in any manner, or denied any right or privilege, for such actions”



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Rhode Island

STATE WITH EXPLICIT EMPLOYEE PROTECTION

Medical Marijuana Act, codified at R.I. Gen. Laws Chapter 21-28.6; R21-28.6-MMP(5923)

Employment Protections:

- Cardholder not subject to arrest, prosecution, criminal or other penalties and property forfeiture. No school, employer or landlord may refuse to enroll, employ or lease, or otherwise penalize solely for his/her status as a registered, qualified patient or registered primary caregiver.
- Prohibits employment discrimination based on person's status as registered medical marijuana user.
- Does not require any employer to accommodate medical use of marijuana in the workplace.



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Standing Firm! Part 3

How to upgrade your job descriptions to include critical essential function safety language directly applicable to opiates



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What Language Should Be in Every Job Description?

- Add as an “essential job function” the scarecrow language – the “ability to work in a constant state of alertness and safe manner.”
- This essential job function makes *alertness* “job related” under the ADA & OSHA General Duty Section 5(a);
- Safety issue if the employee works in a *safety sensitive* position so then prohibition becomes a “business necessity.”
- MRO supporting letter most helpful to support the job relatedness and business necessity defenses as expert justification



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Standing Firm! Part 4

How to make it all about safety in supervisory training



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"Business Necessity" to Maintain Safe Workplace



- **The average claims cost for a workplace injury is 7 times the worker's compensation claim cost according to OSHA's website costs calculator.**

These estimates include the following kinds of indirect costs:

- Any wages paid to injured workers for absences not covered by workers' compensation;
- The wage costs related to time lost through work stoppage associated with the worker injury;
- The overtime costs necessitated by the injury;
- Administrative time spent by supervisors, safety personnel, and clerical workers after an injury;
- Training costs for a replacement worker;
- Lost productivity related to work rescheduling, new employee learning curves, and accommodation of injured employees; and
- Clean-up, repair, and replacement costs of damaged material, machinery, and property.

Some of the possible kinds of indirect costs not included in these estimates are:

- The costs of OSHA fines and any associated legal action;
- Third-party liability and legal costs;
- Worker pain and suffering; and
- Loss of good will from bad publicity.

OSHA's \$afety Pays Program



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Standing Firm! Part 5

Decide now on your drug free workplace policy options when dealing and opiates and impairing substances



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Drug Free Workplace Policy Options

1. Just Say NO to use of Impairing Effect Prescription Medications and Substances by safety sensitive employees
2. Just Give UP
3. Make it all about pre-duty disclosure of impairing effect prescription medications and substances as a safety policy (read again OSHA Section 5 obligation)
4. Option 3 allows you to **Stand Firm** by treating all impairing effect medications and substances equally to avoid discrimination; i.e. there is no discrimination again prescription medications or medical marijuana card holders, only maintaining a safe workplace free of impairing effect substances



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Standing Firm! Part 6

Understand the inter-play between the ADA & emerging court cases and workplace drug testing employer obligations



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Interactive Process – Prudent Risk Reduction

- Currently only twelve Medical Marijuana states currently contain some type of anti-discrimination statutory protections for Marijuana cardholders: Arizona, Arkansas, Connecticut, Delaware, Illinois, Maine, Minnesota, Massachusetts, Nevada, New York, Pennsylvania and Rhode Island.
- Expect more states in the future to include some kind of protective language process will give employer defensible/compassionate position if challenged



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Types of Reasonable Accommodations

- Leave of Absence beyond FMLA
- Work Continuation Agreement (based on an interactive discussion with the cardholder and follow up testing)
- Modified work schedules
- Based on an individualized assessment



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The DON'Ts of Prescription Drug Disclosure

- **DON'T** condition an employee's continued employment upon the employee's discontinuing use of a legally prescribed medication - unless, after an individualized medical assessment, a physician concludes in a written report that discontinuance is job-related and consistent with business necessity and a direct threat to safety.



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“Interactive Process” How-to

- Face-to-face, with two employer representatives participating
- Address only the medical condition and affected work issue
- About the nature, extent, severity and duration of any impairment or leave
- Entitled to seek medical documentation about an employee's disability and functional limitations (if not obvious)
- **Use your MRO and Occupational Physician wisely to advise employer with a written clearance opinion**



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Standing Firm! Part 7

How to put all the puzzle pieces into place to form your compliant legal strategy to effectively stand firm when dealing with opiates and impairing substances in your workplace



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Putting Your Puzzle Pieces Together

- 1) Update Job Descriptions to include “safety sensitive position” and the ability to work in a constant state of alertness and safe manner as an essential job function;
- 2) Update drug free workplace policy to bring it into compliance with state laws and to include a pre-duty impairing effects disclose safety policy for safety sensitive employees;
- 3) Treat all impairing effect medications equally to avoid a prescription/medication medical marijuana discrimination/not compassionate claim;
- 4) Engage in the interactive process;
- 5) Obtain a written fitness for duty opinion from an Occupational/MRO Physician before you take adverse employment action; and
- 6) Use someone to guide you through this process who understands all of the above steps



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Constangy is Here to Help you **Stand Firm!**

1. Constangy Workplace Drug & Alcohol Testing Group can help you with customized DFWP Compliant Policies in all 50 states that will cover OSHA Post Accident language and forms; Pre-Duty Disclosure Safety language; all forms and sign-offs, etc.
2. Can train your supervisors on reasonable possibility and reasonable suspicion with customized checklist.
3. Can advise you on OSHA inspections, risk reduction steps to avoid OSHA retaliation claims, OSHA citation responses, etc.
4. Can advise on Last Chance and Work Continuation Agreements.
5. Can advise on Unemployment Compensation and Workers Compensation state specific disqualifications for a positive test result.



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Contact the Presenters

THOMAS M. EDEN III

PARTNER AT CONSTANGY, BROOKS,
SMITH & PROPHETE, LLP

Constangy, Brooks, Smith & Prophete, LLP
3120-D Frederick Road
Opelika, AL 36801

Direct 334-246-2901
Cell 205-222-8030
teden@constangy.com



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Contact the Presenters

LEIGH TYSON

PARTNER AT CONSTANGY,
BROOKS, SMITH &
PROPHETE, LLP

Constangy, Brooks, Smith & Prophete, LLP
230 Peachtree Street
Suite 2400
Atlanta, Georgia 30303

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ltyson@constangy.com



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Thomas M. Eden, III

Partner

"You may gain temporary appeasement by a policy of concession to violence, but you do not gain lasting peace that way."

--Sir Anthony Eden, Former British Prime Minister and Foreign Secretary to Winston Churchill

Tommy Eden's law practice is principally in the areas of Management Labor and Employment Law; Drug Testing Law (DOT Regulated and Non-Regulated) throughout the United States; defense of employers in federal court in all aspects of employment litigation including claims under Title VII, ADA, FMLA, FLSA, ADEA, and retaliatory discharge actions; defense of employers in charges brought with the EEOC, Wage and Hour Division, National Labor Relations Board, and the Department of Labor; and litigation over employee benefits under ERISA. He also counsels employers on Immigration compliance under the Alabama Immigration Act and conducting I-9 audits under the Federal Immigration Act.

Opelika

3120-D Frederick Road
Opelika, Alabama 36801

T: 205.222.8030

West Point

709 3rd Avenue
West Point, Georgia 31833

T: 205.222.8030

Practice Areas

> [Litigation; Employment
Litigation Prevention and
Defense](#)

Practice Emphasis

- Management Labor and Employment Law
- Employment Law Compliance Consultation and Training
- Workplace Drug Testing Law and Consultation
- Workplace Immigration Compliance and Training
- Civil Litigation
- Administrative Law
- Church Law and Consultation
- Union Avoidance

Bar & Court Admissions

- Alabama, 1980
- Georgia, 1981
- U.S. District Courts, AL & GA, 1980
- Eleventh Circuit Court of Appeals, 1981
- U.S. Supreme Court, 1983

Education

Publications/Presentations

"[Marijuana in the Workplace](#)," *ConstangyTV: Close-Up on Workplace Law*, December 2016

[Additional Publications by Thomas M. Eden, III >](#)

Professional Activities/Associations

- Member, Alabama State Bar
- Member, American Bar Association, Labor and Employment Law Section
- Member, American Employment Law Council
- Member, Birmingham Bar Association
- Member, Lee County Bar Association
- Member, State Bar of Georgia
- Member of Board of Directors, East Alabama SHRM Chapter
- Board Member, SAPAA
- Editor, SAPAA State Laws-at-a-Glance Blogs
- AV® Peer Review Rated By Martindale-Hubbell

Civic/Charitable Activities/Associations

- Board Member, Boys & Girls Club of Greater Lee County
- Auburn Bicycling Committee
- Boy Scouts of America

Cumberland School of Law,
Samford University

- J.D., *cum laude*, 1980

Auburn University

- B.A., 1976

Seminars & Presentations

- > Webinar - Drug Testing Landmines for Public Employers
- > Webinar: Transportation employers, are you ready for the FMCSA drug and alcohol clearinghouse?
- > Webinar - Standing firm against marijuana in the workplace
- > Webinar - Don't panic! Employers should be able to continue most post-accident drug tests under OSHA's new "Reasonable Reporting Procedure" Rule
- > Webinar - Drug Testing and Disclosure of Legal Medications: Walking the ADA Tightrope
- > Webinar: 7 Drug-Testing Litigation Landmines for Public Employers, and How to Avoid Them

- Chattahoochee Council Board
- Auburn Kiwanis Club
- First Baptist Church of Opelika

Other Personal Background Information and Interests

- Enjoys road cycling, hiking and attending Auburn University football games. Tommy is married and has two sons.

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NEW JERSEY • NEW YORK • NORTH CAROLINA • SOUTH CAROLINA • TENNESSEE • TEXAS • VIRGINIA



DOT Drug Free Policy Worksheet

You have requested a worksheet in order for your entity to receive a proposal to develop a Drug Free Workplace Policy and/or Forms. You will be sent an engagement letter to confirm the work requested prior to drafting your customized Drug Free Workplace Program. If you have questions contact attorney Tommy Eden, a partner working out of the Constangy, Brooks, Smith & Prophete, LLP offices in Opelika, AL and West Point, GA and a member of the ABA Section of Labor and Employment Law who serves on the Board of Directors for the East Alabama SHRM Chapter. **Contact him at Office: 334-246-2901; Mobile: 205-222-8030; Blog: www.alabamamatwork.com; Website: www.constangy.com. Email: teden@constangy.com.**

This is a fillable PDF. Please fill out this questionnaire and return it via email to teden@constangy.com or fax to 334-521-7017 so that we can provide to you a flat rate quote for your project. Thank you.

1. Name of the Entity as it should appear throughout the Policy & Forms:

Answer: _____

Entity Name

2. Abbreviated Name of the Entity as it should appear throughout the Policy & Forms (such as "ATC" rather than "American Trucking Company, Inc.):

Answer: _____

Abbreviated Entity Name

3. Type of Entity: (examples - Company, Organization, Agency, League, Association, Corporation, Firm, Group, Department, Practice, Partnership, Enterprise):

Answer: _____

Entity Type

4. Mailing Address (include city, state & zip code):

Answer: _____

Address

5. Phone number:

Answer: _____

Telephone

6. Fax number:

Answer: _____

Telefax

7. Title and/or Name of the Entity's "Designated Employer Representative" – (This should be the person in charge of implementing the program, overseeing employee education, arranging for testing, and keeping records of the Entity's compliance with drug-free workplace rules. It is generally the personnel director, administrator, or your Entity's equivalent):

Answer:

*** DER ***

DER's Title: _____

DER's address: _____

DER's Phone: _____

DER'S E-mail: _____

Hours when available: _____

8. Back-up DER: _____

Alternate DER

Answer:

DER's Title: _____

DER's address: _____

DER's Phone: _____

DER'S E-mail: _____

Hours when available: _____

9. Name of your certified Medical Review Officer (MRO) – (a licensed physician (MD or DO) and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results):

MRO

Answer: _____

MRO's Address: _____

MRO's Phone: _____ MRO's Fax: _____

10. EAP Provider (provide all contact information-must have if PHMSA regulated)

EAP

Answer: _____

11. **Lab** **Answer:** **Address:**

*** Lab ***

12. How many DOT covered employees?

Answer: _____

Under what DOT agency(s) regulations do your covered employees work?

13. Do you also want additional state specific "Company Authority" policy? If yes, what state?

State

Answer: Yes / No _____

State: _____

14. When do you plan to implement the program (date)?

Effective Date

Answer: _____

15. Alcohol Testing Site(s) & Specimen Collection Site(s):

Answer: _____

16. Substance Abuse Professional (SAP)

SAP

Answer: _____

Address of SAP: _____

SAP Phone: _____

17. Consortium/Third Party Administrator (C/TPA)

TPA

Answer: _____

Address: _____

Phone: _____

These materials are for educational purposes only and are not intended as a substitute for the legal advice of an attorney knowledgeable of the issues covered as they relate to a user's individual circumstances.

"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."



Fitness for Duty Intake Worksheet

This is an intake worksheet to assist in customizing the Fitness for Duty forms toolkit. By gathering the information below, you will be able to customize the six forms in the toolkit using the series of find & replace commands in the boxes below. If you wish to secure the copy written forms toolkit, please contact Tommy Eden and he will send you a proposed engagement letter. If you need assistance with this process, Tommy Eden, a partner working with the Constangy, Brooks, Smith & Prophete, LLP, prepared the forms toolkit and offers legal and consulting in the area of fitness for duty. **Contact him at Office: 334-246-2901; Mobile: 205-222-8030; Blog: www.alabamawork.com; Website: www.constangy.com. Email: teden@constangy.com.**

This is a fillable PDF.

1. Name of the Entity as it should appear throughout the Forms Toolkit:

Answer: _____

Entity Name

2. Type of Entity: (examples – Company, Organization, Agency, League, Corporation, Firm, Group, Practice, Enterprise):

Answer: _____

Entity Type

3. Title and/or Name of Entity's *Designated Employer Representative* (This should be the person in charge of implementing the program, overseeing employee education, arranging for testing, and keeping records of the Entity's compliance with drug-free workplace rules. It is generally the personnel director, administrator, or your Entity's equivalent.):

Answer: _____

DER's Title: _____

DER's Address: _____

DER's Phone: _____

DER's E-mail: _____

DER's Fax: _____

DER
DER Title
DER Address
DER Phone
EMAIL
DER Fax

4. Name of your certified Medical Review Officer (MRO) – (a licensed physician responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results):

Answer: _____

MRO's Phone: _____

MRO
MRO phone

MRO's e-mail: _____

MRO's Fax: _____

MRO email

MRO Fax

5. MRO Interview date

Answer: _____

MRO Interview Date

6. Certified Medical Examiner (CME)

Answer: _____

Certified Medical Examiner

7. Donor

Answer: _____

Donor Phone: _____

Donor fax or e-mail: _____

Donor

Donor Phone

Donor Contact

These materials are for educational purposes only and are not intended as a substitute for the legal advice of an attorney knowledgeable of the issues covered as they relate to a user's individual circumstances.

"No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers."

Contact(s)

> Thomas M. Eden, III
All Attorneys in this Area

Related Service Areas

> Litigation; Employment
Litigation Prevention and
Defense

Events

- > Webinar - Drug Testing Landmines for Public Employers
- > Webinar: Transportation employers, are you ready for the FMCSA drug and alcohol clearinghouse?
- > Webinar - Standing firm against marijuana in the workplace
- > Webinar - Don't panic! Employers should be able to continue most post-accident drug tests under OSHA's new "Reasonable Reporting Procedure" Rule
- > Jacksonville Breakfast Briefing: Drug Testing for Public Employers
- > Webinar - Drug Testing and Disclosure of Legal Medications: Walking the ADA Tightrope
- > Webinar: 7 Drug-Testing Litigation Landmines for Public Employers, and How to Avoid Them

Newsletters & Bulletins

- > OSHA Update, Court refuses to block OSHA's new anti-retaliation rule that restricts post-accident drug testing and safety incentive programs
- > Client Bulletins, Colorado Supreme Court Beats the Reefer
- > Client Bulletins, Medical marijuana extracts approved in Georgia

Workplace Drug & Alcohol Testing

Substance abuse policy review; federal and state-specific policy development; guidance with forms; assistance with government compliance; counseling employers on employee hiring and severance procedures.

POLICY REVIEW AND DEVELOPMENT SERVICES

Whether your substance abuse testing program has been implemented recently or has been in place for many years, Constangy recommends a thorough policy review to make sure your program meets all federal, state, and local legal compliance requirements, reduces the risk of your organization of legal liability, and provides every available tool you need to maintain a safe, drug-free, and effective workplace.

After we complete your policy review, if we have found that your program documents do not meet the legal requirements, we can help you develop one that will.

Constangy will answer questions about your drug testing policy such as:

- What personnel can you test?
- What substances can you test for?
- Can you test with instant products or use lab services, or both?
- Can you complete collections onsite or send your personnel to off-site collection facilities, or both?
- Under what circumstances can you drug and alcohol test?

Constangy develops customized policies and form packs for the following Department of Transportation (DOT) covered industries:

- Federal Motor Carrier Safety Administration (FMCSA)
- Federal Transit Administration (FTA)
- Pipeline and Hazardous Materials Safety Administration (PHMSA)
- Federal Aviation Administration (FAA)
- United States Coast Guard (USCG)
- Mine Safety and Health Administration (MSHA)
- Supervisor Reasonable Suspicion Training in accordance with DOT guidelines

Constangy develops customized, state-specific policies and form packs for 48 states.

CONSULTATION SERVICES

We give employers critical decision making guidance with regard to:

- Reasonable suspicion determinations and documentation
- Documenting appropriate disciplinary actions for violators
- Prevailing in unemployment compensation disqualification cases
- Prevailing in workers' compensation disqualification cases
- Negotiating last chance and work continuation agreements
- Response to regulatory fines and inquiries
- Union negotiations of Drug Free Workplace Policies
- Fitness for duty determination strategies
- Medical Review Officer protocols
- Laboratory Corrective Action Plans
- Collector Correction Affidavits
- Substance Abuse Professional regulatory compliance guidance
- Navigating DOT Medical Examination fitness issues
- Medical marijuana in the workplace risk reduction
- Public employee testing precautions

For more information of assistance in your specific workplace, contact [Tommy Eden](#) at 205.222.8030 or teden@constangy.com or any Constangy attorney.