



Cocaine and Amphetamine Use Continue Decline; Test Methods Evolve

Hair and Urine Testing Data Trends Agree, but Hair Detects More Illegal Drug Use, According to Quest Diagnostics

Nancy N. Delogu, Esq.

A new “Drug Testing Index Special Report” issued by laboratory giant Quest Diagnostics suggests that the abuse of illegal amphetamines and cocaine have continued to decline among United States workers, although it appears that urine drug tests fail to detect a fair number of those who abuse these drugs.¹ The report comes at a time when the U.S. Department of Transportation and federal employers plan to lower testing cutoffs for both cocaine and methamphetamines, and to expand the regulated urine testing panel to include MDMA, which is a “designer” or synthetic amphetamine. MDMA is commonly called “Ecstasy,” variants are “Adam” and “Eve.”

In October 2009, Quest issued a side-by-side analysis of drug test results performed on hair and urine specimens collected simultaneously from the *same* donor. Over a five-year period, hair specimens revealed an overall “positive” rate of 12.6 percent, while the overall positive rate for urine drug tests was 7.6 percent.² Similar results were found when cocaine use and methamphetamine use were analyzed separately.

Urine drug tests typically detect evidence of illegal drug use occurring in the prior one to three days after ingestion. Hair testing, in contrast, typically captures evidence of illegal drug use at the time the hair was growing. Approximately three inches of hair will give a drug use history of the previous six months, although typically only the growth from the most recent 90-day period is tested.

Hair samples can also be evaluated to determine approximately when the drug use occurred, and whether it was interrupted by abstinence. This makes them useful for pre-employment, random, and follow-up testing, when an employers is most interested in a pattern of

¹ Quest Diagnostics, Drug Testing Index™ (Nov. 20, 2009) summarized at http://www.questdiagnostics.com/employersolutions/dti/2009_05/dti_index.html. The Drug Testing Index examines positive test rates (the proportion of positive results for each drug to all such drug tests) among federally mandated, safety-sensitive workers, the general workforce, and the combined U.S. workforce.

² Workforce drug screening results comprised approximately 80 percent of the data. *Id.*

substance abuse. Hair samples are not, however, typically of use in detecting illegal drug use proximate to the time of the test, because the hair has not yet grown out of the scalp so that it may be collected. Hair samples are not recommended, therefore, for use in reasonable suspicion and post accident testing. According to Quest Diagnostics, hair tests also will not reveal a single incident of illegal drug use.

Given the longer “window of detection,” therefore, it is not surprising that hair testing data are more likely to capture instances of illegal drug use. And for purposes of tracking the decline in stimulant abuse, both tests agree that cocaine and amphetamine abuse is declining. For example, in the first half of 2009, the cocaine positive rate for hair tests was 3.2 percent, and for urine tests, 0.30 percent.³ Methamphetamine positives occurred in 0.90 percent of hair tests while urine tests revealed a 0.10 percent positive rate.⁴

Federal drug testing programs, such as those applied to the federal employee work force and the U.S. Department of Transportation’s (DOT) regulated private sector work force, do not authorize employers to utilize hair samples to fulfill mandated testing requirements, although the United States Department of Health and Human Services (HHS) and the U.S. DOT have considered rulemaking on the topic in the last decade. However, the urine testing methodology for both groups is likely to change in the near future to make the urine testing process more sensitive to detecting cocaine and amphetamine misuse.

As of May 2010, the initial and confirmatory cut-off levels for cocaine and methamphetamine will decline for the federal work force, and urine drug tests will seek evidence of a broader range of amphetamine abuse, to include MDMA (street names include “Ecstasy”), MDA (“Adam”) and, MDEA (“Eve”). The DOT has proposed adopting these new cutoff levels (and other amendments to the HHS program) for the regulated private sector work force in a Notice of Proposed Rulemaking which is to be published in the February 4, 2010 *Federal Register*. HHS estimates that 10 percent more users of amphetamine and cocaine may be identified using the lowered cutoffs and testing for new drugs. See http://www.federalregister.gov/OFRUpload/OFRData/2010-02315_PI.pdf for a copy of the proposed regulations.

What’s the take-away for an employer with a drug-free workplace policy, regulated or otherwise, given this news? In brief, **2010 is likely to be a year of change for employer drug-testing programs.** For some, it may be time for an update to an existing testing policy. Employers should give some thought to whether they will modify non-regulated testing panels to match the federal panel, and if so, when; consider whether to make use of alternative test methodologies, such as hair testing, for their non-regulated work force; and/or prepare to update their regulated testing policy in anticipation of DOT changes.

Nancy Delogu is an attorney and substance abuse testing expert. She also serves as managing shareholder in Littler Mendelson, P.C.’s Washington, D.C. office.

³ *Id.*

⁴ *Id.*

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Biography

Ms. Delogu defends employers in employment disputes before federal and state courts and administrative agencies on a range of employment issues including workplace harassment and discrimination, workplace privacy, and disability accommodation issues. She also counsels employers on implementing reductions-in-force, including compliance with the federal Older Workers' Benefit Protection Act (OWBPA) and the Worker Adjustment and Retraining Notification Act (WARN), and similar state statutes.

Ms. Delogu is also a leading expert on federal and state drug-free workplace and drug-testing issues, and has drafted dozens of substance-abuse prevention policies, including Department of Transportation (DOT) mandated programs. In this realm, she advises both employers and testing service providers on compliance.

Publications

Ms. Delogu is a co-author and former editor of the comprehensive annual Guide to State and Federal Drug-Testing Laws.

Recent publications include: Ruling Clears Haze Over Pot, Pre-Employment Drug Tests (San Francisco Daily Journal), with Rod Fliegel; I Don't Know Why They Picked Me: 10th Circuit Broadens Requirements for Waiving Age Discrimination Claims, and Employers Exhale: Supreme Court Medical Marijuana Decision Aids Employer Anti-Drug Programs.

This seminar is provided free-of-charge to all *Drugs Don't Work in NJ!* Members.

Invitations with registration information will be mailed separately.

“2010 is likely to be a change for employer drug-testing programs” ~ Look inside for details!



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