

Q: May we drug test job applicants for a non-CDL role? Does it make a difference if our goal is to support the new hire in obtaining a CDL in order to move them into a CDL role?

A:

Because pre-employment drug testing is legally complex, *we strongly recommend conferring with an attorney, if you are considering drug testing applicants.*

Certainly, you would want to be strategic about doing so. Some questions to consider:

- Why do we want to drug test applicants? Is it a safety-sensitive position? Would a positive result disqualify the employee from performing the essential functions of the position?
- Would drug testing make sense for all positions or just certain roles, such as those we hope to move into CDL roles?
- Which drugs should we test for? Does it make sense to include marijuana?
  - Note: If the position will not be subject to federal requirements, it is probably best not to find out if they are a casual user of marijuana.

In accordance with [21 VSA § 512](#), prior to drug testing an applicant:

1. The applicant must receive a conditional offer of employment, letting them know the hiring is conditioned upon a negative drug test;
2. The applicant must receive written notice of the drug testing that includes:
  - a. A list of the drugs to be tested;
  - b. A statement that therapeutic levels of medically prescribed drugs will not be reported;
  - c. Testing must follow the myriad requirements and procedures outlined under [21 VSA § 514](#), including having a written policy that must be given to the person being tested.

Given current hiring challenges, some members may want to recruit individuals without a CDL, support them in obtaining their CDL, and, ideally, move them into a CDL role. If the Town has created an applicant drug testing program, with the requisite written policy, that follows legal procedures noted above, the employee would, of course, need to pass a drug test before moving to a CDL role. Be mindful that, since they are already your employee, you will have more statutory obligations toward them if they fail the drug test. It may be helpful, therefore, to have an agreement with the employee that they will obtain a CDL before the end of their probationary period. In this case, having a longer probationary period, rather than a shorter one, may make sense.