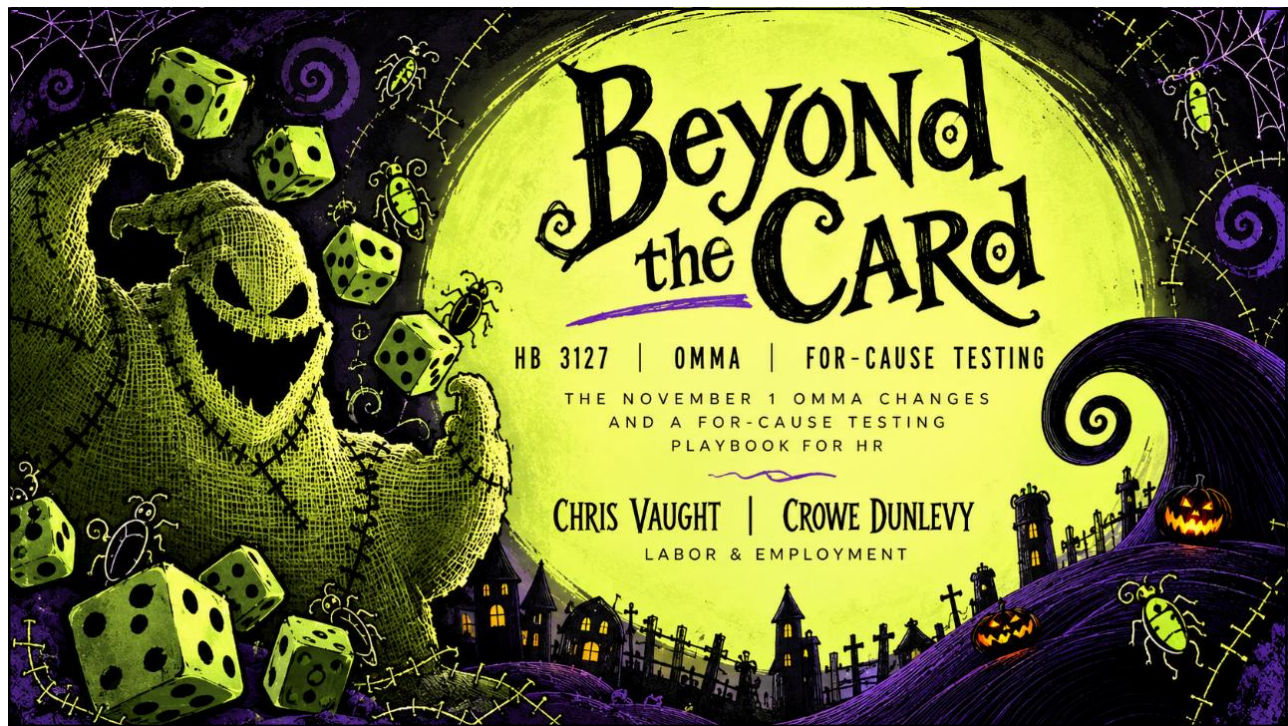
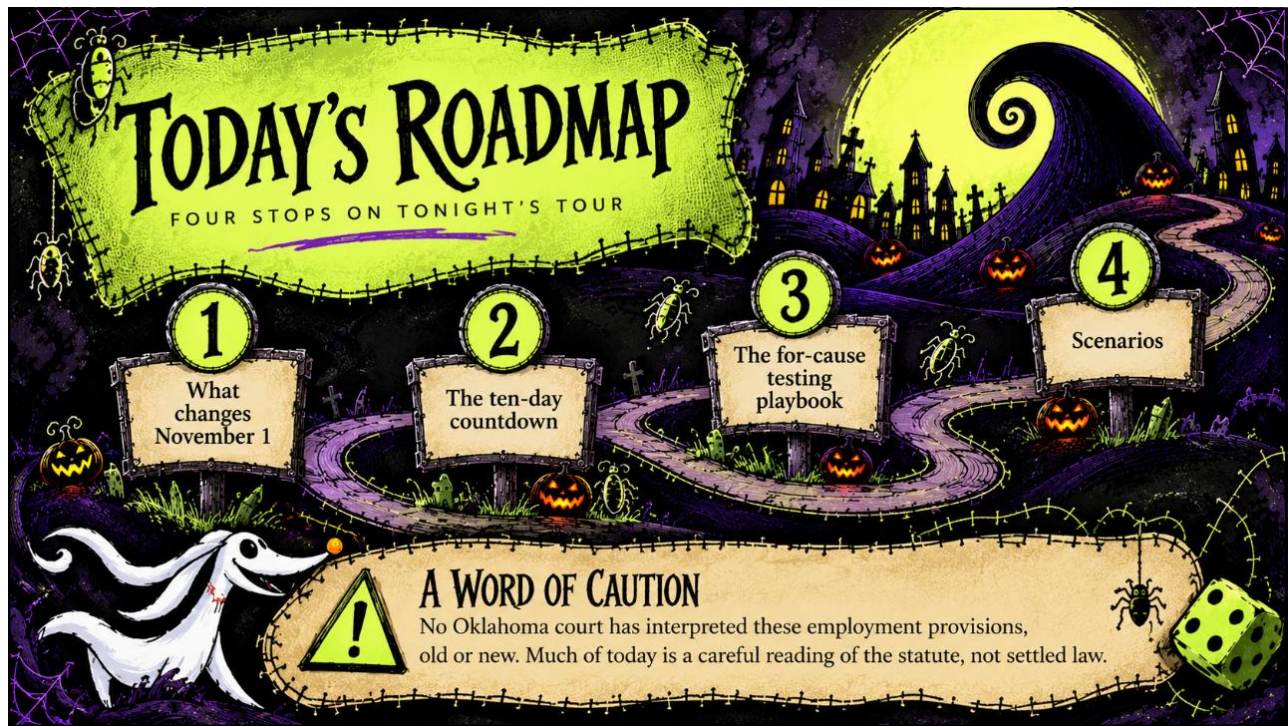






PART ONE

TRACK 1

SAFETY-SENSITIVE POSITIONS

Zero tolerance.



MANDATORY ZERO TOLERANCE

Safety-sensitive positions must be subject to a zero-tolerance drug and alcohol standard.



THE CARD IS NO DEFENSE

A medical marijuana license does not excuse a confirmed positive in a safety-sensitive role.



UNDEFINED

The statute does not define "zero tolerance." Your written policy must clearly define the standard.

PART ONE

"DRUG AND ALCOHOL" MEANS DRUG AND ALCOHOL



Confirmed alcohol concentration of 0.02 constitutes a positive test.



A 0.04 threshold should no longer apply to safety-sensitive roles.



Zero tolerance applies to alcohol and other drugs, not just marijuana.



Competing statutory interpretation remains untested. Employers should expressly state their adopted interpretation.

ALCOHOL THRESHOLD FOR SAFETY-SENSITIVE ROLES



NO LONGER APPLIES



IS A POSITIVE TEST



Employers should clearly state their interpretation in their written policy.

PART ONE

ZERO TOLERANCE DOES NOT MEAN ZERO NANOGRAMS

Testing cutoffs still apply.

MARIJUANA TESTING CUTOFFS

 Initial urine screen:
50 ng/mL

 Confirmation:
15 ng/mL

 No medical marijuana license defense for safety-sensitive positions.

CONFIRMED POSITIVE

 A confirmed positive is at or above the applicable cutoff.

 No impairment showing is required under the proposed zero-tolerance definition.

 Review officer generally reports positive or negative, not numerical levels.

 Employers should use the standard cutoffs in their written policies.



PART ONE

WHO IS SAFETY-SENSITIVE NOW?

IT DEPENDS ON WHAT THE JOB ACTUALLY INVOLVES.

 **FOCUS ON ACTUAL JOB DUTIES**

Classification is based on what the employee actually does, not just their job title.

 **HAZARDOUS MATERIALS**

Handling, storing, transporting, or working with hazardous materials.

 **VEHICLES, MACHINERY AND EQUIPMENT**

Operating company vehicles, machinery, equipment, or power tools.

 **SPECIFIC ROLES AND ENVIRONMENTS**

- Maintenance
- Firefighting
- Utilities
- Critical infrastructure

 **SENSITIVE MATERIALS AND CARE**

- Flammable materials
- Pharmaceuticals
- Firearms
- Direct patient care
- Direct child care

 **EXAMPLE**

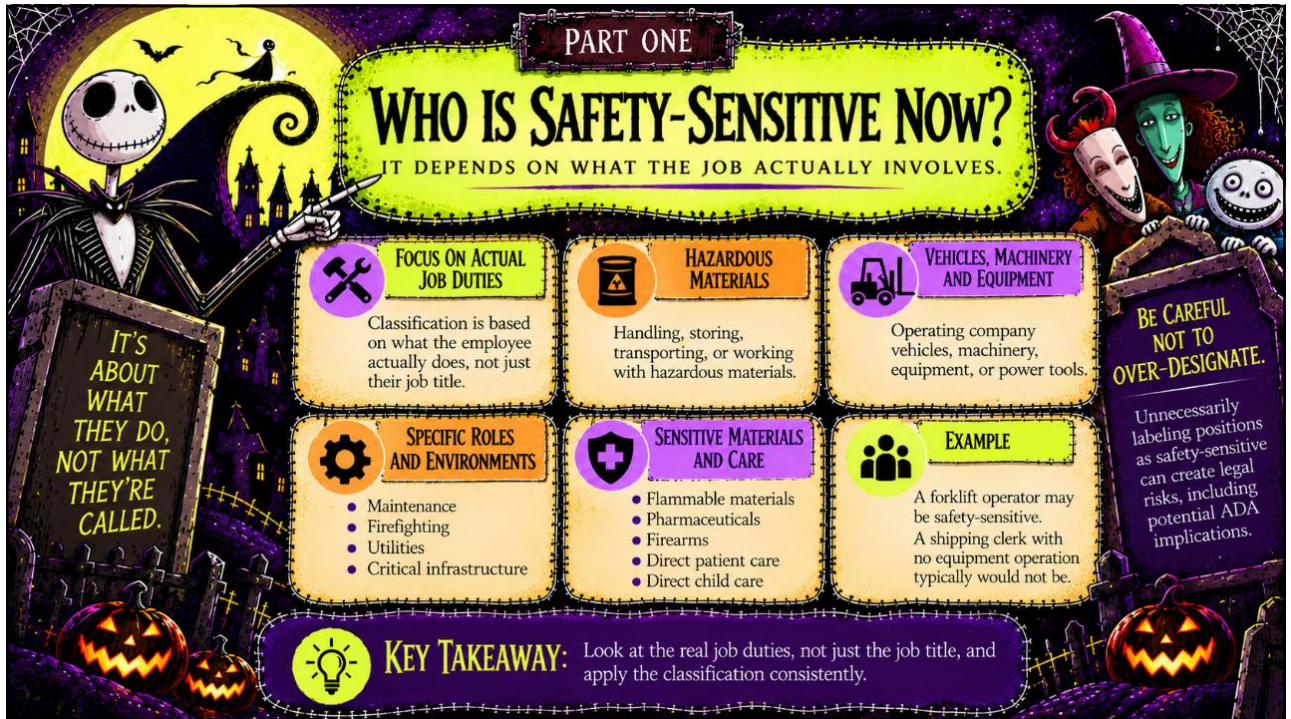
A forklift operator may be safety-sensitive. A shipping clerk with no equipment operation typically would not be.

IT'S ABOUT WHAT THEY DO, NOT WHAT THEY'RE CALLED.

BE CAREFUL NOT TO OVER-DESIGNATE.

Unnecessarily labeling positions as safety-sensitive can create legal risks, including potential ADA implications.

 **KEY TAKEAWAY:** Look at the real job duties, not just the job title, and apply the classification consistently.



PART ONE

TRACK 2: EVERYONE ELSE

STILL PROHIBITED, BUT A DIFFERENT STANDARD.

1 WHAT DOESN'T CHANGE?

- Marijuana use is still prohibited during work hours.
- Impairment is still prohibited, including from alcohol or other drugs.
- Employers can still enforce drug and alcohol policies and take disciplinary action.

2 KEY DIFFERENCES

- A positive test is still defined by the DOT or Oklahoma cutoff, whichever is lower.
- A positive test alone does not automatically result in disciplinary action.
- Employers must consider the totality of the circumstances and any explanations.

3 PRACTICAL IMPLICATIONS

- Focus on performance, behavior, and impairment in the workplace.
- Document concerns and follow your policy consistently.
- Be prepared to have a conversation with the employee about the results and any explanation.

DIFFERENT TRACK. SAME EXPECTATION. DRUG USE STILL ISN'T WELCOME AT WORK.

IMPAIRMENT IMPACTS WORKPLACES — REGARDLESS OF THE TRACK.

KEY TAKEAWAY: Track 2 employees are still expected to be free from drug and alcohol use at work, but there is no mandatory testing threshold, and a positive test is not automatic grounds for discipline.

PART ONE

WHAT SURVIVED THE CHANGEOVER

KEY ELEMENTS THAT REMAIN IN PLACE.

1 TESTING IS STILL ALLOWED

- Employers can still maintain drug testing programs.
- Pre-employment, random, post-accident, and for-cause testing are still permitted.
- Testing must comply with applicable laws and be applied consistently.

2 ZERO TOLERANCE STILL APPLIES

- Employers can still prohibit marijuana use in the workplace.
- Employees can still be disciplined for being under the influence, possessing, or using marijuana at work.
- Impairment and safety concerns remain valid bases for action.

3 POLICY STILL MATTERS

- A clear, written policy is essential.
- Policies should address testing types, expectations, and consequences.
- Consistent application helps reduce risk and supports lawful decisions.

4 EMPLOYER DISCRETION REMAINS

- You can set standards that are more restrictive than the law.
- You can take action based on impairment, safety, performance, or policy violations.
- You can enforce other workplace rules (e.g., no possession, no use during work hours, safety sensitive roles).

THE LAW CHANGED. THE BASICS STILL STAND.

TESTING
POLICY
CONSISTENCY
DISCRETION

KEY TAKEAWAY: While the law has changed, the core principles of a strong drug and alcohol policy remain the same.

PART THREE

WHY OBSERVATIONS MATTER MORE NOW

OKLAHOMA'S LAW PLACES GREATER EMPHASIS ON
OBSERVED WORKPLACE CONDUCT.

1 OBSERVATIONS SUPPORT THE DECISION TO TEST (TRACK 1)

- Specific, observed workplace conduct can create a reasonable basis to test under Track 1 (for-cause).
- You must be able to articulate what you saw, when it occurred, and why it raised concern.
- General concerns or hunches are not enough.

2 ZERO TOLERANCE GOVERNS THE RESULT

- For safety-sensitive positions, a positive drug or alcohol test is prohibited and results in removal from duty.
- A positive test alone does not automatically justify other disciplinary action, but it does require removal from the safety-sensitive position.
- Follow the testing and return-to-duty requirements for safety-sensitive employees.

3 DOCUMENTED CONDUCT PROVIDES ADDITIONAL SUPPORT (TRACK 2)

- In certain situations, documented workplace conduct can also support testing under Track 2 (even when the employee is not in a safety-sensitive position).
- Clear, contemporaneous documentation strengthens your decision and helps defend it if challenged.
- Focus on specific facts, not assumptions or subjective opinions.

KEY TAKEAWAY:

Your observations—and how well you document them—determine when testing is appropriate and help support the decision, while Oklahoma's zero tolerance rule governs the result for safety-sensitive employees.

PART THREE

“REASONABLE SUSPICION” IS NO LONGER THE LAW

THE STANDARDS ACT REPLACED
REASONABLE SUSPICION IN 2011.

PREVIOUS STANDARD (Pre–November 1, 2011)

- Employers were required to have “reasonable suspicion” of drug or alcohol use.
- The standard was based on specific, articulable facts and objective observations.
- Reasonable suspicion governed for-cause testing. Random, post-accident, and other testing had their own rules.
- Many employers used supervisor training and checklists to help determine reasonable suspicion.

NEW STANDARD (Effective November 1, 2011)

- The Standards Act no longer uses “reasonable suspicion.” For-cause testing is permitted when the employer reasonably believes the employee may be under the influence.
- Testing is permitted based on the six statutory examples outlined in the law.
- The focus is on specific, observed workplace conduct—not generalized hunches or assumptions.
- Employers must still follow a consistent, documented process and ensure the facts fit within one of the statutory examples.

KEY TAKEAWAY:

Oklahoma's new law removes the “reasonable suspicion” requirement for most for-cause testing and replaces it with six specific, statutory examples. You still need clear, consistent documentation to support the decision to test.

NEW STANDARD. SAME EXPECTATION: MAKE A DEFENSIBLE DECISION.

WHAT CHANGED?

PART THREE

THE SIX STATUTORY EXAMPLES

When any of the following are present, Oklahoma law allows for a for-cause (drug or alcohol) test.

- 1 DRUGS OR ALCOHOL NEARBY**
The presence of drugs or alcohol in the employee's work area, on their person, or at their worksite.
- 2 CONDUCT SUGGESTING IMPAIRMENT**
Observed behavior that reasonably suggests the employee is under the influence of drugs or alcohol.
- 3 REPORTS OF WORKPLACE USE**
A credible report that the employee has used, possessed, or distributed drugs or alcohol in the workplace.
- 4 TEST TAMPERING**
Evidence that the employee has tampered with, altered, or substituted a drug or alcohol test, or otherwise interfered with the testing process.
- 5 NEGATIVE PERFORMANCE PATTERNS**
A pattern of declining performance, unexplained errors, or other performance issues that may indicate substance use.
- 6 EXCESSIVE OR UNEXPLAINED ABSENCES**
Frequent absences, tardiness, or unexplained absences from work that may indicate substance use.

KEY TAKEAWAY: These six situations give Oklahoma employers the legal basis to require a drug or alcohol test. It's not about assumptions—it's about **reasonable, objective indicators**.

PART THREE

TEST TO THE OLD STANDARD, NOT THE NEW ONE

USE THE SAME STANDARD YOU HAVE ALWAYS USED—WITH A FEW IMPORTANT UPDATES.

- 1 USE THE PREVIOUS STANDARD FOR TESTING**
 - Continue to use the prior "reasonable suspicion" standard when deciding to test.
 - Base the decision on specific, articulable facts and objective observations.
 - Avoid general hunches, assumptions, or subjective opinions.
- 2 INCORPORATE THE SIX STATUTORY EXAMPLES**
 - Your observations should align with one or more of the six statutory examples.
 - Document the specific facts that support the example you are relying on.
 - You do not need all six—only one applies.
 - Be clear, contemporaneous, and consistent in your documentation.
- 3 FOLLOW YOUR EXISTING POLICY AND PROCESS**
 - Follow your company's current drug and alcohol policy, testing process, and forms.
 - Use supervisor training and checklists.
 - Document the timeline, observations, and actions taken.
 - Consult HR or legal when there are questions.

KEY TAKEAWAY: Oklahoma's new law does not change how you decide to test—you still use the same "reasonable suspicion" standard, supported by the six statutory examples and strong documentation.

PART THREE

THE FOR-CAUSE TESTING PLAYBOOK IN 9 STEPS

A PRACTICAL PROCESS TO HELP YOU MAKE A DEFENSIBLE DECISION TO TEST—AND WHAT TO DO AFTERWARDS.

- 1 OBSERVE AND RECOGNIZE**
 Identify specific, objective workplace conduct that may fit one or more of the six statutory examples.
- 2 DOCUMENT IMMEDIATELY**
 Record the facts—what you saw, heard, or were told. Include dates, times, locations, and specific details.
- 3 CONSULT AND VERIFY**
 Review the facts with HR and, when needed, legal counsel. Confirm the conduct aligns with a statutory example.
- 4 NOTIFY THE EMPLOYEE**
 Inform the employee that they are being directed to test based on specific, observed workplace conduct.
- 5 ARRANGE THE TEST**
 Send the employee to an approved collection site and follow your company's testing procedures.
- 6 REMOVE FROM SAFETY-SENSITIVE DUTIES (IF NEEDED)**
 If the employee is in a safety-sensitive position, remove them from duty while awaiting results.
- 7 REVIEW THE RESULTS**
 Follow your policy for reviewing results and determining next steps. A positive test in a safety-sensitive position requires removal from duty.
- 8 TAKE APPROPRIATE ACTION**
 Follow your policy and applicable law based on the results, the employee's position, and all relevant circumstances.
- 9 KEEP A COMPLETE RECORD**
 Maintain all documentation—observations, communications, testing records, and the final decision.

ROLL THE STEPS. NOT THE RISK.

PART THREE

THE FOR-CAUSE TESTING PLAYBOOK IN 9 STEPS

STEPS 1 AND 2

- 1 OBSERVE AND RECOGNIZE**
 IDENTIFY WORKPLACE CONDUCT THAT MAY FIT ONE OR MORE OF THE SIX STATUTORY EXAMPLES.
 - Look for **specific, objective** workplace conduct.
 - Focus on the **facts** you see, hear, or are told—not general hunches or assumptions.
 - Determine whether the conduct may fit one or more of the **six statutory examples**.
- 2 DOCUMENT IMMEDIATELY**
 RECORD THE FACTS—WHAT YOU SAW, HEARD, OR WERE TOLD.
 - Write a clear, detailed account as **soon as possible**.
 - Include **dates, times, and** locations.
 - Capture **specific statements and behaviors**.
 - Include any **relevant photos, videos, or other evidence** (if available).

KEY TAKEAWAY: A strong for-cause test starts with clear, objective observations and immediate, detailed documentation.

PART THREE
THE FOR-CAUSE TESTING PLAYBOOK IN 9 STEPS
STEPS 3 AND 4

3 CORROBORATE
Look for additional information to confirm what you observed.

- Speak with **witnesses** (if available).
- Review relevant **records** (such as security footage, time records, or prior incidents).
- Look for **consistency** in the information.
- Identify any other facts that support or **contradict** what you observed.

4 CALL HR
Before taking further action, contact HR.

- Share what you observed and any corroborating information.
- Discuss next steps and whether for-cause testing is appropriate.
- Follow company policy and applicable law.
- Get guidance on how to communicate with the employee and what to do next.

KEY TAKEAWAY:

Confirm the facts and involve HR early to ensure the decision is consistent, fair, and legally compliant.

PART THREE
THE FOR-CAUSE TESTING PLAYBOOK IN 9 STEPS
STEP 5: WHAT TO SAY (AND WHAT NOT TO ASK)

TELL THE EMPLOYEE

- State the observed conduct. "I observed _____."
- Explain that company policy requires for-cause testing.
- Inform them that **refusing** the test may result in disciplinary action, up to and including termination, under company policy.
- Let them know they will have the opportunity to disclose any medications to the testing collector or medical review officer.

DON'T ASK

- "Do you have a medical marijuana card?"
- "What medications are you taking?"
- "Do you have a drinking problem?"

KEY TAKEAWAY:

Be clear, factual, and consistent. Let the testing professionals handle questions about medical conditions and medications.

PART THREE

THE FOR-CAUSE TESTING PLAYBOOK IN 9 STEPS

STEPS 6, 7 AND 8

6 REMOVE AND TRANSPORT

- Remove the employee from safety-sensitive duties immediately.
- Arrange safe and reliable transportation to the testing location.
- Do not allow the employee to drive.
- Maintain a professional, respectful approach.

7 COLLECT PROMPTLY

- Get to the collection site as soon as reasonably possible.
- Follow the proper chain of custody and collection process.
- Use a qualified third-party collector and a Medical Review Officer (MRO).
- Ensure the correct test types and cutoffs are used under your policy.

8 WAIT FOR CONFIRMATION

- Do not take adverse action based on a screening (initial) result.
- Wait for the confirmed result from the MRO.
- The MRO will contact the employee to discuss legitimate medical explanations.
- Follow up with HR before taking any next steps.

KEY TAKEAWAY:

Act quickly, follow proper procedures, and wait for a confirmed result before making decisions. Keep safety, consistency, and documentation top of mind.

PART THREE

THE FOR-CAUSE TESTING PLAYBOOK IN 9 STEPS

STEP 9: REFUSALS, RESULTS, AND RECORDS

9A REFUSALS

- A refusal to test is treated as a positive test under most company policies.
- Clearly communicate the consequences of a refusal before testing.
- Document the refusal and the employee's statements, if any.
- Follow your policy and apply it consistently.

9B RESULTS

- The Medical Review Officer (MRO) will confirm the result.
- The MRO may contact the employee to discuss legitimate medical explanations.
- Wait for the confirmed result before taking action.
- Follow your policy for next steps based on the confirmed result.

9C RECORDS

- Keep all documentation related to observations, testing, and results.
- Maintain confidentiality in accordance with applicable law (e.g., ADA and OMMA).
- Retain records for the time period required by your policy and applicable law.
- Ensure consistent recordkeeping across all employees.

KEY TAKEAWAY:

Refusals are significant, wait for confirmed results, and keep thorough, confidential records.

SCENARIO 1

THE MYSTERIOUS JACKET

FACT #1
A coworker reports that an employee's jacket smelled strongly of marijuana in the breakroom.

FACT #2
The employee denies using marijuana and says the jacket was in his car over the weekend.

FACT #3
No one has observed the employee impaired. He is currently at work and performing his normal job duties.

? WHAT WOULD YOU DO?

HR
EMPLOYEE STATEMENT
COMPANY POLICY
NEXT STEPS

SCENARIO 1

THE MYSTERIOUS JACKET

THE VERDICT

PROBABLY NOT
BASED ON THESE FACTS ALONE.

KEY POINT:
A marijuana odor alone, without other signs of impairment or a safety concern, is generally not a sufficient basis for testing.

WHY?

- Odor can persist on clothing and does not necessarily mean current impairment.
- Testing should be based on reasonable suspicion of on-duty impairment.
- Be consistent with your policy and applicable law.

WHAT TO DO INSTEAD:

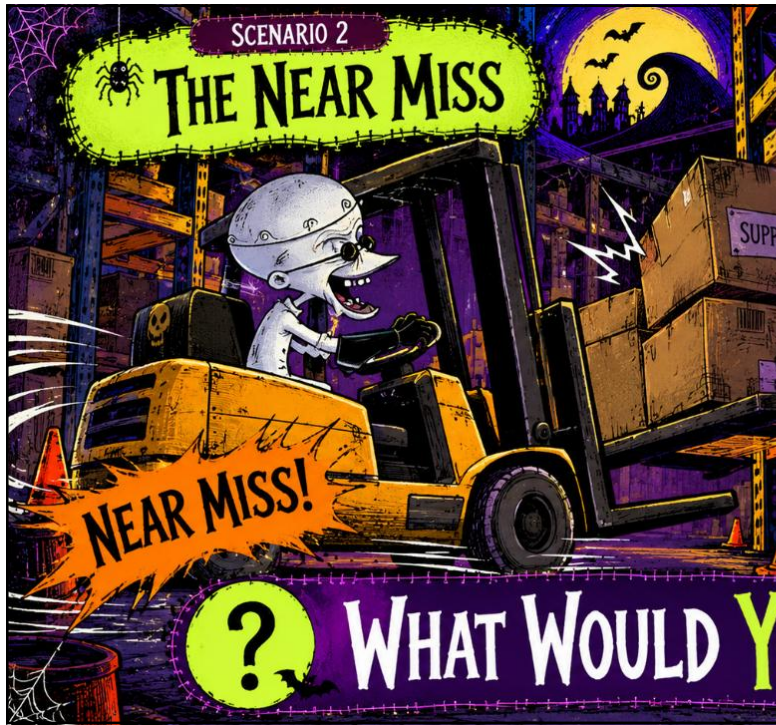
- Have a respectful conversation with the employee.
- Document what was observed and reported.
- Remind the employee of the policy (no use during work hours and no impairment on the job).
- Monitor for any signs of impairment.

DIFFERENT SCENARIO?
If the employee is in a safety-sensitive position (e.g., forklift operator) and there are additional signs of impairment (slurred speech, poor coordination, etc.), testing may be appropriate under your policy.

TAKEAWAY:
Odor alone is not enough. Look at the totality of the circumstances, follow your policy, and document your observations.

SCENARIO 2

THE NEAR MISS



?

WHAT WOULD YOU DO?

FACT #1

A supervisor observed an employee operating a forklift erratically. The employee nearly struck a storage rack and stopped just in time.

FACT #2

The supervisor noticed the employee's eyes appeared red, and his speech sounded slow.

FACT #3

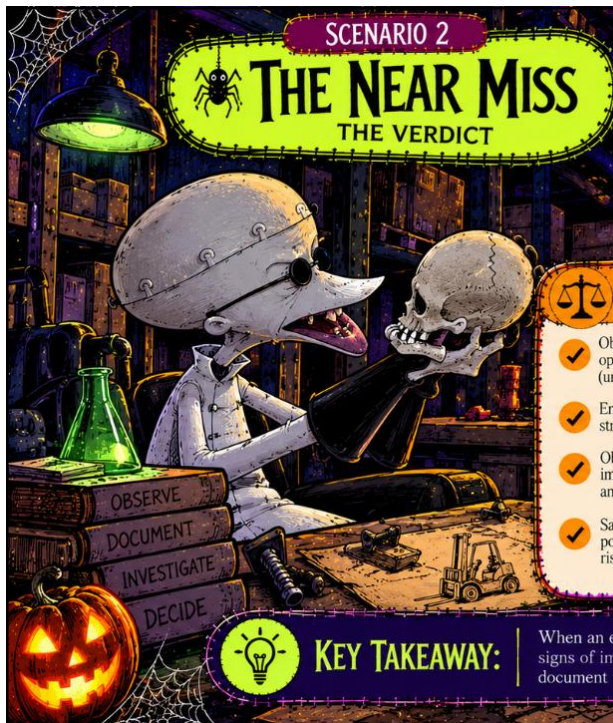
The employee denies using any marijuana and says he is just tired. No one has observed him using marijuana at work.

SAFE PEOPLE
KEEP
HALLOWEEN
TOWN
RUNNING

SCENARIO 2

THE NEAR MISS

THE VERDICT



✓

TESTING IS APPROPRIATE

Based on these facts, there is reasonable suspicion of impairment in a safety-sensitive position, and testing is appropriate under most company policies.

WHY?

- ✓ Observed erratic operation of a forklift (unsafe behavior).
- ✓ Employee came close to striking a storage rack.
- ✓ Observable signs of impairment (red eyes and slurred speech).
- ✓ Safety-sensitive position with potential risk of serious harm.

WHAT TO DO INSTEAD:

- ✓ Remove the employee from the forklift and other safety-sensitive duties immediately.
- ✓ Document the specific observations (behavior, physical signs, time, location, and who observed it).
- ✓ Arrange for a drug test in accordance with your policy and applicable law.
- ✓ Ensure safe transportation (home or to the testing site).

DIFFERENT SCENARIO?

- ✓ If the employee was not in a safety-sensitive position and there were no additional signs of impairment, testing may not be appropriate under your policy.
- ✓ If the behavior could be explained by a medical condition or other non-drug-related cause, follow your policy for reasonable suspicion and consider additional information.

KEY TAKEAWAY: When an employee in a safety-sensitive position shows observable signs of impairment, testing is generally appropriate. Follow your policy, document thoroughly, and ensure a safe response.

SCENARIO 3

THE ANONYMOUS TIP

THE QUESTION

SCENARIO FACTS:

- HR receives an anonymous report.
- Jack Skellington allegedly smoked marijuana in a vehicle during lunch.
- Employee returns and works normally.
- No firsthand observations.

QUESTION:

Is a for-cause test appropriate?

SCENARIO 3

THE ANONYMOUS TIP

THE VERDICT

THE VERDICT

- Do not test bas
- Statute arguably based on a rep
- Anonymous in objective evide
- Whether use o on duty is deb
- Have a trained
- Investigate po policy violatio

SCENARIO 4

THE NEGATIVE RESULT

THE QUESTION

QUESTION: Can the employee be disciplined for meeting conduct?

- Zero is a customer service lead.
- Supervisor observes confusion, sweating, and slurred speech.
- HR orders for-cause testing.
- Confirmed result is negative.

Question:
Can the employee be disciplined for meeting conduct?

SCENARIO 4

THE NEGATIVE RESULT

THE VERDICT

THE VERDICT:

- Discipline may be possible, but proceed cautiously.
- Consider potential medical explanations.
- Return employee to work promptly.
- Pay for testing time.
- Evaluate whether an ADA interactive process is appropriate.
- Apply consistent performance standards.
- A negative result does not mean the original testing decision was improper.

BOTTOM LINE: A negative test does not automatically end the matter. Consider other explanations and apply consistent performance standards.

THE FINAL TAKEAWAYS

KEY LESSONS FOR A SAFER, FAIRER WORKPLACE

1 **KNOW YOUR POLICY.**
Understand the November 1 changes and your organization's testing procedures.

2 **DOCUMENT OBSERVATIONS.**
Focus on specific, objective workplace behavior — not assumptions.

3 **FOLLOW THE PLAYBOOK.**
Involve HR, act consistently, and prioritize safety.

4 **WAIT FOR CONFIRMED RESULTS.**
Don't make testing-based disciplinary decisions from an initial screening alone.

5 **PROTECT CONFIDENTIALITY.**
Handle medical and testing information appropriately.

KEY TAKEAWAY: A thoughtful, consistent, and well-documented approach helps us maintain a safe, compliant, and respectful workplace for everyone.

QUESTIONS?

CHRIS VAUGHT