

# Oral Fluid Screening Solutions

## State by State Legal Status of Oral Fluid Testing



OraSure Technologies



## **State by State Legal Status of Oral Fluid Testing (Updated: January 2011)**

The information is provided for education purposes only and not as legal advice or opinion. Reader retains full responsibility for the use of the information contained herein. Employers or employees seeking a determination of legal rights or responsibilities should seek the counsel of an attorney or a designated official of an applicable regulating agency.

The following charts were compiled using:  
*Summary of Individual Drug Testing State Statutes*, WFC & Associates, updated 01/2010.

STATUTE?	SPECIMEN DEFINED?	ORAL FLUID PERMITTED?	LAB-BASED ORAL FLUID?	POCT ORAL FLUID?	CONFIRMATION TESTING & MRO REQUIRED?
<b>Alabama</b> Voluntary	Defined in voluntary law as urine for drug testing; breath for alcohol testing	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes (Outside of voluntary law except in WC presumption of impairment cases)	Outside of the voluntary law neither are required but both are highly recommended
<b>Alaska</b> Voluntary	Defined in voluntary laws as urine and breath	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes (Outside of voluntary law; the voluntary law requires use of FDA approved POCT devices; there are no FDA-approved POCT oral fluid devices)	Outside of the voluntary law neither are required but both are highly recommended
<b>Arizona</b> Voluntary	"Sample means urine, blood, hair, saliva, breath or other body specimens..."	Yes	Yes	Yes (Outside of voluntary law; the voluntary law prohibits all POCT drug testing)	Outside of the voluntary law neither are required but both are highly recommended
<b>Arkansas</b> Voluntary	"Specimen means tissue, fluid, or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites."	Yes	Yes	Yes (Outside of voluntary law; the voluntary law prohibits all POCT drug testing)	Both are required under the voluntary law; outside of the voluntary law neither are required but both are highly recommended
<b>California</b> No	N/A	Yes	Yes	Yes (State's lab licensing law would preclude any POCT; however, state does not enforce the law upon employers)	Neither are specifically required by law but both are highly recommended for initial screen positives especially in such a litigious state

STATUTE?	SPECIMEN DEFINED?	ORAL FLUID PERMITTED?	LAB-BASED ORAL FLUID?	POCT ORAL FLUID?	CONFIRMATION TESTING & MRO REQUIRED?
<b>San Francisco, CA</b> Yes	No	Yes	Yes	Yes	Neither are specifically required by law but both are highly recommended for initial screen positives especially in such a litigious state
<b>Colorado</b> No	N/A	Yes	Yes	Yes (except in WC presumption of impairment cases)	No requirements, but both are recommended
<b>Boulder, CO</b> Yes	No definition offered but statute refers to "urine, blood, or other bodily fluid or tissue"	Yes	Yes	Yes (POCT results must be confirmed at a lab with GC/MS)	Confirmation testing required on initial screen positives; MRO verification is highly recommended; employees are entitled to a retest of a portion of the original sample
<b>Connecticut</b> Yes	No	Yes; statute only applies to urine testing but does not prohibit oral fluid testing	Yes	Yes (POCT results must be confirmed at a lab with GC/MS)	Confirmation testing required on all initial positives. MRO recommended.
<b>Delaware</b> No	N/A	Yes	Yes	Yes	No requirements, both are recommended
<b>District of Columbia</b> No	N/A	Yes	Yes	Yes	No requirements, both are recommended

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<b>Florida</b> Voluntary	"Specimen means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites"	Yes (without restriction outside of the voluntary law)	Yes (outside of voluntary law and otherwise)	Yes (Outside of voluntary law; the voluntary law permits POCT testing as of June 2009)	Both required under voluntary law and highly recommended for initial screen positives in general
<b>Georgia</b> Voluntary	"Specimen means tissue, blood, breath urine, or other other product of the human body..."	Yes (as part of voluntary law and otherwise)	Yes (as part of voluntary law and otherwise)	Yes for pre-employment screening only under voluntary law; POCT results must be confirmed)	Both required under voluntary law and highly recommended for initial screen positives in general
<b>Hawaii</b> Yes	"Specimen means urine, blood, or such other sample that the department determines to be appropriate for substance abuse testing	<b>No per regulations developed by the Hawaii Dept. of Health</b>	<b>No</b>	<b>No</b>	FYI-POCT <i>urine</i> testing is permitted for pre-employment only; results must be confirmed at a lab; only FDA-approved devices may be used
<b>Idaho</b> Voluntary	"Sample means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites which shall include only urine, saliva, breath, <u>and blood with restrictions.</u>	Yes (no restrictions on specimen types)	Yes	Yes (POCT results must be confirmed at a lab)	All positive screens must be confirmed at a lab and individuals must be given the opportunity to discuss results with an MRO

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<b>Illinois</b> No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended.
<b>Indiana</b> No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>Iowa</b> Has non-voluntary & voluntary laws	"Sample means such sample from the human capable of revealing the presence of alcohol or other drugs, or their metabolites, which shall include only urine, saliva, breath, and blood."	Yes	Yes	Yes (POCT results must be confirmed at a lab)	MRO must review all positive results
<b>Kansas</b> Yes	"Biological specimens means: human blood, human urine, human saliva, and human gastric contents."	Yes	Yes	<b>No</b> (No POCT permitted)	Confirmation testing is required; MRO not specifically required but highly recommended
<b>Kentucky</b> No	N/A	Yes	Yes	Yes	No requirements, but both are recommended
<b>Louisiana</b> Yes	"Sample means urine, blood, saliva, or hair."	Probably	Yes	<b>No (requires POCT testing to be done with FDA-approved devices; there are no FDA approved oral fluid devices at this time)</b>	MRO must review all positive results

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<b>Maine</b> Yes	Definition is not a determining factor as the DOL has ruled against oral fluid testing.	<b>No</b> (Per ruling by the DOL; confirmed)	<b>No</b>	<b>No</b>	Legislature passed a law permitting the use of POCT saliva testing but no standards have been established yet, therefore POCT oral fluid is not allowed as of June '08)
<b>Maryland</b> Yes	"Specimen is limited to blood, urine, saliva, and hair."	Yes	Yes	Yes (must register with state to conduct POCT; <b>only FDA-approved devices</b> ; for pre-employment only)	POCT results must be confirmed at a lab; MRO must review all positive results
<b>Massachusetts</b> No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>Michigan</b> No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>Minnesota</b> Yes	"...body component sample..."	Yes (with FDA approved device)	Yes	<b>No</b> (No POCT permitted)	No statutory requirements, but both are recommended
<b>Mississippi</b> Voluntary	"...a tissue or product of the human body..."	Yes (without restriction outside of the voluntary law)	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes ( <b>no under voluntary law</b> ; POCT results must be confirmed at a lab)	Both required under voluntary law and highly recommended for initial screen positives in general

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<b>Missouri</b> No	N/A	Yes	Yes (except in WC and UC presumption of impairment cases)	Yes (except in WC presumption of impairment cases)	No statutory requirements, but both are recommended
<b>Montana</b> Yes (law applies to safety-sensitive jobs only)	Sample means a urine specimen, a breath test, or oral fluid...	Yes	Yes	<b>The law requires use of FDA approved device and there are no FDA cleared POCT oral fluid devices at the time)</b>	Statute defers to SAMHSA guidelines therefore both would be required
<b>Nebraska</b> Yes	"body fluid or breath specimen..."	Yes	Yes	Yes (POCT results must be confirmed at a lab)	FYI-law applies to companies with 6 or more employees
<b>Nevada</b> No	N/A	Yes	Yes	<b>No</b> (No POCT permitted)	No statutory requirements, but both are recommended
<b>New Hampshire</b> No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>New Jersey</b> No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>New Mexico</b> No	N/A	Yes	Yes (except in WC and UC presumption of impairment cases)	Yes (except in WC & UC presumption of impairment cases)	No statutory requirements, but both are recommended
<b>New York</b> No	N/A	Yes	Yes	<b>No</b> in most cases; location where POCT is conducted is subject to state's lab licensing requirements	Only MRO can receive results



STATUTE?	SPECIMEN DEFINED?	ORAL FLUID PERMITTED?	LAB-BASED ORAL FLUID?	POCT ORAL FLUID?	CONFIRMATION TESTING & MRO REQUIRED?
<b>North Carolina</b>					
Yes	Sample means urine, blood, hair or oral fluids	Yes	Yes	Yes (POCT results must be confirmed at a lab; on for pre-employment screening)	Confirmation testing required; MRO highly recommended
<b>North Dakota</b>					
No	N/A	Yes	Yes (except in WC and UC presumption of impairment cases)	Yes (except in WC and UC presumption of impairment cases)	No statutory requirements, but both are recommended
<b>Ohio</b>					
Voluntary	Refers to SAMHSA guidelines for drug testing	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes-Outside voluntary law <b>No</b> -Under voluntary law	<b>No</b> (refers specifically to following the SAMHSA guidelines for drug testing)	Both required under voluntary law per references to SAMHSA guidelines; highly recommendation for initial screen positives in general
<b>Oklahoma</b>					
Yes	Sample means tissue, fluid or product of the human body chemically capable of revealing the presence of drugs or alcohol...	Yes	Yes (per May 2007 change)	Use of FDA approved device only and there are no FDA oral fluid devices	MRO must review all test results
<b>Oregon</b>					
Yes	Specimen means materials derived from a human being or body	Yes	Yes	Yes (POCT results must be confirmed at a lab; must register to conduct POCT)	Confirmation testing required; MRO highly recommended and may be required
<b>Pennsylvania</b>					
No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended

STATUTE?	SPECIMEN DEFINED?	ORAL FLUID PERMITTED?	LAB-BASED ORAL FLUID?	POCT ORAL FLUID?	CONFIRMATION TESTING & MRO REQUIRED?
<b>Puerto Rico</b>					
Yes	"Sample means a sufficient amount of urine or any other bodily fluid or tissue..."	No	No	No	None
<b>Rhode Island</b>					
Yes	Mentions..."urine blood, or other bodily fluid or tissue..."	Yes	Yes	Yes (POCT results must be confirmed at a lab)	All initial screen positives must be confirmed with GC/MS or equivalent technology
<b>South Carolina</b>					
Voluntary	No	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>South Dakota</b>					
No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>Tennessee</b>					
Voluntary	Specimen means tissue, fluid or a product of the human body capable of revealing the presence of alcohol or drugs or their metabolites	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes-Outside voluntary law <b>No</b> -Under voluntary law	Yes (however, voluntary law prohibits all POCT drug testing)	Both required under voluntary law and highly recommended for initial screen positives in general
<b>Texas</b>					
No	N/A	Yes	Yes	Yes	No statutory requirements, but both are recommended

STATUTE?	SPECIMEN DEFINED?	ORAL FLUID PERMITTED?	LAB-BASED ORAL FLUID?	POCT ORAL FLUID?	CONFIRMATION TESTING & MRO REQUIRED?
<b>Utah</b> Voluntary	Sample means urine, blood, breath, saliva	Yes	Yes	Yes (POCT results must be confirmed at a lab)	All initial screen positives must be confirmed at a lab per voluntary law
<b>Vermont</b> Yes	No	Probably; consult with local counsel	Probably; consult with local counsel	<b>No</b> (No POCT permitted)	Confirmation testing required; MRO must review all test results
<b>Virginia</b> Voluntary	No	Yes	Yes	Yes (except in WC presumption of impairment cases)	None
<b>Washington</b> No	No	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>West Virginia</b> No	No	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>Wisconsin</b> No	No	Yes	Yes	Yes	No statutory requirements, but both are recommended
<b>Wyoming</b> No	No	Yes	Yes	Yes	No statutory requirements, but both are recommended

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