

# SNAPSHOT: THE WAR ON DRUGS MEETS THE EMPLOYMENT SYSTEM

a Drug Policy Alliance publication



The importance of access to meaningful employment cannot be understated. Employment provides a means to support oneself and others and connections to coworkers and the community. Ensuring access to employment is a crucial way to reduce poverty.<sup>1</sup> Not being employed can lead to negative health effects and is strongly associated with increased rates of drug use and substance use disorders.<sup>2</sup> Employment is often identified as an important goal by people in drug treatment and recovery from substance use disorders.<sup>3</sup>

Despite the generally recognized importance of employment, policies stemming from the war on drugs exclude millions of people who use drugs or who have convictions from employment and its associated benefits.<sup>4</sup> These policies disproportionately impact people of color, who already face additional barriers to employment.<sup>5</sup> The underlying assumptions of these policies are that people who use drugs cannot perform their jobs; any drug use is problematic and indicates a personality flaw; and a criminal conviction should permanently bar employment opportunities. Instead of targeting people for drug use or past conduct, we should ensure equitable access to employment opportunities and support employees who may benefit from harm reduction and drug treatment services.

When President Ronald Reagan declared his war on drugs on September 14, 1986, the first initiative he announced his administration would undertake was seeking “a drug-free workplace at all levels of government and in the private sector.”<sup>6</sup> Soon after his address, President Reagan signed an executive order

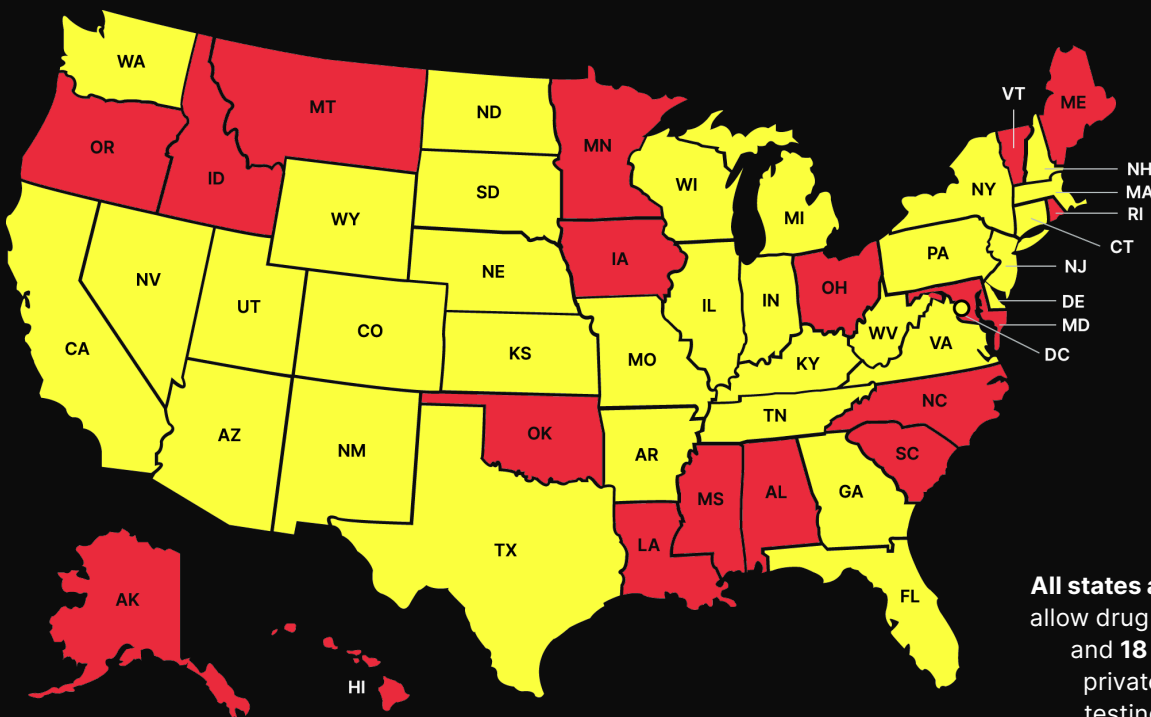
requiring each federal agency to establish a drug testing program for employees in “sensitive positions.”<sup>7</sup> The order explicitly stated that any drug use, even off duty, is “contrary to the efficiency of the service” and people who use drugs “are not suitable for federal employment.”<sup>8</sup> In 1988, President Reagan signed the Drug-Free Workplace Act into law, which requires all federal contractors and grantees to establish drug-free workplace requirements.<sup>9</sup> Another federal law enacted in 1991 requires all safety-sensitive employees in private transportation jobs to submit to drug testing.<sup>10</sup> The remainder of the private sector quickly followed suit; by 1996, 81 percent of surveyed employers said they subjected employees to drug tests.<sup>11</sup>

Every state allows drug testing in some job settings, and 18 states allow all employers to conduct drug testing regardless of job function.<sup>12</sup> Many employers continue to require drug tests despite a dearth of evidence that these policies are actually effective in reducing drug use or improving workplace safety and productivity.<sup>13</sup> Drug tests can only determine if a person has a drug metabolite in their system. They cannot tell how much of a drug was consumed, how intoxicated the person became, or whether the person has a substance use disorder. Drug tests cannot determine if drug use will impact a person’s ability to perform their work or create a safety risk. Drug testing policies do infringe on workers’ privacy, requiring people to submit a urine sample even though less than one-tenth of employees have actually tested positive for drugs within the past month.<sup>14</sup> Refusal to take the test is often, in itself, grounds to deny or terminate employment.<sup>15</sup>

Marijuana is the most common drug identified in employee drug tests because marijuana is the most commonly used illicit drug and because it remains in a person's system much longer than other drugs.<sup>16</sup> Drug testing policies can lead to negative employment actions due to marijuana use occurring outside work hours. Even in states that have legalized all adult use or medical use of marijuana, employers may still be able to terminate employees for a marijuana-positive drug test.<sup>17</sup>

For employees that do have substance use needs, employer support is often lacking. When these needs are identified, employers have wide discretion to sanction or terminate the employee, which can then exacerbate drug use.<sup>18</sup> Although most employers have employee assistance programs (EAPs) which assist with a wide variety of health issues, employees do not frequently use them and may fear negative repercussions from their employer.<sup>19</sup> Employees may also feel they cannot take time from work to address their substance use needs out of fear of negative consequences or loss of income due to reduced hours.

Employment options are severely limited for people with criminal records. Widespread criminalization, fueled in large part by the drug war, has resulted in as many as one in five people in the U.S. having some type of criminal record.<sup>20</sup> Laws vary by state, but employers generally have wide discretion to deny employment to people with criminal records. The electronic accessibility of court records and proliferation of private background check companies has made doing a background check cheap and easy, though often not accurate.<sup>21</sup> Additionally, many licenses needed to work in certain sectors can be denied based on past convictions.<sup>22</sup> More than a quarter of jobs in the United States require a license, which immediately limits access for people with criminal records.<sup>23</sup> These barriers have significant economic impacts; employment barriers faced by people who have a felony conviction were associated with a loss of \$78 billion to the economy in 2014.<sup>24</sup>



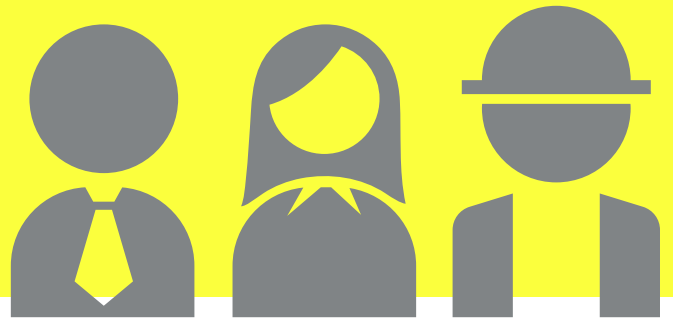
## STATE POLICIES, ALLOWANCES, AND RESTRICTIONS ON WORKPLACE DRUG TESTING

- Some public and private employers can drug test job applicants and employees
- All public and private employers can drug test job applicants and employees

**All states and the District of Columbia** allow drug testing in some job settings, and **18 states** allow both public and private employers to conduct drug testing, regardless of job function. Workplace drug testing cannot assess current impairment or intoxication, and research suggests that it does not increase workplace safety or open avenues for care and support. These policies merely increase punishments for people who use drugs.

*Source: OHS Health & Safety Services Inc. (as of 2019)*

**Instead of targeting people for drug use or past conduct, we should ensure equitable access to employment opportunities and support employees who may benefit from substance use services.**



Some positive steps have been taken to address these barriers. The federal Equal Employment Opportunity Commission has issued guidance stating that denying employment based on criminal records could be a form of racial discrimination because people of color are more likely to have been the target of criminal law enforcement.<sup>25</sup> Thirty-five states, the District of Columbia, and over 150 cities and counties have established “Ban the Box” policies, which prohibit public employers from asking job applicants about past charges and convictions on the initial job application.<sup>26</sup> Thirteen states and 18 cities and counties have extended these policies to private employers.<sup>27</sup> Several states have recently enacted laws adding or expanding ways to expunge or seal criminal records, reducing their ability to be seen for employment purposes.<sup>28</sup> However, eight states still have no expungement procedures and several others only offer it in limited circumstances (e.g., only for misdemeanors).<sup>29</sup>

Given the importance of employment to individuals, communities, and the country, we should focus on maximizing opportunity, not needlessly disqualifying people based on drug tests and criminal records that are inadequate indicators of work performance. For people who do have substance use needs, employment is an essential stabilizing factor and should also be an avenue for connection to services. **In particular, we should prioritize:**

- Eliminating drug testing requirements for job applicants and employees.
- Preventing negative employment actions based on drug use that does not impact work performance.
- Increasing use of employee assistance programs (EAPs) for employees with substance use needs.
- Limiting the ability to deny employment and licenses based on past convictions.
- Adding and expanding expungement and sealing procedures and providing legal assistance to those who could not otherwise afford it.
- Implementing and expanding Ban the Box policies.
- Adding and strengthening anti-discrimination protections and enforcement for people with criminal records and people who use drugs.

## Endnotes

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