



Information sheet for employers

Personal data and checks on the use of alcohol, drugs and medicines in the employment relationship

This information sheet for employers explains the Q&As about testing for alcohol, drugs and medicines on our website.

Introduction

Testing employees for alcohol, drugs and medicines is almost always prohibited. But there are conceivable situations in which the invasion of an employee's privacy may still be justified. These situations are explicitly mentioned as exceptions in the law. You must meet strict conditions.

Legal exceptions

Checking the use of alcohol, drugs and medicines during working hours is only permitted if there is specific legislation for this. In addition, you must take appropriate measures to minimise the invasion of an individual's privacy.

For the time being, consent is only available for certain professions under the Shipping Act, Railway Act, Local Railway Act, and Aviation Act. These acts are bundled in the [Alcohol, Drugs and Medicines \(Road Traffic\) Decree](#). This also states which officials or persons designated by the Minister are authorised to administer the tests.

If you do not fall under one of the specific legal exceptions, taking alcohol, drugs and medicine tests is prohibited. The Dutch Data Protection Authority (DPA) cannot therefore allow you to take these tests within these legal frameworks.

If you find it desirable to take tests because of a high-risk position, but the law does not specifically mention this position as an exception, it is up to the legislator to decide whether checks are indeed desirable and whether they should be permitted by law. Until then, you are not allowed to administer the tests. This also applies to people who are not directly employed by you, but who do have to come to your site to do their work.

It concerns health data

The General Data Protection Regulation (GDPR) regards personal data obtained from alcohol, drugs and medicine tests as health data. In principle, there is a ban on processing health data.



Health data within the meaning of Article 9 GDPR do not only refer to data that are subject to medical confidentiality, such as the nature, cause and treatment of the illness. They relate to **all** data that concern the mental or physical health of a person.

Data resulting from a snapshot, like data from continuous monitoring, are health data. These data also provide information about a person's health. The processing of health data is in principle prohibited, unless the processing meets one of the legal exceptions as stated in the [Alcohol, Drugs and Medicines \(Road Traffic\) Decree](#).

What consideration has the legislator made?

By imposing strict requirements on the processing of health data, the legislator forces you as an employer to carefully balance the interests of checks on the use of alcohol, drugs and medicines and the fundamental rights of the individuals involved.

The legislator has thus deliberately established a closed system of situations in which alcohol, drugs and medicine checks are permitted under a number of conditions. It is therefore up to the legislator to expand this system where necessary. For example, by adding exceptions to the prohibition and/or adjusting the conditions.