

IS YOUR DRUG AND ALCOHOL TESTING PROGRAM IN COMPLIANCE WITH DOT REGULATIONS?

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PROJECT MANAGER

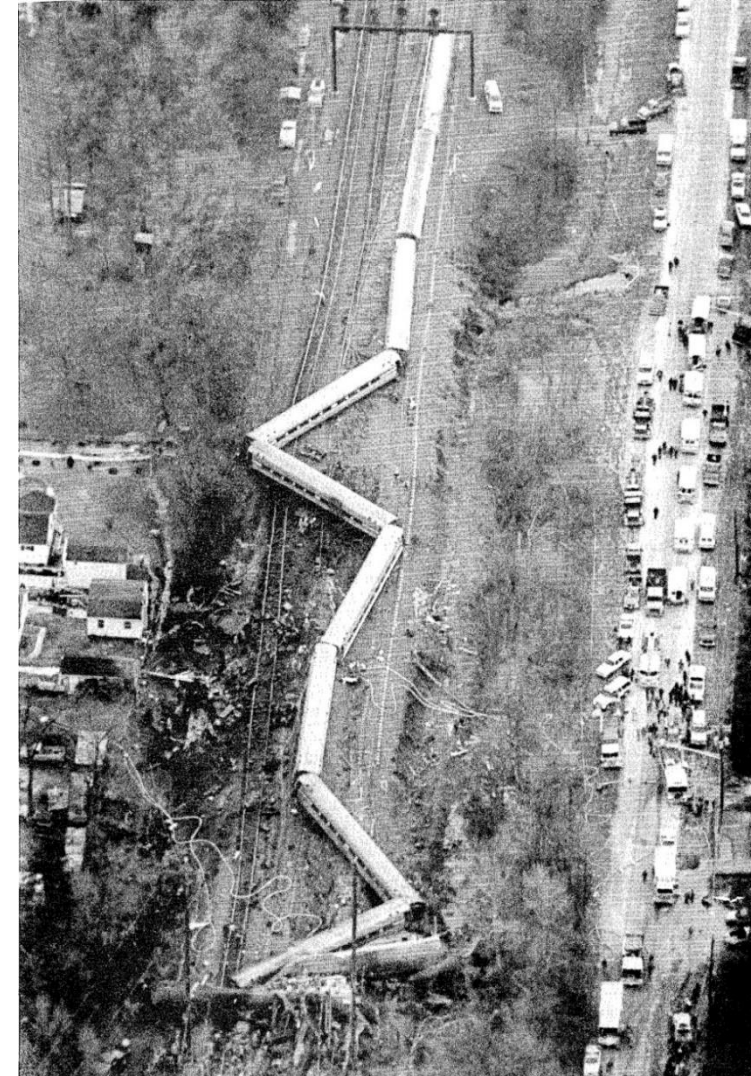
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4/3/16 Amtrak Chester, Pennsylvania Collision



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Workplace Impacts of Substance Abuse

- 3.5 X more workplace accidents.
- 2.7 X more absences.
- 3 X more medical benefits usage.
- 10-20% decrease in productivity.
- Increased loss/shrinkage.
- Higher incidence of workplace violence.



DOT Agencies

- **Federal Aviation Administration - (FAA).**
- **Federal Motor Carrier Safety Administration - (FMCSA).**
- **Federal Railroad Administration – (FRA).**
- **Federal Transit Administration – (FTA).**
- **Pipeline and Hazardous Materials Safety Administration (PHMSA).**
- **United States Coast Guard – (USGC).**

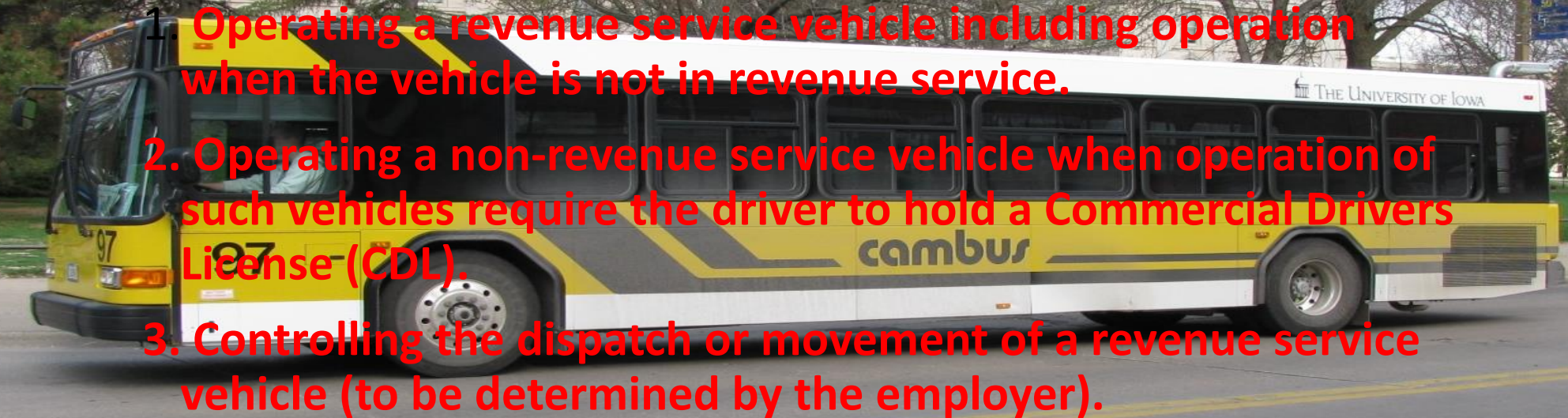
Applicable Regulations

- **49 CFR Part 29 – Drug Free Workplace act of 1988.**
- **49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs.**
- **49 CFR Part 655 (as amended) – Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations – Operator’s that receive FTA Section 5307, 5309, or 5311 funding.**
- **49 CFR Part 382 – Controlled Substances and Alcohol use and Testing – Federal Motor Carrier Safety Administration (FMCSA). Operator’s that don’t receive FTA operating assistance funding that have vehicles that require the driver to have a Commercial Driver’s License (CDL).**

Drug Free Workplace Act Requirements

- Publish statement prohibiting the use/abuse of controlled substances in the workplace;
- Establish an on-going drug free awareness program;
- Provide each employee a copy of the employer's substance abuse policy;
- Employee notifies the employer within 5 days of his/her criminal drug statue conviction for a violation occurring in the workplace;
- The appropriate agency (FMCSA, FTA) must be notified within 10 days and the employer must take appropriate action against a convicted employee within 30 days of the conviction.

FTA Safety Sensitive Functions



1. Operating a revenue service vehicle including operation when the vehicle is not in revenue service.
2. Operating a non-revenue service vehicle when operation of such vehicles require the driver to hold a Commercial Drivers License (CDL).
3. Controlling the dispatch or movement of a revenue service vehicle (to be determined by the employer).
4. Maintaining a revenue service vehicle or equipment used in revenue service.
5. Carrying a firearm for transit security purposes.

FTA Safety Sensitive Functions continued

Volunteers

1. The volunteer is required to hold a commercial drivers license to operate the vehicle; or
2. The volunteer performs a safety-sensitive function for an entity subject to these provisions and receives remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity.

FMCSA Safety Sensitive Functions

- All time at an employer or shipper plant, terminal, facility or other property, or any public property waiting to be dispatched unless the driver has been relieved from duty by the employer.
- All time inspecting equipment as required by 49 CFR Parts 392.7 and 392.8 or otherwise inspecting, serving or conditioning any commercial vehicle at any time.
- All time spent at the driving controls of a commercial vehicle in operation.
- All time other than driving time, in or upon any commercial motor vehicle except time resting in a sleeper berth (a berth conforming to requirements of 49 CFR Part 393.76).

FMCSA Safety Sensitive Functions continued

- All time loading and unloading a vehicle, supervising or assisting in the loading and unloading, attending a vehicle being loaded or unloaded, remaining in readiness to the vehicle, or giving or receiving receipts for shipments loaded or unloaded.
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

Education and Training

- Display and distribution to every covered employee of informational material and a community service hot-line telephone number for employee assistance if available.
- Covered Employees under the FTA must receive 60 minutes of training on the effects of alcohol misuse and prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.



Education and Training continued

- Covered Employees under the FMCSA must receive written materials concerning the effects and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected including confrontation, referral to any employee assistance program and or referral to management.
- Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral and performance indicators of probable drug use, and at least 60 minutes of training on the physical, behavioral, speech and performance indicators of probable alcohol misuse.

Education and Training Continued

- Company Policy on use of prescription and over the counter medication.
- Other on Going Awareness Training:
 - Posters in common areas such as break rooms on the effects of alcohol and drugs.
 - Brochures available on treatment centers.
 - Employee Assistance Program brochures available.



Preemption of State and Local Laws

- This part preempts any state or local law, rule, regulation, or order to the extent that:
 - Compliance with both the state or local requirement and requirement in this part is not possible;
 - Compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this part.
 - This part shall not be construed to preempt provisions of state criminal laws that impose sanctions for reckless conduct attributed to prohibited drug use or alcohol misuse leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

Drugs Tested For:

- **Marijuana**
- **Cocaine**
- **Opioids** (Narcotics such as heroin, morphine, and codeine, as well as
Hydrocodone: Brand Names- Norco, Vicodin, Lortab;
Hydromorphone: Brand Names- Dilaudid, Exalgo;
Oxycodone: Brand Names- Oxycontin, Roxicodone, Percocet;
Oxymorphone: Brand Names- Opana)
- **Phencyclidine (PCP)**
- **Amphetamines**



Initial Cut off Levels

- Marijuana metabolites (THCA): 50 ng/ml
- Cocaine metabolites: 150 ng/ml
- Codeine/Morphine*: 2000 ng/ml
- Hydrocodone/Hydromorphone: 300 ng/ml
- Oxycodone/Oxymorphone: 100 ng/ml
- 6-Acetylmorphine: 10 ng/ml
- Phencyclidine: 25 ng/ml
- Amphetamines**
 - AMP/MAMP***: 500 ng/ml
 - MDMA/MDA****: 500 ng/ml

* Morphine is the target analyte for codeine/morphine testing.

** Either a single initial test kit or multiple initial test kits may be used provided the single use test kit detects each target analyte independently at the specified cutoff.

*** Methamphetamine is the target analyte amphetamine/methamphetamine testing.

**** Methylendioxyamphetamine(MDMA)

Confirmation Cutoff Levels

- Marijuana metabolites
Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA): 15ng/ml
- Cocaine metabolites
Benzoylecgonine: 100ng/ml
- Opiate Metabolites
Morphine: 2000ng/ml
Codeine: 2000ng/ml
Hydrocodone/Hydromorphone: 100ng/ml
Oxycodone/Oxymorphone: 100ng/ml
6-Acetylmorphine: 10ng/ml
- Phencyclidine: 25ng/ml
- Amphetamine: 250ng/ml
- Methamphetamine*: 250ng/ml
- MDMA: 250ng/ml
- MDA (Methylenedioxyamphetamine): 250ng/ml

* To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/ml

Prohibited Behavior

- Consumption of prohibited drugs at all times.
- Consumption of alcohol while on duty.
- Consumption of alcohol for all covered employees reporting for duty or remaining on duty requiring the performance of safety-sensitive functions if such consumption will result in an alcohol concentration of 0.02 or greater.
- Consumption of alcohol 4 hours prior to duty.
- Consumption of alcohol within 8 hours following an accident or during on call hours.

Testing Categories

- Pre-employment
- Random
- Post Accident
- Reasonable Suspicion
- Return to Duty
- Follow Up

Pre-Employment Testing

Purpose:

To identify those applicants who have consumed a prohibited substance or misused alcohol in the recent past and as such, exhibit a high risk behavior that has the potential to impact the workplace and may present an unacceptable safety risk.

Who:

- All applicants for safety sensitive positions.
- All transfers into safety sensitive positions.
- All employees on any type of leave more than 90 days, and the employee has not been in the employer's random selection pool during that time.

All applicants and current employees transferring into safety sensitive positions cannot perform safety sensitive functions until the employer receives a verified negative drug test result.

Pre-Employment Testing Exceptions under FMCSA

- If the driver has participated in a qualified drug and alcohol testing program that meets the requirement of 49 CFR Part 382 and 40 within the previous 30 days and while participating in that program.
- Was drug tested within the past six (6) months (from the date of application with the employer).
- Has participated in a random drug and alcohol testing program for at least (12) months (from date of application with the employer).
- Employer must ensure that no previous employer of the driver of whom the employer is aware of has records of a violation of 49 CFR Part 382 of the drug and alcohol testing rule of any other DOT agency within the previous six (6) months.
- If the employer cannot verify the above information, the employer shall conduct a pre-employment test on the driver.

Random Testing

- Random Testing serves as a very strong deterrent for safety sensitive employees beginning or continuing prohibited drug use or alcohol misuse.
- Random testing can be used to detect drug and alcohol use for the purpose of removing identified users from safety sensitive positions.

Statutory Requirements: VANDALIA BUS LINES

- 50% of all safety sensitive employees must be tested annually for drugs under the FTA Mode.
- 25% of all safety sensitive employees must be tested annually for drugs under FMCSA Mode.
- 10% of all safety sensitive employees must be tested annually for alcohol under FTA and FMCSA Modes.
- Testing must be spread throughout the year.
- These rates may be increased to ensure unpredictability.

Random Testing continued

- Selections must be made by a scientific valid method.
- Each employee must have an equal chance of being selected each draw.
- Testing must be unannounced.
- Testing must occur immediately after notification.
- Drugs may be tested for anytime an employee is on duty.
- Alcohol may be tested for immediately prior to the performance, during the performance or immediately following the performance of a safety sensitive function.

Random Testing continued

EXHIBIT RANDOM DRUG & ALCOHOL TESTING SCATTER SHEET														
TIME OF TEST														
12:00 A.M.							X							
11:00 P.M.														
10:00 P.M.														
9:00 P.M.														
8:00 P.M.														
7:00 P.M.														
6:00 P.M.														
5:00 P.M.				X										
4:00 P.M.									X					
3:00 P.M.														
2:00 P.M.														
1:00 P.M.														
12:00 P.M.														
11:00 A.M.	X													
10:00 A.M.														
9:00 A.M.														
8:00 A.M.														
7:00 A.M.														
6:00 A.M.										X				
5:00 A.M.														
4:00 A.M.														
3:00 A.M.														
2:00 A.M.						X								
1:00 A.M.														
DAY	SUN	MON	TUES	WED	THURS	FRI	SAT	SUN	MON	TUES	WED	THURS	FRI	SAT
DATE				10/01/03			10/11/03		10/13/03	10/21/03				
DATE	10/26/03				10/28/03									

Post Accident Testing

- An occurrence associated with the operation of a vehicle, whether or not the vehicle is in revenue service.
- Fatality (Testing is mandatory).
- Anytime an individual requires medical treatment away from the scene of the accident.
- If one or more vehicles receives disabling damage and has to be towed away from the scene of the accident.
- On non fatal accidents, the decision to test is based on whether or not the covered employee contributed to the accident based on the best available information at the time – FTA Mode.
- If a driver receives a citation for a moving traffic violation for the above type of non fatal accidents – FMCSA mode.

Post Accident Testing continued

- All surviving covered employees on duty in the vehicle at the time of the accident.
- Any other covered employees whose performance could have contributed to the accident.
- Use Post Accident Decision making form to determine if a post accident drug and alcohol test has to be conducted.
- The decision to test will be based on the best available information at the time of the determination.
- The requirement to perform testing should in no way delay the necessary medical attention or interfere with a law enforcement investigation.
- Employees subject to testing must remain readily available for testing which means notifying the employer of their location at all times if they leave the scene prior to being tested.

Post Accident Testing continued

- If the alcohol test is not administered within two (2) hours after the accident occurred, it must be documented as to the reason(s) why it was not administered within this time frame.
- If an alcohol test is not administered within eight (8) hours, the employer shall cease attempts to administer the alcohol test, and you must document the reason(s) why the test was not administered within this time frame.
- The drug test is to be administered as soon as practicable, but no later than thirty two (32) hours after the accident.

Post Accident Testing continued

- The results of a blood , urine or breath test for the use of prohibited drugs or alcohol misuse conducted by Federal, State, or local officials having independent authority for the test shall meet the requirements of post accident testing provided the such test conforms to the applicable Federal, State or local testing requirements and the test results are obtained by the employer.



Post Accident Decision Making Form

POST-ACCIDENT SUBSTANCE ABUSE TESTING DECISION MAKER

Accident Information Accident Report Number: _____

Operator's Name: _____ Badge #: _____ Division: _____

Date of Accident: _____ Time of Accident: _____ Bus #: _____

Location of Accident: _____ City: _____

Date of Breath/Alcohol Test: _____ Time of Breath/Alcohol Test: _____

Date of Drug Test: _____ Time of Drug Test: _____

Brief Description of Accident: _____

Decision Questions

Was there a fatality? Yes _____ No _____ If yes, Post-Accident testing required.

If the accident was non-fatal and involved a transit vehicle (bus, van, automobile, and trolley bus), ask the following questions:

1. Has any individual suffered a bodily injury and immediately received medical treatment away from the scene of the accident? Yes _____ No _____
2. Did any vehicle involved incur disabling damage and transported away from the scene by a tow truck or any other vehicle? Yes _____ No _____

If "yes" is checked for questions 1 or 2, a Post-Accident Drug and Breath/Alcohol test is required unless it is determined, using the best information available at the time of the decision, that the employee's performance can be completely discounted as a contributing factor to the accident.

3. If either questions 1 or 2 were answered "yes" and a test was not conducted, please give reasons why:

4. Did the alcohol test occur more than two hours from the time of the accident? Yes _____ No _____
If Yes, explain:

5. If no alcohol test occurred because more than eight hours elapsed from the time of the accident, please explain:

6. Did the employee leave the scene of the accident without just cause? Yes _____ No _____
If Yes, explain:

7. If no drug test was performed because more than 32 hours passed since the time of the accident, explain why:

Authorized Signature: _____ Date: _____

Reasonable Suspicion Testing

Purpose:

To provide management with a tool to identify drug or alcohol affected employees who may pose a danger to themselves and others in their performance of safety sensitive functions.

An employee is reasonably suspected of prohibited drug use or alcohol misuse when one train supervisor can:

- Substantiate specific behaviors, speech, or body odors that may indicate drug use or alcohol misuse.
- Identify job performance problems that may indicate prohibited drug use or alcohol misuse; and
- Actually observes physical indications that prohibited drug use or alcohol misuse may be occurring.

Reasonable Suspicion continued

- Reasonable suspicion determination cannot be based on heresy, it must be based on contemporaneous, articulable observations.
- If the alcohol test is not administered within two (2) hours after the observation occurred, it must be documented as to the reason(s) why it was not administered within this time frame.
- If an alcohol test is not administered within eight (8) hours, the employer shall cease attempts to administer the alcohol test, you must document the reason(s) why the test was not administered within this time frame.
- The drug test is to be administered as soon as practicable, but no later than thirty two (32) hours after the observation.
- Document Reasonable Suspicion Referrals.

Reasonable Suspicion Form

CONDITION OF SAFETY SENSITIVE REPORT FOR REASONABLE SUSPICION TESTING FOR DRUGS AND/OR ALCOHOL

Section 1

Employee Name: _____
 Employee Job Title: _____ Division/Work Unit: _____
 Date of Observation: _____ Time: _____ am/pm
 Location: _____ Employee performing safety-sensitive duties? Yes or No

Section 2 Observations: Check ALL that apply

- | Behavior | Appearance | Speech |
|---|--|---|
| <input type="checkbox"/> stumbling, unsteady gait | <input type="checkbox"/> flushed complexion | <input type="checkbox"/> slurred, thick |
| <input type="checkbox"/> drowsy, sleepy, lethargic | <input type="checkbox"/> sweating | <input type="checkbox"/> incoherent |
| <input type="checkbox"/> agitated, anxious, restless enunciation | <input type="checkbox"/> cold, clammy, sweats | <input type="checkbox"/> exaggerated |
| <input type="checkbox"/> hostile, withdrawn | <input type="checkbox"/> bloodshot eyes | <input type="checkbox"/> loud, boisterous |
| <input type="checkbox"/> unresponsive, distracted pressured | <input type="checkbox"/> tearing, watery eyes | <input type="checkbox"/> rapid, |
| <input type="checkbox"/> clumsy, uncoordinated talkative | <input type="checkbox"/> dilated (large) pupils | <input type="checkbox"/> excessively |
| <input type="checkbox"/> tremors, shakes, silly | <input type="checkbox"/> constricted (pinpoint) pupils | <input type="checkbox"/> nonsensical, |
| <input type="checkbox"/> flu-like illness complaints speech | <input type="checkbox"/> unfocused, blank stare | <input type="checkbox"/> cursing, inappropriate |
| <input type="checkbox"/> suspicious, paranoid | <input type="checkbox"/> disheveled clothing | |
| <input type="checkbox"/> hyperactive, fidgety | <input type="checkbox"/> unkempt grooming | Body Odor |
| <input type="checkbox"/> frequent use of mints, mouthwash, breath sprays, eye drops | | <input type="checkbox"/> alcohol |
| <input type="checkbox"/> inappropriate, uninhibited behavior | | <input type="checkbox"/> marijuana |

Section 3

The observations, are documented above, were made of the employee identified in Section 1.

 Supervisor's Name (Printed or typed) Signature
 Date

Additional Witness:

 Witness' Name (Printed or typed) Signature
 Date

Section 4 Test Determination:

- | | |
|---|--|
| <input type="checkbox"/> reasonable suspicion alcohol breath test | <input type="checkbox"/> no test conducted |
| <input type="checkbox"/> reasonable suspicion drug urine test | <input type="checkbox"/> 8 hours elapsed |
| <input type="checkbox"/> no test required | <input type="checkbox"/> no collection available |
| <input type="checkbox"/> employee refused test | <input type="checkbox"/> employee transported for medical care |
| <input type="checkbox"/> other (explain) _____ | |

Section 5 Drug/Alcohol Test Administered

Breath/alcohol test Date: _____ Pass or Fail
 Drug test Date: _____ Pass or Fail

Additional notes:

Return to Duty Testing

Purpose:

To provide a degree of assurance to the employer that the individual is presently drug and alcohol free and is able to return to work without undue concern of continued drug abuse or alcohol misuse.

Following a positive drug or alcohol test, that individual may not be allowed to perform safety sensitive duties until:

- They have been assessed by an SAP.
- They have a negative return-to-duty test.
- Mandatory observed collection conducted for all return-to-duty tests.

Follow Up Testing

Purpose:

To motivate employees to remain drug and alcohol free after returning to duty following a positive test and to provide employers with an assurance that the person has not resumed drug use or alcohol misuse.

Tests must be:

- Unannounced.
- A minimum of six tests within 12 months following a positive can go from 12 months to 60 months.
- Frequency and duration is determined by the SAP.
- Mandatory Observed collections conducted for all follow-up tests.
- No other type of drug and/or alcohol test can be substituted for a follow up test.

Refusals to Test

- Failure to appear in a reasonable time, except pre-employment tests.
- Failure to remain at the collection site until the testing process is complete.
- Failure to provide a breath and/or urine specimen.
- Failure to provide a sufficient breath and/or urine specimen with no medical explanation.
- Failure to undergo a medical evaluation as required by a MRO or DER.
- Failure to cooperate with any part of the testing process (e.g. refuses to empty pockets when directed by the collector, behaves in a confrontational way that disrupts the collection process, fails to wash hands after being directed to do so by the collector).
- Fails to permit monitoring or direct observation.

Refusals to Test continued

- For an observed collection, fails to follow the observer's instructions to raise his/her clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possesses or wears prosthetic or other device that could interfere with the collection.
- Fails to take a second test as directed by the collector or employer.
- Admits to collector or MRO that employee substituted or adulterated the specimen.
- Has a MRO verified adulterated or substituted test result.

Drug and Alcohol Testing Procedures

A statement that all drug and alcohol testing will be conducted in accordance with 49 CFR Part 40.

- Requirements that covered employees submit to drug and alcohol tests in accordance with 49 CFR Part 655 – FTA.
- Requirements that covered employees submit to drug and alcohol tests in accordance with 49 CFR Part 382 – FMCSA.
- If both drug and alcohol tests are conducted, alcohol testing should be administered first.
- Optional-Detailed procedures of how the testing will be conducted to protect the employee and the integrity of the drug and alcohol process.
- Optional – Procedures that will be used to safeguard the validity of the test results and ensure test results are attributed to the correct employee.

Collection Sites

- On-Site Mobile Collectors
 - + Takes less time away from work
 - + Employee can be better supervised after notification to test before collection takes place
 - + Collectors are generally more knowledgeable and experienced in DOT collection procedures
 - + Availability in “off-business hours”
 - + Easier interaction with management personnel if problems/questions arise
 - + Bring collection supplies with them
 - More costly to employer than collections at fixed collection site
 - Reluctance to come to worksite for one or two drug tests?
 - Toilet enclosure/collection area at worksite may not meet minimum standards and require considerable prep by collector
 - May not have readily available person to observe specimen collection when necessary and donor is opposite gender of mobile collector

Collection Sites continued

- Off-Site Fixed Collection Sites

- + Published hours of operations and appointment or walk-in requirements
- + Toilet enclosure/collection area dedicated to workplace drug test collections
- + Less expensive per collection than mobile/on-site collections
- + Multiple staff available to assist, particularly if direct observation is needed
- + Many fixed collection sites are eCCF enabled
- Limited hours for specimen collection, especially for 24/7 transit operations
- Collectors may not be as well trained and experienced in DOT procedures if collection is not their primary duty at facility
- May not have evidential breath alcohol testing capability
- May have policy prohibiting direct observation during collection
- May be unwilling to store CCFs at the site for clients

Consequences for Positive Drug and Alcohol Tests

- Positive drug test result (including pre-employment).
- Breath alcohol concentration (BAC) 0.02 or greater, but less than 0.04.
 - Out of safety sensitive functions until BAC less than 0.02 or start of the next scheduled duty period, but not less than 8 hours following the test under FTA mode.
 - Out of safety sensitive functions until BAC less than 0.02 or start of the next scheduled duty period, but not less than 24 hours following the test under FMCSA mode.
- BAC 0.04 or greater.
- Refusal to test.
 - Immediate removal of employee from safety-sensitive functions.
 - Refer to SAP for assessment, regardless of eligibility for reinstatement or hire.

Consequences for Positive Drug and Alcohol Tests continued

- State who pays for evaluations, education and/or treatment, return to duty and follow up testing.
- Follow transit system disciplinary policy.
- Additional policies or consequences clearly described as being based on independent authority.



Records Management

- Records should be maintained in a secure location with controlled access.
- All drug and alcohol testing files must be kept in a locked file cabinet.
- Records must be kept separate from medical and personnel records.
- Only the Designated Employee Representative (DER) and Alternate DER shall have access to these files.
- The file folders can be individual employee folders or by year and type of test.
- MIS reports must be submitted to the regulatory agency by the deadline.
- All records must be kept for the duration of time according to 49CFR Part 40.

Disclosure

The confidentiality of drug testing information is a critical concern of all employees.

Inadvertent disclosure of the names of employees who were tested and their test results may result in legal action.

Test results may be released only to:

- Employee, if requested in writing.
- DOT agency or state authorized representative.
- National Transportation Safety Board requests as part of accident investigation.
- Subsequent employers, if requested in writing by the employee.
- Other identified persons as requested in writing by the employee.

Disclosure continued

- Decision-maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee and arising from the result of a drug or alcohol test administered under FMCSA and FTA's rules.



Vendor Oversight

- Collection Site
- Laboratories
- Medical Review Officer
- Substance Abuse Professional
- Consortium/Third Party Administrator



Any Questions?

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