

## Alcohol and Drug Testing of Employees with a Commercial Driver's License

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### Background

Employers are responsible for implementing and conducting the testing programs. They may do this by using their own employees, by using contract services, or by joining together in a consortium that provides services to all member companies.

### Prohibitions on Drug and Alcohol Use and Possession

Federal regulations provide that no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 BAC (blood-alcohol concentration) or greater. Safety-sensitive functions are defined as those functions listed in 49 CFR 395.2(1) through (7), including time spent driving, loading and unloading, performing vehicle inspections, waiting to be dispatched, etc. In addition, no management official having actual knowledge that a covered employee has a BAC of 0.02 or greater shall permit the covered employee to perform any safety-sensitive functions. Further, a driver may not possess alcohol while on duty or while operating a commercial motor vehicle. This includes possession of any medication containing alcohol.

The regulations prohibit a covered employee from using alcohol while performing safety-sensitive functions or within four hours prior to performing safety-sensitive functions. A driver may not use alcohol within eight hours following an accident, or until the driver takes an alcohol test, whichever comes first. The use of overtime can be authorized as per company policy to ensure compliance if necessary.

A covered employee may not report for duty or remain on duty requiring the performance of safety-sensitive functions when the employee uses any controlled substance, except when he or she is under a doctor's care and the doctor advises the employee in writing that the substance does not adversely affect the driver's ability to operate a commercial motor vehicle safely. This documentation must be retained in the driver's medical folder for five years.

# Required Testing

## Pre-employment Testing

Pre-employment testing is confined to drug testing only and is conducted before applicants are hired or after an offer to hire, but drug testing is also required when an employee transfers to a safety-sensitive position from a non-safety-sensitive position. A negative drug test must be on file prior to the performance of safety sensitive duties.

## Post-accident Alcohol and Controlled Substances Testing

The regulations state that within two (2) hours following an accident the driver of the vehicle shall be tested if any one of the following conditions are met:

- The accident involved a fatality
- The driver received a citation under state or local law for a moving violation arising from the accident and the accident involved an injury requiring treatment away from the scene
- The driver received a citation under state or local law for a moving violation arising from the accident and the accident involved the towing of any vehicle.

If any of the above conditions occur, the supervisor shall immediately require the driver to report to the designated medical testing facility for an alcohol and drug test. The employee may be escorted to the testing site if conditions warrant.

## Reasonable Suspicion

Reasonable Suspicion drug and alcohol testing is conducted when a trained management personnel observes that the behavior or the appearance of a safety-sensitive employee is characteristic of and consistent with drug and/or alcohol usage. Management will use the Reasonable Suspicion Testing Checklist as an aid in determining if such testing is justified.

**NOTE:** If testing is warranted, immediately escort the employee to the designated medical testing facility. This action will ensure the safety of the employee, the co-workers, and the general public.

## Random Alcohol and Drug Testing

The employee is randomly selected for testing from a "pool" of all affected employees subject to testing. The testing dates and times are unannounced and are scheduled with unpredictable frequency throughout the year.

## Return-to-duty and Follow-up Testing

In order to return to duty, a negative test result is required when an individual who has violated the prohibited alcohol conduct standards desires to return to work. Return-to-duty testing resulting in a negative test is also one of the requirements for returning to duty following a positive drug test. Follow-up testing is required in both instances as recommended by the Substance Abuse Professional (SAP). Follow-up tests are unannounced and at least six tests must be conducted in the first twelve months after a driver returns to duty. Follow-up testing may be extended for up to sixty months following return to duty.

## **Alcohol and Drug Testing Procedures**

### **Alcohol Testing**

Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted. The confirmation test, if required, must be conducted using an EBT that prints out the results, dates and time, a sequential test number, and the name and serial number of the EBT.

### **Drug Testing**

Drug testing is conducted by analyzing an employee's urine specimen. The employee provides a urine specimen in a location that affords privacy. Certified Collectors seal and label the specimen and accompanying paperwork for shipment to a drug-testing laboratory. The Omnibus Act requires that drug testing of employees include split specimen. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Both bottles are sent to the laboratory. If the Analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee has seventy-two hours to request the split specimen be sent to another DHHS certified laboratory for analysis.

## **Sanctions For Violation of the Rules**

### **Alcohol**

Covered employees who violate alcohol prohibitions must be immediately removed from safety - sensitive functions. Covered employees who have a positive alcohol test in excess of 0.04 BAC cannot return to safety-sensitive duties until they have been evaluated by a substance abuse professional (SAP), have complied with any recommended treatment, have passed a re-evaluation by the SAP, have passed an evaluation by the Medical Review Officer (MRO), and have passed a return-to-duty alcohol test. Follow-up testing to monitor the employee's abstinence from alcohol use will be required. Covered employees who have any alcohol concentration (defined as 0.02 - 0.039) when tested just before, during, or just after performing safety-sensitive functions must also be removed from performing such duties for twenty-four hours.

### **Drugs/Controlled Substances**

As with an alcohol misuse violation, a covered employee must be removed from safety-sensitive duty if he or she has a positive drug test result. An employee cannot return to safety-sensitive duties until he or she has been evaluated by a substance abuse professional (SAP) and the MRO, complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the employee's continued abstinence from drug use will be required.

## Record Keeping

### Release of Information

The Employer may not release information on a driver's testing record to any other party without written permission from the driver. The rules provide that a prior employer must make these records available to a subsequent employer upon receipt of a written request from a driver.

### Reasonable Suspicion Testing Checklist

1. Must order a reasonable suspicion test if one of the following is observed during the course of duty.
  - I smelled what I know to be the smell of alcoholic beverages on the covered employee.
  - The covered employee was sleeping on the job.
  - The covered employee struck another person.
  - The covered employee struck company equipment/vehicle with an object (e.g., stick, wrench), or intentionally damaged or destroyed company equipment/vehicle.
  - The covered employee was driving a vehicle or operating machinery erratically (e.g., weaving on the road, speeding, hitting objects with the vehicle, not following safety rules, etc.)
  - The covered employee swayed back and forth when standing still; had to catch his balance repeatedly.
  - The covered employee weaved or had to continually catch balance when walking.
  - Other (please specify) \_\_\_\_\_
  
2. Must order a reasonable suspicion test if two or more of the following are observed during the course of duty.

The covered employee:

- Refused to respond when spoken to.
- Yelled at people for no reason
- Was constantly arguing with co-workers
- Made persistent errors on the job (described in comment section below).
- Other (please specify) \_\_\_\_\_

## **Record Keeping – Continued**

### **Notification of a Positive Alcohol Test at 0.02 BAC and Above But Less than 0.04 BAC**

The employee will be advised that he or she may not perform any safety-sensitive duties for a period of at least twenty-four hours from the time of manager notification. The employee should be further notified that before the beginning of the next duty shift after the twenty-four hour period, the employee must pass an alcohol test. Failure to pass a return-to-duty alcohol test after the twenty-four hour period (continuing to test at 0.02 or above) will result in a mandatory referral to the Substance Abuse Professional (SAP) for an evaluation.

### **Notification of Positive Alcohol Test at 0.04 BAC and Above**

The supervisor should immediately inform the employee that he or she is placed in an "emergency, off-duty status.

Following any necessary investigation, the supervisor will determine what additional action should be taken according to Company policy.

### **Notification of a Positive Drug Test Following Random, Reasonable Suspicion or Post Accident Testing.**

Management has the employee contact the MRO as soon as possible. The MRO informs the employee that he or she has tested positive for drugs and determines if there is a medical reason for the positive test. If there is a medical reason the tests counts as a negative test. If there is not a medical reason, the MRO informs the employee of the employee's right to appeal the drug test with a split specimen test. Under the law, employee notification of the drug test result will be in writing and the employee has 72 hours to request a split specimen test.

Management will immediately place the employee on "emergency, off-duty status.

Following any necessary investigation, the supervisor will determine what additional action should be taken according to Company policy.