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DRIVING UNDER THE INFLUENCE – OR NOT?
(DRUGS, ALCOHOL AND TRANSPORTATION)

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Overview of Drug and Alcohol Rules for Employers

What Employers Need to Know

The United States Congress recognized the need for a drug and alcohol free transportation industry, and in 1991 passed the Omnibus Transportation Employee Testing Act, requiring DOT Agencies to implement drug and alcohol testing of safety-sensitive transportation employees. 49 CFR Part 40, or Part 40 as we call it, is a DOT-wide regulation that states how to conduct testing and how to return employees to safety-sensitive duties after they violate a DOT drug and alcohol regulation. Part 40 applies to all DOT-required testing, regardless of mode of transportation. For example, whether you are an airline covered by FAA rules or a trucking company covered by FMCSA rules, Part 40 procedures for collecting and testing specimens and reporting of test results apply to you. Each DOT Agency-specific regulation spells out who is subject to testing, when and in what situations for a particular transportation industry.

The DOT, along with FMCSA, adopted regulations requiring commercial motor vehicle (CMV) operators required to maintain a commercial driver's license (CDL) to be tested for alcohol and drugs. While you can hire various service agents to collect specimens, conduct laboratory analyses, medically review lab results and determine test outcomes; you cannot delegate your responsibility to comply with all applicable requirements and procedures of 49 CFR Part 40 and Part 382. This means that you are

http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/overview-drug-and-alcohol-rul...
responsible for all actions of your employees, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.

Employers can be held responsible for service agent errors and resulting civil penalty actions for noncompliance. Service agent violations may be directly addressed under the public interest exclusion (PIE) as described in 49 CFR Part 40 Subpart R. Additionally under the Safe Roads Act of 2012, Congress provided authority for civil penalty actions against service agents (49 USC 31306a) [Moving Ahead for Progress in the 21st Century Act ("MAP-21": P.L. 112-141)].

This web site is intended to provide you with the basic information necessary to implement a DOT drug and alcohol testing program. It offers you many answers to questions that have been raised by employers trying to implement DOT testing programs, but it will not answer all of them. For those, we'll provide you with additional resources to give you what you need to be successful.

- When are tests administered?
- Which substances are tested?
- What are the testing procedures?
- What if my driver fails or refuses a test?
- What are my training responsibilities?
- What resources are available to employers?

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Who do I test?

What Employers Need to Know

Generally, all CDL drivers who operate commercial motor vehicles subject to the CDL requirements on public roads in the U.S. are performing safety-sensitive functions and are subject to DOT drug and alcohol testing (§382.103). This includes all full-time, part-time, intermittent, backup and international drivers.

When are tests administered?

DOT drug and alcohol tests include:

• Pre-employment – An employer must receive a negative drug test result before permitting a CDL driver to operate a CMV (§382.301).
• Post-accident – Drug and alcohol tests may be required after crashes according to the following chart (§382.303):

<table>
<thead>
<tr>
<th>Type of Accident Involved</th>
<th>Citation Issued to the CMV Driver</th>
<th>Test Must Be Performed by Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Fatality</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Human Fatality</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Bodily Injury With Immediate Medical Treatment Away From the Scene</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Bodily Injury With Immediate Medical Treatment Away From the Scene</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Disabling Damage to Any Motor Vehicle Requiring Tow Away</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Disabling Damage to Any Motor Vehicle Requiring Tow Away</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

- **Random** – CDL drivers must be randomly tested throughout the year (§382.305); an employer who employs only himself/herself as a driver, who is not leased to a motor carrier, shall implement a random testing program of two or more covered employees in the random testing selection pool as a member of a consortium (see §382.305 interpretation 11).

- **Reasonable suspicion** – Drivers who appear to be under the influence of drugs or alcohol can be immediately tested (§382.307). You need to train CDL driver supervisors to detect the symptoms of driver impairment (§382.603).

- **Return-to-duty** – Required for drivers who tested positive, refused, or otherwise violated the prohibitions of 49 CFR Part 382 Subpart B; and who have completed the return-to-duty process with a DOT-qualified substance abuse professional. This test is directly observed, and a negative result is required before resuming driving duties (§382.309 and §40.305).

- **Follow-up** – Required for drivers who tested positive, refused, or otherwise violated the prohibitions of 49 CFR Part 382 Subpart B; and who have completed the return-to-duty process with a DOT-qualified substance abuse professional, and have tested negative for a return-to-duty test. This testing is prescribed by the substance abuse professional for a minimum of 6 directly observed tests in 12 months, but can be extended an additional four years (§382.311 and §40.307).

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What Substances Are Tested?

What Employers Need to Know

DOT drug tests require laboratory testing (49 CFR Part 40 Subpart F) for the following five classes of drugs:

- Marijuana
- Cocaine
- Opiates – opium and codeine derivatives
- Amphetamines and methamphetamines
- Phencyclidine – PCP

Drug cutoff concentrations can be found on the Substance Abuse and Mental Health Services Administration Web site.

DOT alcohol tests identify alcohol concentration of 0.02 and greater.

NOTE REGARDING NON-DOT TESTING: DOT does not prohibit motor carrier employers from instituting a "company authority" testing program that is in addition to, and distinct from, the

http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/what-substances-are-tested
required DOT testing program. Under such non-DOT programs, employers could test for other drugs.
DOT also does not prohibit employers from using tests of non-urine specimens under a non-DOT
program. DOT regulations at §382.601 provide that employer materials supplied to drivers may
include information on additional employer policies with respect to the use of alcohol or controlled
substances, including any consequences for a driver found to have a specified alcohol or controlled
substances level, that are based on the employer's authority independent of this part. Any such
additional policies or consequences must be clearly and obviously described as being based on the
employer's independent authority.

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The DOT drug and alcohol testing procedures are extensive and can be found in 49 CFR Part 40 Subpart E and Part 40 Subpart L, respectively. It is important for employers to know the testing process in order to ensure proper procedures are followed to protect the interests of the company and their drivers. An employer handbook titled What Employers Need to Know about DOT Drug and Alcohol Testing is available on the U.S. DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) Web site. The employer handbook provides valuable information on program policies and assigning responsibilities, selection of service agents and their roles, employee and supervisor training and education, employer actions when employees violate rules and recordkeeping and data collection requirements and program compliance and audits.

In addition to the employer handbook, an employee handbook is available on the ODAPC Web site. To facilitate employers obtaining information on how urine and alcohol tests are administered to ensure the validity of testing as well as provide confidentiality of the employees’ testing information, we recommend reviewing the employee handbook.

http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/testing-procedures
To further facilitate employers obtaining knowledge of proper testing procedures, we recommend the mock collection instructional video offered on the ODAPC web site.

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http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/testing-procedures
What if my driver fails or refuses a test?

What Employers Need to Know

A driver fails a drug or alcohol test by testing positive to a drug test, or registering a 0.04 or greater alcohol content. Either of these results requires the driver to be immediately removed from performing safety-sensitive functions (i.e., driving CMVs) until successful completion of the return-to-duty process with a DOT-qualified substance abuse professional.

A driver's refusal to submit to a drug or alcohol test is generally equivalent to testing positive to a drug or alcohol test. The driver must immediately be removed from performing safety-sensitive functions (i.e., driving CMVs) until successful completion of the return-to-duty process with a DOT-qualified substance abuse professional. The DOT regulations outline refusals to test for drugs and alcohol. Some refusals are determined by medical review officers (49 CFR Part 40 Subpart G) and alcohol technicians (49 CFR Part 40 Subpart N). For others, the determination is your responsibility. Refusals to submit to a drug or alcohol test are defined in 49CFR 382.107. You must base your decisions on the DOT instructions and NOT on personal opinions about whether the employee is a long-time reliable worker; has ever tested positive or refused a test; was correctly selected for the test; or claims to have misunderstood the collector's instructions to remain at a collection site, among others. The employer handbook available on the ODAPC Web site provides a list of Part 40 refusals and the

http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/what-if-my-driver-fails-or-refu...
Instructions for handling them. It is, therefore, critical to understand the specific circumstances that define a refusal. These can be found in 540.191, 540.261 and 6382.107.

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What are my employee and supervisor training responsibilities?

What Employers Need to Know

FMCSA controlled substance and alcohol testing regulations are in place to protect the safety of the traveling public. Public safety is best served if drivers are aware of the effects of alcohol and controlled substances on health, safety, and the work environment. Educating drivers and training supervisors are essential for these programs to be effective, and employers are required to provide educational materials for drivers and training for supervisors prior to the start of testing (§382.601 and §382.603, respectively).

The FMCSA regulations require that you develop a written policy on controlled substances use and alcohol misuse in the workplace and that the policy be provided to every driver. §382.601 identifies the required content of the materials to be made available to each driver and requires the employer to maintain a statement signed by each employee certifying receipt of the policy/educational materials.

http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/what-are-my-employee-and-su...
Additionally, employers must provide training to all persons who supervise drivers subject to the regulations, in accordance with §382.603. The purpose of this training is to enable supervisors to determine whether reasonable suspicion exists to require a driver to undergo testing described in §382.307. It must include at least 60 minutes of training on alcohol misuse and 60 minutes on controlled substances use (120 minutes total).

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Employers Resources and Downloads

Employers seeking additional information on DOT drug and alcohol testing rules are encouraged to use the resources listed on this page.

Videos:

- DOT Mock Collection Instructional Video
- DOT’s 10 Steps to Collection Site Security and Integrity Video

Brochures & Guides:

- Drug and Alcohol Testing Brochure for Drivers
- Best Practices for DOT Random Drug and Alcohol Testing
- ODAPC’s Employee Handbook for DOT Drug and Alcohol Testing
- Implementation Guidelines for Alcohol and Drug Regulations

Additional Resources:

- DOT’s "Am I Covered?" Tool – Find out if you’re subject to drug and alcohol testing regulations.

http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/employers-resources-and-down...
• DOT 5-Panel Drug Testing Notice
• Moving Ahead for Progress in the 21st Century Act ("MAP-21": P.L. 112-141)
• DOT Direct Observation for All Return-to-Duty & Follow-Up Drug Testing Notice
• Federal Drug-Free Workplace Programs Web site
• Substance Abuse Program Administrators Association (SAPAA) Web site
• Drug and Alcohol Testing Industry Association (DATIA) Web site

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