

By Peter Gerstenberger

Driver Drug & Alcohol Testing

Skirting DOT compliance is a high stakes gamble that can result in sidelined trucks, drivers, or both. This article deals with an often misunderstood aspect of driver fitness – the need to test for drugs and alcohol. As an employer, you are responsible for meeting all applicable requirements and procedures, and you are held accountable for the actions of your employees, representatives and agents in carrying out DOT requirements.

The DOT's drug and alcohol testing rules cover drivers performing safety-sensitive functions. The types of drug tests required are: pre-employment; reasonable suspicion; post-accident; random; return-to-duty; and follow-up. Pre-employment alcohol testing is not required.

Some employers perform drug testing as part of their drug-free workplace programs. DOT tests must be completely separate from non-DOT tests in all respects. The samples, the results, even the forms cannot be shared between programs.

Most companies use a service agent to perform the tasks needed to comply with DOT agency drug and alcohol testing regulations. As the responsible party, you must ensure that the service agents you use meet DOT qualifications. You may require service agents to show you documentation. Your good faith use of a service agent is not a defense in an enforcement action in which your alleged noncompliance may have resulted from the service agent's conduct. A third-party agent cannot act as your designated employer representative.

Employees who fail drug tests still have rights. You are prohibited from laying off or firing employees who fail because they failed, except in certain situations where worker safety is threatened. Even then, you must obtain a waiver.

When you are notified of a positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report. Similarly, if the employee somehow cheats on the test,

you must consider this a refusal to test and immediately remove the employee from safety-sensitive functions. With an alcohol test result of 0.04 or higher, you must immediately remove the employee, and with a test result of 0.02—0.39, you must temporarily remove the employee. You can only return the offending employee to safety-sensitive tasks when they successfully complete a return-to-duty process.

New hires and employees transferred into safety-sensitive positions must provide written consent to be tested before being permitted to drive your CDL vehicles. Additionally, you must request records from DOT-regulated previous employers to cover the two years prior to the employee's application or transfer. If feasible, you must review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. You must maintain a written, confidential record of the



information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

If you are "the previous employer," you must maintain a written record of information released, and you must, after reviewing the employee's specific, written consent, immediately release information to the new employer.

When you are required to report data to a DOT agency, you must use a form and instructions provided by DOT for the purpose, and you must submit the report in accordance with rule requirements established by the DOT agency regulating your operation.

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