

Drug and Alcohol Testing in the Workplace

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Good afternoon, I'm Lamont Byrd, Director of the Safety and Health Department at the International Brotherhood of Teamsters. I want to discuss the very important topic of drug and alcohol testing in the workplace with you and to hopefully address any questions you may have regarding this matter. I'm not here to advocate for or against drug and alcohol testing in the workplace. The Teamsters Union represents over 500K workers who are subject to drug and alcohol testing either to comply with Federal regulations or as part of our collective bargaining agreements with employers in various industry sectors. My goal today, is to share with you, information that I've gained from working on these issues for over 25 years.

Why Drug and Alcohol Test?

- In 1986, as part of the “War on Drugs”, the Reagan Administration recommended that employers conduct drug testing.
- In 1988, to comply with the Drug-Free Workplace law, any company that received a contract with the Federal Government of \$25K or more must provide a Drug-Free Workplace
- In 1991, The Omnibus Transportation Employee Testing Act passed and required testing for workers in safety-sensitive jobs in aviation, trucking, railroads, mass transit, and pipelines.

Why Drug and Alcohol Test?

- Employers that have successful drug-free workplace policies report:
 - Improvements in morale and productivity
 - Decreases in absenteeism, accidents, down time, turnover, and theft
 - In some states, employers with drug-free workplace programs qualify for reduced costs for workers' compensation and other kinds of insurance

According to NIDA, there are benefits to having successful drug and alcohol testing programs. One of my goals is to provide you with information and issues that you should consider should your employer attempt to implement drug and alcohol testing programs.

Why Drug and Alcohol Test?

- As noted previously, since 1991, some transportation industry sectors require testing of workers who perform safety-sensitive job tasks.
- Many non-transportation employers also implemented testing programs in an effort to reduce on-the-job impairment.
 - 90% of Fortune 1000 companies, and
 - 62% of all employers in the US have mandatory drug-testing programs

In the late 1980's and early 1990's there were several significant transportation accidents, Congress passed the Omnibus Transportation Employee Testing Act of 1991, because they recognized the safety need for ensuring drug- and alcohol-free transportation employees. The "Act" required DOT Agencies to implement drug testing of safety-sensitive transportation employees in the aviation, trucking (including school bus drivers, and certain limousine and van drivers), railroads, mass transit, and pipelines industries. In 1994, DOT added alcohol testing requirements to its regulations.

Why Drug and Alcohol Test?

- According to the National Institute on Drug Abuse (2013), roughly 68% of illicit drug users are more likely to:
 - Change jobs frequently
 - Be late or absent form work
 - Be less productive
 - Experience higher rates of workplace accidents
 - File a workers' compensation claim

The bottom line is that according to NIDA, illicit drug use among individuals in the workplace has both economic and safety-related impacts.

Drug and Alcohol Testing in the Workplace

Pros – (employers)

- Deterrence
 - Employees may be less inclined to use illicit drugs and abuse alcohol if testing is conducted
- Safety
 - If workers are performing safety-sensitive tasks, they are less likely to have accidents if not impaired
- Liability
 - Workers who are determined to have used drugs may not receive WC benefits if injured

Cons

- Cost of testing
 - Cost of testing averages \$38/test for drugs
- Privacy
 - Testing can be an invasion of employees' privacy, especially during direct observation
- Does not measure impairment
 - Positive test result means that there was exposure/ingestion of the drug at some point in the past

Drug & Alcohol Testing

Federally Mandated Testing

Federally Mandated Testing

- These programs require employers to use urine testing for drugs and breath testing for alcohol
- Tests cover five drug classes
 - Opiates
 - Marijuana
 - Phencyclidine (PCP)
 - Amphetamines
 - Cocaine

Federally Mandated Testing

49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs

- Administrative Provisions
- Employer Responsibilities
- Urine Collection Personnel
- Collection Sites, Forms, Equipment and Supplies used in DOT Urine Collections
- Urine Specimen Collections
- Drug Testing Laboratories
- Medical Review Officers and the Verification Process
- Split Specimen Tests
- Problems in Drug Tests

Federally Mandated Testing

49 CFR Part 40 – Procedures for Transportation Workplace Drug and Alcohol Testing Programs

- Alcohol Testing Personnel
- Test Sites, Forms, Equipment and Supplies Used in Alcohol Testing
- Alcohol Screening Tests
- Alcohol Confirmatory Tests
- Problems in Alcohol Testing

Federally Mandated Testing

49 CFR Part 40

- Substance Abuse Professionals and the Return-to-Duty Process
- Confidentiality and Release of Information
- Roles and Responsibilities for Service Agents
- Public Interest Exclusions

Federally Mandated Testing Programs

Part 382 Controlled Substances And Alcohol Use and Testing

- General
- Prohibitions
- Tests required
- Handling of Test Results, Records Retention, and Confidentiality
- Consequences for Drivers Engaging in Substance Use-Related Conduct
- Alcohol Misuse and Controlled Substances Use Information, Training and Referral
- Requirements and Procedures for Implementation of the CDL Drug and Alcohol Clearinghouse

Federally Mandated Testing

- Types of testing
 - Pre-employment
 - Random
 - Reasonable suspicion
 - Post-accident
 - Return to duty after a non-negative test result
 - Unannounced follow up

Pre-Employment Testing - Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used, unless the employer uses the exception in paragraph (b) of this section.

Random Testing - Every driver (who possesses a CDL and operates a CMV covered by the rule) shall submit to random alcohol and controlled substance testing as required in this section.

Reasonable Suspicion Testing - An employer shall require a driver to submit to an alcohol and/or controlled substances test when the employer has reasonable suspicion to believe that the driver has violated the regulations. The employer's determination must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.

Post-Accident Testing - As soon as practicable following a crash each employer shall test for alcohol and controlled substances for each of its surviving drivers: if there was a fatality; or the driver receives a citation within 8 hours of the occurrence (within 32 hours for controlled substances) under State or local law for a moving traffic violation arising from the accident, if the accident involved: Bodily injury to any person who, receives medical treatment away from the scene of the accident; or One or more vehicles incurred disabling damage requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Return-to-Duty Testing – A driver who violated the drug and/or alcohol testing regulation, i.e., non-negative test result, refusal to test, etc., must submit to return-to duty testing and have a negative test result prior to resuming driving duties.

Unannounced Follow Up Testing – A driver who violated the drug and/or alcohol testing regulation must submit to at least 6 unannounced follow up tests during the first 12 months of his/her return to duty, unless the Substance Abuse Professional who evaluates the driver determines that additional tests are necessary. The follow up testing period may be extended for an additional 48 month, per the SAPs recommendations.

Pre-Employment Testing

- Prior to the first time a driver performs safety-sensitive functions for an employer, the driver shall undergo testing for controlled substances as a condition prior to being used.
 - This includes incumbent employees who transition from non-driving positions, e.g., dock worker, to CDL qualified driver.
 - Current drivers who have been out of a random testing pool for more than 30 days also have to submit to pre-employment testing.

Post Accident Testing

- Drivers must submit to this testing if:
 - There is a human fatality
 - A citation is issued to the driver and;
 - A person involved in the accident receives medical attention away from the crash site, or
 - There is tow away damage to a vehicle that was involved in the accident.
- Drug testing must be conducted within 32 hours of the accident
- Alcohol testing must be conducted within 8 hours of the accident

Random Testing

- 25% of the drivers must be randomly tested for drugs on an annual basis
 - For example, if there are 100 drivers, the employer must conduct at least 25 random tests. This does not mean that 25 drivers must be randomly tested as some drivers may be selected for testing more than one time.
- 10% of the drivers must be randomly tested for alcohol on an annual basis
 - For example, if there are 100 drivers, the employer must conduct at least 10 random tests. This does not mean that 10 drivers must be randomly tested as some drivers may be selected for testing more than one time.

Random Testing

- The driver selection process must be scientifically valid and provide each driver in the pools an equal chance of being selected during each testing period.
- Drivers who are not available for testing due to illness, injury, layoff, etc., but who are expected to return to work shall not be removed from the testing pools.
- If a driver is not available for testing on a particular day, the employer has the option of selecting the next driver on the random list, or delaying the testing of that driver until he/she returns to work, providing that he/she returns during the testing cycle.

Reasonable Suspicion Testing

- A driver who exhibits indicators of intoxication (staggering, glassy eyes, slurred speech, behavior, etc.) while on the job and a manager who has received training to identify such indicators directly observes such indicators, must submit to testing for drug and/or alcohol testing.
- Alcohol testing must be conducted if such indicators are exhibited immediately before, during, or immediately after the work shift.
- The manager who observes the indicators must document what he/she observed within 24 hours of making such observation.

Reasonable Suspicion Testing

- It should be noted that Reasonable Suspicion Testing for controlled substances will involve urine collection under direct observation of the specimen collector.

Return to Duty Testing

- Drivers who have a drug and/or alcohol test result that is non-negative, e.g., positive, adulterated, substituted, or refusal (for alcohol 0.04 BAC or higher), are required to submit to Return to Duty Testing prior to resuming driving duties.
- These drivers will also have to be evaluated by a Substance Abuse Professional and successfully complete education/rehabilitation programs prior to returning to duty.

Unannounced Follow Up Testing

- Drivers who return to work after a non-negative drug or alcohol test result and after successfully completing education/rehabilitation and providing a negative drug and/or alcohol test result are required to submit to Unannounced Follow Up Testing per the Substance Abuse Professional's recommendation.
- Drivers must be tested at least 6 times during the first year but the SAP may require more tests. In addition, the SAP may extend the testing period up to a total of five years.

Federally Mandated Testing

- Specimen collection personnel must be trained to properly collect specimens, complete documentation, package, and transport specimens to laboratory for analysis
- Specimen collection facilities must meet specific requirements to ensure the privacy of the donor and to minimize the risk of the specimens being adulterated or substituted

Specimen Collection Personnel – Must receive specific training on how to properly collect specimens. These technicians must also use/complete specific chain-of-custody forms (custody and control form).

Collection Site Requirements

If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.

* Must include a facility for urination

* Must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (*e.g.*, water faucets, soap dispensers) and providing moist towelettes outside the closed room.

Federally Mandated Testing

- The specimen testing laboratories used must be approved by the Department of Health and Human Services per the National Laboratory Certification Program.

As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP) for all testing required.

A list of approved laboratories is published in the Federal Register on a monthly basis.

Federally Mandated Testing

- Testing conducted by the approved laboratory is a two-stage test
 - Screening (immunoassay)
 - Identifies the presence of drugs through a process that binds an antibody to antigens (drugs or metabolites)
 - There is a risk of a “false positive” as a result of cross reactivity with a substance of similar structure
 - Confirmatory (gas chromatography/mass spectroscopy)
 - Identifies drugs by looking at the unique mass/charge ratio

The Screening Test is conducted to eliminate obvious negative specimens. If a screening test result exceeds the established cutoff level for one or more drugs, a confirmatory test is conducted to provide final confirmation that the test result is positive. GC/MS is the “gold standard” for confirmatory drug testing.

If a donor has a test result that is not negative, he/she can request that the split specimen be tested. This specimen will be shipped to another approved laboratory for analysis.

Federally Mandated Testing

- Laboratories use scientifically valid cut off levels for all of the drugs and metabolites for which testing is conducted
- Validity testing conducted to ensure that specimens have not been adulterated or substituted

One of the key concepts within **drug testing** is the application of a **cut-off level**. This is the point which segregates a **test** result as being either positive or negative. ... If a **drug test** is reported as screen positive or presumptive positive, this merely shows a response, which is usually because a **drug** is present.

Cutoff Levels

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA ¹	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoylcegonine	100 ng/mL
Opiate metabolites			
Codeine/Morphine ²	2000 ng/mL	Codeine	2000 ng/mL
		Morphine	2000 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamines ³			
AMP/MAAP ⁴	500 ng/mL	Amphetamine	250 ng/mL
		Methamphetamine ⁵	250 ng/mL
MDMA ⁶	500 ng/mL	MDMA	250 ng/mL
		MDA ⁷	250 ng/mL
		MDEA ⁸	250 ng/mL

¹Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

²Morphine is the target analyte for codeine/morphine testing.

³Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.

⁴Methamphetamine is the target analyte for amphetamine/methamphetamine testing.

⁵To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.

⁶Methylenedioxyamphetamine (MDMA).

⁷Methylenedioxyamphetamine (MDA).

⁸Methylenedioxyethylamphetamine (MDEA).

- Laboratories are required to participate in Proficiency Analytical Testing (PAT) to ensure that they can accurately and precisely identify and quantify drugs and metabolites of interest.

Federally Mandated Testing

- Medical Review Officer reviews all test results
 - Ensures that all aspects of the specimen collection, chain-of-custody, and analytical procedures comply with regulations
 - Consults with the donor prior to providing final validation of test result, if result is other than negative
 - Instructs laboratory to allow the testing of a split specimen if the donor challenges the validity of the test result

Medical Review Officer (MRO) - You must be a licensed physician (Doctor of Medicine or Osteopathy) and be knowledgeable in the following areas:

(1) You must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.

(2) You must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.

(3) You must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom you evaluate drug test results, and you must keep current on any changes to these materials.

Federally Mandated Testing

- If an employee tests positive, has an adulterated or substituted specimen, or refuses to submit to testing, prior to resuming driving or other safety-sensitive duties he/she:
 - Must submit to an evaluation by a Substance Abuse Professional
 - Successfully complete recommended education and/or treatment
 - Have a negative return to duty test result
 - Participate in the recommended follow up testing

Motor carriers and other employers are not obligated to retain drivers or other covered employees who test positive for drugs/alcohol. However, the employer must provide the employee with information regarding where to find a Substance Abuse Professional and education/treatment facilities. Covered employees may not resume driving or performing other safety-sensitive functions until he/she has been evaluated, treated, passes a return to duty test and participates in follow up testing...even if he/she changes employers.

Federally Mandated Testing

- Summary
 - All aspects of the program must comply with stringent government regulations
 - Training of all personnel involved in the testing process is required
 - Laboratories are highly regulated and proficiency testing is required
 - Cutoff levels for substances are established by the government
 - Test results are reviewed by competent professions prior to final disposition
 - Employees who violate testing requirements are provided with information concerning education/rehabilitation
 - Strict return to duty process after rehabilitation
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- The testing programs are highly structured and regulated by government agencies.
 - Employees who are subject to testing, designated employer representatives, specimen collectors, medical review officers, and substance abuse professionals must all be properly trained and credentialed.
 - Laboratories that analyze specimens are on an approved list and meet all of the technical and regulatory requirements as set forth by the government.
 - Test results are reviewed by technical/regulatory expert and the donor is contacted prior to determining if a specimen is not negative.
 - Employers are required to provide employees who violate the testing regulations with information on how/where to obtain education and/or rehabilitation.
 - If an employee is retained on his/her job after a non-negative test result, he/she must submit to a strict return to duty and follow up testing procedure.

Federally Mandated Testing

- Alcohol Testing
 - Is very similar to the drug testing program
 - Pre-employment testing is not required
 - Random
 - Post-Accident
 - Reasonable Suspicion
 - Return to Duty
 - Follow Up after a non-negative test result

Federally Mandated Testing

- Alcohol Testing
 - Government approved Evidential Breath Testing Devices are required for confirmatory testing
 - Testing must be conducted
 - Immediately prior to performing safety-sensitive tasks
 - While performing safety-sensitive tasks
 - Immediately after performing safety-sensitive tasks

Federally Mandated Testing

- Alcohol Testing
 - Breath Alcohol Testing Technician must be trained to use the type of EBT device being used
 - If screening test is not negative, a confirmatory test must be conducted
 - Must wait 15 minutes before conducting the confirmatory breath test
 - If test result in 0.02 BAC to 0.039 BAC, driver must be taken out of service for at least 24 hours
 - If test result is 0.04 BAC or greater, driver must be evaluated by a SAP, complete recommended education/rehabilitation and provide a negative return to duty test prior to performing safety-sensitive tasks
 - Must participate in a follow up testing program for at least one year.

EBT device must be maintained and calibrated per the manufacturer's requirements.

Collective Bargaining Agreement

- Article 35, Section 3 – Drug Testing
 - Probable Suspicion Testing
 - Random Testing
 - Non-Suspicion Based Post-Accident Testing
 - Chain of Custody Procedures
 - Urine Collection Kits and Forms
 - Laboratory Requirements
 - Laboratory Testing Methodology
 - Urine Testing
 - Medical Review Officer
 - Substance Abuse Professional
 - Leave of Absence Prior to Testing
 - Disciplinary Action Based on Positive, Adulterated or Substituted Test Results
 - Return to Employment After a Positive Urine Drug Test Result
 - Special Grievance Procedure
 - Paid-For Time

Collective Bargaining Agreement

- Article 35, Section 4 – Alcohol Testing
 - Employees Who Must Be Tested
 - Alcohol Testing Procedure
 - Notification
 - Random Testing
 - Non-Suspicion Based Post-Accident Testing
 - Substance Abuse Professional
 - Probable Suspicion Testing
 - Preparation for Testing
 - Specimen Testing Procedures
 - Disciplinary Action Based on Positive Test Results
 - Return to Duty After a Positive Test Result (>than 0.4 to State Limit)
 - Paid for Time
 - Record Retention
 - Special Grievance Procedure

Upcoming Issues

- Expansion of the drug testing panel to include four prescription opioid painkillers
 - Hydrocodone
 - Vicodin
 - Lortab
 - Hydromorphone
 - Dilaudid
 - Oxycodone
 - Percocet
 - OxyContin
 - Oxymorphone
 - Numorphan
 - Numorphone

Upcoming Issues

- The Federal Motor Carrier Administration (FMCSA) issued a Final Rule to establish the Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse (Clearinghouse). This new database will contain information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances (drug) and alcohol testing program for holders of CDLs.
- The Clearinghouse rule requires FMCSA-regulated employers, Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), consortia/third party administrators (C/TPAs), and other service agents to report to the Clearinghouse information related to violations of the drug and alcohol regulations in 49 Code of Federal Regulations, parts 40 and 382 by current and prospective employees.
- Employers will be required to "ping" the database when hiring a new driver and on an annual basis for current drivers.
- Effective date of the rule is January 4, 2017
- Compliance date is January 6, 2020.