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What do your commercial driver's license holders need to do to comply with U.S. Department of Transportation regulations?

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Drug and Alcohol Testing for Holders of Commercial Driver's Licenses

by Christopher S. Mayer, Esq.

To achieve the goal of a drug- and alcohol-free transportation environment, the Federal Motor Carrier Safety Administration of the U.S. Department of Transportation ("DOT") has adopted regulations (the "DOT Regulations") requiring certain commercial motor vehicle operators to be tested for alcohol and drugs. Commercial driver's license ("CDL") holders are covered by the DOT Regulations and must submit to pre-employment, post-accident, random, reasonable-suspicion, return-to-duty, and follow-up testing for alcohol and controlled substances.

This article briefly summarizes the alcohol and controlled-substances testing requirements under the DOT Regulations, which are a matter of utmost importance to CDL holders who make their livelihood operating commercial vehicles and to employers whose businesses involve a trucking component or other use of commercial vehicles. Given the severity of possible penalties for violations of the DOT Regulations, including loss of license for CDL holders and financial and other penalties for such businesses, CDL holders and employers must learn and comply with the regulations.

CDL BASICS

A CDL is required for operators of any large vehicle, whether such operation is for work or another reason. There are three classes of CDL licenses. Class A is required for anyone driving a vehicle that weighs more than 26,000 pounds and towing more than 10,000 pounds. Class B licenses are required for vehicles that weigh more than 26,000 pounds, but are towing less than 10,000 pounds. Lastly, Class C is the license needed for any vehicle that doesn't meet Class A or Class B requirements but that can hold 16 or more passengers or is designed to transport hazardous materials.

In New Jersey, non-CDL drivers are over the legal limit if their blood alcohol concentration exceeds 0.08%. However, CDL holders are considered over the limit for licensing purposes if their blood alcohol content is higher than 0.04%. The threshold for CDL holders is significantly lower than the limit of 0.08% under New Jersey law and can be exceeded by imbibing as few as two alcoholic beverages.

If convicted of a first offense, the holder of a CDL will lose commercial driving privileges for a one-year period. The same penalties apply for a first refusal to provide a breath sample and a first-offense conviction for driving under the influence of a controlled substance.

(Continued on next page)



What types of testing are required?

Pre-Employment Testing: With limited exceptions, employers may not allow drivers to perform safety-sensitive functions (as defined in the DOT Regulations) before receiving a negative test result for controlled substances. 49 C.F.R. 382.301.

Post-Accident Testing: As soon as practicable following an accident involving a commercial motor vehicle engaged in commerce and operating on a public road, employers must screen each driver involved in such an accident for alcohol and controlled substances who (i) were involved in performing safety-sensitive functions if the accident involved the loss of human life; or (ii) received a citation under state or federal law within a certain period of time after the accident, provided the accident caused bodily injury to a person, resulting in immediate medical treatment, or one or more of the vehicles involved in the accident had to be towed from the scene. 49 C.F.R. 382.303.

Random Testing: Generally, employers must randomly test at least 10% of all of their drivers annually for alcohol and 50% for controlled substances. The random alcohol screening must be performed while a driver is performing a safety-sensitive function or immediately before or after a driver performs a safety-sensitive function. All drivers in the pool for testing must have an equal chance of being selected and tested in each selection period. Employers must use a scientifically-valid method to select employees from the pool, such as a random number table or a computer-based random number generator that is traceable to a specific employee by Social Security number, payroll identification number, or other comparable identifying numbers. 49 C.F.R. 382.305.

Reasonable-Suspicion Testing: An employer shall require a driver to submit to an alcohol and/or controlled substance test when the employer has reasonable suspicion to believe that the driver has violated the DOT Regulations' prohibitions concerning alcohol and/or controlled substances. The employer's determination that reasonable suspicion exists to require the driver to undergo an alcohol and/or controlled-substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver, and may include with respect to controlled substances, indications of chronic use, or withdrawal. The required observations shall be made by a supervisor or company official who is trained in accordance with the DOT Regulations. 49 C.F.R. 382.307.

Return-to-Duty Testing: Each employer shall ensure that, before a driver returns to duty that requires the performance of a safety-sensitive function after engaging in conduct prohibited by the DOT Regulations concerning alcohol or controlled substances, the driver shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02% and/or the driver shall undergo a return-to-duty controlled-substances test with a result indicating a verified negative result for controlled-substances use. 49 C.F.R. 382.309.

Follow-up Testing: The employer's Substance Abuse Professional (as defined in the DOT Regulations) will establish a follow-up testing plan. The employer must ensure that the follow-up testing plan is carried out. A minimum of six tests must be conducted in the first 12 months, and the driver may be subject to this test for a maximum of 60 months. 49 C.F.R. 382.311.



The preceding is a brief summary of the alcohol and controlled substances testing requirements for CDL holders under the DOT Regulations. In practice, these requirements are far more complex and onerous. Businesses subject to the DOT Regulations must make sure they are in compliance with the law, and their policies should be regularly reviewed and updated by trained professionals. CDL holders must recognize that even one failed alcohol or controlled-substances test will jeopardize their livelihood.

Notice: This article reflects the opinion of the author and does not necessarily reflect the opinion of Partnership for a Drug-Free New Jersey (PDFNJ). This information should not be construed as legal advice from the author or PDFNJ. Please consult your own attorney before making any legal decisions.

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49 CFR Part 40

The Department of Transportation's (DOT) rule, **49 CFR Part 40, describes required procedures for conducting workplace drug and alcohol testing for the Federally regulated transportation industry.**

The 49 CFR Part 40 may be viewed in its entirety on the Department of Transportation website: http://www.dot.gov/odapc/NEW_DOCS/part40.html?proc

382.301 Pre-employment Testing.

(a) 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. No employer shall allow a driver, who the employer intends to hire or use, to perform safety-sensitive functions unless the employer has received a controlled substances test result from the MRO or C/TPA indicating a verified negative test result for that driver.

(b) An employer is not required to administer a controlled substances test required by paragraph (a) of this section if:

(1) The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days; and

(2) While participating in that program, either:

(i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or

(ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

(3) The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of this part or the controlled substances use rule of another DOT agency within the previous six months.

(c) (1) An employer who exercises the exception in paragraph (b) of this section shall contact the controlled substances testing program(s) in which the driver participates or participated and shall obtain and retain from the testing program(s) the following information:

(i) Name(s) and address(es) of the program(s).

(ii) Verification that the driver participates or participated in the program(s).

(iii) Verification that the program(s) conforms to part 40 of this title.

(iv) Verification that the driver is qualified under the rules of this part, including that the driver has not refused to be tested for controlled substances.

(v) The date the driver was last tested for controlled substances.

(vi) The results of any tests taken within the previous six months and any other violations of subpart B of this part.

(2) An employer who uses, but does not employ a driver more than once a year to operate commercial motor vehicles must obtain the information in paragraph (c)(1) of this section at least once every six months. The records prepared under this paragraph shall be maintained in accordance with §382.401. If the employer cannot verify that the driver is participating in a controlled substances testing program in accordance with this part and part 40 of this title, the employer shall conduct a pre-employment controlled substances test.

Code of Federal Regulations 177

(d) An employer may, but is not required to, conduct pre-employment alcohol testing under this part. If an employer chooses to conduct pre-employment alcohol testing, it must comply with the following requirements:

(1) It must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).

(2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others).

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR part 40 of this title.

(5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

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