

## Commercial Drivers Drug and Alcohol Testing – Part Two

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The Federal Motor Carrier Safety Administration (FMCSA) oversees an extensive testing and education program to help employers protect the public against drivers who use controlled substances and/or alcoholic beverages during their work. We will discuss the program in two parts. This part will focus on penalties, training, recordkeeping and consequences of non-compliance. Part one discusses the actual regulations and who is subject to the program.

Penalties For Failing A Drug Test – A driver who fails any alcohol or substance abuse test may face the following:

- suspension from performing any "safety functions"
- evaluation by a "substance abuse professional"
- extensive documentation of test results
- retesting of the suspended driver, with passing results (alcohol test with no more than .02 blood alcohol and a negative controlled substance test) before reinstatement.
- Termination (not a regulation, but at the discretion of the employer)

Record Keeping Requirements - Employers must maintain complete records of their drug-testing results for at least five years. Further, an employer must keep a calendar year summary of their testing program that is subject to review by the Federal Highway Administration (FHWA).

Training Required By The Regulations - Drivers must receive training in substance abuse avoidance and be given a manual on the company's alcohol and substance abuse policy. Manuals must be acknowledged in writing and it must be kept on file. Supervisors – employees who are authorized to order testing based on reasonable suspicion of abuse must have two hours training.

Respecting Employee Rights - Employers should consider:

- Supervisors who order a test under reasonable suspicion should base his/her judgment upon specifics
- Before testing, the driver must be verbally notified that it is required by statute
- Only a properly trained supervisor can order a drug/alcohol test due to reasonable suspicion
- Random tests must truly be random
- Any random test must be given either just before, during or after performance of a "safety function"

Required Rehabilitation Services - Any driver who is tested by a supervisor due to suspicious behavior (regardless of test results) must be given the names, addresses and phone numbers of "substance abuse professional" counseling and treatment programs. Before reinstating an employee who has failed a drug or alcohol test, the driver must undergo evaluation, pass drug testing and be given follow-up tests.

Employers Who Use Independent Drivers - These employers have to periodically verify that the drivers participate in an approved alcohol and controlled substance testing program. The business must secure written evidence that the drivers have been tested and have passed these tests.

Consequences Of Noncompliance - A company that fails to comply with the program may face civil and/or criminal penalties. In addition, a party that decides to sue a company because of an accident might use any evidence of violations against it.

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