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Frequently Asked Questions

Alcohol and Drug Testing FAQ's.

Why am I being selected for a random?

Pursuant to D.O.T. Rules and Regulations, D.O.T. covered employers are required to conduct random alcohol and drug test on their covered workers. D.O.T. requires that the selection process be scientific based. This is usually performed by use of a computer randomizing software. The employer enters their covered workers into the data base and then runs the program which selects the individuals to be tested and the type of tests that are to be administered.

Am I the only one being selected?

No, each covered employer is required by D.O.T. regulation to select a specific percentage of the total number of covered employees. For example, if your company falls under the jurisdiction of the Federal Motor Carrier Safety Administration (F.M.C.S.A.), your company must select 50% of the covered employees for drug testing and 10 % of the covered employees for alcohol testing. This rate varies for each D.O.T. covered modal like Federal Aviation Administration (F.A.A), Federal Railroad Administration (F.R.A.), etc.

Why do you tape up the bathroom? It makes me feel like a criminal.

The regulation covering the collection procedures for urine specimen collections is very specific. It outlines the minimum procedure/protocol which must be done to ensure the integrity and security of the collection process. The regulations specify the steps we must take, which may include but is not limited to the following: taping off water sources, soap dispensers, and atomizers; putting bluing into the commode water; and removing other things like hand lotions and air fresheners. The procedure is required by regulation and is not specific to any one individual.

Why did you make me empty my pockets? Is that legal?

As a D.O.T. covered employee, you are required to display the contents of your pockets to the technician. Failure to do so is considered a refusal to test (49CFR 40.191). We are required to inspect the contents of your pockets to ensure contaminants and/or adulterants are not introduced into the testing process.

Do I have to give my social security number?

No, the regulation specifically allows you to use any other unique identifier. You may use your driver's license number, employer I.D. number, payroll file number, etc. However, that number should be specific to you. This number is used to track the test and subsequent results of YOUR specimen.

Why can't you use hair instead of urine?

The U.S.D.O.T. allows ONLY breath for alcohol and urine for drugs. There is no other permissible medium.

I am taking medication prescribed by my doctor. Do I have to tell you what I am taking? Will it affect the test?

No, you do not need to disclose any medicine you are taking. We will remind you to write down any medication so that you can remember to tell the Medical Review Officer (M.R.O.) what you are taking.

The testing is limited to drugs/medication made from the five substances being tested for (e.g. cholesterol medication, blood pressure medication, and birth control in most cases will not affect the test result). Should anything show up in the test, the M.R.O. will contact you regarding the test result before speaking with your employer. Legitimate medical use may be permissible under the regulations.

I was involved in an auto accident and the police officer said that I had to take a drug test when I got to work. Why?

If you were driving a commercial vehicle at the time of the accident, you may be required to submit to post-accident testing. If you were not operating a commercial motor vehicle, the accident does not fall under the jurisdiction of the U.S.D.O.T. There is not enough information in your question for a definitive answer.

My employer told me that I had to do a post-accident test which he called a non-D.O.T. test. What does that mean?

The U.S.D.O.T. requires all covered employers to develop both a D.O.T. and non-D.O.T. testing policy. The D.O.T. policy covers all the components of the D.O.T. rules and regulations. The non-D.O.T. policy covers things which the regulation may not cover or other specifics of an incident which may not be defined in the regulation.

I was involved in a very serious accident that was not my fault. The other driver was badly injured and the paramedics said they did not think he would live long enough to get to the hospital. I was made to take an alcohol and a drug test. Why?

U.S.D.O.T. requires that all surviving drivers in a fatal accident must submit to alcohol and drug testing. The regulation specifies the alcohol test must be done within two hours of the accident. In this case, because the other driver was a probable fatal, the company acted appropriately in requiring the test. If the other driver survived, the test would fall under the company's non-D.O.T. test requirements. The company can ask the M.R.O. to convert the test from a D.O.T. post-accident to a non-D.O.T. post accident test. However, the company must document the reasons for the conversion.

I was told I had to go to the clinic for a random test. While on my way, I stopped to eat lunch. When I got there I was yelled at and was told that I may have caused a refusal. They called my boss who yelled at me, too. I thought I had two hours to do the test.

NO, you do not have two hours. This is a misunderstanding. The regulation states that you are required to immediately report for the test. The U.S.D.O.T. Office on Drug and Alcohol Policy (O.D.A.P.) issues a publication that you can get from their website which states: upon notification of testing, every step you take from that point forward must be toward the completion of the test.

I work for an airline company as a baggage handler; I had an accident where the baggage cart clipped a food service truck for another company. I was told I am required to take a test. Is this required?

There is not enough information to give you a definitive answer. However, based only on your information, the post-accident requirement was probably driven by company policy and procedures. If there was an injury, it may have been driven by your company's workers' compensation policy. Since there was no apparent aircraft involvement, this probably does not fall under the jurisdiction of the D.O.T./F.A.A. regulations (14CFR121 app I & J).

Does my drug test protected information fall under the Health Insurance Portability Authorization Act (H.I.P.A.A.)?

Generally speaking, the information is protected but not necessarily regulated under H.I.P.A.A. Federally mandated testing is specifically not protected under H.I.P.A.A. However, it is protected under D.O.T. Rules and Regulations. There are limitations to the disclosure of the test results, usually only to your M.R.O. and employer. If you have a positive test that information may also be disclosed to future employers under the D.O.T. Regulations.

Drug testing in this manner is forensic, not medical, which means the test is to determine the presence of specific prohibited substance(s). Medical testing means the test is being administered to diagnose a medical condition. Medical testing is protected under H.I.P.P.A.

Are F.M.C.S.A. covered drivers required to log their drug testing time, even if required to do the test on their own time?

*Yes, 49-CFR-395 is very specific. All time spent in the administration of a drug or alcohol test must be recorded on the driver's log. This time is also deducted from his available hours of service for the day, whether or not the carrier pays his/her wages. In general, this time is considered to be from the time of notification through the time the test is completed and the driver returns to work. Caution should be used in the scenario described. The regulations require that the driver immediately report for the drug test. If you are notifying the driver, are you certain he is **immediately reporting** for the test?*

Our driver was involved in a rollover accident and he was taken to the hospital by an ambulance. We asked the hospital to do a drug test and they did. Now, they will not release the results to us. How can we get the results?

In all probability, the test done at the hospital was a medical test not a forensic test. Medical testing is protected under H.I.P.A.A. and your employee will have to sign a release before the hospital will release the lab report. Forensic testing is not protected under H.I.P.A.A.

In all likelihood, the test will not be acceptable to the U.S.D.O.T. for a post-accident test. All D.O.T. tests must be submitted to a D.H.H.S./S.A.M.S.H.A. certified laboratory under a chain of custody. All D.O.T. tests are to be confirmed by G.C./M.S. and those results released to the M.R.O. for review. Most hospitals do not have G.C./M.S. capabilities and most are not D.H.H.S./S.A.M.S.H.A. certified.

In Denver, for example, none of the hospitals conduct forensic testing, nor do they employ 49-CFR- part 40 qualified technicians. The forensic testing is farmed out to companies like us. Many of the occupational medicine clinics offer drug testing to their client companies, however this is only during clinic hours. Some of the clinics have retained companies like us to provide services to their clients after hours, weekends, and holidays.

*In addition, **there is not a D.H.H.S./S.A.M.H.S.A. certified laboratory in Colorado.** All D.O.T. specimens collected in Colorado are shipped out to certified labs.*

In the future, you should have your dispatcher call us as soon as the accident is reported. We will dispatch one of our technicians to the scene of the accident or to the hospital and administer the D.O.T. required testing. Our technicians are well versed in the U.S.D.O.T. regulations for all modals as well as Workers' Compensation issues. All of our technicians are Part 40 qualified.

While making a delivery at one of our client's locations, the driver drove across a railroad spur on client property. The saddle tank drug on the spur and ruptured dumping almost 200 gallons of diesel on the ground. No one was injured. Is this a D.O.T. post-accident?

*The question is too vague. However, based **only** on this information, **NO** the accident does not qualify under 382.303.a.a1.a2.b1 or b2. The vehicle was not being operated on a public road. However, **you are still required** to follow the 49-CFR-172 requirements for an accident involving a HazMat spill. A form 5800.1 must be completed and the appropriate notifications made to the N.R.C. and local emergency response groups (police department, fire department, E.P.R.C., etc.). Did the spilled fuel enter a water way or storm sewer? If so, the spilled fuel is now hazardous waste and as the generator of the spill you are responsible for the remediation, restoration costs, and clean-up of the spill. There are several requirements under 49 CFR and under 40 CFR for which you are responsible. Call with any questions or if we may be of further assistance.*

I was pulled for a random test. When I got to the testing site I told the technician that I had gone to the bathroom before I arrived at the clinic. I was told that I had to try and pee anyway. I told the technician that I could not and (s)he would have to wait. I was given a warning for refusal to test. Is that legal? Can (s)he make me do that?

Yes, the technician can give you a warning. Under 49-CFR-Part 40, the technician is required to have you attempt to provide a specimen as soon as you arrive, even though you reported that you had just urinated. By refusing to make the attempt, you have refused to cooperate with the testing process (see 49-CFR-382.211 and 49 CFR 40.191: failed to cooperate with the testing process; behaved in a way that disrupted the testing process).

I failed a drug test for my previous employer. Do I have to tell my new employer even if I passed the pre-employment test?

Yes, you must report the positive test to your new employer. 49-CFR-391.21 clearly requires your disclosure at the time of application. As well as the disqualification under 49-CFR-391.15.2.ii . Additionally, your previous employer is required under 49-CFR-40.25 to disclose all information relating to your participation in their alcohol and drug testing program, which also covers any and all positive tests.

We want to conduct post-accident testing for our non-D.O.T. employees. What do we need to do before we start testing?

First, you must make sure you have a company policy covering testing, testing procedures, refusals, random procedures, etc. We can assist you in developing and implementing these policies. Also, check with your Workers' Compensation carrier. Many carriers require some type of post-accident drug testing as part of their cost containment program. However, most Workers' Compensation carriers do not pay for testing. Also 8-42-112 and 8-73-108 of the Colorado Un-Employment Law and Workers' Compensation laws provide for certain reductions in benefits if the employee tests positive at or above prescribed levels. We also suggest you review the policies with your legal council.

Information presented in the FAQ is not intended to be legal advice. You should consult with your attorney before making or adopting changes in your policies and procedures. The FAQ is not intended to be a substitution for Regulatory Compliance. Questions are limited in scope and detail, all factors may not be presented in the question(s). Answers are limited in scope solely to the information in the question and is our best interpretation of how the regulation(s) would apply to the circumstance(s) presented in the questions.

We were told that we could reduce an employee's benefit package if he tests positive in an accident. Is this claim true?

Regarding your question, there are two possible answers. Under D.O.T. Regulations, you may not use the test result for any other purpose! Whether or not that test can be used in a W.C. related issue is highly questionable. You must follow the appropriate procedures as they are defined in 49-CFR-382 for a positive post-accident test. If the accident does not meet the requirements for a post-accident test as they are defined, then the accident should revert back to your non-D.O.T. policies. If the test is being administered under your non-D.O.T. policies, then yes, the test results may be used as part of your determination for a W.C. claim.
**** USE EXTREME CAUTION****

We were told by our T.P.A. that we must use their lab and M.R.O. in order for them to serve as our T.P.A. Can we use our old M.R.O.? He is very familiar with our operation.

*D.O.T. Regulations allow for you to use "service agents" in the administration of your program. The T.P.A. should be able to force you to use someone **not** of your choosing. See 49 CFR 40.15, 49 CFR 40.73 and 49 CFR 40, Appendix F. There are a number of prohibitions in Appendix F concerning C/T.P.A.s and their roles. For example, as a collector, we cannot disclose a B.A.T. test result to a C/T.P.A. unless you as the employer have specifically authorized that release to the T.P.A. (49 CFR 40, App F, 1). We must report that result directly to the company D.E.R.*

Appendix F to Part 40--Drug and Alcohol Testing Information that C/T.P.A.s May Transmit to Employers

[emphasis added]

1. If you are a C/TPA., you may, acting as an intermediary, transmit the information in the following sections of this part to the DER. for an employer, **if the employer chooses to have you do so.** These are the only items that you are permitted to transmit to the employer as an intermediary. **The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to employers, the transmission of SAP reports to employers, the transmission of positive alcohol test results, and the transmission of medical information from MROs to employers.**

2. In every case, you must ensure that, in transmitting the information, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit MROs' drug testing results to DERs, you must transmit each drug test result to the DER. in compliance with the requirements for MROs set forth in § 40.167.*

Additionally, it is the employer/carrier's responsibility to ensure the qualifications of all its service agents. It is your program and ultimately you are responsible for the program. There is no reason why the C/T.P.A. cannot transmit the requested information to the M.R.O. of your choosing. Check with your corporate program manager. It is possible that corporate will make the change for financial reasons. Nonetheless, the T.P.A. can only do what you allow them to do.

Is it true that under F.A.A. rules, two positive tests can result in permanent revocation of my license?

Without knowing some of the other details (alcohol or drugs), there is not a specific answer. Yes, there are provisions within the F.A.A. standards that allow for permanent revocation of your Airman Certificate and barring from performing safety sensitive duty [14 CFR 121 VI (E) (1) & (2) is one of the citations that specify permanent disqualification].

*US. Department Of Transportation. Code of Federal Regulations Office of Drug & Alcohol Policy & Compliance. Title 40. 25 June 2008. 22 Dec. 2008 <http://www.dot.gov/odapc/NEW_DOCS/part40.html#>.