



## What Employer's Need to Know about Their Drug Testing Program

Employers today have many responsibilities and challenges when it comes to their company's drug and alcohol program, especially with all the new state and federal laws pertaining to drug testing.

One goal that has not changed over the years is our battle to protect our workplace, our community, and our next generation which helps saves lives, money, and the American business.

DATCSs commitment and mission is to educate you, as the person in charge of your drug and alcohol testing program, with the knowledge of guidelines and procedures. This will ensure that you have a better understanding of DATCSs role as your service agent as well as your responsibilities as the Designated Employee Representative (DER).

Thank you for giving us the opportunity to become true partners toward a goal of mutual success and a drug free workplace.

### **Below are a few things that supervisors, who are in charge of their company drug testing program, need to know.**

1. When fighting an unemployment claim after firing an employee because of a refusal or positive drug and/or alcohol test, what is the main mistake employers leave out of their policy that exempts them from disqualifying a claimant from unemployment benefits?

- Most companies do not address and define what is considered a “refusal to test” in the company policy. A few examples are:
  - Failure to appear for any test (except a pre-employment) within a reasonable time after being directed to do so by an employer.
  - Failure to provide a urine specimen in the amount and time frame required for a drug test without medical explanation.
  - Failure to permit the observation or monitoring of a collection, in the case of a required directly observed or monitored drug test.
  - Failure to remain at the testing site until the testing process is complete.
  - Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector; behave in a confrontational way that disrupts the collection process).
  - Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.



2. As a DOT company, should you have a company policy testing program in addition to your DOT policy testing program?

- Yes, but you must be very clear about which requirements are under DOT authority and which are under your company authority. There are many reasons why a company that falls under DOT regulations should have a non-regulated policy. Listed below are a few:
  - Some accidents do not fall under DOT post-accident guidelines and should not be tested as a DOT test. For example, if a DOT employee does damage to your vehicle but the definition of a DOT post-accident does not require a drug and alcohol test under DOT regulations, then the company may choose to test the donor under the company policy.
  - A non-regulated alcohol test does not show up on your MIS report which show all of the testing the company has done throughout the year. If it is not required under DOT post-accident regulations, non-dot post-accident test will not be included in your end of the year total testing numbers addressed on your MIS report that is required if audited.
  - A company policy can also test for as many drugs as needed. DOT only test for 5 drugs where normal non-regulated testing can test up to 10 drugs and more including the expanded opiates.

3. How would you handle the situation if you get a call from the collector that the donor could not provide the required amount of specimen within the 3-hour allowed time frame?

- The collector will notify you immediately after the 3-hour allotted time with documentation and you, as a DER, should contact the Medical Review Officer (MRO). After consulting with the MRO, direct the employee to obtain, within 5 days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. If there is not an adequate basis for determining that a medical condition could have prevented the employee from providing a sufficient amount of urine, the test will be marked as a "refusal to test" by the MRO.

4. How long do you have to conduct a DOT post-accident required drug and alcohol test?

- DOT requires you to attempt the alcohol test within the first 2 hours. If not complete, document the reason, but you can attempt to complete the test up to 8



hours. After 8 hours, you must cease the attempt and document why the alcohol test was not completed. For the drug test, you have 32 hours.

5. What are your Employee Assistance Program (EAP) requirements under DOT?

- You must have a list of Substance Abuse Professionals (SAPs) posted in the office that is assessable to the employees.

6. What is your responsibility after a positive drug screen?

- As an employer who receives a verified positive drug or alcohol test result, you must immediately remove the employee involved from performing safety-sensitive functions. If you are going to release them from employment, you must provide them a list of Substance Abuse Professionals to guide them where to go to complete their evaluation to be able to return to a safety-sensitive position. If your company offers second chances, then they should sign a return to duty form explaining the time frame they have to complete a substance abuse program to be able to come back to a safety-sensitive position with the company.

7. If you receive a drug test result indicating that the employee's specimen was dilute, what action does DOT regulations say that you can take on a dilute negative specimen?

- If the MRO reports a dilute negative specimen, you have the option to retest as long as your program stays consistent retesting all dilute specimens. You may, however, establish in your company policy that certain types of tests will be retested only. (e.g., conduct retests on pre-employment situations, but not random tests.) You are not permitted to do a direct observation on a retest for dilute negative results, unless circumstances warrant that.

8. What should you tell employees who are concerned about their prescription drugs affecting their drug test?

- All employees need to know that if their drug test was affected by their prescriptions, a Medical Review Officer (MRO) will call them directly and confirm their prescription. The test will report as a negative if a valid prescription is in their name. Remind your employees not to take someone else's prescriptions, because that will be considered a positive result.

9. What alcohol concentration level requires disciplinary action under DOT regulations?



- When an employee has an alcohol test result of 0.04 or higher, you must immediately remove the employee involved from performing safety-sensitive functions and provide them with the SAP material.

10. What reasons require a direct observation collection?

- There are several reasons a collector would be required, under DOT collection procedures, to do a direct observation:
  - Return-to-duty and follow-up testing
  - Out of temperature range on the cup
  - Signs of tampering
  - Suspicious conduct
  - MRO request to do a direct observation after their evaluation of the test results