

## EDUCATING THE WORKFORCE IN SUBSTANCE ABUSE PROGRAM MANAGEMENT

### Backgrounds: Myth vs Reality

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Driver risk management is vital to the safety and future profitable operations of any organization. The Department of Transportation has its requirements for monitoring drivers, but you may have drivers of your company or personal vehicles, and they may not be regulated by the DOT. In addition, routine non-regulated employees should be monitored as well.

All monitoring and background systems available are certainly not created equal, and these systems may not delve deeply into ALL aspects of a driver's or employee's background. Comprehensive employee backgrounds are important to the risk management of any organization, whether it's for drivers or other staffers, especially those in "safety sensitive" positions.

There are really three critical questions to be addressed for drivers:

- Do you know the driving record of the employee driving for you right now?
- What do you know about their record, when they are NOT driving for you?

- How often do you review the driving records for their current safety configuration?

Today's technology allows for an in-depth review, but first DATCS wants to help dispel any existing myths about backgrounds for drivers:

#### MYTH

- Routine background checks give all the information you need.

#### REALITY

It might not tell the WHOLE story...there is more info available than ever before and it is a risk to take it at face value, due to what may be missing from the history.

#### MYTH

- Motor Vehicle Records (MVR) pulled once a year are sufficient.

#### REALITY

What about the other 364 days?

#### MYTH

- Telematics and GPS give all the monitoring needed.

#### REALITY

It does not give the complete picture, since it may not give information about non-working hours.

Best practices for comprehensive driver monitoring:

- Establish a baseline with a 3-year history
- Monitor more than 1 time a year.
- Broaden your coverage, apply your background to ALL employees in the geographic area.
- Take corrective action, enroll drivers and supervisors in available training programs.

It is easier today than ever before, especially with DATCS' background check menu, covering everything from a simple background to an extensive DOT program. Don't depend on sketchy information, depend on DATCS to provide the history required to ensure safety and reduced risk for your organization.

For further information about the background services that DATCS offers, contact our background specialist, Stacy Fuller, at 903-534-3893 or [stacy.fuller@datcs.com](mailto:stacy.fuller@datcs.com).



## DOT Published Notice of Proposed Rule Making

On January 23, 2017, the DOT published a Notice of Proposed Rule Making (NPRM) that would add four opioids to the drug-testing panel and update several testing program provisions.

The 5-panel federal test includes “opiates”, specifically codeine, morphine, and heroin. Under this proposal, it will be changed to “opioids”, which is a broader term that will include opiates and semi-synthetic prescription compounds (hydrocodone, hydromorphone, oxycodone, and oxymorphone). Semi-synthetic opioids interact with the body’s chemical systems in much the same way as natural opiates, and

because they produce similar effects as their natural counterpart, they are also prone to misuse.

Additional proposed amendments include:

- Making changes to the specific substances that will determine a positive once a drug specimen has reached the laboratory. This will include removing methylenedioxyethylamphetamines (MDEA) as a confirmatory test analyte from the existing drug panel and add methylenedioxyamphetamine (MDA) as an initial test analyte.
- The removal of the requirement for employers and C/TPAs to submit blind specimens to labs. It is considered a “burden-

relieving measure for affected entities”.

- Removal of the list of approved SAP certification organizations from Part 40 (list will be maintained on DOT’s website).
- Addressing what a collector must do when a specimen is questionable and the donor is unable to provide a second specimen.

- Prohibiting service agents from using the DOT log and branding to represent endorsement from the agency.

To view the full Notice of Proposed Rule Making, please follow the link:

<https://www.gpo.gov/fdsys/pkg/FR-2017-01-23/pdf/2017-01131.pdf>



## Firearms Must Be Relinquished At Collection Sites

49 CFR Part 40.61 (f) requires collectors to direct employees to leave “personal belongings” outside of the restroom, in a “mutually agreeable location”. *The Urine Specimen Collection Handbook* (May 31, 2014) further directs the collector to ask the donor to “leave other personal belongings”

with their outer garments.

DOT has determined a “personal belonging” includes a firearm, even when the donor possesses the firearm as part of their safety-sensitive armed security function.

For employees, hesitant to relinquish control of their firearm, even for a few minutes, it has

been suggested the employee could:

- Place the firearm in a lockbox, with the donor taking possession of the key.
- Have a supervisor meet or accompany the employee to the collection site and take possession of the firearm.

*(FTA Drug and Alcohol Issue 61)*



## Post-Accident Testing Key in Workers' Comp Claims

Employers may sometimes feel the deck is stacked against them in workers' compensation claims. But post-accident drug tests can change the hand that's dealt.

Employers and claims representatives are frequently confronted with claims involving questionable injuries resulting from "accidents" no one saw or heard, but there simply is not enough evidence to rebut the employee's story. Perhaps even more frustrating are the claims involving employees who were careless or blatantly acting against company policy (and common sense) when they injure themselves. But the workers' compensation laws do not take into account the fault of the employee, unless the injury resulted from the use of alcohol, illegal drugs, or prescription drugs used in contravention of a physician's orders.

So long as an employer can establish the presence of alcohol or drugs, a rebuttable presumption arises that the injury or accident resulted from the use of those substances. In other words, if a drug is found in an injured worker's system, the law assumes the accident and injury were the result of the worker's use of that drug, and the burden then shifts to the employee to overcome that presumption. Thus, the importance of a post-accident drug test cannot be overstated.

In the case of *Prock v. Bull Shoals Landing*, 2012 Ark. App. 47 (Jan. 11, 2012), the Arkansas Court of Appeals reaffirmed the importance of post-accident drug testing. Greg Prock was an employee of Bull Shoals Landing in 2007 when he used an acetylene torch to cut the top off of a fifty-five-gallon barrel that had previously contained marine oil. During the process, the

barrel exploded and caused a fire that seriously injured him and a co-worker, Matt Edmisten. Both men were taken to the hospital where they tested positive for illegal drugs. As a result of the presence of the illegal drugs in Prock's system, the legal presumption arose that the drugs were the cause of the accident and injuries.

One important lesson to take away from this case is the importance of post-accident drug testing. Once an employer is able to establish the existence of any alcohol or drugs in an injured worker's system, the employee is then put on the defensive and must convince the courts that the drug use did not cause the accident. This is one area of workers' compensation law where the burden really is on the employee.

## I Want My Test Records!

We periodically get asked if an employee can have access to their drug and alcohol records. The answer is yes! Upon request, employees are entitled to all records about

their drug and alcohol tests. An employer must provide records promptly. While some employers require employees to sign a release before releasing records,

release of the records cannot be contingent upon receiving any kind of payment from the employee. Employers are required to provide test results and return-to-duty testing records.

