Controlled Substance Use & Testing

The DOT- FMCSA Regulations (49 CFR Part 382 And Part 40) Require That The Following Program Elements Be Implemented:

Program Requirements:

- Employer's Policy Statement
- Supervisor Education & Training
- Controlled Substances & Alcohol Testing Program
- Evaluation Of Operator
- Recording Keeping

Employer's Policy Statement

- Each employer must adopt a policy on substance abuse in the workplace; such a policy must include (among other things):
  - Identifying the operators who are subject to testing.
  - Describe the prohibited behavior.
  - Describe the testing procedures.
  - Describe consequences for violating the controlled substances and alcohol regulations, such as immediate removal from position as an operator and referral to a substance abuse professional (SAP).
    - Note: it should make clear that any further actions, (i.e., Termination) are employer-mandated.

Education & Training

- Employers must provide operators with educational materials explaining the requirements of the program and the procedures under 49 CFR 40, et al.

- Employers must provide information on the effects and consequences of substance abuse on personal health, safety, worksite, and also information on the indicators of substance abuse.

- Supervisors must have training (at least 2 hours) on the physical, behavioral and performance indicators of substance use or alcohol misuse to determine reasonable suspicion testing.

Testing Requirements

- The types of tests are:
  - Pre-employment
  - Reasonable suspicion
  - Post-accident
  - Random
  - Return to duty
  - Follow up

Referral For Evaluation

- Employers must remove any operator from his/her position who has violated the regulations in subpart B (i.e. confirmed positive results, refusal to test) and refer the operator to a substance abuse professional for an evaluation.
- Evaluations determine the level of assistance an operator needs to resolve the problems with controlled substances or alcohol.

Administrative Requirements

- **Employers must maintain certain records including:**
  - One year: verified negative controlled substance test results and alcohol test
  - Two years: records relating to the collection process
  - Five years: operator's verified positive results, operator referrals to SAP, return to duty and follow up
- **Documentation of the following:**
  - Certificate of receipt of the employer's policies and procedures
  - Release form for previous employers
  - Reasonable suspicion
  - Random testing selection process
- **Confidentiality**
  - Results only released to a third party by consent of the operator
  - Upon written request employers must provide any operator with records relating to his/her test
- **Testing Laboratory Procedures**
  - Document procedures for collection, shipping and processing urine specimens
  - Chain of custody
  - Control form

Pre-employment

- Prior to the first time an operator performs a safety-sensitive function (operates a crane) for an employer
- Each applicant must be made aware that the employer is committed to a controlled substances and alcohol free workplace
- Note: applicants are also required to sign release of information forms from previous employers for the last two years

Reasonable Suspicion

- Observations made by a supervisor or company official who is trained (this person is excluded from performing the testing)

Post Accident

- Per DOT: post accident testing occurs when there is:
  - A fatality or
  - Driver is issued a moving traffic violation and the accident results in bodily injury requiring immediate medical treatment OR a motor vehicle is transported away from the scene by a tow truck
- Under OSHA: post accident testing could be when there is:
  - A fatality or
  - Bodily injury to any person who, as a result of the injury, immediately receives medical treatment

Random

- Employers are required to randomly test 50% of their operators for controlled substances and 10% for alcohol
- Selection must be done with a scientifically valid random selection method
- The test dates must be spread out during the course of each year, i.e., Monthly, Quarterly

Return To Duty

- Where the following occurs, operators need to be evaluated by a Substance Abuse Professional (SAP), participate in any treatment program prescribed and pass a return to duty test prior:
  - After verified positive controlled substance test results
  - Alcohol test of .04 or greater
  - Refusal to submit to a test

Note: The regulations do not require that employees be rehabilitated and reinstated (although you may do so).

Follow Up

- Once an operator for whom treatment was recommended is allowed to return to duty, he/she must be subject to unannounced follow-up testing for at least 12, but not more than 60 months. The frequency and duration will be recommended by the SAP with a minimum of six tests during the first 12 months after a return to duty.

Controlled Substance Testing Procedures

- Specimen Collection
- Laboratory Testing
- Medical Review Officer
- Substance Abuse Professional

Alcohol Testing Procedures

- Obtaining Program Services
- Alcohol Related Conduct
- Dry Run of the Program (suggested)

Joining a Consortium

- Small employers may find it beneficial to join a consortium in order to reduce challenges and costs related to implementing a program
- A consortium can be a group of employers who join together to administer the drug and alcohol testing programs