

Polk County Wisconsin

DRUG AND ALCOHOL TESTING

Policy 714

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Purpose

The Department of Transportation (DOT) and the Federal Highway Administration (FHWA) have issued a rule (49 CFR Parts 40 and 382) requiring alcohol and controlled substance testing of drivers who are required to have a commercial drivers license. These rules include procedures for urine drug testing and breath alcohol testing. The purpose of this policy is to establish an alcohol and controlled substances testing program to help prevent accidents and injuries resulting from the misuse of these substances by drivers of commercial motor vehicles. Consequently, the Employer must establish an alcohol misuse prevention program and anti-drug program as well as the subsequent enforcement of violations for its employees conducting safety-sensitive job functions.

Policy

The purpose of this policy is to assure employees fitness for duty and to protect our employees and the public from risk posed by worker use of alcohol and drugs. This policy is intended to comply with all the applicable Federal regulations governing work-place alcohol and drug misuse in the highway industry. Polk County strictly prohibits the use of alcohol and/or controlled substances by employees and volunteers who are performing, ready to perform, ceasing to perform or supervising the performance of safety-sensitive functions including:

1. All time spent at a facility waiting to be dispatched;
2. All time spent inspecting equipment;
3. All time spent driving a commercial motor vehicle;
4. All time spent in or on a commercial motor vehicle except resting time;
5. All time spent loading or unloading;
6. All time spent performing driver requirements relating to accidents;
7. All time spent repairing, assisting or attending a disabled commercial motor vehicle;
8. All time spent performing any other work while on duty;
9. All time spent supervising employees performing or otherwise conducting safety-sensitive functions;
10. All time spent providing a breath sample, urine specimen, including travel time to and from the collection site, in order to comply with testing as directed by the

employer.

Prohibited Alcohol Usage

1. Alcohol consumption is prohibited:
 - a. At any time during the four (4) hours prior to performing a safety-sensitive function;
 - b. At any time while performing a safety-sensitive function; and
 - c. For eight (8) hours after an accident involving a commercial motor vehicle when a post-accident alcohol test is required (see post-accident testing provisions).
2. Reporting for duty or remaining on duty with a blood alcohol concentration of 0.04 percent or greater is prohibited.
3. Performing safety-sensitive functions after a positive alcohol test indicating a blood alcohol concentration of 0.02 is prohibited.
4. Using, possessing, dispensing, distributing or receiving alcohol while on duty is prohibited. This prohibition includes medications that contain alcohol.

Prohibited Drug Usage

1. The unauthorized use of any controlled substance is strictly prohibited in all situations.
2. Reporting to work under the influence of a prescription drug is prohibited unless the employee's physician determines that the use of the prescription drug will not impair the employee's ability to perform a safety-sensitive function. Legally prescribed drugs must include documentation of the patient's name, the substance name, the quantity to be taken and the period of authorization. Any such prescription must be checked in with the employee's supervisor. The employee should possess only that quantity prescribed during that shift.

It is the responsibility of employees to remove themselves from service if they are experiencing any adverse effects from medication that would affect their ability to safely perform any safety-sensitive function.

Other Prohibited Conduct

1. The following conduct is also strictly prohibited under this policy:
 - a. Deliberately misusing the policies and procedures herein by any employee in regard to any subordinate is strictly prohibited;

- b. Providing false information in connection with any test or altering, tampering, contaminating, adulterating or substituting any test sample by any means is strictly prohibited.
 - c. If called out for extra duty, all employees shall inform the employer that they cannot report for work if they have used a controlled substance or consumed alcohol and reporting for duty would violate this policy. Failing to inform the employer is prohibited.
2. Any employee who violates any of the above provisions shall be subject to all disciplinary actions consistent with county policies including termination.

Test Refusal Prohibited

Refusal to submit to an alcohol or controlled substance test required by this policy is prohibited.

Refusal

1. Refusal to submit to an alcohol or controlled substance test means any of the following:
 - a. Failing to provide adequate breath for alcohol testing without a valid medical explanation after receipt of notice of the requirement of breath testing.
 - b. Failing to provide adequate urine for controlled substance testing without a valid medical explanation after receipt of the notice of the requirement for urine testing.
 - c. Engaging in any conduct that obstructs or otherwise impairs or impedes the testing process.
 - d. Unnecessarily leaving the scene of an accident before a post-accident test is administered or failing to be readily available for post-accident testing.
 - e. Failing to report to, and undergo alcohol and/or controlled substance testing, at a collection site as required, obstructing the taking of the test at the collection site, or attempting to alter or tamper with the test sample.
2. An alcohol test refusal shall be treated as if the employee had tested at 0.04 percent or greater.
3. A controlled substance test refusal shall be treated as a positive test result for unauthorized use of controlled substances.

Required Tests

Reasonable suspicion, random, post-accident, return to duty tests, and follow-up tests for alcohol and/or controlled substances are required under this policy.

1. Reasonable Suspicion.

- a. An employee must be tested if there is reasonable suspicion to believe that the employee has violated the alcohol or drug usage prohibitions, or if the employee's behavior and appearance indicate noncompliance with this policy. Reasonable suspicion means suspicion based on a specific contemporaneous, personal observation by a supervisor or official who has been trained in accordance with the provisions of 49 CFR part 382.603, of appearance, behavior, including job performance, speech or body odors, including breath.
- b. Reasonable suspicion testing is permitted under this policy only if the observation is made during, just preceding or just after any time the employee is required to comply with this policy.
- c. A written record of the observations leading to an alcohol reasonable suspicion test, signed by the supervisor or official that made the observations, must be made within twenty-four (24) hours of the test.
- d. A written record of the observations leading to a controlled substance reasonable suspicion test, signed by the supervisor or official that made the observations, must be made within twenty-four (24) hours of the observed behavior or before the results of the controlled substance test are released, whichever is earlier.
- e. Once a reasonable suspicion determination is made, the employee shall cease to perform safety-sensitive functions and the supervisor or official shall transport the employee to the collection site. The employee to be tested shall be transported to the collection site not later than eight (8) hours after the reasonable suspicion determination. If the drug or alcohol test is conducted more than two (2) hours but less than eight (8) hours after the reasonable suspicion determination, the supervisor or official shall complete a report explaining the reason for the delay in conducting the drug or alcohol test.
- f. If a breath test is performed and establishes a blood alcohol concentration percent of 0.02 or greater, the employee shall not be permitted to return to work and shall be placed on leave without pay until a decision as to the employee's status has been made.

- g. If a blood or urine test is performed, the employee shall not be permitted to return to work until the test results are known and a decision as to the employee's status has been made. The County will contact the employee once the test results are known (this could take 24 - 48 hours).

2. Random Testing.

This test is used to eliminate risks associated with illegal or unauthorized drug and alcohol use. Random alcohol and drug testing will be conducted just before, during or just after an employee's performance of safety-sensitive duties. The employee will be randomly selected for testing from a pool of employees subject to testing. The testing dates and times are unannounced and will occur with unpredictable frequency throughout the year. The employee will be notified of the requirement to be tested and must report to the collection site for testing at the appointment time.

If an employee is randomly chosen for testing on a day that the employee is on an authorized leave, the work supervisor shall not disclose the selection and notify the employee of the random testing requirement upon returning to work from leave.

Testing of employees who remain in the testing pool and are chosen at a time when they are not in pay status will be deferred until the next testing period when they are in pay status.

The minimum annual percentage rate for random alcohol testing shall be twenty-five (25) percent of the average number of employees in safety-sensitive positions. The minimum annual percentage rate for random drug testing shall be fifty (50) percent of the average number of employees in safety-sensitive positions.

3. Post-Accident Testing

As soon as practicable following an accident, an employee shall be tested for alcohol and drugs if the employee was performing a safety-sensitive function and the accident involved a 1) loss of human life; 2) the employee was cited under state or local law for a moving traffic violation arising from the accident and a person is injured in the accident and immediately receives medical treatment away from the scene of the accident; or 3) the employee receives a citation under state or local law for a moving traffic violation and any of the vehicles involved in the accident were required to be towed from the scene.

An employee shall be subject to and shall undergo a post-accident alcohol breath test not later than eight (8) hours after the accident. If the test is not administered within two (2) hours following the accident, a record shall be prepared and placed on file stating the

reasons the test was not administered earlier.

An employee shall be subject to and shall undergo a post-accident drug test not later than thirty-two (32) hours after the accident.

An employee shall be readily available for post-accident testing. Failure to do so may be deemed a test refusal.

4. Return to Duty

An employee who has engaged in prohibited conduct related to drug or alcohol misuse under this policy shall undergo a return-to-duty drug and/or alcohol test before they will be permitted to perform safety-sensitive functions. The return-to-duty test results must show a verified negative result for controlled substances and an alcohol concentration of less than 0.02 percent.

An employee who has engaged in prohibited conduct related to drug or alcohol misuse under this policy shall also be evaluated by a substance abuse professional before they will be permitted to return to duty.

5. Follow-up Testing

An employee who has engaged in prohibited conduct related to drug or alcohol misuse under this policy shall be subject to at least six (6) random tests during the twelve (12) month period after returning to duty with the possibility of follow-up testing for up to sixty (60) months after the employee returns to duty.

Test Confidentiality

Confidentiality is maintained throughout the drug/alcohol testing process. All positive test results are first forwarded to a Medical Review Officer (MRO) for review. The MRO reviews the individual medical history and affords the employee an opportunity to offer any clarifying information that would explain the positive test. Records shall be maintained in the strictest of confidence in a medical file separate from the official personnel file. In cases where disciplinary action results from a positive test, such information is shared only with those in a supervisory capacity involved in that action. Upon a written employee request, such information will also be made available to the employee's representatives. Polk County will carry out this policy in a manner which respects the dignity and confidentiality of those involved.

Test Procedures

Alcohol

Employees will be required to submit to breath testing using an evidential breath testing (EBT) device administered by a state-certified breath alcohol technician (BAT). Two (2) breath tests are required to determine if an employee has a prohibited alcohol concentration. An initial screening test is conducted first. Any result less than 0.02% BAC is considered a "negative" test. If the alcohol concentration is 0.02% BAC or greater, a second or confirmation test must be conducted. The BAT will follow procedures that will assure the integrity of the testing, safeguard validity of the test results and insure that those results are attributed to the correct driver.

Preparation for Breath Alcohol Testing

1. When the employee enters the collection site, the BAT will require him or her to provide positive identification (i.e. photo I.D. or Employer identification).
2. The BAT will explain the test procedure.
3. Employees will be required to complete and sign various forms used to document the testing process. Refusal to sign the test form(s) or provide proper identification will be regarded as a refusal to take the test.
4. Employees will be instructed to blow forcefully into the mouthpiece for at least six (6) seconds or until the EBT indicates that an adequate amount of breath has been obtained.
5. If an employee tests positive during the screening test, he/she shall not eat, drink, put any object or substance in his or her mouth and, to the extent possible, not belch during the 20 minute waiting period before the confirmation test.

If a confirmation alcohol test measures .04 percent blood alcohol concentration or greater, the Employer is required to:

- A. Remove the employee from the safety-sensitive position. (The employee will be sent home without pay.)
- B. Advise the employee of the resources available regarding evaluation and resolution of problems with the use of controlled substances and the misuse of alcohol.
- C. Have the employee evaluated by a substance abuse professional who shall

determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substance abuse.

- D. Have the employee retested at least six (6) times at random during the next year with the possibility of follow-up testing for up to 60 months.
 - E. Insure that the employee tests less than .02 percent blood alcohol concentration before the employee is allowed to return to duty.
- 6.
- a) If the confirmation test level is equal to or greater than 0.02 but less than 0.04 percent blood alcohol concentration, the employee will be removed from the safety-sensitive position and sent home for 24 hours and will not be permitted to return to work until another breath test is administered and the result is less than 0.02% BAC.
 - b) If a breath test cannot be administered, the employee must be removed from performing safety-sensitive duties for at least 24 hours. In the event that an employee is required to comply with breath or blood alcohol testing as a result of a law enforcement investigation, the test will be considered enforceable for purpose of this policy if the test conforms to the applicable federal, state or local requirements for that testing.

Controlled Substances

For purposes of this policy, the Employer will utilize, at a minimum, a 5-panel drug screen consisting of the following drugs:

- a. Tetrahydrocannabinol (marijuana drug)
- b. Cocaine
- c. Amphetamines
- d. Opiates (including heroin)
- e. Phencyclidine (PCP)

Drug testing is conducted by analyzing an employee's urine specimen. The certified testing lab will follow procedures that will assure the integrity of the testing, safeguard the validity of the test results, and insure that those results are attributed to the correct employee. This procedure will include split specimen. Each urine specimen is subdivided into two (2) bottles labeled as a "primary" and a "split" specimen. Both bottles are sent to a lab. Only the "primary" is opened and used for the urinalysis. The split specimen bottle remains sealed and is stored at the lab. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the employee has 72 hours to request the split specimen be sent to another certified laboratory for analysis.

Preparation for Drug Testing

1. When the employee enters the collection site, the employee will be required to provide positive identification (i.e. photo I.D. or Employer identification).
2. The employee will be instructed to provide at least 45 ml of urine under the split sample method of collection. This will be done in a specifically designated "donor" bathroom.
3. The urine sample shall be divided into a primary specimen (30 l) and a split specimen (15 ml).
4. If the test result of the primary specimen is positive, the employee may request within 72 hours, that the Medical Review Officer (MRO) direct that the split sample specimen be tested in a different DHHS-certified laboratory for the presence of the drug(s) for which a positive result was obtained in the test of the primary specimen.
5. MRO Review Required
 - a) All drug test results must be reviewed and interpreted by a physician Medical Review Officer (MRO) before they are reported to the employer.
 - b) If the laboratory reports a positive result to the MRO, the MRO contacts the employee (in person or by telephone) and conducts an interview to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the employee provides an appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the employer.
6. Removal from performing a safety-sensitive function is not stayed pending the result of the test of the split specimen.
7. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test.
8. Employees will be required to complete and sign various forms used to document the testing and chain of custody process. Refusal to sign the test form(s) or provide proper identification will be regarded as a refusal to take the test.

As with an alcohol misuse violation, the Employer is required to act upon a positive drug test result in the following manner:

1. Remove the employee from the safety-sensitive position. (The employee will be sent

home without pay.)

2. Refer the employee to the EAP for advice on what information is available on evaluating and resolving problems associated with the misuse of alcohol and controlled substances.
3. The employee must be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs to resolve problems associated with the misuse of alcohol or the use of controlled substances.
4. The employee must have a negative result on a return-to-duty drug test.
5. Follow-up testing to monitor the employee's continued abstinence from drug use will be required at least six (6) times in the first 12 months after return-to-duty and up to 60 months.

Discipline

In addition to the consequences and sanctions prescribed by Federal Highway Administration regulations for engaging in prohibited conduct as defined by 49 CFR Section 482, the County may administer separate and independent disciplinary actions. Such discipline shall be consistent with County policies and may include measures up to and including discharge.

Amendment

The County reserves the right to amend this policy at any time and for any reason.