



DOT Drugs and Alcohol Testing

*Presented by
Midwest Toxicology Services, LLC*

Today's Presentation

- **Background & Statistics**
- **Overview of DOT Drug Testing requirements**
- **Do you have questions?**

DOT Background

- First DOT testing began in 1989
- October 1991 Omnibus Transportation Act was passed
- 1994 final rules were issued
- Employers had to implement these rules 1995-96
- Affected over 7 million drivers who had Commercial Drivers License.

Widespread Drug Abuse in the Workplace

- 47% of Workplace accidents are drug related
- 80% of those injured in a *serious* drug related accident at work are not the drug abusers but the innocent co-workers
- Substance abusers are 5 times more likely to file a worker's comp claim

Employer Responsibility

- Employers are responsible to understand:
 - 49 CFR Part 40 – testing procedures
 - 49 CFR Part 382 - FMCSA rules
- Most companies use a **TPA (Third Party Administrator)** to manage their testing
- However, employers are responsible for all actions of their officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations
 - **THEREFORE**, it is very important you know that your TPA is well qualified and has a proven track record for keeping their clients in compliance

Employer Responsibility

- Designate a DER
- Have an up-to-date policy
- Provide copy of written policy to employees
- Provide required Employee Education to employees
- Train an adequate number of Supervisors
- Perform all required testing
- Have documentation of proper random pool management
- Keep proper records for required time period
- Complete annual MIS reports

What is a DER (Designated Employer Representative)?

- The DER:
 - is the person designated by the employer to be responsible for receiving communications and test results from service agents
 - must be employee of company
 - is authorized to take immediate actions to remove employees from safety-sensitive duties
 - is authorized to make required decisions in the testing and evaluation processes

Substance Abuse Policy

- DOT has specific requirements and required content for your substance abuse policy - 382.601
- Your policy should be reviewed periodically to make sure it is current with current DOT rules and regulations
- Be sure to provide a copy of your written policy to all new employees

Employee Education

- Employers must complete employee education requirements to meet 382.601
- This training is a one time only training – employers may provide the training by:
 - Classroom style meeting
 - Written handouts
 - Video/internet presentations
- Employer must have written documentation of providing this education & each employee must sign a “Certificate of Receipt” verifying this information was provided to them

Supervisor Training

- DOT requires that a sufficient number of supervisors are trained to determine if an employee needs to be tested for “reasonable suspicion”
- What is a sufficient number?
- How often is training required?
- Where can you obtain supervisor training?

What are the required tests

- Pre-employment
- Post-accident
- Random
- Reasonable Suspicion
- Return-to-duty
- Follow-up

Pre-employment Testing

- Employer has 4 specific requirements
 - ✓ Complete a PE drug test on the employee
 - ✓ Complete a drug & alcohol background check for previous testing violations with previous employer(s)
 - ✓ Provide required employee education to the employee
 - ✓ Add employee to the random pool after notice of negative PE test

Drug & Alcohol Background Check

49 CFR 40.25 & 391.23

- This requirement is often overlooked and not performed
- You must have the written consent from the prospective employee to obtain testing records from any previous employer(s) they worked for as follows:
 - 40.25 – requires the past 2 years records
 - 391.23 – requires the past 3 years records
- Another rule often forgotten is the requirement for the employer to ask the new employee if they have failed any pre-employment test - 40.25(j) – **This must be documented**

Post-Accident Testing 382.303

- Employer MUST test for drugs & alcohol if:
 - Fatality
 - Citation plus towing of vehicle
 - Citation plus medical treatment
- Time Requirements
 - Drug Test - 32 hours
 - Alcohol Test - 2 hours if possible, try 6 more hours (total 8 hours)

What about non-DOT accidents?

- Most accidents will NOT be a “DOT accident”
- Do you test for accident situations that aren't DOT accidents?
 - It is up to the employer
 - You should have a written policy covering what accidents you will or will not require testing for

Random Testing

Random Guidance & Rules

1. How are random selections done?
 - ✓ Must use scientifically valid method to do selection
2. How often can driver be selected?
 - ✓ All drivers must have the same equal chance of being selected each time a random is done
 - ✓ Drivers can be selected each time or not at all
3. Can driver be excused from a random test?
 - ✓ Only if driver is no longer employed, deceased or is out on extended leave of absence for entire random period
4. How many random tests must be done each year?
 - ✓ Minimum of 50% drugs, 10% alcohol

Random Testing

5. How/when is driver notified of random test?
 - ✓ Rules state tests must be unannounced
 - ✓ Avoid giving driver any advance notice of their random test – rule states driver is to report directly for testing once notified

6. How frequently must random be done?
 - ✓ Selections must be spread reasonably throughout the calendar year
 - ✓ FMCSA recommends quarterly selections

7. How much time does driver have to report for test?
 - ✓ Once the DER notifies a driver he/she was selected – they must report immediately for the test (cannot delay testing)

Reasonable Suspicion Testing

- Criteria for a suspicion test – 382.307
 - Trained supervisor must make determination
 - Decision to test must be based on a face-to-face observation of the drivers:
 - Appearance
 - Behavior
 - Speech
 - Body odor
 - Written documentation must be completed on any suspicion testing situation

Return-to-duty & Follow Up Tests

- Return-to-duty and Follow-up tests are required for employees who have a testing violation (positive test or refusal)
- They must complete the following steps before they are eligible for a RTD test
 - Complete a face to face evaluation with a qualified SAP (Substance Abuse Professional)
 - Complete the program of rehabilitation recommended by the SAP
- After a successful RTD test the employee is required to complete a minimum 6 follow-up tests in the next 12 months

DOT compliance and audits

- FMCSA has the right to audit your records at any time – only have to give 2-days notice
- Fines can vary depending on the non-compliance issue.
 - Ex. Employer could be fined up to \$11,000 for failing to implement a testing program.
- Would you be prepared if you were audited?

Where to find Information?

Website for DOT rules,
documents, etc.

www.dot.gov/odapc

FMCSA Implementation Guide

<http://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/employers-resources-and-downloads>

The screenshot displays the FMCSA website interface. At the top, it shows the United States Department of Transportation logo and navigation links for 'About DOT', 'Our Activities', and 'Areas of Focus'. The main header features the FMCSA logo and 'Federal Motor Carrier Safety Administration' text, along with a search bar. A navigation menu includes 'About Us', 'Regulations', 'Registration', 'Safety', and 'News'. The breadcrumb trail reads 'Home > Regulations > Drug & Alcohol Testing'. A left sidebar menu lists various categories, with 'Employer Resources' highlighted. The main content area is titled 'Employers Resources and Downloads' and includes a sub-header 'Employers seeking additional information on DOT drug and alcohol testing rules are encouraged to use the resources listed on this page.' Below this, there are sections for 'Videos' (listing 'DOT Mock Collection Instructional Video' and 'DOT's 10 Steps to Collection Site Security and Integrity Video') and 'Brochures & Guides' (listing 'Drug and Alcohol Testing Brochure for Drivers', 'Best Practices for DOT Random Drug and Alcohol Testing', 'ODAPC's Employee Handbook for DOT Drug and Alcohol Testing', and 'Implementation Guidelines for Alcohol and Drug Regulations'). To the right, there is an illustration of a person at a desk and a 'Related Links' section with the link 'Find the local Field Offices in your State'. At the bottom, it mentions 'FMCSA Information Line' and '1200 New Jersey Avenue, SE'.

THANK YOU

- MTS has provided TPA services for substance abuse testing programs since 1992
- Many of you are our current clients and we thank you for your business
- Others who currently aren't our clients are very welcome to call us if you have questions about DOT drug and alcohol testing or would like to learn more about our services