


FEDERAL DRUG AND ALCOHOL TESTING POLICY

Approved:


Jack Marchbanks, Ph.D., Director

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Responsible Division: Human Resources

Supersedes: ODOT Federal Drug and
Alcohol Testing Policy Dated January 2, 2023

I. POLICY STATEMENT

It is the policy of the Ohio Department of Transportation that its workplace be free of restricted substance abuse. Consequently, the use of restricted substances, including non-medical marijuana and medical marijuana by employees covered under the provisions of the US Department of Transportation (US DOT) drug and alcohol testing requirements is prohibited. Further, employees who use or are under the influence of alcohol while on duty shall be deemed to have engaged in prohibited conduct. The purpose of this policy is to foster a safe, drug and alcohol-free workplace, an environment conducive to the successful accomplishments of agency goals and mission, the enhancement of employee well-being, increased employee productivity, the reduction of accidents, injuries, and fatalities, and the abatement of risks created by employees who are on duty in an impaired condition.

II. AUTHORITY

Drug Free Workplace Act, 1988
Americans with Disabilities Act of 1990, as amended
Omnibus Transportation Employee Testing Act, 1991
49 CFR Part 40
Ohio Revised Code 3796.28
Ohio Administrative Code 123:1-45-01, 123:1-76-01 through 123:1-76-14
State of Ohio Drug Free Workplace Policy – HR-39, 2023
State of Ohio/OCSEA Contract, Appendix M

III. SCOPE

- A. This policy applies to an ODOT employee or final applicant for employment who is subject to the drug and alcohol testing requirements as specified under the Omnibus Employee Testing Act of 1991 (ACT), US Department of Transportation, Federal Motor Carrier Safety Administration Regulations, Title 49, Parts 40 and 382 under the following conditions:
 - 1. The employee must be required to possess a commercial driver's license (CDL) to perform the duties of his/her position, and
 - 2. The employee must be required to perform safety-sensitive functions
- B. A CDL is required to operate any motor vehicle used to transport passengers or property if the vehicle has:
 - 1. A gross combination weight rating of 26,001 or more pounds, including a towed

- unit with a gross vehicle weight rating of 10,000 pounds
 - 2. A gross vehicle weight rating of 26,001 or more pounds
 - 3. Is designed to transport 16 or more passengers including the driver
 - 4. Is of any size and is used to transport hazardous materials as defined by the Hazardous Materials Transport Act
- C. An employee is considered to be performing a safety sensitive function during any period in which he/she is actually performing, ready to perform or immediately available to perform any safety sensitive function. Performing a safety sensitive function means any period from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety sensitive functions shall include:
- 1. All time spent at the driving controls of a commercial motor vehicle in operation
 - 2. All time at an ODOT facility or other property or on any public property waiting to be dispatched, unless the driver has been relieved from duty by ODOT
 - 3. All time inspecting equipment, servicing or conditioning any commercial motor vehicle
 - 4. All time (other than driving time) in or upon any commercial motor vehicle, except time spent resting in a sleeper berth
 - 5. All time loading or unloading a vehicle, supervising or assisting in loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a commercial motor vehicle or in giving or receiving receipts for shipments loaded or unloaded
 - 6. All time repairing, obtaining assistance or remaining in attendance upon a disabled vehicle

IV. TESTING REQUIRED

The Act requires pre-employment drug tests, reasonable suspicion drug and/or alcohol tests based upon the observations currently present, post-accident drug and alcohol tests, random drug and/or alcohol tests, return-to-duty drug or alcohol tests, and follow-up tests for drug or alcohol.

V. GENERAL PROHIBITIONS

As required by Federal law, an employee is required to notify ODOT within five (5) days of conviction of a Federal or State criminal drug statute, provided such conviction occurred at the workplace or any location where the employee is working at the time of the incident which led to the conviction. An employee's failure to timely report may be cause for discipline up to and including removal. In addition, US DOT regulations prohibit the following:

- 1. The use of alcohol or any controlled substance while the employee is performing safety-sensitive functions
- 2. The performance of any safety-sensitive duty within four (4) hours after the consumption of alcohol

3. The refusal to take an alcohol or drug test when ordered
4. Remaining on duty after a positive alcohol (0.04 BAC or greater) or drug test
5. The performance of safety-sensitive functions by any person with a BAC of 0.02 to 0.0399
6. The consumption of any alcohol within eight (8) hours of an accident by any employee subject to a post-accident test

VI. TESTING OVERVIEW

A. Pre-Employment Testing - Drug tests are required for all final applicants for positions covered by US DOT testing requirements. A negative drug test result must be received prior to the employee performing safety sensitive functions. Persons entering these positions from outside state government, and current state employees who do not perform safety-sensitive functions (49 CFR, Part 382), and are transferring into these positions must be tested.

US DOT regulations (49 CFR, Part 40.25) require prospective employees to authorize release of information about previous drug and alcohol test results. The authorization is a condition for employment, and must include the following in the two (2) years prior to the release of information:

1. Alcohol tests with a result of 0.04 or higher
2. Verified positive drug tests
3. Refusals to be tested
4. Other violations of DOT drug and alcohol testing regulations
5. Information obtained from previous employers of a drug and alcohol rule violation
6. Documentation, if any, of completion of a return-to-duty process following a rule violation

B. Reasonable Suspicion Testing - If there is reasonable suspicion to believe that a covered employee is under the influence of alcohol or drugs, that employee must be tested. Only one supervisor's observation is required to order a reasonable suspicion test. The specific observations of the employee's behavior or appearance must be current and made just before, during or after the employee performs safety sensitive functions. The employee shall be immediately removed from the performance of safety sensitive functions and escorted to the test site. No prior documentation is required as a condition for ordering a reasonable suspicion test, though written documentation of the observations is required:

1. Within 24 hours of the test order, or before the test results are received, whichever is sooner for a drug test
2. Following the order to test for an alcohol test. If the alcohol test is not administered within two (2) hours of the reasonable suspicion determination, additional documentation must be prepared as to why it was not done. If the test has not been administered within eight (8) hours, testing efforts must cease and documentation prepared listing the reasons for not administering the test

C. Post-Accident Testing – As soon as practicable following the occurrence of an accident involving an employee operating a commercial motor vehicle on a public road, the surviving driver shall be tested if any of the following criteria are present:

1. Any accident involving a fatality
2. Any accident in which the driver is cited, and there is disabling damage to the vehicle(s) requiring a vehicle to be transported away from the scene by a tow truck or other motor vehicle
3. Any accident in which the driver is cited, and immediate off-site medical treatment is required for bodily injury to any person

Employees must notify the agency about an accident immediately (if medically able to do so), remain readily available for testing, and not consume any alcohol for eight (8) hours after the accident, or until an alcohol test has been administered, whichever occurs first. Failure to comply with this requirement shall be considered a refusal to submit to testing. Any employee required to be tested but needing medical assistance must get the needed medical assistance first.

Post-accident tests for alcohol should be done within two (2) hours of the accident. Attempts to test for alcohol should cease if eight (8) hours have elapsed after the accident and no test has been done. The agency must document for file the reason why the test was not promptly administered within two (2) hours, and if not administered within the eight (8) hours.

Drug tests must be administered as soon as possible after the accident, but never beyond thirty-two (32) hours after the accident. If the drug test was not performed within the 32-hour time limit, documentation must be made for file as to why it was not performed.

Post-accident breath or blood tests for alcohol, or urine tests for drugs conducted by Federal, State or local authorities having independent authorization to conduct such tests can be used if they conform to applicable Federal, State or local requirements, and the test results can be obtained.

D. Random Testing – Random testing is essential to deter the use of drugs and misuse of alcohol. Of the average number of all covered employees, the minimum annual percentage rate for random testing shall be ten percent (10%) for alcohol and twenty-five percent (25%) for drugs.

All employees covered under US DOT drug and alcohol regulations will be subject to an equal chance of being selected for random testing whenever selections are made. Selections will be made by a computer-based random number process, using the position numbers of all positions for which US DOT testing is required. Selections are made on a monthly basis, are unannounced and confidential. Separate selections are made for both alcohol and drug tests.

Tests can be ordered any time during the employee's work shift. An employee is to receive no advance notice. An employee notified of their random selection is required to comply with the order to test, immediately proceed to the test site without delay, and arrive at the test site within a reasonable period for travel. The dates of testing are randomly distributed during each selection period. An employee may be notified to test during any day of the selection period. Documentation is required for any selected employee not tested during the selection period indicating the reason why the administration of the test did not occur. An employee, who has been absent from work for more than thirty (30) days, and during the period of absence was selected for random drug test is required to complete a pre-employment drug test prior to resuming safety sensitive duties.

- E. Return-to-Duty Testing - An employee who tests positive for a restricted substance or refuses to test or violates other provisions of the US DOT Code of Federal Regulations on controlled substances and alcohol use and testing cannot work again in a safety sensitive position until successfully completing the treatment plan determined by a certified Substance Abuse Professional (SAP) and official release to return to work by the SAP within one hundred and eighty (180) days. Upon receipt, ODOT will schedule the employee to complete a return-to-duty test. A negative result is required as a condition for resuming employment. Return-to-duty testing is conducted under direct observation at the test site. The employee is responsible for payment for the cost of a return-to-duty test.
- F. Follow-Up Testing - An employee who has returned to duty after receiving treatment following a positive test result will be subject to unannounced follow-up alcohol and/or drug testing as directed by the SAP. A minimum of six (6) unannounced follow-up tests during the first 12 months is required after the employee returns to duty. Testing may continue for up to sixty (60) months after the employee returns to duty if ordered by the SAP. Follow-up testing is conducted under direct observation at the test site. The employee is responsible for payment for the cost of all follow-up tests.

VII. REFUSAL TO TEST

An employee covered under US DOT drug and alcohol regulations is required to submit to the direction and administration of the following test types in accordance with these regulations: pre-employment, post-accident, random, reasonable suspicion, or a follow-up alcohol or drug test. An employee's refusal to submit or successfully complete a required drug and/or alcohol test will be considered a positive test. A refusal to test also includes: the failure to appear for any test within a reasonable period of time, failure to remain at the test site until the testing process is complete, failure to permit direct observation of the test process when required, failure to complete a second test when directed, failure to undergo a medical examination or evaluation as directed by the Medical Review Officer (MRO) of the testing program, or is reported by the MRO as having a verified adulterated or substituted test result.

A refusal to test for alcohol will occur when the employee fails to:

1. Sign the breath alcohol test form
2. Provide breath for an alcohol test
3. Provide an adequate amount of breath to complete an alcohol test
4. Cooperate with the testing process, or behave in a confrontational way that would disrupt or prevent completion of the test

A refusal to test for drugs occurs when the employee fails to:

1. Provide a urine specimen
2. Provide an adequate amount of urine
3. Cooperate with the testing process, or behave in a confrontational way that would disrupt or prevents completion of the test

Any person refusing to complete a pre-employment test will not be hired. An employee refusing to take a return-to-duty test cannot be returned to duty. A refusal requires the immediate removal of the employee from safety sensitive duties and may subject the employee to disciplinary action up to and including termination of employment.

VIII. DRUG URINALYSIS

In accordance with US DOT regulations drug testing shall be performed through urinalysis. Urinalysis will test for the presence of metabolites of the following controlled substances: (1) marijuana, (2) cocaine, (3) opioids, (4) amphetamines, (5) phencyclidine (PCP). Drug test panels and cut-off levels are listed in 49 CFR, Part 40. Federal regulations (49 CFR, Part 382.213) do not authorize the use of schedule 1 controlled substances (21 CFR 1308.11), including medical marijuana, for any reason regardless of state initiatives otherwise. In addition, an employee may not use a drug or substance in the other schedules identified in 21 CFR 1308.11 except:

1. If the controlled substance or drug is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and assigned duties; and
2. The licensed medical practitioner has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

In order to protect the driver and the integrity of the testing processes, safeguard the validity of the test result and ensure that the result is attributed to the correct driver, the following procedures shall occur: An employee must present picture identification to the collection facility. The urinalysis procedure starts with the collection of a urine specimen. The employee will sign the sealed specimens, and chain of custody form for the specimens. Urine specimens will be submitted to a Department of Health and Human Services (DHHS)-certified laboratory for testing. As part of the collection process, the specimen provided will be split into two vials; a primary vial and a secondary vial. The DHHS-certified laboratory will perform initial screening on all primary vials. If the primary specimen tests positive, a confirmation test of that specimen will be performed before being reported by the laboratory

to the MRO as a positive test.

All laboratory results will be reported by the laboratory to a Medical Review Officer (MRO) designated by the employer. Negative test results shall be reported by the MRO to the employer. Before reporting a positive test result to the employer, the MRO will attempt to contact the employee to discuss the test result. If the MRO is unable to contact the employee directly, the MRO will contact the Employer Management Official designated in advance by the employer, who shall in turn contact the employee and direct the employee to contact the MRO immediately or, if after the MRO's business hours and the MRO is unavailable, at the start of the MRO's next business day. In the MRO's sole discretion, a determination will be made as to whether a result is positive or negative, or negative with a medically unqualified / safety risk if an employee has a medical prescription for a controlled substance, e.g.: an opioid. An employee who tests negative with a medically unqualified / safety risk regarding a controlled substance shall be immediately removed from safety sensitive duties pending resolution of the medically unqualified / safety risk in accordance with 49 CFR Part 382.213.

Pursuant to US DOT regulations, individual test results for applicants and employees will be released to the employer and will be kept strictly confidential unless consent for the release of the test results has been obtained. Any applicant who has submitted to drug testing in compliance with this policy is entitled to receive the results of such testing upon timely written request.

An employee testing positive may make a request of the MRO to have the secondary vial tested. The employee may request that the secondary vial be tested by a different DHHS-certified lab than tested the primary specimen. The employee making the request for a test of the second specimen is responsible to reimburse the state for the cost associated with the test. The request for a testing of a second specimen is timely if it is made to the MRO within 72 hours of the individual being notified by the MRO of a positive test result.

IX. ALCOHOL TESTS

An employee is subject to random alcohol testing just before, during or just after an employee performs a safety sensitive function, including whenever an employee is immediately available to perform safety sensitive functions. An employee must present picture identification to the collection facility. Alcohol tests will be performed using an evidential breath testing device. The evidential breath testing device will be operated by a breath alcohol technician. The employee shall follow all instructions given by the breath alcohol technician. In the event that an employee, on the basis of the evidential breath test, has a confirmed blood-alcohol content of .02 to .0399, the employee shall be removed from duty for 24 hours. A test indicating a blood-alcohol concentration of .04 or over is a positive test resulting in the employee being immediately removed from duty until further notice. An employee testing .02 or above must immediately contact the employer from the test site, inform them of the test result, and shall not operate a state vehicle returning from the test site. There is no re-test of an alcohol test.

X. POSITIVE TEST RESULTS

Employees who test positive, including refusals to test, for alcohol or controlled substances for the first time will be immediately removed from safety sensitive duties and subject to disciplinary action up to and including removal from employment. Except for temporary, seasonal, unclassified or employees in their initial probationary period, employees who test positive for restricted substances on a first offense shall be provided the opportunity to hold the disciplinary action in abeyance contingent upon completion of an Employee Assistance Program (EAP) Participation Agreement and Last Chance Agreement. Upon completion of the EAP Participation Agreement, the Ohio EAP will refer the employee to a certified Substance Abuse Professional (SAP) for evaluation and determine the specific treatment plan for the employee. Upon successful progress or completion of the plan, the SAP shall submit a written release for the employee to be able to resume safety-sensitive duties. An employee is required to successfully complete the prescribed treatment plan as one condition of future employment.

The following discipline shall apply for a violation of this policy:

Violation	1st Offense	2nd Offense
An Alcohol Test of .02 to .03999	Written Reprimand/Termination	Termination
An Alcohol Test of .04 or Greater	Termination, or EAP Participation Agreement and Last Chance Agreement	Termination
A Positive Drug Test	Termination, or EAP Participation Agreement and Last Chance Agreement	Termination
Refusal to Take a Drug or Alcohol Test	Termination, or EAP Participation Agreement and Last Chance Agreement	Termination

XI. EMPLOYEE ASSISTANCE PROGRAM

The Ohio Employee Assistance Program (EAP) is a confidential, professional support service available to all State of Ohio employees and their dependents. The EAP is a voluntary program which helps employees and their families affected by drug or alcohol abuse with referral to a certified Substance Abuse Professional. Employees with substance abuse problems are encouraged to voluntarily contact the EAP. Enrollment in a substance abuse program will not adversely affect employment, however, unacceptable job performance, attendance, and/or behavior problems may result in disciplinary action. The Ohio Employee Assistance Program may be contacted at <https://das.ohio.gov/employee-relations/benefits-administration/ohio-eap/ohio-eap> or (800) 221-6327.

XII. FEDERAL TESTING INFORMATION

Information and assistance regarding the Federal DOT drug testing requirements and the process for their implementation are available at <https://www.fmcsa.dot.gov/regulations/drug-alcohol-testing/testing-procedures-0> , from the Office of Labor Relations at (614) 466-6114, or by contacting the ODOT District Labor Relations Officer or Drug and Alcohol Testing Confidant.

XIII. TRAINING

Each employee will be provided a copy of this policy and receive information on the drug free workplace expectations, drug and alcohol testing programs and procedures, and the Ohio Employee Assistance Program within thirty (30) days of employment.

All employees shall be provided periodic drug-free workplace training in accordance with Federal Regulations, State Policy and Collective Bargaining Agreement, including new employee orientation, supervisor training and e-learning courses. Supervisors of employees covered under Federal drug and alcohol testing regulations will receive specific training in recognizing the signs and symptoms related to reasonable suspicion testing in accordance with Federal Regulations.

XIV. ADMINISTRATION OF THE TESTING PROGRAMS

The Office of Labor Relations in the Division of Human Resources is responsible for the administration of the drug and alcohol testing programs in conjunction with the services and resources provided by the Ohio Department of Administrative Services, Office of Drug Free Workplace. Drug and Alcohol Testing Confidants are also designated in every ODOT district and Central Office to administer the drug and alcohol testing programs at the local level, primarily the district Labor Relations Officer.

These individuals, along with other agency managers and supervisors, shall be responsible for the implementation, enforcement and monitoring of this policy and the drug free workplace program to ensure that it is administered consistently, fairly and within appropriate constitutional parameters.

Employees with questions about the drug and alcohol testing programs may contact the Office of Labor Relations at (614) 466-6114, or the district Labor Relations Officer or Drug and Alcohol Testing Confidant.

XV. FISCAL ANALYSIS

The budgeted amount for drug and alcohol testing is \$120,000 per year, payable through the Division of Human Resources, Office of Labor Relations cost center.