

# DRUG TESTING FOR COMMERCIAL DRIVERS LEGAL CORNER

By Adam Pace

Most drivers who possess a commercial driver's license (CDL) and operate a commercial vehicle are subject to the federal alcohol and drug testing requirements found in the Code of Federal Regulations, Title 49, Parts 40 and 382.

Employers of CDL drivers are required to perform the

- **Pre-employment drug testing**—CDL drivers must pass a drug test as a condition for employment.
- **Reasonable Suspicion Testing** – CDL drivers are subject to reasonable suspicion testing (drug or alcohol), which is typically based on observations of the appearance, behavior, speech, or body odors of the driver. Referral for such testing is made by a supervisor, who must attend required training. It is a good practice to keep written records of the observations used as the foundation for random tests.
- **Post-accident Testing**—CDL drivers must be tested for drugs and alcohol if they are involved in an accident on a public road that involves a fatality. For accidents that do not involve a fatality, the CDL driver must be tested for drugs and alcohol if he/she receives a citation for the accident under state or local law, and the accident involves an injury which requires treatment away from the scene or disabling damage to any motor vehicle which requires the vehicle to be towed away. The alcohol testing must occur ideally within 2 hours, but not more than 8 hours after the accident. The drug testing must occur within 32 hours.
- **Random Testing**—CDL drivers are subject to random, unannounced drug and alcohol testing spread reasonably throughout the calendar year. The testing must use a scientifically valid method to ensure that each driver has an equal chance of being tested each time, and 50% of all drivers must be tested for drugs, and 10% of all drivers must be tested for alcohol in a given year.
- **Return-to-duty and Follow-up Testing** – CDL drivers who test positive on a drug or alcohol test must test negative prior to returning to safety sensitive work (which includes driving). These drivers must also undergo follow-up tests during the first 12 months after returning to work.

Employers must drug test for marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP), and the testing typically consists of initial urine testing, followed by confirmation testing on specimens that screen positive by using gas chromatography/mass spectrometry. Alcohol testing is typically conducted using National Highway Traffic Safety Administration-approved evidential breath-testing devices (breathalyzers) operated by trained

technicians. A blood alcohol content of 0.04% or higher is a violation of federal standards, but employers may set a higher standard (such as 0.02%, etc.).

Employers may be interested to know that current federal regulations do not require blood testing for CDL drivers. And the United States Supreme Court recently ruled in *Missouri v. McNeely* (2013) that, subject to certain exceptions, the Fourth Amendment requires law enforcement to obtain a search warrant to order a blood test, even if they have lawfully arrested the driver for driving while intoxicated. This means that evidence obtained through a warrantless blood test is likely to be suppressed in criminal proceedings against a driver. However, there is still a chance that the evidence will be admissible in a civil lawsuit.

The purpose of the federal drug and alcohol testing regulations is to promote safety and to reduce highway accidents. Know your rights and responsibilities, and drive safely!

*“ The purpose is to promote safety and to reduce highway accidents. ”*



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