

Drug Testing: Commercial Driver's License (CDL) Employees

Substance Abuse and Drug Testing Policy

Statement of Policy

The use of banned/illegal drugs and other intoxicants by employees who use a commercial driver's license ("CDL") during their employment with the University presents a serious threat to the safety and health of the employee, their fellow colleagues, and the general public. It is the policy of the University that all CDL employees, regardless of their role or status with the University, should be free of drugs, alcohol, and other intoxicating substances. As a condition of being involved and/or registered with the University, all CDL employees will comply with the terms of this policy, as well as the University's Drug and Alcohol Policy.

General Rules

The University establishes the following rules applicable to all CDL employees of the University.

1. All CDL employees must be "physically qualified" to do the task assigned to them. A person is not "physically qualified" to perform their assigned work if he/she:
 - a. Uses any non-prescribed or illegal drug, including drugs banned by the Department of Transportation ("DOT") or any other federal or state governmental agency, including marijuana obtained legally under state law, or
 - b. Fails to pass any drug test required under this policy.
2. While on the University premises, performing University business, while operating a University vehicle, while driving on behalf of the University, or during working hours, CDL employees are prohibited from:
 - a. Using, acquiring, possessing, manufacturing, distributing, dispensing, storing, soliciting, or selling, any illegal/banned drugs, alcohol or other intoxicating beverage (including cold medication with trace alcohol), or drug paraphernalia;
 - b. Using or possessing any controlled substance without authorization by a valid prescription;
 - c. Acquiring, manufacturing, distributing, dispensing, storing, soliciting, or selling a controlled substance,
 - d. Being under the influence of or testing positive for any banned/illegal drug, controlled substance, or alcohol.
3. No CDL employee shall be permitted to drive if their general appearance or conduct indicates potential use of a banned/illegal substance or intoxicating beverage, pending testing.
4. A CDL employee who tests positive for any banned/illegal substance or intoxicating beverage will be considered medically and physically unqualified to function as an employee and will be immediately suspended pending further investigation.

Substances Tested

- A. Controlled Substances.** Although the rules set forth above and in the University's Drug and Alcohol Policy apply to all controlled substances, drug testing required under this policy will analyze an individual employee's sample for the presence of any and all banned substances identified by the Omnibus Transportation Employees Testing Act of 1991 and related regulations (49 CFR Part 40) or DOT and Federal Transit Administration ("FTA") rules.
- B. Prescribed Medications.** This policy does not prohibit a CDL employee from using medication prescribed by a licensed physician, provided the employee takes the medication as prescribed. The employee is responsible to establish that the medication was prescribed by a licensed physician familiar with the individual's medical history and employment requirements, including use of the employee's CDL. The individual will also be required to provide a statement from the physician that taking the medication will not impair the safe performance, skill, and judgment of the employee's performance or duties, create a reasonable possibility of future harm to the employee or the general public, or otherwise alter the employee's physical or mental ability.

Any CDL employee using an over-the-counter or prescribed medication that may alter their physical or mental ability is required to report such treatment to the Office of Human Resources. Further, the employee should notify the University of any prescription drug use prior to taking any required drug test. The University reserves the right to obtain an independent medical opinion to analyze the relationship between the drug use and the ability to safely perform the employee's job. The University further reserves the right to prohibit the employee from driving in the course of their job duties until the University has received appropriate assurance.

Required Testing

- A. Pre-Employment/Post-Offer Testing:** All applicants offered positions with the University may be tested for use of alcohol or drugs prior to the start of work. The University will not hire as an employee or contract for hire any person unless that person passes an alcohol and drug screen. The University will also not continue in its employ any individual placed on the job prior to completing the post-offer alcohol and drug screen who subsequently tests positive
- B. Annual Pre-Registration Testing.** Any CDL employee registering to participate as a CDL driver with the University is required to undergo an annual test for the presence of any banned/illegal drugs.
- C. Post-Accident/Incident testing.** Alcohol and drug testing is generally required of CDL employees whose performance contributed to an accident/incident, regardless of whether an injury results, if the University cannot completely eliminate alcohol or drug use as a contributing factor to the accident. Because alcohol and drugs do not remain in the body for extended periods of time, testing will be done as soon as possible. If any employee who is subject to post-accident testing is conscious and refuses to be tested, that person will immediately be terminated.

- D. Random Testing.** Due to safety and security considerations, all CDL employees are subject to random drug testing, in addition to other required testing. The frequency of random testing shall be determined by the University without notice to CDL employees.

The University will not have discretion to decide which CDL employees will be tested. The agency selected to administer the test will randomly select eligible CDL employees for testing. Any and all CDL employees may be tested during a 12-month period. Following the agency's selection, the appropriate University official will locate and notify the individual(s) selected for the random testing. This process should be completed within 30 minutes of the contact notification.

To the extent necessary, random testing may be supplemented with selective testing to assure that all CDL drivers are tested during a 12-month period.

- E. Reasonable Suspicion Testing.** Whenever the University has reasonable cause to believe that a CDL employee may be impaired from the use of drugs or alcohol, may test positive, that the employee's work performance or on-the-job behavior may be affected in any way by alcohol or drugs, the CDL employee will be required to undergo drug and/or alcohol testing, at the University's request. Examples of factors giving rise to reasonable suspicion may include:

1. Observable conduct while at work, such as direct observation of drug or alcohol use or possession or of the physical symptoms or manifestations of being under the influence of drug or alcohol.
2. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance and/or attendance, such as repeated errors on the job.
3. A report of drug or alcohol use provided by a reliable and credible source that has been independently corroborated.
4. Evidence that the employee has tampered with a drug or alcohol test.
5. Information that an employee has caused or contributed to an accident while at work, including evidence of safety rule violations or otherwise unsafe behavior or practices.
6. Circumstances of an accident/incident where there is a reasonable basis to suspect that drug or alcohol use could have contributed to an injury, illness, or property damage.

If an individual has reasonable suspicion that a CDL employee is impaired by drugs, alcohol, or a controlled substance, they should notify the Office of Human Resources and complete a Report of Intoxication, which will be considered by the Office of Human Resources along with any positive test results. The Supervisor's Report of Intoxication shall be prepared and signed by the witness(es) within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

In any reasonable suspicion circumstance, the Assistant Vice President of Facilities Services, Facilities Services Manager, or on-duty Security Officer will transport the individual to an appropriate collection facility and await the completion of the collection procedure. The University representative will then transport the individual back to the University's premises, where a spouse, family member or other individual will be contacted to transport the individual to their home. In the event no such individual is

available, the University representative will contact a taxi to transport the individual home (at the University's expense) or the University representative will provide transportation. If the individual refuses to assent to any of these procedures and attempts to operate his/her own vehicle, the University will take appropriate efforts to discourage them from doing so, up to and including contacting local law enforcement officials. Any individual who refuses to undergo a drug or alcohol test under these circumstances or otherwise fails to cooperate with any of the procedures described above will be immediately terminated from employment at the University.

Specimen Collection and Testing Procedures

All persons requested to undergo a drug test will be required to provide a sample at a designated collection site. The collection, handling, and laboratory testing of all specimens will be performed in accordance with all applicable Department of Health and Human Services Mandatory Guidelines for Federal Work Place Drug Testing Programs. All specimen collection and laboratory testing will be performed by a certified specimen collection agent and a certified testing laboratory in accordance with applicable regulations. Any specimen that tests negative on an initial or confirmatory test will be reported as negative. The only specimens reported as positive will be those which have been confirmed as positive by the confirmatory testing method required under the regulations.

Employees subject to testing must sign an approved form consenting to the testing and consenting to the release of test results to the University. Refusal to sign the consent form will be considered refusal to be tested and will result in termination.

Confirmation of Test Results

All positive test results will be reported by the laboratory to the University's Office of Human Resources prior to any decision regarding an individual's qualification for continued employment due to the results of a drug test. The Office of Human Resources will contact a licensed physician with knowledge of substance use and abuse and related testing. They will review and interpret positive test results received from the laboratory and may also request qualification of the test results from the laboratory.

To rule out the possibility of false positive test results, the physician will explore possible alternative medical explanations for any positive test results. Prior to making a final decision verifying a positive test result, the physician will attempt to conduct a medical interview of the individual, either in person or by telephone, and give the individual the opportunity to discuss the positive test results with them. The physician may also review the individual's medical history and any other relevant biomedical factors. In addition, if the confirmed positive test result could have resulted from a legally prescribed medication, the physician will review all medical records made available by the tested employee.

If, after making and documenting all reasonable efforts to contact the employee, the physician is unable to reach the individual directly, the physician will contact a designated University official who will direct the employee to contact the physician prior to any work activities. The physician may verify a test as positive without having communicated directly with an employee about the results if the employee expressly declines the opportunity to discuss the test or if the individual

has not contacted the physician within five consecutive days after a designated representative of the University instructs the individual to do so.

If a test is verified as positive after the employee's failure to contact the physician as required, the individual may provide the physician with evidence documenting that serious illness, injury, or other circumstances unavoidably prevented him or her from timely contacting the physician. The physician, on the basis of such information, may reopen the verification and allow the employee to present information concerning a legitimate explanation for the confirmed positive test.

If, the physician, after completing his or her review, verifies the positive test result, the physician shall notify the Office of Human Resources. In the event a question arises as to the validity or accuracy of a positive test result, the physician may be authorized to order a re-analysis of the original sample at an appropriate laboratory. If the physician determines that there is a legitimate medical explanation for the positive test result, the physician will report the results to the Office of Human Resources as negative. The physician will also report as negative any test result that is not supported by sufficient quality control, inspection reports or other scientific data.

Notification of Test Results

Any CDL employee required to undergo a drug test will, upon written request, have access to any records relating to their drug test and any relevant laboratory certification records. Any CDL employee who tests positive as a result of a drug test will be promptly notified of any positive test results, along with the identity of the drug discovered. Any registrant requesting the results of an annual drug test will be provided with those results within 60 days of being notified of the disposition of their registration or the test results being available, whichever is earlier.

Discipline

An employee who admits violation of this policy need not be tested in order for disciplinary action to be taken. If the employee is suspected to be in violation of this policy, the employee will be immediately placed on suspension pending testing or other appropriate action. The employee will be paid for the time off and allowed to return to work immediately if the test results are negative and the employee is determined not to have violated this policy. If the Office of Human Resources confirms positive test results or determines the employee has otherwise violated this policy, the CDL employee will be subject to severe disciplinary action, up to and including immediate termination, at the University's sole discretion. Individuals terminated or denied employment pursuant to this policy will not be eligible for re-employment in the future.

Any employee who returns to the University after suspension for a violation of this policy shall be subject to unannounced testing for a period to be determined by the appropriate University official, not to exceed 60 months.

Voluntary Rehabilitation Leave

Substance abuse rehabilitation is the responsibility of the employee. If a CDL employee wishes to voluntarily report to the University that they have a substance abuse problem and seek medical or psychological treatment or assistance, the CDL employee must report directly to the Office of Human Resources for further assistance. Such a report does not protect an employee from disciplinary action for misconduct that occurred prior to taking medical leave to seek treatment.

Confidentiality

All drug and alcohol test results and records are considered confidential medical records. These records will be stored electronically, separate from personnel records. All information regarding investigations of misconduct under this policy will be treated confidentially, to the extent appropriate. This information may be released to or confidentially discussed with the employee, their supervisor/manager and other appropriate University representatives, including the University's legal counsel, and/or other individuals only to the extent there is a legitimate business reason to do so or as required by law or court order. Information regarding an individual's alcohol and drug testing results or rehabilitation will not be released to anyone outside the University without the express written authorization of the tested individual, except upon subpoena from a court with jurisdiction. The University will not release an employee's rehabilitation or alcohol or drug testing records to a subsequent employer without the employee's written consent.

Record Retention and Qualification Information

A. Record Retention

The University will request that the reviewing physician retain reports of any individual positive test results for a minimum of five years. The University will also maintain records from date of notification relating to the administration and results of its drug-testing program for a minimum of five years, except that individual negative test results will be maintained for a minimum of 12 months, or longer as required by federal and state document retention laws and regulations.

B. Qualification Information

The University will maintain a Qualification File for each person's confidential medical file. The Qualification File will contain the following qualification information:

1. Purpose for test (random, suspicion, etc.);
2. The type of testing for which the individual was tested;
3. The types of controlled substances testing for which the individual submitted a specimen;
4. The date of such collection;
5. The location of such collection;
6. The identity of person or entity;
 - a) Performing the collection;
 - b) Analyzing the specimens; and
 - c) Serving as the physician.
7. Whether the test finding was "positive" or "negative" and, if "positive," the controlled substance identified.