

Drug Testing: Commercial Drivers Licensed (CDL) Employees Substance Abuse and Drug Testing Policy

Statement of Policy

The use of banned/illegal drugs (identified by the Omnibus Transportation Employees Testing Act of 1991 –49 CFR Part 40- and the Department of Transportation and Federal Transit Administration Rules) by commercial drivers licensed (CDL) employees with the University presents a serious threat to the safety and health of the individual using the substances or doing such acts, 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. As a condition of being involved and/or registered with the University, all CDL licensed employees will abide by the terms of this policy statement, its rules and procedures.

Statement of Rules

The University establishes the following rules applicable to all CDL licensed employees of the University. This policy requires all CDL licensed employees to comply with the drug-testing program set forth in this policy.

1. All CDL licensed 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 habit-forming drug, including drugs banned by any federal or state governmental agency, except if such use consists of a substance prescribed by a licensed physician familiar with the individual’s medical history and involvement with the University, or
 - b. Fails to meet the drug testing requirements under this policy.
2. No CDL licensed employee may be involved with the University vehicle activities and possess, be under the influence of, or use any drug or other substance identified under this policy as a banned/illegal drug or any controlled substance regardless of whether or not the individual may safely perform with the exception of the possession or use of a substance administered to an individual by or under the instructions of a licensed physician who has advised the individual that the substance will not affect the individual’s ability to safely function in their role as a safe, skilled and competent employee.
3. No CDL licensed employee shall be in possession of an intoxicating beverage, regardless of its alcoholic content while involved with employment unless prescribed by a physician. Cold medications are contained in this category.
4. No employee shall be involved with employment if his or her general appearance or conduct indicates the use of a banned/illegal substance or intoxicating beverage.

5. An employee of the University who tests positive for the use of a banned/illegal substance or intoxicating beverage will be medically and physically unqualified to function as an employee, and will be immediately terminated from employment at the University.

Substances Tested

A. Controlled Substances

Although the rules set forth in the “Statement of Rules” section apply to all controlled substances, the drug testing required under this policy and until further notice will analyze an individual employee’s sample to test for the presence of the following substance(s):

1. Any and/or all banned drugs as listed by the Omnibus Transportation Employees Testing Act of 1991 (49 CFR Part 40) and the Department of Transportation and Federal Transit Administration Rules.

B. Prescribed Medications

A CDL licensed employee will not be disciplined if it is determined that a positive test result is due to a medication prescribed by a licensed physician. However, the individual will first have to establish that a licensed physician familiar with the individual’s medical history and involvement with the University prescribed the medication. The individual will also be required to provide a statement from his/her physician that the taking of the medication will not impair the safe performance, skill and judgment of the employee’s performance or duties or create a reasonable possibility of future harm to the employee or the general public.

Any CDL licensed employee taking a prescribed medication will be required to notify the University prior to the taking of any required drug test. The University also reserves the right to obtain an independent medical opinion to analyze the relationship between the drug use and the ability to perform, as well as any underlying medical condition, which necessitates the use of the medication. The University further reserves the right to place any employee taking prescribed medication on a medical suspension until the individual provides the information described above.

Tests Required

A. Annual Pre-Registration Testing

Any CDL licensed employee registering to participate as a CDL licensed driver with the University will be required to undergo a test for the presence of any banned/illegal drugs. Any CDL licensed employee who tests positive as a result of the annual pre-registration drug test or refuses to undergo a test will be immediately terminated from employment at the University.

B. Random Testing

Safety and security considerations mandate that all CDL licensed employees shall be subject to random drug testing. Any CDL licensed employee failing to cooperate with the procedures described above will be immediately terminated from employment at the University.

The University shall make every effort to assure the strict random nature of this testing. The volume and frequency of random testing shall be determined by the University without notice to CDL licensed employees.

No one person will have discretion in deciding which CDL licensed employee should be tested. The selected agency to administer and test for substance abuse will be designated to randomly select eligible CDL licensed employees for substance abuse testing. Up to one hundred percent (100%) of the CDL licensed employees may be tested during any one-year period. Any random testing shall be in addition to all other testing requirements herein provided.

Following the selection, the appropriate official of the University 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 will be supplemented with selective testing to assure that 100% testing of CDL licensed drivers is accomplished during a 12-month period.

C. Reasonable Cause Testing

Whenever the University has reasonable cause to believe that the actions, appearance or conduct of a CDL licensed employee while participating in the work place are indicative of the use of a banned/illegal drug, the CDL licensed employee will be required to undergo a test for the presence of a banned/illegal drug at the University's request. Any refusal to undergo a drug test under such circumstances will result in immediate termination of employment.

The conduct or circumstances constituting reasonable cause must be witnessed by at least two University representatives, if feasible. If not feasible, only one University official need witness the conduct. The witness or witnesses will have received training in the identification of actions, appearance or conduct of a CDL licensed employee, which are indicative of the use of a controlled substance. The witness who has reasonable cause to believe that a CDL licensed employee is using a controlled substance will be required to complete a Report of Intoxication, which will be forwarded to the Office of Human Resources for review and consideration 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 cause circumstance, the Physical Plant Director, Operations Maintenance Coordinator 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 failing 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 testing 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 required confirmatory testing method under the regulations.

Test Results

A. Physician

All confirmed 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 abuse disorders. They will review and interpret positive test results received from the laboratory and may also request qualification of the test results from the laboratory.

In order to assure that employees are not being harmed by the possibility of any false positive test results, the physician will explore possible alternative medical explanations for any positive test results. Prior to making a final decision to verify a positive test result, the Office of Human Resources' physician will conduct a medical interview of the individual, whether 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. Once the Office of Human Resources confirms the positive test result, the CDL licensed employee will be terminated from employment at the University.

B. Positive Test Results

Prior to making a final decision to verify a positive test result for a CDL licensed employee, the physician will give the individual an opportunity to discuss the test result with them. The physician will contact the employee directly, on a confidential basis, to determine whether the individual wishes to discuss the test result.

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. If, after making all reasonable efforts, the University is unable to contact the individual, the University will immediately terminate the individual's employment.

The physician may verify a test as positive without having communicated directly with an employee about the results:

1. If the employee expressly declines the opportunity to discuss the test; or
2. If, within five consecutive days after a documented attempt to contact by the designated representative of the University instructing the individual to contact the physician, and the individual has not done so.

If a test is verified as positive because of the employee's failure to contact the physician (No. 2 above), the individual will have the opportunity to 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 concludes that there is a legitimate explanation, the physician may declare the test to be negative.

If, the physician, after completing his or her review, verifies the positive test result, the physician shall contact the appropriate official to take appropriate action. 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.

C. Notification of Test Results

Any registrant requesting the results of an annual drug test will be provided with those results within sixty (60) days of being notified of the disposition of their registration or the test results being available, whichever is earlier.

Any CDL licensed employee, who tests positive as a result of a drug test, will be provided with notification of any positive test results, along with the identity of the drug discovered.

Any CDL licensed 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.

Discipline

In the event of a positive test result, a CDL licensed employee may be subject to the following disciplinary measures.

1. In the case of a CDL licensed employee's positive test result, the individual will be immediately terminated from employment at the University.
2. In the case of an employee's serious offense off campus (i.e. arrest for possession/use/dealing), the CDL licensed employee may be immediately terminated from employment at the University.

Voluntary Rehabilitation Leave

Substance abuse rehabilitation is the responsibility of the employee. When a CDL licensed employee voluntarily reports to the University that they have a substance abuse problem and seeks medical or psychological treatment or assistance, the CDL licensed employee must report directly to the Office of Human Resources for further assistance.

Post-Suspension Testing

Any employee who returns to the University after suspension shall be subject to unannounced drug testing for a period as determined by the appropriate University official for up to sixty (60) months.

Confidentiality

All information regarding drug or alcohol tests, test results and investigations shall be treated confidentially. Such information will only be released to the employee, the appropriate University representatives, and the physician and as required by any state or federal law or regulation or by court order. The CDL licensed employee may request that such information be released to others provided the individual submits a written consent form containing the following information: the person or persons who are authorized to obtain the information; the purpose of disclosure; the precise information to be disclosed; and the duration of the consent.

Regardless of the foregoing, the University expressly reserves the right to disclose or utilize such information to the extent the University deems necessary to protect its interests with regard to inquiries, investigations, claims, or litigation directly or indirectly involving the University.

Recordkeeping and Qualification Information

A. Recordkeeping

The physician for a minimum of five (5) years will retain reports of any individual positive substance abuse test results. 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 (5) years except that individual negative test results will be maintained for a minimum of twelve (12) months.

The University records containing information obtained by the University regarding the medical condition or history of an employee, including such information regarding drug or

alcohol tests, test results and investigations, will be collected and maintained on separate forms and in separate medical files and will be treated as confidential medical records. All records will be kept in the Office of Human Resources.

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.

Disclaimer

The purpose of the Substance Abuse and Testing Policy is to describe the current policies used by the University. The policies are subject to change by the University at its sole discretion and at any time without notice.

Separability and Severance

Each provision of this policy is separate and distinct from every other provision of this policy. If any provision of this policy shall be found to contravene any state or federal statute, regulation or law or is otherwise found to be unenforceable, that provision shall be severed from this policy and the policy shall be construed as if such provision is not contained therein insofar as the application of this policy in such particular jurisdiction is concerned.