

## **PRESENTER'S GUIDE**

# **DOT "REASONABLE SUSPICION" TESTING FOR MANAGERS AND SUPERVISORS... PART II**

**Part of the Regulatory Compliance Series**

## **OUTLINE OF MAJOR PROGRAM POINTS**

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The following outline summarizes the major points of information presented in the program. The outline can be used to review the program before conducting a classroom session, as well as in preparing to lead a class discussion about the program.

- **Unlike with the use of illegal and controlled drugs, where behavioral signs of their use can vary widely depending on the substances, signs of alcohol use are reasonable consistent no matter what form of alcohol a person has consumed.**
  - It is also important to know that the DOT "Reasonable Suspicion" regulations do not require an employee to be "intoxicated" in order for them to be sent for a "reasonable suspicion" test.
- **What the DOT asks managers and supervisors to look for is "alcohol misuse" which is defined as having a Blood Alcohol Concentration (BAC) of .02 or greater.**
  - The agency feels that with this level of alcohol in an employee's system their performance can degrade to the point that it could be unsafe.
- **As a result, managers and supervisors must rely on observable changes in an employee's behavior to determine whether they might be "under the influence"... and putting themselves and others at risk.**
- **Alcohol is a sedative, so judgement and decision-making are two behavioral functions that can be adversely affected by alcohol consumption.**
  - Because alcohol is a central nervous system depressant, the processes that the brain uses to make judgments are slowed down... which can be disastrous in time critical situations.

- **The cognitive processes that are involved in decision-making are also affected by alcohol.**
  - Under the influence of alcohol the brain's "information retrieval system" performs more slowly... and memory, the ability to reason and the responses to stimuli are all less efficient.
- **Other areas of the brain that are affected by the sedative nature of alcohol are the "sensory perception centers".**
  - As a result, a person's sense of sight, hearing, smell and taste can all be diminished.
  - For instance, a person can have difficulty tracking moving objects, and their night and peripheral vision can be affected.
  - These are all obvious problems for any employee, but especially for drivers.
- **Additionally, as the alcohol concentration in the blood increases a person's overall hearing ability decreases and they have difficulty sorting out background noise as well.**
- **Another sign that a manager can look for that may indicate alcohol consumption is a change in an employee's sense of taste.**
  - This is the most often evidenced by seeing them eat food or drink beverages that they would ordinarily avoid.
- **Something else which can indicate that a person may have alcohol in their system is changes in their "psychomotor" activity.**
  - This involves how the body moves, often in response to outside stimuli.
- **Speech is one of the first motor skills to be affected by alcohol. Changes can include:**
  - Over-enunciation.
  - Slurring.
  - Garbled speech patterns.

- **Since people are often aware that when they drink their ability to pronounce and articulate words decreases, they can attempt to overcompensate by concentrating on their pronunciation and articulation.**
  - So another thing that a manager should look for is someone whose speech is stilted, with exaggerated enunciations.
- **Changes in an employee's personality and how they are interacting with others can also be an indication that they may have alcohol in their system.**
  - Some people can become irritable, hostile or withdraw from social interaction entirely.
  - Others can be unusually talkative, boisterous and even silly.
  - Still other can become suspicious or even experience paranoia.
- **As with behavioral signs of alcohol consumption, the physical signs that an employee has alcohol in their system are consistent no matter what type of alcohol is involved.**
  - However, how quickly the effects of alcohol occur can vary significantly from person to person.
- **In fact, the effects can even vary a bit in the same person, depending on:**
  - How rapidly the alcohol has been ingested.
  - Whether they also ate food at the time, and how much.
  - Whether there are other drugs in their system.
  - Their tolerance for alcohol, based on past usage.
- **That being said, there are a number of physical manifestations which can indicate that an employee has consumed any type of alcohol.**

- **One of the most common indicators is "odor".**
  - Alcoholic beverages typically have a distinct odor that stays on the breath for some time after they are ingested.
  - Most people are aware of this, and consequently many drinkers use breath mints, sprays or mouthwashes to mask the alcohol odor.
  - So both the odor of alcohol and of breath freshener can be indications that someone has been drinking.
- **Other signs that a person may have been drinking are their balance and walk.**
  - If someone is having trouble standing upright or seems to be fighting for their balance, that could be due to alcohol... as could staggering or an unsteady walk.
- **Alcohol can also slow an employee's reflexes, affect their hand-eye coordination, even cause tremors.**
  - Red or bloodshot eyes and unfocused eye movements are common results of alcohol intake as well.
- **A change in an employee's personal appearance can also be an indicator that they have been drinking.**
  - Someone who is normally neatly dressed may come to work looking sloppy and disheveled.
  - Likewise, an employee who is usually neat and clean may not have bathed or showered for a day or two, and not only look bad but smell bad as well.
- **Other physical signs of drinking can include:**
  - Sweating.
  - Shivering or shaking.
  - A flushed complexion.

- **While all of these conditions may be indications of alcohol consumption, it is important to remember that many of them can also be caused by other things.**
  - In many cases it's when there are a combination of these indicators that a manager will want to consider whether an employee should undergo a "reasonable suspicion" test.
- **Meeting with an employee to inform them that you are sending them for "reasonable suspicion" testing may be one of the most difficult things you'll have to do as a manager.**
  - But it's also one of the most important.
- **Fortunately, there are ways to prepare yourself so that the process goes more smoothly, and procedures that you can follow to help you carry it out effectively.**
- **First, make sure you have a thorough knowledge of your company's drug and alcohol policies.**
  - Familiarize yourself with Federal drug and alcohol testing regulations as well, especially those that address "reasonable suspicion".
- **Sometimes when you approach an employee about "reasonable suspicion", they will admit that they have a problem and ask you for help.**
  - This is called "self-admission", and while it can be a hopeful sign, an employee who self-admits must still take the drug and alcohol test.
- **Under Federal regulations, an employee can't avoid the consequences of their substance abuse by asking for help after they are "caught".**
  - If your company has its own policies about self-admission, you should know what they say as well.

- **Remember that no matter how conscientious you are about "reasonable suspicion", you never have a complete picture of the situation until the test results come back.**
  - So it is very important to respect an employee's right to privacy and maintain confidentiality when you deal with them.
- **Do not raise the issue of "reasonable suspicion" testing or drug and alcohol abuse in public, where other employees could overhear.**
  - Instead, say something like, "Would you mind stepping into my office? I'd like to talk with you for a minute".
- **Once you're in private, address the employee calmly and professionally.**
  - Don't accuse them of anything.
  - Just describe what you have observed.
  - Explain that under the circumstances you are required by Federal law to refer them for "reasonable suspicion" testing.
- **It is common at this point for an employee to become upset or angry.**
  - They may also feel scared, especially if they do have a substance abuse problem.
  - But don't allow yourself to get emotional in return.
  - Staying cool is how you maintain control of the situation.
- **If a driver makes denials and excuses, hear them out, but don't back off from your decision to send them for testing.**
  - By law, "reasonable suspicion" is all the justification that you need.
  - Reversing your decision undermines your authority as a manager and degrades the effectiveness of your testing program.
  - So follow through.



- **And remember... if you believe an employee is indeed "under the influence", you should not let them drive themselves to a testing site.**
  - Arrange transportation for them.
- **Federal law requires that all motor carriers that are regulated by the Department of Transportation (DOT) implement drug and alcohol testing programs for employees who perform "safety-sensitive" duties.**
  - As a result, you may well have to send drivers and other employees who perform "safety-sensitive duties" for drug and alcohol testing.
  - So it's good to know something about the testing processes themselves.
- **Drug and alcohol tests fall into two categories:**
  - Urinalysis to detect traces of drugs.
  - Breath and saliva testing for alcohol.
- **Any use of illegal drugs is a violation of the DOT and Federal Motor Carrier Safety Administration (FMCSA) regulations.**
  - When tests indicate the presence of illegal substances, a driver will be relieved of their driving responsibilities immediately.
- **While drinking alcohol is not illegal, the regulations do limit how much alcohol a driver can have in their system while they're on duty.**
  - This "blood alcohol concentration" (BAC) is determined by means of saliva and breath tests.
- **According to FMCSA regulations a BAC of 0.04 or higher will result in a driver being immediately pulled from their job.**
- **Depending on local regulations, a driver whose BAC reads from .02 to .039 can be removed from duty temporarily, until their next scheduled shift.**

- **The FMCSA regulations also describe six specific situations in which commercial drivers are required to submit to drug or alcohol testing.**
- **First, newly hired drivers must test negative for drugs before their employer allows them to operate a commercial motor vehicle on public roads (pre-employment testing is not required for alcohol).**
- **Secondly, drivers must be tested after they are involved in a fatal accident, or receive a traffic citation stemming from an incident that results in an injury or disables a vehicle.**
- **Third, drivers are subject to unannounced testing at random.**
- **Fourth, if a driver shows signs of being under the influence of drugs or alcohol while they are on duty, a manager can send them for testing based on this "reasonable suspicion".**
- **Fifth, an employee who has tested "positive" and been relieved of their driving responsibilities must pass a "Return-To-Duty" test before they can come back to work.**
- **And sixth, an employee who has had a drug or alcohol violation and passed a "Return-To-Duty" test must take a minimum of six unannounced "follow-up" tests during the first 12 months following their return.**
  - It's important to note that under DOT rules, urine samples taken for "Return-To-Duty" and follow-up drug testing must be provided under the "direct observation" of testing personnel.

- **For a commercial driver, there is nothing very complicated about taking a drug or alcohol test.**
  - But since the results of these tests can have a significant personal and professional impact, drivers need to understand what's expected of them during the testing process.
  - This is something that you as a manager or supervisor can help with.
- **Under the FMCSA (Federal Motor Carrier Safety Administration) regulations, drivers who refuse to be tested face the same consequences as if they had tested positive for drugs or alcohol.**
- **When a driver is notified to report for drug testing, they must go to the collection site immediately.**
  - Showing up late for a test, or not showing up at all, can be considered a refusal to take the test.
  - Leaving the testing location before the test is completed can also be considered a "refusal".
- **If a driver is being tested for drugs, once they are at the testing site, they are allowed three hours to produce a urine specimen.**
- **A "five-panel" urinalysis is used to test the sample for traces of five types of drugs:**
  - Marijuana.
  - Cocaine.
  - Opiates such as heroin, as well as opioids.
  - Amphetamines and methamphetamines.
  - Phencyclidine (better known as "PCP").
- **A driver who is unable to provide a urine specimen within the allotted three hours will be evaluated by a licensed physician, known as the Medical Review Officer (MRO).**
  - If no medical condition is found to explain the driver's inability to provide a specimen, it will be deemed a refusal to take the test.

- **If a urine sample indicates that it may have been tampered with or is otherwise fraudulent, the driver may be required to provide another one under the direct observation of testing personnel.**
- **Once analysis of the urine sample is complete, the laboratory will report the results to an MRO, who:**
  - Reviews the findings.
  - Evaluates any medical issues that may be involved.
  - Passes the results on to the driver's employer.
- **In general, the procedures involved in alcohol testing are similar to those for drug testing.**
  - The driver who is being tested is expected to report promptly to the test site and complete the testing process within the allotted time.
- **Their breath and saliva is sampled and analyzed to determine the employee's blood alcohol content (BAC).**
  - A Screening Test Technician or Breath Alcohol Technician will perform an initial assessment, using a "breathalyzer" or saliva swab.
- **If the driver's BAC reads lower than 0.02, the testing is complete and no further action is required.**
  - If the results are 0.02 or higher, the technician will next perform a confirmation test using an Evidential Breath Testing Device (EBT).
  - If the EBT confirms a BAC of 0.02 or higher, the results will be reported to the driver's employer
- **The drug and alcohol testing programs that motor carriers implement for their employees assist in accomplishing several important goals.**
  - By giving commercial drivers a strong incentive to stay clean and sober behind the wheel, the tests help keep the roads safer for everyone who uses them.

- **And by identifying drivers who have a substance abuse problem, testing helps to get them off the road before someone gets hurt.**
  - The testing program also allows those drivers to do what is necessary to get their life and career back on track.
- **The DOT calls this process "Return-To-Duty", and it begins as soon as a driver is informed that their test shows a drug or alcohol violation.**
  - At that time they are provided with a list of Substance Abuse Professionals (SAPs) that has been compiled by the agency.
- **They can then select an SAP and meet with them.**
  - The SAP will evaluate the driver's substance abuse problem and create a treatment plan to address it.
  - The plan will usually include education and counseling to help the driver understand their problem and get it under control.
- **When the treatment plan has been completed, and the SAP believes that the driver is ready, they will be given the appropriate "Return-To-Duty" test.**
- **Department of Transportation regulations require urine samples for "Return-To-Duty" and follow-up drug tests be provided under direct observation of testing personnel.**
- **A driver who tests as "clean and sober" is again allowed to drive a commercial motor vehicle on public roads.**
  - However, the driver will continue to receive treatment and guidance for their substance abuse problem as recommended by the SAP.
  - They will also be subject to no fewer than 6 unannounced drug and alcohol tests in the first 12 months after they return to service.
  - In some cases, an SAP can recommend that unannounced testing continue for up to 60 months.

- **When a transportation employee has a substance abuse problem, it can have serious consequences for them, their employer and everyone else on the roads.**
- **But they don't have to wait for a crash... or a positive result on a drug or alcohol test... before they start dealing with their situation.**
  - They can use resources within their company, union and community to help themselves before a catastrophe occurs
  - Many employers and unions offer voluntary referral programs or Employee Assistance Programs (EAPs) for employees who need help with substance abuse.
- **"Self-reporting" can not only help a driver get on track for assistance and treatment, it can also help to secure their job.**
  - It demonstrates to their employer that they are responsible and professional enough to take the initiative in getting help.
- **Whether they focus on substance abuse specifically or address employee wellness in general, these EAP programs can give employees valuable resources for dealing with a drug or alcohol problem.**
- **Even an employee who has a friend with a drinking or drug problem can help them get the support they need through their employer's "peer reporting" program.**
  - Most communities also offer a range of support services for people with substance abuse problems (information about local resources can easily be found online).

**\* \* \* SUMMARY \* \* \***

- **As we've seen, keeping CDL drivers and other employees with "safety-sensitive" jobs clean and sober is an important part of managers' and supervisors' jobs... and it can be more complicated than you might think.**
- **The DOT requires "transportation employers" to implement alcohol and drug testing programs for drivers and other select employees with "safety-sensitive" jobs.**
- **There are a number of situations under which an employee can be tested for drug or alcohol use, but the one that impacts managers and supervisors the most is "Reasonable Suspicion" testing.**
- **"Reasonable Suspicion" testing allows employees to be sent for testing if a manager or supervisor suspects that they might be "under the influence"... they don't have to have hard evidence.**
- **There are specific protocols for conducting drug and alcohol tests, as well as removing employees from their jobs if they test positive.**
- **Now that you know how "Reasonable Suspicion" testing works and what your responsibilities are in administering it, you can help to make sure that the roads are safe for all drivers... every day!**