Welcome

2015

OEAP Annual Resource Conference

Understanding Substance Abuse: Current Trends in Treatment and Recovery

September 15, 2015
State Fire Marshal Training Academy

State of Ohio
Drug Free Workplace Program

Learner's Guide

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Department of Administrative Services, HRD Operations

Drug-Free Workplace Program

Our Mission...

To foster of a safe, productive, and drug-free workplace environment for state employees, and ensuring the environment is conducive to the successful accomplishment of the agencies' goals and missions, and assisting in the enhancement of employee well-being and increased employee productivity. This is accomplished through a dual state and federally required drug testing effort.

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Federal Testing Program

Who may be tested under the Federal program?

- In accordance with the Federal Omnibus Act of 1991, positions that require a commercial drivers license (CDL) and perform safety sensitive functions.
- Under the Act, a "commercial motor vehicle" includes any motor vehicle used to transport passengers or property if the vehicle:
  - Has a gross combination weight rating or gross combination weight of 26,001 pounds or more, whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; **OR**
  - Has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; **OR**
  - Is designed to transport 16 or more passengers, including the driver; **OR**
  - Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations

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Federal Testing Program

What types of tests are performed?

- **Pre-employment** - All current state employees not in a federal safety-sensitive position, as defined by the Act, entering a federal safety-sensitive position and new hires are required to submit to a federal pre-employment drug test.

  Employees that have been separated e.g. disability separation, disability retirement are required to submit to a re-employment test prior to resuming their safety-sensitive duties, if their separation was greater then 30 days and during that period they were not subject to random drug testing.

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Federal Testing Program

What types of tests are performed?

- **Random** - The Act requires annual random drug testing of 50% and random alcohol testing of 10% of all eligible employees. Currently, approximately 3,300 eligible employees are subject to random federal testing.
- **Reasonable Suspicion** - If there is reasonable suspicion for an employer to believe that a covered employee is under the influence of alcohol or drugs.

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Federal Testing Program (cont.)

- **Post Accident** - An accident in involving operating a commercial motor vehicle and one of the following criteria is met:
  (1) the accident involved the loss of human life; **OR**
  (2) the employee was cited by State or local law for a moving traffic violation arising from the accident; **AND**

  (i) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; **OR**
  (ii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

- **Return to Duty/Follow-up Test** - employees that have violated drug testing policy e.g. positive test result, refusal to test. Drug test must be collected under **direct observation**.

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Federal Testing Program

What substances are tested?

BREATHALYZER

- Alcohol

5-PANEL URINE SPECIMEN COLLECTION INCLUDES:

- Amphetamines (e.g., uppers, speed)
- Cocaine (e.g., crack)
- Marijuana (e.g., grass, weed)
- Opiates (e.g., heroin)
- Phencyclidine (e.g., angel dust

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State Testing Program

Who may be tested under the State program?

- Final applicants for designated safety-sensitive positions, in accordance with the State's Drug Free Workplace Policy; approximately 300 classifications have been designated as safety-sensitive.
- Final applicants for unclassified positions and appointments into unclassified positions *(e.g., promotion, demotion, reassignment, etc.)*.
- Employees subject to random drug testing in accordance with collective bargaining agreements and agency specific agreements.
- Employees reasonably suspected of being under the influence of drugs or alcohol when reporting for duty or while on the job.

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State Testing Program

What types of test are performed?

Alcohol and/or Drug Testing for:

- Pre-employment (drug only)
- Reasonable suspicion
- Random
- Return-to-duty
- Follow-up
- Rebuttable Presumption

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State Testing Program

What substances are tested?

BREATHALYZER

- Alcohol

5-PANEL URINE SPECIMEN COLLECTION INCLUDES:

- Amphetamines (e.g., uppers, speed)
- Cocaine (e.g., crack)
- Marijuana (e.g., grass, weed)
- Opiates (e.g., heroin)
- Phencyclidine (e.g., angel dust)

***State Reasonable Suspicion Test** - agency may request additional drug panels if the agency has reason to believe the employee is abusing prescription drugs. The State of Ohio Drug Free Workplace Policy prohibits all employees on official business, on or off the workplace, from purchasing, transferring, using or possessing illegal drugs, or abusing alcohol, or *abusing prescription drugs in any way that is illegal*.

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State Testing Program

Random Drug Testing

Random testing includes:

- All employees at DRC and DYS who have direct contact with inmates, parolees or youth.
- Employees at State Highway Patrol and the Department of Public Safety that are sworn law enforcement officers.
- Employees in designated safety-sensitive classifications, in accordance with collective bargaining agreements.
  - AFSCME/OCSEA - Appendix M
  - 1199 - Appendix D
  - OEA/NEA - Appendix F
  - FOP - Appendix E
  - OSTA - Unit 15 - Appendix B, Unit 1 Appendix D
  - Agency Specific Agreements

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Federal / State Testing Program

Random Testing

- DAS DFWP provides designated agency drug testing coordinators with a list of positions that are subject for random drug and alcohol testing. This list is generated from a computer program that randomly selects positions.
- Positions may be tested on a weekly or monthly basis, in accordance with collective bargaining agreements or as designated by Department of Administrative Services
  (e.g., DRC and DYS employees are subject to weekly random testing, OCSEA/AFSMCE and FOP are monthly cycles).
- Designated agency HR and/or Labor Relations staff have access to view results in OAKS. Positive tests and all return to duty and follow-up tests are faxed to agency drug testing coordinator.

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Federal / State Testing Program

What if the employee refuses to be tested?

The test is considered **POSITIVE**.

This includes, but is not limited to, the following:

- Delay in reporting to collection or alcohol site;
- Refusal to provide adequate amount of breath/urine to complete a breath or drug test;
- Any refusal to cooperate that prevents completion of a test.

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Scenarios...

- Delay in reporting to collection site;
- Refuse to sign chain of custody form;
- Refuse to follow collection site instructions;
- Shy Bladder.

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State / Federal Testing Program

Reasonable Suspicion Testing

- Where there is reasonable suspicion to believe that the employee, when appearing for duty or on the job, is under the influence of, or his/her job performance, is impaired by alcohol or other drugs.
- Such reasonable suspicion must be based upon objective facts or specific circumstances found to exist that present a reasonable basis to believe the employee is under the influence of, or is using or abusing, alcohol or drugs.

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State and/or Federal Testing Program

What are examples for reasonable suspicion?

Examples of reasonable suspicion shall include, but are not limited to, the following:

- Slurred speech
- Smells of alcohol
- Disorientation
- Abnormal conduct or behavior

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State Testing Program

What are NOT examples for reasonable suspicion?

Scenarios…

- Disgruntled ex-spouse;
- Anonymous e-mails;
- Anonymous phone call;
- Rumors;
- Off duty conduct.

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State Testing Program

Reasonable Suspicion

What do you need for documentation?

- In accordance with collective bargaining agreements, must be documented in writing and supported by two witnesses, including the person having such suspicion. For exempts, in accordance with agency policy or one witness and management confirms a test is warranted.
- In accordance with collective bargaining agreements, the immediate supervisor is contacted to confirm a test is warranted based upon the circumstances.
- Such written documentation must be presented to the employee and the department head, who shall maintain such report in the strictest confidence, except that a copy shall be released to any person designated by the affected employee.
- For positions subject to federal testing, the required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor.

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State / Federal Testing Program

Reasonable Suspicion Testing

- An employee ordered to undergo a reasonable suspicion test **MUST** be transported by the agency to the test site.
- For reasonable suspicion testing, a union representative may also accompany the employee to the collection site as long as it does not delay or impede the testing process
- If an employee refuses to be tested the test is considered **POSITIVE**.

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Federal / State Testing Program

Who pays for drug and/or alcohol test?

- The State pays for all pre-employment, random, reasonable suspicion and federal post accident tests.
- The employee pays for return-to-duty, follow-up and re-tests associated with a positive drug test.
- Drug tests are $33.00; alcohol tests $30.00 and a re-test is approximately $125.00.

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Federal / State Testing Program

Procedure for a Positive Result

- If a classified employee tested positive for drugs, or tested .04 or above for alcohol:
  - Employee may be provided with a copy of the result;
  - Employee is removed from duty;
  - Pre-disciplinary meeting should be held and last chance agreement signed; and
  - Employee is told to promptly report to OEAP.

Exempt and OCSEA/AFSCME Alcohol Testing:
Employees who test between 0.02 and 0.0399 BAC must be removed from duties and cannot return to such duties until 24 hours have elapsed, or beginning of next work shift, whichever is greater. Employee may be subject to discipline in accordance with agency work rule.

Federal Positions: FEDERAL ALCOHOL TESTING:
Employees who test between 0.02 and 0.0399 BAC must be removed from safety-sensitive duties and cannot return to such duties until 24 hours have elapsed.

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Federal / State Testing Program

Pay Status

- Until the employee is provided notice of the pre-disciplinary meeting, the employee is put on paid administrative leave
- After notice is given, if the bargaining unit employee waives the three day requirement, the employee shall remain on paid leave until the pre-disciplinary meeting concludes

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Federal / State Testing Program

Pay Status (cont.)

- If the employee does not waive the 72 hour pre-disciplinary meeting requirement, the employee shall be placed on approved administrative leave without pay and may use any accruals to cover the time off.
- During the period from the conclusion of the pre-disciplinary meeting (i.e., during the period the employee is seeking substance abuse treatment and until the employee returns to work), the employee is on unpaid administrative leave and may use leave accruals to cover the time off.

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Federal / State Testing Program

Return to Duty and Follow Up Testing

- Any employee who violated the State's alcohol and drug-free workplace policy by testing positive, must be evaluated, treated, and must pass a return-to-duty test. The drug test must be collected under **direct observation**. A negative test result is a condition of returning to work
- After completion of a successful return-to-duty test, the employee is subject to a minimum of 6 unannounced follow-up tests during the following 12 months. The drug test must be collected under **direct observation**
- Anyone who has not produced a negative return-to-duty test within 180 days of the positive result, will be terminated under the last chance agreement

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Last Chance Agreement

How long are last chance agreements effective?

- Last chance agreements shall not be effective longer then five years, except in the following unlimited duration situations:
  - Accident involving a fatality;
  - Accident in which the driver is cited and there is disabling damage to the vehicle(s) requiring tow-away; or
  - Accident in which the driver is cited and off-site medical treatment was required.

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Workers' Compensation Testing

Rebuttable Presumption

- Pursuant to HB 223/ORC 4123.54.
- For determination of eligibility for workers' compensation and benefits.
- Positive test creates "rebuttable presumption".
- Covers all state employees.

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Workers' Compensation Testing

What types of test are performed?

- Alcohol
- Amphetamines (e.g., uppers, speed)
- Cocaine (e.g., crack)
- Marijuana (e.g., grass, weed)
- Opiates (e.g., heroin)
- Phencyclidine (e.g., angel dust)
- Barbiturates*
- Benzodiazepines*
- Methadone*
- Propoxyphene*

**not included under federal testing programs*

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Workers' Compensation Testing

When can you test?

INJURY and:

- Employer had reasonable cause to suspect employee may be intoxicated or under the influence of controlled substance not prescribed by doctor.
  - Request of a police officer and not at the request of the employer.
  - Request of a licensed physician not employed by the employer and not at the request of the employer.

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Workers' Compensation Testing

When must the test be administered?

Timing of the Testing to Create the *"Rebuttable Presumption"*:

- Alcohol testing must be performed within 8 hours of the injury.
- Drug testing must be performed within 32 hours of the injury.

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Workers' Compensation Testing

What is "Reasonable Cause" for Testing Purposes?

ORC 4123.54(C)(2)

"Reasonable Cause" means, but is not limited to, evidence that an employee is or was using alcohol or a controlled substance drawn from specific, objective facts and reasonable inferences drawn from these facts in light of experience and training.

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Workers' Compensation Testing

What is "Reasonable Cause" for Testing Purposes?

These facts may be based upon, but not limited to any of the following:

- Observable phenomena, such as direct observation of use, possession, or distribution of alcohol or a controlled substance, or of the physical symptoms of being under the influence of alcohol or a controlled substance, such as but not limited to slurred speech, dilated pupils, odor of alcohol or a controlled substance, changes in affect, or dynamic mood swings.

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Workers' Compensation Testing

What is "Reasonable Cause" for Testing Purposes?

- A pattern of abnormal conduct, erratic or aberrant behavior, or deteriorating work performance such as frequent absenteeism, excessive tardiness, or recurrent accidents that appear to be related to the use of alcohol or a controlled substance, and does not appear to be attributable to other factors.
- The identification of an employee as the focus of a criminal investigation into unauthorized possession, use or trafficking of a controlled substance.

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Workers' Compensation Testing

What is "Reasonable Cause" for Testing Purposes?

- A report of use of alcohol or a controlled substance provided by a reliable and credible source.
- Repeated or flagrant violations of safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose substantial risk of physical injury or property damage and that appear to be related to the use of alcohol or a controlled substance and that do not appear attributable to other factors.

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Workers' Compensation Testing

The BAC level for a positive alcohol test for rebuttable presumption testing is .08 or greater. An employee testing .04 or greater, but less then .08, would be positive under the state and federal drug testing program, but negative in accordance with the rebuttable presumption language.

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2014 Federal/State Testing Data

FEDERAL TESTING	Q1	Q2	Q3	Q4	Total	Positive
PreEmployment Drug	66	137	76	568	847	6
Random Alcohol	126	109	111	89	424	0
Random Drug	606	461	443	464	1873	7
Reasonable Suspicion Alcohol	0	1	0	0	1	1
Reasonable Suspicion Drug	0	1	0	0	1	0
Post Accident Alcohol	11	2	1	0	14	0
Post Accident Drug	12	3	1	1	18	0
Return to Duty Alcohol	0	0	0	0	0	0
Return to Duty Drug	2	0	2	1	5	0
FollowUp Alcohol	9	6	5	2	22	0
FollowUp Drug	14	17	12	10	53	2
Federal Total	745	737	651	1156	3289	16
Positive	2	7	3	4	16	
STATE TESTING	Q1	Q2	Q3	Q4	Total	Positive
Preemployment Drug	925	1362	897	1088	4272	20
Random Alcohol	94	90	96	91	371	1
Random Drug	712	676	687	696	2771	32
Reasonable Suspicion Alcohol	11	6	5	3	25	6
Reasonable Suspicion Drug	12	5	6	3	26	6
Workers Compensation Alcohol	0	0	0	0	0	0
Workers Compensation Drug	0	0	0	0	0	0
Return to Duty Alcohol	0	2	0	2	4	0
Return to Duty Drug	8	11	12	4	35	0
FollowUp Alcohol	7	6	4	6	23	1
FollowUp Drug	50	49	55	56	190	1
State Total	1799	2207	1762	1949	7717	67
Positive	16	24	10	9	67	
TOTAL	2544	2924	2413	3106	10996	83
	18	31	21	13	83	84

DIVISION LOGO

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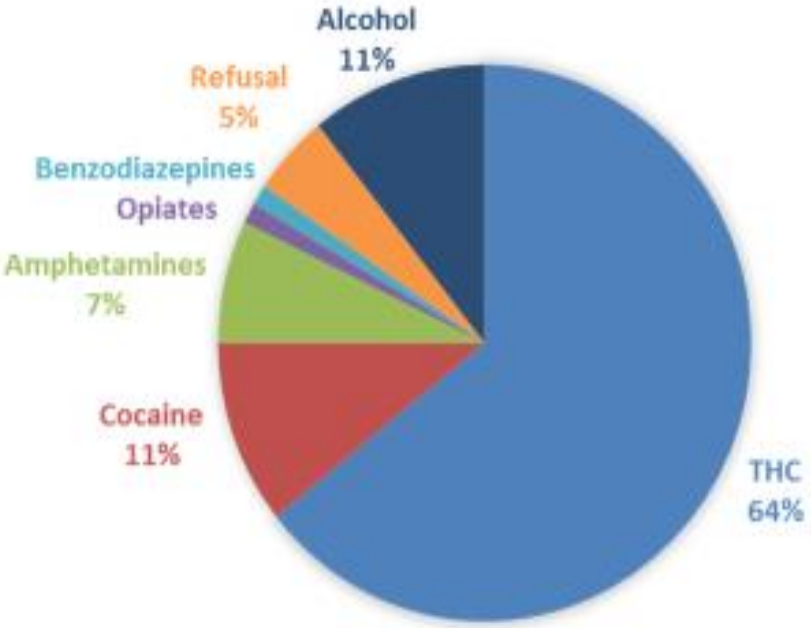
2014 Federal/State Testing Data



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Questions...

DIVISION LOGO

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Contact Information

DAS Drug-Free Workplace Services Program

(614) 466-6346

http://www.das.ohio.gov/Divisions/HumanResources/OrganizationalDevelopment/DrugFreeWorkPlace/tabid/71/Default.aspx

Thank You!

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