



LEGAL ALERT

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New DOT Regulations Affect Drivers

Jerry Morales and Kathleen Kittas

The U.S. Department of Transportation (DOT) recently amended its regulations to require direct monitoring of transportation workers with a past history of negative or invalid drug/alcohol tests.¹ Prior to this updated regulation, the DOT only required collectors to monitor transportation workers who were suspected of previously tampering with their test specimens.

As of August 25, 2008, DOT's regulations require employers to take urine specimens immediately and under direct supervision and observation without prior notice to the employee, if: 1) the laboratory reported to the medical review officer (MRO) an invalid specimen without an adequate medical explanation for the result; 2) the MRO reported required cancellation of the original result because the test of the split specimen could not be performed; 3) the MRO reported that the first specimen was a negative-dilute, and thus requires a second collection; or 4) the employee returns to work after testing positive for a prohibited drug. The employer must explain to the employee the reason for directly observing the employee's specimen collection.

Observers must request the employee to raise his or her shirt, and lower his or her clothing and undergarments to show the observer, by turning around, that the employee does not have a prosthetic device, and then directly watch the urine go from the employee's body into the collection container. The observer must monitor the employee as he or she takes the container to the collector.

PENALTIES FOR NON-COMPLIANCE

Employers are obligated to comply with the requirements of DOT regulations regarding drug testing. If an employee refuses

¹ 49 C.F.R. § 40.67.



to cooperate with testing procedure or fails a test required by the DOT, the employer must immediately remove the employee from any safety-sensitive functions and give the employee a list of qualified Substance Abuse Professionals (SAP). Employers that fail to comply with DOT regulations regarding drug testing are subject to sanctions.

An employee's refusal to comply with the direct observation procedure constitutes a refusal to test. An employee who refuses to take a

drug test will be immediately removed from DOT-regulated, safety-sensitive functions and will not be permitted to resume duty until the employee: 1) undergoes an evaluation by a SAP; 2) successfully completes education or treatment prescribed by a SAP; and 3) provides a negative result on a return to duty test.

For more information regarding the content of this newsletter, please contact Jerry Morales at 602.382.6362 or jmorales@swlaw.com.



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