

DOT/FMCSA Supervisor Training: Reasonable Suspicion WRAP-UP GROUP REVIEW AND DISCUSSION

Use the following common questions and answers as a basis for group discussion.

Note: These questions cover both reasonable suspicion drug and alcohol testing and testing in general. Suggested length - 10 minutes.

Q. What is the objective of the FMCSA's workplace anti-drug and alcohol program as a whole? Isn't the Federal government infringing on the private lives of its employees?

A. The intent of this drug and alcohol testing program is not to control private lives of employees. The primary concern is to protect the safety of employees, passengers, and the public.

Q. If drug/alcohol dependency is considered a disease, why is the FMCSA taking a disciplinary approach?

A. Illegal drug use and alcohol misuse is not an excuse for unacceptable performance. The focus is on safety.

Q. Why are certain employees being singled out in the anti-drug/alcohol program?

A. Employees who perform safety-sensitive functions are responsible not only for their own personal well-being, but that of their colleagues and the public. Hence, this program focuses on those employees.

Q. In general, when would a supervisor require an employee to undergo a reasonable-suspicion drug test?

A. Examples include, but are not limited to overt signs or symptoms of drug use or alcohol misuse or other behavior patterns that are consistent with prohibited drug use, or alcohol misuse.

Q. What are the specific prohibitions related to an employee's use of illegal drugs and alcohol?

A. Under FMCSA regulations, an employee must not:

***Alcohol:* Consume alcohol while performing a safety-sensitive function, four (4) hours prior to performing the function and up to eight (8) hours following an accident or until the employee undergoes a post-accident test, whichever occurs first.**

***Drugs:* Ingest illegal drugs at any time.**

Q. Can an employee be terminated based on a positive test result?

A. Perhaps, but this is neither mandated nor regulated by the FMCSA. Individual employers' policies determine if an employee can be terminated after receiving a positive test result.

Q. What safeguards will be provided to prevent supervisors from using reasonable-suspicion testing as an excuse for witch hunts or vendettas?

A. The regulations requires that a reasonable suspicion referral must be based on a trained supervisor's (or company official's) specific, contemporaneous, articulable observation concerning the appearance, behavior, speech, or body odor of the person for whom the referral is made. Supervisors must receive at least 120 minutes of training and should be evaluated on their performance of that particular supervisory function.

Q. Is it necessary (and if so, how) for a supervisor to have a second supervisor confirm his/her assessment of possible drug/alcohol abuse by an employee (as a self-check), before confidentially verbalizing their request to the employee

A. Only one trained supervisor's opinion is necessary to require a reasonable suspicion test. However, the supervisor's decision should pass the "reasonable and prudent" rule of thumb. The "reasonable and prudent" rule of thumb is a cognitive judgment call that requires the supervisor to 1) assess the facts, signs and circumstances for which the reasonable suspicion is being determined, AND 2) cognitively deduce that a similarly trained and experienced supervisor (having observed the same facts, signs and circumstances) could have reached the same conclusion.

Q. Will employees know which supervisors have made past referrals and tend to being in their presence?

A. Supervisors directly responsible for a decision to conduct a reasonable suspicion test must respect an individual's dignity, and as a matter of policy are required to keep that information confidential.

Q. If an employee is showing signs and symptoms of being under the influence of drugs or alcohol, can the test be done quickly?

A. Yes. Every effort will be made to conduct the test immediately.

Q. What if an employee refuses to take a drug and/or alcohol test?

A. Denial should be an expected reaction; however refusal to a test is tantamount to a positive test result.

Q. Dose a supervisor have to inform the employee of their rights, and the testing process?

A. Employees should already be aware of their rights. Under the FMCSA drug and alcohol rule (§ 382.601) each employer shall provide educational materials that explain the requirements of this part and the employer's policies and procedures with respect to meeting these requirements. The employer shall ensure that a copy of these materials is distributed to each driver prior to the start of alcohol and controlled substances testing

under this part and to each driver subsequently hired or transferred into a position requiring driving a commercial motor vehicle.

Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

Required content. The materials to be made available to drivers shall include detailed discussion of at least the following:

1. The identity of the person designated by the employer to answer driver questions about the materials;
2. The categories of drivers who are subject to the provisions of this part;
3. Sufficient information about the safety-sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance with this part;
4. Specific information concerning driver conduct that is prohibited by this part;
5. The circumstances under which a driver will be tested for alcohol and/or controlled substances under this part, including post-accident testing under § 382.303(d);
6. The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver, including post-accident information, procedures and instructions required by § 382.303(d);
7. The requirement that a driver submit to alcohol and controlled substances tests administered in accordance with this part;
8. An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;
9. The consequences for drivers found to have violated subpart B of this part, including the requirement that the driver be removed immediately from safety-sensitive functions, and the procedures under part 40, subpart O, of this title;
10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less than 0.04;
11. Information concerning the effects of alcohol and controlled substances use on an individual's health, work, and personal life; signs and symptoms of an alcohol or a controlled substances problem (the driver's or a co-worker's); and available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to any employee assistance program and or referral to management.

Employers must also distribute copies of their substance abuse policies to their safety-sensitive employees (drivers). Each driver is required to sign a statement certifying that he or she has received a copy of these materials

Q. Are supervisors required to collect test specimens, or perform any of the tests?

A. No. The regulations prohibit a supervisor who is the direct supervisor of the employee from conducting the breath test and/or collecting urine specimens.

Q. What if the employee was taking prescription drugs and had to take a drug test for reasonable-suspicion?

A. Employees are given the opportunity to list prescription medications they are taking on their copy of the Custody and Control Form. This information is not provided on any other copy of the form.

Q. Can supervisors make reasonable suspicion referrals of other supervisors?

A. Yes. Covered employees include supervisors if they perform a safety-sensitive function.

Q. Can a supervisor be held liable for defamation of an individual's character especially if the test results are negative?

A. No. If a trained supervisor conducts a reasonable suspicion referral in a proper and confidential manner that supervisor has performed his or her job appropriately. Regardless of the test result, if the supervisor has observed the "reasonable and prudent" rule in the conduct of the reasonable suspicion referral, the supervisor has met his or her responsibility.

Q. Is a supervisor required to document the circumstances that led up to a reasonable-suspicion drug and/or alcohol test?

A. The FMCSA rules require that a written record be made of the observations leading to an alcohol or controlled substances reasonable suspicion test, and signed by the supervisor or company official who made the observations, within 24 hours of the observed behavior or before the results of the alcohol or controlled substances tests are released, whichever is earlier.

Detailed documentation and records are generally a good business practice. Drivers believed to be under the influence of a prohibited substance or misusing alcohol may be an immediate hazard to themselves and others, so the reasonable-suspicion determination should not be delayed.

Q. What resources are available to the supervisor to obtain additional information on making a reasonable-suspicion determination?

A. Supervisors can obtain additional guidance from their agencies' designated:

**Substance Abuse Program Managers
Medical Review Officer (MRO)
Substance Abuse Professional (SAP)
Employee Assistance Program (EAP)**