



## **POLICY & PROCEDURE DOCUMENT**

NUMBER: 4.2410

DIVISION: Strategy, Operations and Finance

TITLE: Controlled Substance and Alcohol Testing of Covered Employees

DATE: March 29, 2021

REVISED: N/A

Authorized by: Director, Human Resources

### **I. Purpose and Scope**

The purpose of the policy is to help prevent accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by drivers of commercial vehicles and to comply with the Omnibus Transportation Employee Testing Act of 1991.

### **II. Policy**

In accordance with the United States Department of Transportation (DOT) regulations, this policy complies fully with the regulations mandating pre-employment, random, reasonable suspicion, and post-accident substance and alcohol testing. This policy applies to employees whose job requires them to obtain and maintain a Commercial Driver's License (CDL) and operate a Commercial Motor Vehicle (CMV).

#### **1. Affected Employees:**

Covered employees are University employees (including mechanics who may test drive a repaired vehicle) who operate any of the following class University owned or leased vehicles:

- Class A: Any combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 or more pounds, provided the vehicle being towed is in excess of 10,000

pounds GVWR;

- Class B: Any single motor vehicle with a GVWR of 26,001 or more pounds or any such vehicle towing a vehicle less than 10,000 pounds GVWR; and
- Class C: Any vehicle with a GVWR of less than 26,001 pounds that is either;
- Transporting hazardous materials for which placarding is required, or
- Designed to transport 16 or more passengers, including the driver.

## 2. Types of Testing

- 1) **Pre-Employment**—Candidates offered positions performing covered work will undergo urine drug testing prior to performing any CDL driving duties. The job offer shall be conditioned on the results of the pre-employment screening. Testing under this category includes individuals who are transferred and/or promoted to covered positions. Arrangements for testing will be made by the Department of Human Resources. Satisfactory test results (negative for controlled substances) are required as a condition of employment (documentation of satisfactory test results within the last six months from a previous employer is acceptable). The failure or refusal to fully cooperate or submit to a required tests will result in disqualification from employment.
- 2) **Reasonable Suspicion**—Reasonable suspicion must be based on specific contemporaneous, describable observations concerning the appearance, behavior, speech, or body odors of the employee. Referral for such testing will be made on the basis of facts and circumstances documented by a supervisor who has attended required training, or by a higher level supervisor or equivalent who also has attended the required training. A written record will be made of the observations used as the foundation for such a test.
- 3) **Post-accident**— As soon as possible following an accident, the University will test each covered employee for alcohol and controlled substances if:
  - The covered employee was performing a safety-sensitive function with respect to the vehicle and the accident involved the loss of human life, or
  - The employee receives a citation under state or local law for a moving traffic violation arising out of the accident;
  - Bodily injury to any person who as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
  - One or more 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.
- 4) **Random Testing**—Covered employees are subject to random, unannounced drug and alcohol testing spread reasonably throughout the calendar year.

Random controlled substance testing will be conducted at an annualized rate of fifty (50) percent of covered employees and random alcohol testing will be conducted at an annualized rate of ten (10) percent of covered employees. The base for determining these percentages will be the number of full-time equivalents (FTEs) assigned to covered work. Random tests of employees will be determined solely by the testing contractor using a scientifically valid method to ensure randomness. The random testing rate is based on standards of the federal Highway Administration and may be adjusted from time to time.

- 5) **Return-To-Duty and Follow-Up Testing**—All employees who test positive on a drug or alcohol test must test negative prior to returning to safety sensitive work. Such employees will also be required to undergo follow-up drug and alcohol testing which shall include at least six unannounced, follow-up tests during the first 12 months after returning to work, in addition to any ongoing random testing. At the discretion of the substance abuse professional and the University, such follow-up testing may be extended beyond the employee's return to work.

### 3. Violations

#### A. Controlled Substance

A positive test result indicating the presence of a controlled substance constitutes a violation of the Omnibus Transportation Employee Testing Act of 1991. When the University is made aware of such a violation, the following corrective action will be taken:

- The employee will be immediately relieved from all safety sensitive duties. Arrangements will be made to safely transport the individual home.
- For any time the employee is required to be off the job, he or she may request and be granted accrued paid leave (i.e., sick leave or vacation leave). If the employee does not specify the type of paid leave to be taken, or if the employee does not have paid leave accrued, he or she will be placed on leave without pay.
- The employee will be referred by the University to an appropriate professional through its Employee Assistance Program (EAP) for evaluation and a treatment plan and development of a return-to-work agreement, if the option of reinstatement is permitted. The employee is required to pass a return-to-duty drug test and receive clearance from the substance abuse professional prior to returning to duty.
- The University will evaluate the need for and take the appropriate corrective action up to and including dismissal if the employee fails to contact the substance

abuse professional and/or does not successfully complete all elements of the return-to-work plan.

- Upon return to duty, the employee will undergo follow-up testing (in addition to any ongoing random testing) which will include at least six follow-up tests during the first 12 months. At the discretion of the substance abuse professional and the University, such random testing may continue for up to 60 months after the employee's return to safety sensitive work.

## **B. Alcohol**

- a) **Alcohol Concentration of 0.02 BAC or greater but less than 0.04**— An employee with an alcohol concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform safety-sensitive functions for a minimum of twenty-four (24) hours and shall be subject to provisions of the “follow-up” testing requirements. Federal law states that such an employee shall be prohibited from driving for a period of one year when the employee has been involved in a fatal accident.
- b) **Alcohol Concentration of 0.04 or Greater**—Alcohol concentration of 0.04 or greater constitutes a violation of the Omnibus Transportation Employee Testing Act of 1991. When the University is made aware of such a violation by the testing contractor, the following corrective action will be taken:
  - The employee will be immediately relieved from all safety sensitive duties. At the University's discretion, and based on the availability of alternate work assignments, the University may disallow any work assignment. Arrangements will be made to safely transport the individual to his or her residence.
  - For any time the employee is required to be off the job, he or she may request and be granted accrued paid leave (i.e., accrued sick leave or vacation leave). If the employee does not specify the type of paid leave to be taken, or if the employee does not have paid leave accrued, he or she will be placed on leave without pay.
  - The employee will be referred to a substance abuse professional for evaluation and a treatment plan and for development of a return-to-work agreement, if the option for reinstatement is permitted. The employee is required to pass a return-to-duty alcohol test prior to returning to duty. Initial assessment, case management, and follow-up services with a substance abuse professional will be provided through the University's Employee Assistance Program (EAP).
  - The University will evaluate the need for and take the appropriate corrective

action up to and including dismissal if the employee fails to meet with the substance abuse professional and/or does not successfully complete all elements of the return-to-work plan.

- If the employee is returned to duty, the employee will undergo follow-up testing (in addition to any ongoing random testing) which will include at least six follow-up tests during the first 12 months. At the discretion of the substance abuse professional and the University, such random testing may continue for up to 60 months after the employee's return to safety sensitive work.

#### **4. Counseling and Rehabilitation**

In the interest of employee well-being, the University encourages employees to voluntarily participate in treatment for alcohol or drug abuse. Alcoholism and drug dependency are viewed as treatable illnesses which may be successfully managed. The University encourages employees to seek treatment voluntarily and will arrange for referral to an appropriate professional through its Employee Assistance Program (EAP). Any employee who voluntarily notifies the employer of alcohol and/or controlled substance abuse problems will be given the same opportunity to seek assistance that is extended to employees with any other medical condition. Sick leave, vacation leave, or a reasonable leave of absence without pay may be granted for substance abuse treatment.

Employees are also encouraged to contact the Department of Human Resources for help in understanding available insurance benefits, when participating in treatment. Confidentiality will be maintained to the greatest extent possible at all times.

#### **5. Reinstatement of an employee following a positive test:**

In response to a violation of the Omnibus Transportation Act, employee may be given the option of reinstatement rather than immediate dismissal. If provided the reinstatement option, the employee must comply with the following conditions:

- a. The employee must immediately enroll in a qualified CDL program of evaluation and if necessary, treatment from a Substance Abuse Professional. The program of evaluation and/or treatment from a Substance Abuse Professional may be chosen by the employee, but must be approved by Western Kentucky University.
- b. Upon receipt of a satisfactory report in the program of evaluation and/or treatment, the employee must submit to a controlled substances test in which a negative result is obtained. If a positive test for the use of a controlled substance is returned after the employee enters a program of reevaluation or treatment, then the employee shall be immediately discharged.

- c. An employee shall be eligible for reinstatement under this Section on a one-time basis, and the reinstatement is contingent upon the employee returning directly to work for the University.
- d. Upon reinstatement, the employee shall be subject to six (6) additional tests for controlled substances without prior notice over the following twelve (12) months. These random testing dates will be at the discretion of the substance abuse professional. Note: If a positive result occurs during this time frame, the employee shall be immediately discharged.

#### **IV. Process**

##### **1. Compliance With Testing**

Any covered employee who refuses to comply with a request for testing, who provides false information in connection with a test, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be in violation of this policy and grounds for immediate termination. Refusal to comply may include an inability to provide a specimen or breath sample without a valid medical reason or failure to proceed immediately to the collection site. Such refusals will be treated as a willful violation of policy, and as grounds for corrective action or dismissal.

##### **2. Testing Administration**

Administration of this policy is the responsibility of the Department of Human Resources and department/units with covered employees. Human Resources will assist in defining jobs and any requirements for a CDL. In instances where corrective action may be involved, the matter will be referred to Human Resources for appropriate action. Departments and or Division leaders are responsible for ensuring that the creation of any position or the addition of responsibilities requiring a CDL is communicated to the Department of Human Resources and reflected in the position description.

Any covered employee who is being tested shall be notified by the departmental hiring official or the appropriate Human Resources Official where and when to report for testing.

##### **1. Any covered employee/applicant who**

- a) Is scheduled for testing, who does not report for testing within one hour following the scheduled appointment time, shall be presumed to have refused to be tested. Refusals shall be treated as a positive test and will be subject to disqualification from employment.
- b) A covered employee who has been on layoff or who is off work for an extended leave period, during which the employee was not subject to random testing, shall submit to pre-employment alcohol and controlled substance testing when returning to work.

2. A covered employee shall be tested for alcohol and controlled substances. Testing shall be administered as follows:
  - a) For alcohol abuse by a trained Breath Alcohol Technician utilizing an Electronic Breath Testing Device; and
  - b) For controlled substances through the collection and analysis of a urine sample. The designated collection site will collect the sample, complete the chain of custody documentation and ship the specimen to a certified laboratory.
  
3. Test results are communicated by the medical testing facility and a Human Resources Official. The supervisor will communicate the test results, in writing, to the employee/applicant. If the test results
  - a) Do not indicate alcohol misuse or controlled substance use, the employee will continue performing safety- sensitive functions as scheduled;
  - b) Indicate alcohol misuse or controlled substance use, the employee will be referred to a substance abuse professional for assistance and will be subject to sanctions under University policy;
  - c) Do not indicate alcohol misuse or controlled substance use, the applicant will continue to be considered for employment; and
  - d) Indicate alcohol misuse or controlled substance use, the applicant will not be considered for employment.

**Note:** All test results shall be recorded and communicated in a confidential manner. The Medical Review Officer (MRO) will discuss a test result indicating controlled substance use with the affected covered employee/applicant to ascertain whether the covered employee/applicant is taking prescription drugs. A test of the split urine sample will be conducted as appropriate under applicable regulations. It should be noted that the use of prescription drugs which may affect one's ability to perform a safety-sensitive function is a violation of federal law and of University policy.
  
4. Negative test results shall remain on file for a period of one year with the medical testing facility. All records relating to the collection process and training shall be kept on file with the medical testing facility for two years.
  - a) Records of any alcohol test results indicating an alcohol concentration of 0.02 or greater, documentation of refusals, equipment calibration & documentation of employee evaluations and referral shall be retained for a period of five years by the medical facility.
  - b) Records of covered employee verified "positive" controlled substance test results, documentation of refusals and documentation of employee evaluations and referrals shall be retained for a period of five years by the medical facility.
  
5. All costs associated with alcohol and controlled substance testing shall be paid by the department which employs the covered employee or is recruiting for an approved CDL position. However, following a positive test result, the covered employee is responsible for all associated costs related to the Substance Abuse Program unless otherwise specified by the employing department/units.

6. All covered employees will be provided with written notice of the availability of information regarding the Omnibus Transportation Act, its testing requirements, and a copy of this policy which provides for compliance with the federal requirements.