



# Occupational Health Services of America, Inc.

2147 Riverchase Office Road, Birmingham, AL 35244 \* Phone: 205-421-2085 \* Fax: 205-421-2986

**Dr. Bruce Irwin, & Dr. James M. Allen, AAMRO** / February 1, 2009

Priscilla McCain, Sherri Queen, Bridgette Mason, Linda Tucker, & Charlotte O'Barr

## **Reasonable Suspicion Testing: DOT & NON-DOT**

Recently, employers have been asking questions concerning reasonable suspicion testing. OHSa desires to answer some of the questions in this overview, but if we miss your question, just give us a call.

There are very few supervisors who take advantage of reasonable suspicion testing. At the same time, about 85% of this type of test are positive. The positive rate is so much higher than other types of testing, it tells us that supervisors do recognize indications of use while being reluctant to require an employee to be tested. Many do not want to "rat" on a friend or co-worker. Some state they are afraid of legal repercussions. And some supervisors are uncertain how to confront a co-worker in a suspicious circumstance.

In 49 CFR Part 382.307, the regulations state: "An employer shall require a driver to submit..." if there is reasonable suspicion a driver is using drugs. The reasonable suspicion must be "...based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of..." drugs and/or alcohol.

It is clear that a supervisor who has a suspicion based on the above observations is required to have an employee tested. And in order to require a reasonable suspicion test, the supervisor must have, according to regulations 382.603, a minimum of one hour training on alcohol misuse and an additional hour training on drug use which includes: "...the physical, behavioral, speech, and performance indicators..." of use. Without this training, a supervisor that suspects an individual of using drugs or alcohol, is not qualified to require testing. Thus, training is absolutely necessary.

Word of caution - "Report Of Use" by a third party is NOT basis for reasonable suspicion testing. If an employer tests based on a "report of use," it will have to be by company authority rather than DOT authority. It is suggested to test as a non-federal drug screen or alcohol test.

The employer should always provide transportation to the test site. Sending an employee alone to be tested gives an opportunity to fool the test, and more importantly, the legal liability could be costly should the employee be involved in an accident.

If the employee refuses to test, he or she should be informed the refusal will be treated as a positive. If the employee quits and starts to leave, he or she should be informed that if they drive a vehicle, the employer will notify law enforcement. Supervisors are required to take these actions as part of their duties. Since it is a part of their job, the supervisor has some legal protections in Alabama. This does not mean a disgruntled employee could start legal action, but it does mean there is recourse for the supervisor under Alabama law, which protects a supervisor doing his or her job.

Confronting an employee should be done in privacy whenever possible. And even though the DOT requires that only one supervisor must make the observations, it is recommended more than one supervisor make these observations (when practical). The employee should be treated with courtesy and not accused of anything. Use the employee's name and do not use labels such as "alcoholic" or "addict" when referring to the employee. Explain to the employee that based on certain behavioral observations made by the supervisor, he or she is required to be tested and the company will provide transportation. The company will then need to provide transportation for the employee to a safe place or contact family or friends in order to provide a ride.

On the back of this newsletter, we have provided you with a "Reasonable Suspicion" report form. Be sure to contact our office if you have any questions or comments.



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