

Your Employee Tested Positive...What Now?

One of the biggest questions an employer has about his/her drug testing program is what to do if an already existing employee tests positive on a drug test. Fortunately, many small employers with on-going drug testing programs have not experienced this situation. If an applicant tests positive, the process is very straightforward – the job offer is cancelled and the candidate is not hired. However, sometimes a random or post-accident test on an existing employee comes up positive, and this can cause you stress and anxiety. In order to deal with this situation fairly, and to avoid any legal or liability ramifications, it is important that you follow the steps to the letter while enforcing your policy for a positive test.

It is important to understand the entire procedure a urine specimen goes through to determine a positive result. First, the specimen is collected under strict chain of custody procedure. Then, the laboratory performs an initial screen on the specimen followed by a confirmation test (if needed). Finally, the test result goes through an extensive medical review process by a physician who is certified as a Medical Review Officer (MRO). During the MRO process, the physician attempts to speak to the donor, although the donor can refuse to speak to the physician. This interview informs the donor of the positive drug test, gives the donor an opportunity to present a legitimate medical explanation, and instructs the donor that a retest of the original specimen is available if the donor feels that the laboratory made an error. In some cases, the employer may pay for this retest; in some cases the employee must pay for it. Either way, it is an expensive process where the specimen must be transported to another independent SAMHSA certified laboratory for the retest. In most cases, if the donor is required to pay for the retest, s/he will decline this option. Keep in mind that a retest does not mean the donor can go back to the collection site to give another specimen.

When you receive a positive drug test result for one of your employees, you can be sure that the result has been screened and confirmed by the lab and then reviewed and verified by the Medical Review Officer. This means that this result is a bona fide positive result and no further discussion or explanations from the donor are acceptable (this includes second hand smoke). If you do have questions or concerns, you should discuss them only with the MRO office.

Your first step when receiving a positive result is to review your company policy to determine disciplinary action. Many policies call for immediate termination, some allow for the employee to seek assistance for the drug abuse problem. It is critical that you follow the policy to the letter and that your actions and decisions remain consistent from one employee to the next. Always provide your notification of the positive result and the appropriate consequences to the employee in writing. Depending on whether you have a DOT program, State Law Specific Program or non-regulated program – there may be additional steps to take.

DOT Regulated Companies

A positive test result on a DOT drug test is a distinct violation of the DOT drug and alcohol testing regulations. As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test. The employer must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the DOT required return-to-duty process which includes an initial evaluation by a Substance Abuse Professional (SAP), a course of action prescribed by the SAP and a follow-up evaluation by the SAP. Complete guidelines for the SAP process can be found in the DOT Drug & Alcohol Testing regulations - 49 CFR Part 40 Subpart O - Substance Abuse Professionals and the Return-to-Duty process.

Employers must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation, a listing of SAPs readily available to the employee and acceptable to you, with names,



addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent. This must be done even if you are terminating the employee.

For donors that wish to challenge a positive test result, the opportunity for a split specimen retest is required under DOT regulations. The donor is notified of this option by the MRO and requests this retest through the MRO. The request must be made within 72 hours of the MRO notifying the donor of the positive result and opportunity of split specimen retest. If the MRO receives the request for a retest of a DOT split specimen, the MRO shall notify the lab immediately without concern for who is paying for the test. Company policy should clearly specify the payment responsibilities of a split specimen retest.

Florida Drug Free Workplace Programs

Under Florida guidelines for a drug free workplace, there is no requirement for a SAP evaluation. Company policy would specify the consequences of a positive test including immediate termination, treatment options or a last chance agreement. Written notice of a positive test result along with the consequences of the positive test result, and the employee's available options is required within 5 working days after the receipt of the MRO's confirmed positive result.

The employee or job applicant has 180 days after receiving written notification of a positive test result to request to have the specimen retested at his or her expense at another licensed or certified laboratory chosen by the employee or job applicant.

Non-Regulated Drug Testing Programs

In the absence of specific regulations or guidelines, it is recommended that all options be clearly outlined in the company policy and followed carefully. It is advised that written notice of a positive test result along with the consequences of the positive test result, and the employee's available options be provided within 5 working days after the receipt of the MRO's confirmed positive result. Specimen retesting should also be an option for the donor.

