

WorkSafe: Your industry expert

WorkSafe, Inc. offers a full spectrum of workplace drug and alcohol program services at its office on 36th and C Street in Anchorage. For your convenience, we also offer instant-results testing for worksites. WorkSafe provides corporate training, drug and alcohol testing consultation services, pre-employment drug and alcohol screening, return-to-duty services and follow-up testing. It also has on-call personnel 24 hours a day if an employer's work shifts require testing availability around the clock. For more information regarding a drug-free workplace, contact WorkSafe at 563-8378.

WorkSafe Products & Services

Drug & Alcohol Awareness Training

Collector's Desk Reference Guide[®]

Training Videos

Program Manager's Reference Guide[®]

Breath Alcohol Technician (BAT) Training

Collection Personnel Training Course[®]

Compliance Toolbox CD

WorkSafe Contacts

To contact WorkSafe during regular office hours, call (907) 563-8378 (TEST).

To request an after hours drug or alcohol test, call 888-227-8642.

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WorkSafe *ink*

The official newsletter of WorkSafe, Inc. Providing workplace drug and alcohol testing. DECEMBER 2006

President's post

By Matthew Fagnani, C-SAPA, C-SI, President



As the end of the year rapidly approaches, I have to wonder how the past 12 months flew by so quickly. It is hard to believe that the holiday season is here and 2007 is right around the corner. 2006 was a good year for Alaska as a state and for our economy. I hope it was good for you.

As we look to the holidays, it is important to remember that they are meant to be times of joy, not tragedy. But last year, half of all vehicle fatalities in Anchorage were alcohol-related.

If you are having a company party, protect your company's liability by having your

party at a hotel, catering facility or by hiring a licensed and insured company to serve your party.

Professional caterers have trained their staff not to over serve customers. It is their responsibility to turn down requests for alcoholic beverages when someone has had too much to drink. These professionals are trained to know when to say "no" so you don't have to monitor consumption.

Work it out ahead of time so they have the authority to call a taxi for anyone who may need a ride home.

The goal is to have fun and be safe so that everyone can enjoy the holidays.

All of us at WorkSafe appreciate your business. We may not say it enough but **THANK YOU** for allowing us to serve you. Have a safe and wonderful holiday and we look forward to serving you even better in 2007.

Guidance from the Department of Transportation

With 800 pages of federal regulations that describe the requirements for employers operating under the authority of the Department of Transportation (DOT), questions are sure to arise. Through its website, DOT publishes questions and answers as a way to educate on such expansive regulations.

No agency publication can proactively determine all of the variables that may occur in the workplace. Therefore, the DOT Part 40 guidance is welcome and necessary in order to work through the unknowns.

Throughout the year WorkSafe will ask Part 40 questions on our clients' behalf and, depending on the technicality of the question, can have answers back to you within a couple of days. This valuable service helps ensure you stay in compliance.

The Office of General Counsel and Office of Drug and Alcohol Policy and Compliance of the DOT recently provided the following questions and answers. They constitute official and authoritative guidance and interpretation concerning 49 CFR Part 40 (see 49 CFR 40.5)

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QUESTION:

Are employers and their service agents in DOT drug and alcohol testing programs required to obtain employee written authorizations in order to disclose drug and alcohol testing information?

ANSWER:

In the DOT drug and alcohol testing program, employers and service agents are not required to obtain written employee authorization to disclose drug and alcohol testing information where disclosing the information is required by 49 CFR Part 40 and other DOT Agency and U.S. Coast Guard (USCG) drug and alcohol testing regulations. 49 CFR Part 40 and DOT Agency and USCG regulations provide for confidentiality of individual test-related information in a variety of other circumstances.

Even if drug and alcohol testing information is viewed as protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) rules, it is not necessary to obtain employee written authorization where DOT requires the use or disclosure of otherwise protected health information under 49 CFR Part 40 or the other DOT Agency and USCG drug and alcohol testing regulations.

Unless otherwise stipulated by 49 CFR Part 40 or DOT Agency and USCG regulations, use or disclosure of the DOT drug and alcohol testing information without a consent or authorization from the employee is required by the Omnibus Transportation Employees Testing Act of 1991, 49 CFR Part 40, and DOT Agency and USCG drug and alcohol testing regulations.

Consequently, an employer or service agent in the DOT program may disclose the information without the written authorization from the employee under many circumstances. For example:

- Employers need no written authorizations from employees to conduct DOT tests.
- Collectors need no written authorizations from employees to perform DOT urine collections, to distribute Federal Drug Testing Custody and Control Forms or to send specimens to laboratories.
- Screening Test Technicians and Breath Alcohol Technicians need no written authorizations from employees to perform DOT saliva or breath alcohol tests (as appropriate), or to report alcohol test results to employers.

- Laboratories need no written authorizations from employees to perform DOT drug and validity testing or to report test results to Medical Review Officers (MROs).
- MROs need no written authorizations from employees to verify drug test results, to discuss alternative medical explanations with prescribing physicians and issuing pharmacists, to report results to employers, to confer with Substance Abuse Professionals (SAPs) and evaluating physicians or to report other medical information (see §40.327).
- SAPs need no written authorizations from employees to conduct SAP evaluations, to confer with employers, to confer with MROs, to confer with appropriate education and treatment providers or to provide SAP reports to employers.
- Consortia/Third Party Administrators need no written authorizations from employees to bill employers for service agent functions that they perform for employers or contract on behalf of employers.
- Evaluating physicians need no written authorizations from employees to report evaluation information and results to MROs or to employers, as appropriate.
- Employers and service agents need no written authorizations from employees to release information to requesting federal, state or local safety agencies with regulatory authority over them or employees.

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Random programs:

As the year comes to a close, please remember to update your random list. Having valid employee lists is an employer’s responsibility. WorkSafe program management staff is working hard to assure that the random programs meet federal random testing requirements. As we approach the end of the fourth quarter, year-end results are critical. You will be receiving a statistical report for your year-to-date testing results. Please review them and if you have any concerns, call your program manager immediately so that a solution can be determined.

QUESTION:

What are some examples of an employee’s failure to cooperate with the testing process that would cause a refusal to test and how should the collector handle them?

ANSWER:

Part 40 highlights two examples of failure to cooperate – the employee refuses to empty pockets when instructed to do so and the employee behaves in a confrontational way that disrupts the testing process.

Among others are:

- The employee fails to wash his or her hands after being directed to do so by the collector;
- The employee admits to the collector that he or she adulterated or substituted the specimen; and
- The employee is found to have a device – such as a prosthetic appliance – the purpose of which is to interfere with providing an actual urine specimen.



When the issue is a problem with refusing to following instructions – for example, refusing to empty pockets or refusing to wash hands – or if there is a confrontation, the collector should warn the employee of potential consequences of a failure to cooperate and, if practical, seek assistance from the DER or supervisor to ensure that the employee understands the ramifications.

When the issue is admission of adulteration or substitution, or when a device is found, there is no need for the collector to warn the employee or to seek assistance from the DER or supervisor.

In every case, the collector must carefully follow the procedures at 40.191(d) by terminating the collection process, immediately notifying the DER of the refusal and thoroughly documenting the circumstances surrounding the event in the remarks section of the CCF.

Any specimen that had been collected before the refusal should be discarded.

Reminder for collection personnel:

Please keep your collections certification current. If your certification is not current, and you are audited, DOT may require you to immediately cease collecting all DOT samples until you can re-certify your collections staff.

If you have not conducted any collections within a year of your training, you must take a refresher course. As a collector, you must take a refresher course no less than five years after certification.

Call Dana Blair or Elaine Perez to schedule collectors training at (907) 563-8378.

QUESTION:

If an employee fails to provide a sufficient amount of urine during an observed collection, can an employer remove the employee from performing safety-sensitive functions pending receipt of the verified result from the Medical Review Officer (MRO)?

ANSWER:

The Department believes an employee’s failing to provide a sufficient amount of urine during a directly observed collection is very similar to a laboratory’s reporting a positive, adulterated or substituted test result to MRO.

While we do not believe it is appropriate for an employer to remove the employee from safety-sensitive duties until receiving the MRO’s verified result, we think stand-down waiver provisions could be relevant.

Therefore, employers can apply for a stand-down waiver that would permit the employee to be removed from safety-sensitive duties when he or she does not provide an adequate amount of urine during an observed collection.

The waiver request would need to meet all criteria outlined at 40.21 and should reference the fact that it is for standing an employee down who fails to provide an adequate amount of urine during an observed collection.

The 40.21 waiver request for laboratory positive, adulterated and substituted results will continue to be evaluated separately.

