

WorkSafe Provides Critical Auditing Services

By Matthew Fagnani, C-SAPA, C-SI, President, WorkSafe, Inc.



In the November/December issue of WorkSafe Ink, we reported on the hearing before the Congressional Transportation Subcommittee.

The Government Accountability Office (GAO) was asked to investigate recent reports that some drivers were not being tested, some were being tested but avoiding detection, and some tested positive but continued to drive. Recently, the GAO has made public their analysis of the problem.

In their findings, they revealed that GAO investigators posed as commercial truck drivers needing drug tests, and found that employees at 10 of 24 of the collection sites did not ask the investigator to empty

his pants pockets as required. Factors contributing to drivers testing positive yet continuing to drive include drivers not divulging past drug test history, carriers' failure to conduct thorough background checks on a driver's past drug testing history, and self-employed owner-operators' failure to remove themselves from service. In summary, significant non-compliance was documented in every area of the GAO's inquiry.

As a result of their findings, the GAO is proposing recommendations including additional auditing, larger fines and a national registry, just to name a few. I predict that this issue will not just go away, and that in the end, it will have a substantial effect on the FMCSA/DOT drug testing industry.

I want to reiterate that these non-compliant situations were caused by service agents not doing their jobs and by company Designated Engineering Representatives (DERs) not auditing their service agents. This continues to echo the importance of the role of the DER: It is not just added duties to an already full plate. The DER needs to protect his/her company by fully understanding what the DOT rules are and auditing service agents to be sure the job is done right the first time. DOT will continue to hold DERs and companies responsible and accountable for the actions of their services agents. Please audit your service providers or hire WorkSafe to audit them for you. Our trained staff will provide your DER and the services agent with documentation of any required corrective action. ■

Complying with Coast Guard Regulations Requires Teamwork

By Don Bisby, General Manager, WorkSafe, Inc.

Fishing season is upon us. For our fishing charter clients, remaining compliant with Coast Guard regulations is essential to staying in business. As many of our clients can attest, the Coast Guard is out in force auditing and imposing fines when necessary. This is where WorkSafe can help. WorkSafe is committed to assisting you, as a member of your team, to help you remain compliant with Coast Guard regulations.

Each year, WorkSafe sends out to each Coast Guard client a new "Scope of Services" by which we manage your drug and alcohol program.

The Scope of Services asks you to (1) Notify WorkSafe in writing of the date your season will begin; (2) Ensure that seasonal employees receive a pre-employment test at the

beginning of each season prior to being reactivated into the random program unless they meet the exemption rule; (3) Notify WorkSafe in writing of negative test results so the employee can be added to the random pool; (4) Conduct random tests during your operating season; (5) Continually notify WorkSafe in writing of any seasonal activity and inactivity, such as changes in your staff (ie. new hires or terminations); and finally (6) Notify us once your season has concluded so we can deactivate your account until you are ready to start up again.

Random drug testing requires cooperation and teamwork from everyone involved. It is an area that

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All supervisors must be trained in identifying the signs and symptoms of drug and alcohol use. To better assist clients, we are now holding monthly training sessions at our location in Anchorage.



◎ SIDEBAR

Five factors that demonstrate the value of post-offer Employment Testing:

1. To obtain and document baseline information of what pre-existing conditions are present prior to hire. This provides a reference point in the event of a later workers' compensation claim. It can also determine if a serious medical condition exists that may harm the individual or pose risks to other employees.
2. If an employee is hired for a specific job, the exam can be used to determine if the individual is capable of performing the physical requirements of that job.
3. If an individual cannot perform an essential task required by the job, then reasonable accommodation may be offered. Without this post-offer determination, the new employee must be allowed to attempt a task to prove whether or not he/she can perform it.
4. To obtain a baseline of information or test results that may be used later to help determine if a certain work exposure is causing a medical condition or not.
5. To determine if the individual has a temporary condition that needs follow-up care or corrective action before clearing the employee to perform the task required.

The results of the pre-placement examination are maintained in the patient's confidential occupational health record, separate from any other employee records.

A word of caution: Employers cannot pick and choose which new hires need physicals. The employer cannot be "arbitrary and capricious" in examining only select new hires. One objection to pre-employment or post-offer, pre-placement testing is based on the erroneous belief that federal regulations prohibit such tests. While medical tests are illegal if given solely to make pre-employment decisions, conducting valid physical ability tests is legal. A valid test determines if the applicant or worker can perform the essential functions of a particular job. Such a test meets the legal standard of being a business necessity and employers have a legal right to conduct such testing. ■

The Value of Pre-placement Physical Ability Testing — IMED Health News

Injury avoidance and documentation begin at the time of hiring

By Dave Popken, MA, BSHS, PA-C, Clinical Director, IMED Occupational Health Services

Prevention and avoidance of all job-related injuries and illnesses is the goal of every employer's safety program. Yet injuries and illnesses can, and do, occur. Two-thirds of every workers' compensation health care dollar is spent by employers to pay for lost time, disability or for the cost of a replacement worker. Yet with early intervention and appropriate oversight when required, workers' compensation costs can be dramatically reduced.

Integration of the Americans with Disabilities Act (ADA) pre-placement medical screening is a crucial part of any injury prevention program. Fitness testing to ensure that prospective employees have the physical ability to perform the essential functions of the job without getting injured, is not only legally defensible, but also smart business. There are three components to a successful workplace physical abilities testing program.

(1) Job Task Analysis (JTA) —

Performed in the field in three distinct steps, JTA is a key element in injury prevention, ergonomic intervention and safe return-to-work determinations. In step one, the evaluator observes and quantifies the type and frequency of tasks (essential functions) performed on the job. In step two, the evaluator identifies the physical abilities necessary to perform the essential functions. In the final step, the evaluator selects the physical ability test(s) that will best determine the physical abilities of the employee to be tested.

(2) Post-offer Employment Testing —

Post-offer strength and/or functional testing are injury prevention tools that match an employee's physical capacities with work requirements. In the past, employers would request physicals to determine if an individual could be hired, but since the enactment of the ADA in 1992, pre-employment physicals cannot be a determining factor in offering employment. This landmark legislation caused widespread reevaluations to



Implementing a workplace safety program is a sure way to keep worker compensation costs down.

determine why physicals are given and to what advantage. Subsequently, examinations may be performed only after a conditional offer of employment, hence the terms, "Pre-Placement" and "Post-Offer" physicals. (see sidebar ◎)

(3) Physical Capacity Evaluation (PCE) —

A key evaluation tool for safe return-to-work, disability determination, vocational rehab and other medico-legal applications is the PCE, also known as functional capacity evaluation (FCE). Testing is customized to the known physical demands of the job, and can be as extensive as necessary to determine the ability of the injured employee to return to the job, and in what capacity. IMED can also cross-reference all company job descriptions in order to recommend temporary modified work that could be performed by the employee with existing limitations. Post-injury PCE also allows the employer the opportunity to evaluate employees that may have been hired prior to the initiation of a post-offer testing program and apply the same criteria for job placement as are applied to new hires. This is particularly important in the context of the "aging workforce" problem.

Consult with the professionals at WorkSafe IMED to determine what pre-placement exam protocol can be developed that will best serve your company's need to protect its most important asset — your employees. ■



DOT paperwork a heavy burden

Commercial Solutions are available through WorkSafe

By Michael Bell, General Manager, Commercial Solutions, Inc.

For any company that uses vehicles as part of their business, a basic working knowledge of Department of Transportation (DOT) regulations is in order. Employers in enterprises as diverse as construction, landscaping, tourism and service-based support of the oil industry all need to know if any individual driver or vehicle falls under the jurisdiction of federal regulation.

The regulations can be confusing to the average reader, with many being written by and for bureaucrats.

Unfortunately, ignorance is no defense when you find yourself face-to-face with a DOT inspector who decides to conduct an audit of your business files. Many companies, for example, are unaware that once a vehicle used in commerce has a gross vehicle weight rating (GVWR) of 10,001 lbs, all drivers of that vehicle are required to carry a DOT medical card (FMCSA code 390.5). The perfect example of an “innocent mistake” is a lawn business that uses a large pickup to tow a trailer of mowing equipment.

Once that 10,001 threshold has been reached the driver must also follow many of the same regulations that CDL license holders must adhere to. This includes a DOT approved Driver File, medical card, applicable license, initial motor vehicle record (MVR), Annual Statement of Violations, Annual MVR and, if applicable, a Record of Road Test and Certificate.

With the increasing frequency of inspections by DOT, State Troopers and local police, many companies realize too late that they are DOT-regulated. Companies that suddenly find they are in the trucking business have little time to get up to speed on the regulations that may affect them. If they do not comply with these regulations there could be

fines levied against their company. The regulations can also be confusing to the average reader, with many being written by and for bureaucrats.

Along with the DOT file regulations, companies also must conduct DOT pre-employment checks on prospective employees if the hire falls within a certain time period of employment on their applications. For instance, if an employee has applied to your company and their previous employment as a driver falls within a certain time frame, you are required to do a DOT previous employment verification check. If there is no answer back from the previous employer, you must make a minimum of three good faith attempts to get that information (this includes faxing, calling on the phone and certified letters). If there is still no answer back, these attempts must be documented and kept in the employee’s driver file.

If a DOT inspection is triggered for any number of reasons (most inspections happen when a vehicle is pulled over and the driver is unable to produce a medical card) they will come to your place of business and ask for a compliance inspection of your business. At this point they will want to look at financial records, vehicle maintenance records, driver logs, bills of lading and driver files. For most transportation

companies this can be a daunting task. But when a company has not been following the regulations this can be a very painful process.

Solid record keeping is the solution to the situation. A well-managed driver file, including up-to-date records of all the above mentioned items, managed by someone familiar with the ins and outs of federal DOT regulations can make the difference between spending time on the road or sorting through files with a regulator. ■

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auditors examine closely. In order for us to effectively manage your random program it is extremely important that we are communicating with one another. Before we can generate random reports it is essential that we receive an updated employee roster each month from your company. Once we have updated your company roster we will send you a list of anyone that has been selected to take a random. After your employee completes the random test, indicate the date that your employee tested and fax/email this back to WorkSafe. If the employee that was selected to test is not available or not employed, then annotate that information on the form as well.

Also, remember that all supervisors must be trained in identifying the signs and symptoms of drug and alcohol use. To better assist our clients we are now holding monthly training sessions at our location in Anchorage.

WorkSafe is committed to assisting you in your drug testing program, so that together you remain compliant with all Coast Guard drug and alcohol requirements. ■



Solid record keeping is your solution and can make the difference between spending time on the road or sorting through files with a regulator.



WorkSafe: Two locations to better serve you

As WorkSafe continues to grow, we are now in two locations. WorkSafe will continue to serve our customers for drug test collection and IMED occupational health services at our 300 W. 36th Ave. clinic location. Our corporate office has moved to 3230 C St. All program management services such as results reporting, random list management and billing will be conducted out of this office. If you prefer to receive this newsletter via email, please contact Al Stoddard at: astoddard@worksafeinc.com. ■

WorkSafe Contacts

To contact WorkSafe during regular office hours, call 563-8378 (TEST). To request an after hours drug or alcohol test, call 888-227-8642.



WORKSAFE Divisions

- Drug & Alcohol Testing
- Commercial Solutions
- IMED Occupational Health Services

President

Matthew Fagnani – C-SAPA, C-SI
273-2407

Director of Operations

Tom Englehart
729-5522

■ IMED Occupational Health Services

Clinical Director

Dave Popken – PA-C 729-5514

■ Commercial Solutions

General Manager

Michael Bell 729-5520

Division Director

Evan Zavatore 729-5521

■ Drug & Alcohol Testing

General Manager

Don Bisby 729-5518

Accounting Manager

Diane Owens 729-5507

Compliance Manager

Al Stoddard – C-SAPA 729-5506

Program Manager

Dana Blair 729-5503



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