

Avoiding Driver Drug & Alcohol “Don’ts”



Imagine the damage that an impaired driver operating one of your commercial motor vehicles (CMVs) could inflict on the general public. Those companies that have experienced this can tell you firsthand about the potential aftermath: lawsuit, DOT crash investigation, fines and penalties, and the publicity nightmare.

With so much at stake, it’s vital that your CMV drivers understand what behavior is **not** permitted when it comes to the DOT regulations.

WHAT IS PROHIBITED DRUG BEHAVIOR?

The drug prohibitions include:

- Use of any drug or substance identified in 21 CFR 1308.11 Schedule I;
- Use of any non-Schedule I drug or substance, except under the direction of a licensed medical practitioner who is familiar with the driver’s medical history and has advised the driver that the drug will not adversely affect the driver’s ability to safely operate a CMV;
- Testing positive for drugs (see thresholds in §40.87);
- Having an adulterated or substituted test specimen; and
- Refusal to take a required test.

WHAT IS PROHIBITED ALCOHOL BEHAVIOR?

A driver is not allowed to use alcohol at certain times and in certain situations. These alcohol prohibitions include:

- Use while performing a safety-sensitive function;
- Use during the 4 hours before performing a safety-sensitive function;
- Reporting for duty or remaining on duty to perform a safety-sensitive function with an alcohol concentration of 0.04 or greater;



Refusing a drug or alcohol test carries the same consequences as a positive test result.

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- Use during the 8 hours following an accident, or until the driver undergoes a post-accident test; and
- Refusal to take a required test.

Also, note that a driver found to have an alcohol concentration of 0.02 or greater but less than 0.04 may not perform, nor be permitted to perform, safety-sensitive functions for at least 24 hours. However, it is not a DOT alcohol testing violation and does not require the return-to-duty process.

WHAT IS A REFUSAL TO TEST?

When notified of a drug and/or alcohol test, certain actions on the part of your driver are considered a refusal to test, such as:

- Not immediately going to the testing site when instructed;
- Not remaining at the testing site until the process is completed;
- Failing to provide a specimen for testing without an acceptable medical explanation;
- Refusing to sign an alcohol testing form; and
- Failing to cooperate with any part of the testing process.

In the instance of a DOT pre-employment test, a refusal only occurs once the testing procedures begin. For instance, if an applicant does not show up for an appointment or leaves the collection site before being called in for the test, it is not a refusal to test.

WHAT ARE THE CONSEQUENCES OF VIOLATING DOT TESTING RULES?

There are **serious consequences** faced by a driver who refuses to test, fails an alcohol test, or has a positive, adulterated, or substituted drug test result. A driver who violates testing rules:

- Must be removed from all safety-sensitive functions.
- May not return to a safety-sensitive function until:
 - An evaluation by a substance abuse professional (SAP) has been done,
 - The driver has complied with prescribed treatment, and
 - He or she passes a return-to-duty test.
- Is subject to at least six follow-up tests in the first 12 months after returning to duty and may be subject to follow-up testing for up to a total of five years.

Record of the violation under Part 382 is reported to the CDL Drug & Alcohol Clearinghouse by the medical review officer or employer depending on the circumstances.



Avoiding Driver Drug & Alcohol “Don’ts” (continued)

WHAT IS ACTUAL KNOWLEDGE?

Actual knowledge of a DOT drug or alcohol violation occurs when you:

- Directly observe your employee engaging in prohibited activity (e.g., drinking on the job);
- Are provided information by your driver’s previous employer(s) (e.g., DOT testing history/Safety Performance History);
- Learn of a traffic citation for driving a CMV while under the influence of alcohol or controlled substances; or
- Receive an employee’s admission of alcohol or controlled substance use, unless provided under a voluntary self-identification program.



Direct observation for purposes of actual knowledge is not the same as observing an employee’s behavior or physical characteristics in order to send a driver for a reasonable suspicion test.

Drivers who fail or refuse a drug or alcohol test must be removed from safety-sensitive functions.

When you have actual knowledge that one of your CDL drivers violated DOT testing rules, you must treat this as you would a positive result. You must remove the driver from a safety-sensitive function until there’s documentation that the driver has completed the necessary steps of the return-to-duty process. You must also report the actual knowledge to the CDL Drug & Alcohol Clearinghouse by the close of the third business day following the date on which you learn of the violation.

EASILY COMPLY WITH DRIVER TESTING REQUIREMENTS

The J. J. Keller® *DOT Drug & Alcohol Program Management Service* protects your business from violations with access to full third-party administration services and program oversight. Through this comprehensive service, our compliance experts will:



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