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# Reasonable Suspicion for Supervisors (Non-DOT)





# Introductions...

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# Learning Outcomes

- Ability to articulate reasonable suspicion
- Understand your role in the process
- Indicators, signals and symptoms of drug and/or alcohol use
- Five steps to a defensible reasonable suspicion strategy
- Necessary documentation to substantiate your observations
- How to confront an employee during reasonable suspicion
- Actions to take when:
  - **Supervisor receives “hearsay” or 3<sup>rd</sup> party information, or**
  - **Suspicious substance is discovered, or**
  - **Employee refuses to be tested or abruptly leaves the jobsite after the confrontation**



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# What is Reasonable Suspicion?





# Types of Drug and Alcohol Testing

- **Pre-Employment** – most common, easiest to “pass”
- **Post-Incident** – verify whether or not impaired or under the influence
- **Follow-Up** – applied only to suspended employees (+Test) “if” rehired
- **Random**
  - **Test a specific, minimum percentage of your employee pool**
  - **Common: 25% Drug & 10% Alcohol**
- **Reasonable Suspicion (*aka* – “For Cause”)**
  - **Drug and/or alcohol test is administered when the employer has *Reasonable Suspicion* to believe that an employee has used a prohibited drug and or engaged in alcohol misuse.**
- **Return-to-Duty** – performed upon re-hire or for previously suspended employees due to positive drug and/or alcohol test



# Reasonable Suspicion Definition

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- Objectively justifiable suspicion of possible drug abuse and/or alcohol misuse that is based on specific observable, contemporaneous and articulable facts:
  - **Observable** - *an act or instance of noticing or perceiving*
  - **Contemporaneous** - *happening in the here and now*
  - **Articulable** - *clearly describe what you have observed*

Reasonable suspicion testing can be administered based on your personal feelings, emotions and other subjective evidence as long as you believe the person be all messed up on drugs and/or alcohol.

 **Poll locked.** Responses not accepted.

True

False



# Purpose of Reasonable Suspicion

- Inform, empower and develop confidence in a supervisor by developing a common understanding in **practical methods** to make “*fair*”, “*reasonable*” and “*observable referrals*” for a drug and alcohol test.
- Risk management strategy for any employer whose employees perform a “*Safety-Sensitive*” function.
  - **Any activity where impairment increases the likelihood of an accident or injury**
    - **IMPAIRMENT:** a deterioration of an individual’s judgment and decrease in his or her physical ability.
  - **All time from the point an employee begins work or is required to be ready to work until the time he or she is relieved from work an all responsibilities for performing work.**





# Workplace Drug & Alcohol Statistics

- Construction Industry Statistics (*National Drug Free Workplace Alliance*)
  - **11.6% Illicit Drug Use, 16.5% Heavy Alcohol Use, Substance Abuse 14.3%**
- On average, 15 out of every 100 work-related fatalities test positive for drugs or alcohol.
  - *Occupational Safety and Health Administration (OSHA)*
- Employees who are high, “coming down”, inebriated or hungover are 5-times more likely to injure someone else on the job
  - *Bradford Health Services*
- 12% of drivers on the road have alcohol in their system
  - *National Highway Traffic Safety Administration*
- Over 10,000 people die on the highways as a result of alcohol-related vehicle accidents
  - *National Highway Traffic Safety Administration*



# Can anyone Refer an Employee to a Reasonable Suspicion Test?

A Reasonable Suspicion test may only be administered after a “Reasonable Suspicion” trained supervisor has personally observed, confirmed and documented specific, contemporaneous and articulable indicators (*appearance, speech, body odor, or behavior*) consistent with the signs and symptoms of drug abuse and/or alcohol misuse.

**Anyone who has ever abused drugs or misused alcohol has enough training and "real world" experience to make a Reasonable Suspicion drug and/or alcohol determination.**

 **Poll locked.** Responses not accepted.

True

False



# What makes a Non-DOT Reasonable Suspicion Trained Supervisor's Referral Credible, Reliable and Defensible?

- Consistently following the 5 Step Reasonable Suspicion Process
- Specific observable, contemporaneous and articulable facts
- Personal observations with correct, complete documentation
- Politely, professionally and respectfully confronting an employee in a private setting to discuss observations without accusation or discrimination and protecting his/her privacy and confidentiality

## Remember:

You are not making determinations based on anything other than the observable indicators you personally witness.

You are not trying to diagnosis any drug or alcohol issue.



# Do I need to have “DOT” Reasonable Suspicion Training?

Under section 382.603 of the FMCSRs, anyone designated to supervise Commercial Motor Vehicle (CMV) drivers during safety sensitive functions must receive at least 60-min of training on alcohol misuse and at least 60-min of training on drug abuse. Training is then used to determine if the CMV driver must undergo reasonable suspicion drug and/or alcohol testing under Section 382.307.

- Any time a driver is waiting to be dispatched
- Performing any CMV inspection/service
- All time spent at the driving controls
- All time (other than driving time) in or upon a CMV, not including resting in sleeper berth
- All time loading/unloading a CMV: supervising, assisting, attending, remaining in readiness, giving or receiving receipts
- All time repairing, assisting, remaining in attendance upon a disabled CMV



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# Supervisor's Role





# Supervisor's Role in Reasonable Suspicion

- Maintain safe, secure and productive work environment
- Evaluate and discuss performance with employees
  - **Monitor and enforce expectations**
- Treat everyone with dignity and respect, safeguard confidentiality
  - **Act in a manner that does not demean or label people**
- Follow the 5 Steps for a defensible Reasonable Suspicion strategy

## **It is Not Your Responsibility to:**

- Diagnose alcohol and drug problems
- Provide counseling or therapy
- Have all the answers
- Be a police officer





# Understand Legally Sensitive Areas

As a trained supervisor in Reasonable Suspicion, you must:

- **Know, support, enforce your company's drug and alcohol policy**
- **Make every effort to safeguard each employee's confidentiality**
- **Thoroughly investigate all alleged violations**
  - NEVER ignore comments, observations and/or suspicions
  - NEVER allow nepotism or friendships to cloud your judgment
- **Provide due process and ample opportunity for an employee to respond to any allegations of Reasonable Suspicion**
- **If testing is performed, ensure quality control of the entire process and confirmation of positive test results**
- **Conform to all contracts or union agreements, if applicable**





# Common Legal Issues

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- Inconsistent or Discriminatory Testing
- False Accusations
- Substandard or Non-Compliant Testing Procedures
- Negligent in Employee Privacy and Confidentiality
- Wrongful Termination



# Should I be Concerned about an Employee who May Not Test Positive?

- Simple Answer = NO!
  - **Your role is to take action when you observe specific, contemporaneous, and articulable indicators (*appearance, speech, body odor, or behavior*) consistent with the signs and symptoms of drug and/or alcohol use.**
- Your employee Does Not have to test positive to be correct in sending him or her in for a Reasonable Suspicion drug and/or alcohol test
  - **Do Not allow fear to cloud the understanding of your observations**
- Do not concern yourself with threats from employees or bogus claims retaliation or discrimination
  - **Your defensible strategy consists of the 5 essential steps**
  - **PLEASE NOTE: If you have any concerns, then have another trained supervisor confirm your observations BEFORE confronting the employee**



# **Do I Need to have another Trained Supervisor verify My Observations before taking any Action?**

- **Simple answer = No**
- **Some companies prefer to have 2 trained supervisors corroborate each other's observations, but it is not a legal requirement.**
- **Not taking action creates even more risk.**

## **What is Necessary if You are the only Trained Observer?**

- **Adamantly follow all 5 steps of the Reasonable Suspicion process to ensure a defensible strategy**

If another Reasonable Suspicion trained individual is not available to confirm your observations, then you cannot confront the individual to discuss your observations and you cannot make a referral for a drug and alcohol test.

 **Poll locked.** Responses not accepted.

True

False



# Where or How should I Begin?

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There are specific questions you can ask yourself when determining Reasonable Suspicion.

If you are observing changes in behaviors, then you may want to watch that individual more closely to potentially catch a problem before it evolves into an accident, injury or worse.

## Can you answer “YES” to any of these...

- Have you noticed a sudden or unusual change in the employee’s behavior?
- Does the employee suddenly appear unkempt or disorganized when you have known them to take pride in their appearance and work ethic in the past?
- Does the employee appear unusually nervous, agitated or stressed?
- Performance consistently slipping or below average?
- Does the Employee seem fatigued or unusually tired?
- Does the Employee have difficulty concentrating on what you say or understanding simple directions?
- Observed a dramatic weight shift (gain/loss)?
- Recent thefts or missing items related to individual’s tasks or responsibilities?
- Has the employee been caught in a lie or made statements that are inconsistent with what you know about the person?
- Any reason to believe the employee is experiencing financial difficulties that could be the result of a possible addiction to drugs?



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# Signs & Symptoms

## Alcohol Misuse Drug Abuse



# Review Alcohol & Common Drugs

- Alcohol

- **Beer** – 12 oz.
- **Wine** – 5 oz.
- **Liquor** – 1 oz.



**Alcohol is Alcohol in any Form:**

*mouthwash, cough syrup, extracts, candies, prescribed meds, etc.*

**0.02% may impair ability to perform tasks**

- Drugs

- **Marijuana**
- **Cocaine**
- **Amphetamine or Meth**
- **Opiates**
- **Phencyclidine or PCP**

- Over-the-Counter or Prescription Meds

**Drugs / Substances listed in DEA Schedule I include:**

- **Heroin** (diacetylmorphine)
- **LSD** (Lysergic acid diethylamide)
- **Marijuana** (cannabis, THC)
- **Mescaline** (Peyote)
- **MDMA** (3,4-methylenedioxyamphetamine or "ecstasy")
- **GHB** (gamma-hydroxybutyric acid)
- **Ecstasy** (MDMA or 3,4-Methylenedioxyamphetamine)
- **Psilocybin**
- **Methaqualone** (Quaalude)
- **Khat** (Cathinone)
- **Bath Salts** (3,4-methylenedioxypropylone or MDPV)



# Alcohol is only considered to be beer, wine or liquor.

 **Poll locked.** Responses not accepted.

True

False



# Alcohol Misuse

## Signs & Symptoms of ALCOHOL Misuse:

- Dulled mental process
- Constricted pupils
- Sleepy or lethargic
- Slowed reaction time
- Slurred speech
- Poor reflex actions
- Impaired vision
- Inability to focus

## Reasonable Suspicion Observations:

- Slurred speech
- Bloodshot, watery eyes
- Poor balance
- Odor on breath or clothing
- Involuntary, sudden movements of the eyes



# Alcohol Impairment

- Operating a vehicle, equipment or performing any safety sensitive task while under the influence of alcohol impairs:
  - **Attention span**
  - **Visual tracking**
  - **Reflexes and reaction time**
  - **Information processing**

## Reality of Alcohol Impairment:

- **According to the DOT, every 2 hours 3 people are killed in alcohol-related highway crashes.**
  - *National Highway Traffic Safety Administration FARS data, 2012*



# Marijuana

- **Alters the brain's interpretation of incoming messages and sense of time, diminishes concentration, reflexes, reaction time, coordination and judgement.**



# Marijuana Use

## Signs & Symptoms of MARIJUANA Use:

- Reddened eyes
- Slowed speech
- Chronic fatigue
- Anxiety
- Coughing, sore throat

## Reasonable Suspicion Observations:

- Very bloodshot eyes
- Droopy eyelids
- Odor of marijuana
- Short attention span
- Mumbling nonsense
- Muscular tremors or involuntary quivering
- Disoriented behavior



# Marijuana Impairment

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- Next to alcohol, marijuana is the drug most frequently found in overall workplace testing, post-injury testing and in drivers involved in fatal accidents.
  - **Impairs time and distance perceptions**
- After consuming marijuana, an individual's ability to drive a vehicle or perform safety sensitive functions is impaired for at least 4 to 6 hours.



# Cocaine

- **Powerful physical and mental stimulant drug that directly affects the central nervous system**



# Cocaine Use

## Signs & Symptoms of COCAINE Use:

- Anxiety or agitation
- Dilated pupils
- Difficulty concentrating
- Fatigue or insomnia
- Sweating
- Tremors
- Dry mouth

## Reasonable Suspicion Observations:

- Teeth grinding
- Body tremors
- Dilated pupils
- Difficulty focusing the eyes
- Runny nose
- White powder around nose
- Uncontrolled talkativeness
- Extremely excitable behavior
- Dramatic mood swings





# Cocaine Impairment

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- Cocaine chemically alters the brain and gross motor functions, which has a direct impact on the complex system of critical thinking skills and reflexes that allow a person to drive a vehicle, operate equipment or perform any safety sensitive function.
- Cocaine users can become overconfident in their abilities, often take unnecessary risks and make at-risk decisions “in-the-moment” that they would not make when sober.



# Amphetamines or Meth

- **Drugs that stimulate the central nervous system.**
- **They are abused for the physical sense of energy at lower doses and mental exhilaration at higher doses.**



# Amphetamine Use

## Signs & Symptoms of AMPHETAMINE Use:

- Anxiety or restlessness
- Profuse sweating
- Body tremors
- Difficulty focusing eyes
- Exaggerated reflexes
- Dizziness, nausea, fainting

## Reasonable Suspicion Observations:

- Dilated pupils
- Jaw grinding, clenched teeth
- Dizziness or fainting
- Repetitive, bizarre behavior
- Depression, anxiety
- Dramatic mood swings
- Exaggerated reflexes
- Loss of coordination
- Energy then no energy
- Physical collapse

# Amphetamine Impairment

- Amphetamines or Meth chemically alters the brain and gross motor functions, which has a direct impact on the complex system of critical thinking skills and reflexes that allow a person to drive a vehicle, operate equipment or perform any safety sensitive function.
- Amphetamines or Meth users can become overconfident in their abilities, often take unnecessary risks and make at-risk decisions “in-the-moment” that they would not make when sober.



# Opiates

- **A class of narcotics that cause strong euphoric feelings**
- **Includes heroin, morphine, codeine and other medically prescribed opiate-type narcotics such as hydrocodone, oxycodone, methadone and fentanyl**



# Opiate Use

## Signs & Symptoms of OPIATE Use:

- Apathy, laziness, indifference
- Drowsiness
- Impaired vision
- Mood swings
- Impaired coordination
- Inability to concentrate

## Reasonable Suspicion Observations:

- Constricted pupils
- Droopy eyelids
- Dry mouth
- Low, raspy speech
- Depressed reflexes
- Poor coordination

# Opiate Impairment

- Opiates chemically alter the brain and gross motor functioning of the body, which has a direct impact on the complex system of critical thinking skills and reflexes that allow people to drive a vehicle, operate equipment and perform safety sensitive functions.
- The feeling of apathy created by opiates can translate into carelessness.
- The physical effects reduce reaction time and increase the risk of accidents and injury.



# Phencyclidine or PCP

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- Depending on a person's body chemistry, PCP can act as a depressant, a hallucinogen and/or a stimulant.
- PCP scrambles the brain's internal stimuli and alters how users see and respond with their environment.





# PCP Use

## Signs & Symptoms of OPIATE Use:

- Dizziness
- Loss of coordination
- Profuse sweating
- Convulsions, spasms
- Extreme mood swings
- Severe confusion
- Aggressive, agitation
- Memory loss

## Reasonable Suspicion Observations:

- Involuntary eye movements
- Confusion or memory loss
- Thick, slurred speech
- Violent, combative behavior
- Behavior occurring in cycles
  - **High/low, up/down, high/low...**

- Opiates chemically alter the brain and gross motor functioning of the body, which has a direct impact on the complex system of critical thinking skills and reflexes that allow people to drive a vehicle, operate equipment and perform safety sensitive functions.
- The feeling of apathy created by opiates can translate into carelessness.
- The physical effects reduce reaction time and increase the risk of accidents and injury.



# Over-the-Counter or Prescription Meds

- **Over-the-Counter or Prescription Meds can interfere with a person's ability to drive a vehicle, operate equipment or perform safety sensitive functions.**
- **Employers should have specific language in their Drug and Alcohol policy stating immediate supervisor notification for any Over-the-Counter or Prescription Meds, which includes discussing all necessary precautions, warnings and side effects of the drugs and whether to prohibit the individual from performing any safety sensitive functions.**

**Over-the-counter and prescription medications do not  
impair anyone's ability to perform a safety sensitive  
function.**

 **Poll locked.** Responses not accepted.

True

False



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# The Reasonable Suspicion Process

## 5 Steps for a Defensible Strategy





# 5 Step Process

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1. **Observation**
2. **Confirmation**
3. **Documentation**
4. **Confrontation**
5. **Testing**

The 5 steps may not occur in order but it is critical that each is specifically addressed as part of a complete, defensible strategy.



# Observation

Occurs when you personally witness unusual or uncharacteristic behavior exhibited your employee

- **Observable** - *an act or instance of noticing or perceiving*
- **Contemporaneous** - *happening in the here and now*
- **Articulable** - *clearly describe what you have observed*

## Observable indicators :

- **Appearance**
- **Speech**
- **Behavior**
- **Odor**

The 4 observable indicators for determining Reasonable Suspicion include: Appearance, Behavior, Speech and Odors.

 **Poll locked.** Responses not accepted.

True

False





# Be Aware of Common Warning Signs of Drug Abuse and Alcohol Misuse

The following signs are common for alcoholism, drug abuse or both.

If you can confirm any of these signs, please pay close attention to determine if Reasonable Suspicion testing is justified.

**REMEMBER:** your observations must be based on specific observable, contemporaneous and articulable facts.

# Confirmation through Observation

## Changes in BEHAVIOR

- Significant change in mood, attitude or behavior
- Increased difficulty at home: *conflicts, absences, disappearances*
- Isolation or withdrawal from coworkers
- Secretive behavior, defensive attitude, lying about use/abuse
- Elaborate justification for the need of alcohol or drugs

## Changes in JOB PERFORMANCE

- Consistent, increasing unsatisfactory work performance
- Numerous accidents/incidents/injury without explanation
- Difficulties dealing with coworkers or customers
- Unexplained or excessive absenteeism or tardiness
- Frequent illness or requests for time off
- Avoidance of supervisors

## Changes in PHYSICAL APPEARANCE

- Deterioration in personal grooming and/or hygiene
- Agitation or drowsiness, rapid or slurred speech
- Lack of coordination, inability to concentrate
- Odors: alcohol, marijuana, “burnt” smells on clothes or breath
- Dilated pupils, bloodshot eyes, runny nose, nervous shaking
- Nausea or other physical symptoms

## Other Observations Consistent with a Drug or Alcohol Problem

- Concerns brought to your attention by family, friends, coworkers
- Mysterious legal or financial trouble
- Frequent need to borrow money, theft from company
- Non-work related visits from people or strangers



# Confirmation

Confirm through observation that the employee is displaying specific indicators consistent with the signs and symptoms of alcohol misuse and/or drug abuse:

- *Appearance*
- *Speech*
- *Behavior*
- *Odor*

**If you are unsure or lack confidence that you can confirm your observations, then reach out to another trained supervisor within your company for help.**



# Observations by a 3<sup>rd</sup> Party

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aka – Hearsay



# 3<sup>rd</sup> Party Observations

- You cannot make a determination based on anything other than observable indicators you personally witness
  - **You may not refer an employee for a Reasonable Suspicion drug and/or alcohol test solely on 3<sup>rd</sup> party observations**
    - “Someone saw something somewhere” is not a defensible strategy and has a high likelihood of costly legal consequences
- 3<sup>rd</sup> party observations can come from:
  - **Coworker or an “untrained” supervisor**
  - **Another employer’s employee or supervisor**
  - **Phone call from a concerned individual**
  - **Member of the public**
  - **Client or customer**



# Addressing 3<sup>rd</sup> Party Observations

If you or another trained supervisor from your company are not in a position to personally and directly observe and confirm your employee's behavior, then you cannot order a Reasonable Suspicion drug and/or alcohol test based on another's opinion, even if they are a Trained Supervisor for another company.

## What you can do:

- **Have the employee immediately removed from all safety sensitive functions until such time as you can make specific, contemporaneous and articulable observations that confirm or deny if a Reasonable Suspicion test is warranted.**
  - Discontinue all work and wait for "X" person to arrive
  - Housekeeping or job site clean up
  - Cleaning equipment

You can use someone else's observations like a concerned member of the public or another company's trained supervisor as the basis for determining Reasonable Suspicion.

 **Poll locked.** Responses not accepted.

True

False





If you lack confidence or are unsure of your observations, then seek observation and confirmation from another trained supervisor

# Documentation

**Observations without documentation are not defensible.**

Proper documentation requires that you specifically and clearly state, in writing, your observations of the employee's:

- **Appearance**
- **Behavior**
- **Speech**
- **Odors**



**List all observable signs and symptoms**

- **Be Specific**
- **Be Brief**
- **Be Objective**

*Reasonable Suspicion must be based on specific, contemporaneous and articulable observations.*



# Observed Behavior Record

## OBSERVED BEHAVIOR REASONABLE SUSPICION RECORD

Reasonable suspicion determined for:  Alcohol  Drugs  
 Employee Name \_\_\_\_\_ ID number \_\_\_\_\_  
 Address of occurrence \_\_\_\_\_  
 City & State \_\_\_\_\_  
 Date of occurrence \_\_\_\_\_ Time of occurrence \_\_\_\_\_

Record employee observed behavior for reasonable suspicion for the use of alcohol or controlled substances. The employer shall require the employee to submit to a controlled substance or alcohol test if a supervisor or company official determines that reasonable suspicion exists.

### MARK ALL ITEMS THAT APPLY AND DESCRIBE SPECIFICS AS NEEDED

#### WALKING/BALANCE

- Stumbling  Staggering  Falling  Unable to stand  Sagging at knees  
 Swaying  Unsteady  Rigid  Holding on  Feet wide apart

#### SPEECH

- Shouting  Whispering  Slow  Incoherent  Slobbering  
 Slurred  Rambling

#### ACTIONS

- Resisting Communications  Insulting  Hostile  Profanity  
 Fighting/insubordinate  Erratic  Crying  Threatening  
 Hyperactive  Drowsy  Indifferent

#### EYES

- Bloodshot  Dilated pupils  Restricted pupils  Wearing sunglasses  
 Watery  Glassy  Droopy  Nystagmus

#### FACE

- Flushed  Pale  Sweaty

#### APPEARANCE/CLOTHING

- Disheveled  Dirty  Messy  Partially dressed  Stains on clothing  
 Having odor

#### BREATH

- Alcohol odor  Faint alcohol odor  No alcohol odor  Marijuana odor

#### MOVEMENTS

- Fumbling  Jerky  Slow  Nervous  Hyperactive

#### EATING/CHEWING

- Gum  Candy  Mints  Tobacco  Other

OTHER OBSERVATIONS: \_\_\_\_\_

Did the employee admit to using drugs or alcohol?  YES  NO  
 When: \_\_\_\_\_ How much: \_\_\_\_\_  
 Substances: \_\_\_\_\_ Where taken: \_\_\_\_\_

#### WITNESSED BY:

Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
 Date Report was prepared: \_\_\_\_\_ Time report was prepared: \_\_\_\_\_

## REASONABLE SUSPICION TESTING CHECKLIST

Employee Name: \_\_\_\_\_ Employee Job Title: \_\_\_\_\_  
 Facility: \_\_\_\_\_ Location of Event: \_\_\_\_\_  
 Observation Date: \_\_\_\_\_ Time: \_\_\_\_\_ a.m./p.m.  
 Was employee performing a safety-sensitive duty? Yes No

The following observations were made of the employee identified above:

Check ALL specific and contemporaneous observations and document the following:

#### BEHAVIOR

- unsteady gait, stumbling  
 drowsy, sleepy, lethargic  
 agitated, anxious, restless  
 hostile, belligerent  
 irritable, moody  
 depressed, withdrawn  
 unresponsive, distracted  
 clumsy, uncoordinated  
 tremors, shakes  
 flu-like illness complaints  
 suspicious, paranoid  
 hyperactive, fidgety  
 inappropriate, uninhibited behavior  
 frequent use of mints, mouthwash, breath sprays, eye drops

#### APPEARANCE

- flushed complexion  
 flushed complexion  
 cold, clammy sweats  
 bloodshot eyes  
 tearing, watery eyes  
 dilated (large) pupils  
 constricted (pinpoint) pupils  
 unfocused, blank stare  
 disheveled clothing  
 unkempt appearance

#### SPEECH

- slurred, thick  
 incoherent  
 exaggerated enunciation  
 loud, boisterous  
 rapid, pressured  
 excessively talkative  
 nonsensical, silly  
 cursing, inappropriate speech

#### BODY ODORS

- alcohol  
 marijuana

Other observations: \_\_\_\_\_

Supervisor Name (*print or type*) \_\_\_\_\_ Supervisors Signature \_\_\_\_\_ Date \_\_\_\_\_

Additional witnesses (optional)

Witness Name (*print or type*) \_\_\_\_\_ Witness Signature \_\_\_\_\_ Date \_\_\_\_\_

#### TEST DETERMINATION

- DOT  NON-DOT  NO Test Conducted  
 Reasonable Suspicion Alcohol Test  8 hours elapsed for alcohol test  
 Reasonable Suspicion Drug Test  32 hours elapsed for drug test  
 No Test Required  Employee transported for medical care  
 Employee Refused Test  Other (explain): \_\_\_\_\_

Employee transported to collection site by: \_\_\_\_\_  
 Time of Transport: \_\_\_\_\_ a.m./p.m. Collection Facility: \_\_\_\_\_

# Documenting Your Observations Is Not Necessary For Defensible Strategy.

 **Poll locked.** Responses not accepted.

True

False



# Confrontation

- Immediately speak to the employee after confirming and documenting your observations
  - **Do not delay!**
- Remove the employee from all safety sensitive tasks.
- Always ask to speak with the employee in a private setting.
- Never confront an employee in front of any coworkers.
- Describe exactly what you observed to the employee.
- Be specific and stick to the observable, documented facts.



# Responses to a Confrontation

- Be prepared for difficult and challenging responses:
  - **Employee will not cooperate with you or any request**
  - **Employee begins to cry and/or begs not to be tested**
  - **Employee gets defensive and denies your suspicions**
  - **Employee becomes aggressive or combative**
  - **Employee begins to talk nonstop**
  - **Employee is silent**
- In all cases, be patient, give the employee time to respond and listen carefully. Then, repeat your observations and the need to follow through with a Reasonable Suspicion drug and alcohol test to confirm or deny any suspicion.



# During Difficult Confrontations...

- Repeat your observations and the reason for concern
  - **Remain calm, listen and respond with kindness and respect**
- Make it clear that you are not placing any blame
  - **Observations have led to Reasonable Suspicion**
    - The only way through this is a test confirm or deny what is happening
  - **DO NOT accuse the employee of using drugs or alcohol!!!**
- Point out the situation requires you to take action
  - **It's not personal --- it's your job!**
- Emphasize your company policy on this circumstance
- Document the encounter



# Testing

- Immediately after the confrontation, direct the employee to undergo drug and/or alcohol testing at a predetermined testing facility.
- Never allow any employee suspected of alcohol misuse or drug abuse to transport themselves to a testing facility.
- If testing is conducted off-site, the employee must be transported to the testing facility by a person of the same gender.





# Testing Considerations

- Reasonable suspicion **ALCOHOL** testing must be made during, just before or just after an employee performs safety sensitive functions.
  - **If an ALCOHOL test was not administered within 2-hours of the observations and the employee is still on duty, document why the test was not given and continue with completing the test.**
  - **If an ALCOHOL test was not administered within 8-hours of the observations and the employee is still on duty, document why the test was not given and discontinue all efforts to test the employee.**
    - Do not allow the employee to perform any safety sensitive function until he/she passes an alcohol test or at least 24 hours has passed since the observations.
- Reasonable suspicion **DRUG** testing may be performed anytime reasonable suspicion exists and the employee is on duty.



Employees should be allowed to drive themselves to test facility or, if necessary, be transported by someone of the opposite sex.

 **Poll locked.** Responses not accepted.

True

False



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# Refusal to Test





# What is Considered “Refusal to Test”?

Refusal to test means more than just declining to take a test

- **Fails to appear for any test within a reasonable time**
- **Fails to remain at the testing site until process is complete**
- **Fails to provide a urine sample or saliva / breath specimen**
- **Fails to provide enough urine, saliva or breath and there is no medical explanation for the failure**
- **Fails to follow observer’s directions during observed collection**
- **Possesses or wears a prosthetic or other device used to interfere with the collection process**
- **Test is verified as being adulterated or substituted**
- **Employee admits he/she adulterated or substituted the specimen**
- **Declines or fails to take a second test when directed by the collector**
- **Fails to undergo a medical examination or evaluation in response to test**
- **Fails to cooperate with any part of the testing process**

**Refusal to test only means when someone declines to take a drug and/or alcohol test.**

 **Poll locked.** Responses not accepted.

True

False



# Consequences for Refusal to Test

- Employee cannot escape any consequence simply by refusing to take a drug and/or alcohol test
- Federal and State laws apply to all covered employees
  - **DOT, FRA, Pipeline, Aviation, etc.**
- Employers reserve the right to create and follow their own policies in accordance with all applicable laws

## Common Policy Examples:

- 1<sup>st</sup> refusal treated as a “Positive” test result and will be handled according to company policy
- 2<sup>nd</sup> refusal treated as resignation of employment

**An employee can escape the consequences of testing simply refusing to take a test?**

 **Poll locked.** Responses not accepted.

True

False



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# Suspicious Substance is Discovered





# Take Action

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- As a trained supervisor, you have the ability to take action and move towards Reasonable Suspicion
- Immediately confront the employee
- Ask to speak with them in private
- Request to see the suspicious substance to confirm or deny any suspicion
  - **Your request may be denied**
    - Begin the 5 step reasonable suspicion process
  - **You may find out that your suspicion was wrong**
    - Thank the employee for their willingness to cooperate and assure them that nothing further will happen with this situation





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# Failing an Alcohol Test Testing Positive for Drugs





# Failing an Alcohol Test

- Alcohol concentration of 0.04 or greater
  - **Remove employee from all safety sensitive functions**
  - **Employee should not return to safety sensitive function until:**
    - An evaluation is performed by a Substance Abuse Professional (SAP)
    - Has complied or completed all prescribed treatment
    - Passes a return-to-duty test
  - **Depending on your company's policy, the employee may be subject to 6 follow-up tests in the first 12 months after a return-to-duty and may be subject to additional follow-up testing for up to 5 years**
    - Other consequences may apply according to federal and state laws, and in conformance with your company's policy



# Alcohol Concentration 0.02 – 0.04

- Do not allow any employee to drive a vehicle, operate equipment or perform any safety sensitive function for at least 24-hours if their alcohol concentration is determined to be greater than 0.02 but less than 0.04
  - **Remove the employee from the work location**
  - **Do not allow them to drive themselves home**
  - **Refer to your company's policy about how to respond**
    - Employee conference
    - Written warning
    - Suspension
    - Termination



# Testing Positive for Drugs

If an employee tests positive for drugs or has a verified adulterated or substituted test result:

- **Immediately remove from all safety sensitive functions**
- **He/she should not return to a safety sensitive function until:**
  - Evaluation by a Substance Abuse Professional (SAP) has been completed
  - All prescribed treatment is complied with or complete
  - Return-to-duty test is performed and passed
- **Depending on your company's policy, the employee may be subject to 6 follow-up tests in the first 12 months after a return-to-duty and may be subject to additional follow-up testing for up to 5 years**
  - Other consequences may apply according to federal and state laws, and in conformance with your company's policy



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# Alcohol & Drug Testing Records





# Records to Retain for 5-years

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- Alcohol tests with concentrations 0.02 or greater
- Drug tests with a verified positive result
- Refusals to submit to required alcohol/drug tests
- Employee evaluation and referrals
- Any calibration documents
  - **e.g. Evidential Breath Testing (EBT) devices**
- Records related to the administration of alcohol and drug testing programs
- Annual calendar year drug/alcohol test summary



# Records Retention

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- Records to retain for 2-years:
  - **All alcohol and drug collection process records**
- Records to retain for 1-year:
  - **Negative and cancelled drug test results**
  - **Alcohol test results with concentrations less than 0.02**



# Requesting Test Records

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- Except as required by law, no employer can release information contained in any employee's drug and alcohol records with his/her written permission.
- Upon written request, an employee can obtain copies of their own records.
- Records can be disclosed to decision makers in a lawsuit, grievance or other proceeding initiated by the employee or on his/her behalf.
- DOT and NTSB have regulatory authority covered employees' records and information must be released according to specific federal and state laws.





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# In Closing...





## Attendees are now able to...

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- Recognize common signs and symptoms of alcohol misuse and/or drug abuse
- Describe what to look for when determining Reasonable Suspicion
- Execute the 5 steps necessary for a defensible strategy
- Articulate and confirm observations
- Correctly document an employee's appearance, behaviors, speech and odors
- Successfully confront an employee to administer a Reasonable Suspicion drug and/or alcohol test



# Thank You!

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