



How professional evaluation, treatment and follow-up can put drivers back to work.

THE ROAD BACK

By David Cullen
Executive Editor
dcullen@truckinginfo.com

Sometimes an ending is a beginning. Is a single failed drug test or alcohol screening enough reason to terminate an otherwise valued truck driver as a “lifestyle” drug user or unsalvageable alcoholic who must never drive a truck again? If you choose not to view it that way, then you need to know how such an employee can legally and safely return to duty as outlined under federal regulations.

Even if you automatically discharge drivers for failing a test, what about one who voluntarily admits to misuse of alcohol or illegal drug use (including marijuana, the use of which is prohibited by CDL holders under federal law)? That driver may be permitted to return to driving after successfully completing “an educational or treatment program, as determined by a drug and alcohol abuse evaluation expert,” according to Department of Transportation regulations.

In either case, the first thing to do is remove the driver from the safety-sensitive position. You could put him or her to work in the warehouse, for instance, or on paid or unpaid leave.

The return-to-duty process mandated by federal regulations must be supervised by a substance abuse professional, or SAP. The Department of Transportation requires that SAPs hold certain credentials (ranging from alcohol and drug abuse counselor, employee assistance professional, all the way up to M.D.), possess specific knowledge, receive training, achieve a passing score on an exam, and adhere to a continuing education requirement.

But there's another key aspect to all this: An SAP must not advocate for the employer or the employee, but work "to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education and/or treatment, follow-up tests, and aftercare," states DOT.

Aside from any labor-contract provisions requiring a treatment option, why should an employer bother to work toward – and even perhaps pay for – the rehabilitation of a driver who has both broken the law and violated company policy?

Forward thinking

While termination of a driver for violating a DOT drug/alcohol prohibition is the employer's prerogative, a DOT spokesman told us, "modern, forward-thinking carriers that want to run as safely as possible may have a written, voluntary self-identification policy to encourage drivers to come forward – rather than hide the fact knowing they would face termination."

This kind of policy removes the individual from "safety-sensitive" driving duties until he or she successfully completes the return-to-duty process under the direction of a substance abuse professional. But they're not the standard in the industry.

"Many employers opt to have 'zero toler-



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ance' policies, therefore DOT violators are automatically fired," says Lane Kidd, managing director of the Alliance for Driver Safety and Security, a group of motor carrier and logistics firms that lobbies for various safety reforms.

"Such rules, so long as the regulations are observed by the motor carrier, are permissible," he continues. "However, termination is not a legal requirement. A company that has a driver who violated a DOT regulation could opt to keep the driver on and go through the return-to-duty process and follow-up testing."

Kidd also points out that "the courts have ruled that a driver who has not actually violated the regulations may disclose to the employer a problem with either drugs or alcohol. And the employer then is obligated to adhere to the Americans with Disabilities Act. The courts in many cases would consider such an admission a bona fide disability."

He advises that, "at a minimum, the employer should go through the interactive process with the employee to determine what would be a reasonable accommodation that would not run afoul of the Feder-

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– Lane Kidd, Trucking Alliance

al Motor Carrier Safety Regulations. Thus, many motor carriers provide assistance or at least help the individual identify the proper resources for treatment and assistance."

Ben Greenberg, partner and vice chair of the trucking practice group at legal firm Goldberg Segalla, says an ADA claim is more likely to be valid "if the driver is actively seeking help on the front end and is not a current abuser; that's much better than testing positive and asking for forgiveness. It's looked at a lot differently. Either way, safety comes first. You couldn't accommodate a driver that's [still] taking a drug that would affect their ability to operate safely."

The ADA does specifically exclude Schedule 1 drugs, which are always illegal at the federal level. This includes marijuana.

Return to duty

Regardless how a driver arrived at a crossroads with drugs or alcohol, the first stop on his or her road back to driving a truck is an evaluation by an SAP. DOT requires this be conducted face to face according to the regulations, "to provide the SAP with an opportunity to objectively evaluate the 'nonverbals' — those physical cues to internal feelings, thoughts, and behaviors. The SAP should be cognizant of the client's appearance, posture, carriage, ability to make eye contact, and ability to relate in-person as well as other physical characteristics that would be indicative of alcohol and drug use and abuse."

In other words, a trained, qualified professional will more than likely be able to accurately gauge how well an individual may respond to treatment and which type of treatment may be most beneficial.

"The SAP's referral of the employee to the appropriate program is vital," states DOT. The referral should take into account clinically evaluated employee needs as well as insurance coverage, ability to pay for care, employer treatment contracts, employer policies regarding availability of leave for employees needing assistance, and availability of treatment and education programs.

As to treatment expectations, DOT holds that the employee's "ability to demonstrate successful compliance with the initial treatment recommendations is key to an employer's decision to return an employee to safety-sensitive duties."

RESOURCES

➔ www.fmcsa.dot.gov/regulations/drug-alcohol-testing/overview-drug-and-alcohol-rules

Overview of drug and alcohol rules.

➔ www.fmcsa.dot.gov/regulations/title49/section/382.103

Official guidance in question-and-answer format for all aspects of FMCSA Regulation Part 382, which covers use and testing of controlled substances and alcohol.

➔ csa.fmcsa.dot.gov/safetyplanner

The FMCSA Safety Planner, which provides simple explanations and templates to help motor carriers understand and comply with federal safety regulations. See Chapter 6, Driver Requirements.

Once recommended treatment is completed, the driver must go through a follow-up evaluation by the SAP. This should be clinically based and is meant to provide the employer “a concise assessment of the employee’s success in fulfilling requirements of the treatment plan.”

Lastly, because most drug and alcohol relapses occur during the first 12 months following treatment, follow-up testing is indicated, as well as participation in after-care programs and self-help groups, such as Alcoholics Anonymous and Narcotics Anonymous.

The fact that recovering from drug and alcohol misuse or addiction is a never-ending process is reflected in the DOT requirement that the SAP present the employer with a plan for follow-up testing.

“The SAP can re-evaluate the plan at any time and terminate the plan following the first

year if all the required tests for the first year were completed. Testing should be spread throughout the year, unpredictable, and unannounced,” note the regulations.

If the motor carrier fails to begin or continue with a driver’s DOT return-to-duty process and follow-up testing, according to safety and compliance consultant J.J. Keller, it is a violation that could cost the company up to \$15,040. “Allowing this driver to operate a CMV puts the carrier at risk of negligent entrustment claims if there is a crash.”

To end on a positive note, consider these words of Bill Wilson, co-founder of Alcoholics Anonymous: “No personal calamity is so crushing that something true and great can’t be made of it.” 🍷

BONUS: Read the rest of the series plus related web-only articles at www.truckinginfo.com/undertheinfluence

‘WOULD I EVER DRIVE AGAIN PROFESSIONALLY?’

Commercial driver George Taylor* thought he had waited long enough after smoking marijuana to pass his drug test. It was decriminalized in his state, and he was only a casual user. But apparently it wasn’t long enough.

When the testing lab called, the medical review officer quizzed the driver on possible reasons for failing his test. Was he taking prescription medications? Was he using marijuana? Taylor was evasive on the latter: “I could see no benefit in admitting that I had used drugs.” When he was unable to offer any plausible explanation for the failed test, the MRO terminated the call.

“I was a little numb at this point. I liked my job. I was assuming I would be fired. I was thinking about how I was going to update my resume, whether this would be on my permanent record, if I would ever drive again professionally.”

He Googled “CDL failed drug test” and read on trucking forums of drivers who said their failed tests were a career nightmare, the DOT-mandated return-to-work process expensive and useless. After reading that most large trucking companies wouldn’t hire a driver with a failed drug test on his or her record, Taylor called recruiters at four of the largest fleets and asked about their hiring policies for drivers who had failed a drug test but completed the DOT return-to-duty process. He learned they had policies requiring that the failed drug test be anywhere from a year to 10 years old.

But then his boss called to tell him he wasn’t being fired. Instead, he was suspended for 30 days and would be given a second chance if he completed the DOT return-to-duty process.

“Because I live in a small mountain town, the closest SAP was in Albuquerque, two and a half hours away,” he recalls. “I called her and quickly filled her in on my situation. She explained that the initial evaluation would

cost \$175 and take about 90 minutes. She would direct me to appropriate counseling and, following that, I would return for another evaluation, which would cost \$125.... I decided it was worth adding a little bit to the credit card debt and made an appointment for the following week.”

The initial evaluation involved a 90-minute conversation and two written tests. The SAP said the driver would have to complete four sessions of individual or group outpatient counseling and eight verified self-help meetings (such as Alcoholics Anonymous).

The individual/group outpatient counseling started with a local licensed clinical social worker recommended by the SAP, who he met with via Skype for \$75. That was followed by local group meetings to cover the remaining three “outpatient counseling” sessions, plus eight AA meetings.

It took about three weeks to complete all the required classes, after which he returned to Albuquerque for his exit interview with his SAP.

She photocopied the evidence he brought to prove he attended all the mandated classes, then sent a copy to him and to the designated employer representative at his job. He was able to return to driving after passing a return-to-duty drug test and had to be randomly tested at least twice within the following year at his expense.

“I completely and fully accept responsibility for my failed drug test,” Taylor says. But he questions how well current rules actually improve safety.

“I have been driving for 32 years, and I have never had an accident. My driving record speaks for itself. But because of a legal activity (on the state level, anyway) that I engaged in on my time off, my career as a driver is in peril.”

* Not his real name

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