

PRESENTER'S GUIDE

DOT "REASONABLE SUSPICION" TESTING OVERVIEW: FOR MANAGERS AND SUPERVISORS

Part of the Regulatory Compliance Series

Quality Safety and Health Products, for Today... and Tomorrow

OUTLINE OF MAJOR PROGRAM POINTS

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The following outline summarizes the major points of information presented in the program. The outline can be used to review the program before conducting a classroom session, as well as in preparing to lead a class discussion about the program.

- **In spite of all that is done to try and combat it, driving "under the influence" continues to be one of the major causes of accidents.**
 - To help address this problem, federal law requires motor carriers to implement drug and alcohol testing programs for employees with safety-sensitive jobs, such as driving a commercial vehicle on public roads

- **While the regulations specify six different situations in which tests may be administered, the one known as "reasonable suspicion" testing is unique.**
 - It allows managers to take action if they think an employee is under the influence of drugs or alcohol... even when they don't have hard evidence to prove.
 - It (the government feels that managers are most likely to see signs of a problem because they have regular contact with drivers).

- **"Reasonable suspicion" testing gives them a way to:**
 - Intervene immediately when they suspect that an employee is "under the influence".
 - Take action when changes in an employee's appearance or behavior over time indicate that they may be abusing drugs or alcohol.
 - Both of these situations will result in requiring the employee to undergo drug or alcohol testing.

- **By referring them for testing, a manager not only helps identify employees who have substance abuse issues, but also prevents them from getting behind the wheel, where they could cause accidents, injuries... and worse.**

- **“Reasonable suspicion” testing also protects a motor carrier from any legal and financial liability, or a lowering of its safety rating by the Federal Motor Carrier Safety Administration (FMCSA).**
- **Referring an employee for drug or alcohol testing can be an unpleasant duty for a manager.**
 - It can also raise privacy issues and even lead to an employee filing a grievance.
 - Having to undergo testing can also leave a permanent mark on a driver's career, seriously affecting their life and livelihood.
 - This is why the FMCSA provides guidance on how to implement "reasonable suspicion" testing.
- **The agency's regulations specify exactly what types of observations are needed to establish suspicion, and how substance abuse can show itself in an employee's appearance and behavior.**
 - Managers can use the guidance to eliminate any guesswork when applying the concept of "reasonable suspicion" in a real workplace situation.
- **There are also a number of best practices that managers should follow when informing an employee that they are referring them for drug or alcohol testing.**
 - Following these procedures won't necessarily make the interview a pleasant experience, but they will help make it go more smoothly and prevent later blowback from a disgruntled employee.
- **During the holidays, when a partygoer has had too much to drink you take their keys away to prevent them from driving.**
 - In the transportation industry, when a commercial driver appears to be impaired, the situation is more complicated.

- **A motor carrier manager takes a “tipsy driver’s” keys away by referring them for "reasonable suspicion" drug and alcohol testing, which can have serious consequences.**
 - Sending a driver for testing raises privacy issues, can put strain on employee relations, and could possibly lead to a grievance or lawsuit being filed by the driver.
 - To protect your company from financial or legal liability, and to guard yourself against retaliation as well, you have to ensure that your suspicion is unbiased and founded on hard fact

- **Federal Motor Carrier Safety Administration (FMCSA) standards say that any decision to refer an employee for “reasonable suspicion” testing must be based on "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver."**
 - You should never base a drug or alcohol test referral on a "gut feeling" or vague "intuition" about an employee.
 - Instead, "reasonable suspicion" must be built on observations... of how and employee looks, acts, talks or smells.
 - For example, if you encounter an employee whose breath smells of beer, you could reasonably suspect that they may be "under the influence"... especially if they also appear disheveled, walk unsteadily or slur their speech.

- **Other indications can include a driver who is:**
 - Talking Fast
 - Laughing a lot
 - Wearing sunglasses indoors
 - And may also be using breath mints all the time.

- **These are what the FMCSA calls "specific" observations.**
 - Each one of them records a clearly distinguishable fact about the driver.

- **There are two other criteria that “reasonable suspicion” observations must meet.**
 - They must be "contemporaneous", i.e. represent facts about how someone looks and acts at the present time.
 - You have to see them yourself, firsthand in person.

- **For example, you can't refer a driver for testing because another employee has told you that they saw the driver snorting something in their cab.**
 - If this report triggers a memory that you saw something similar a week ago, that doesn't count either.

- **The other criteria that a “reasonable suspicion” observation must meet is that it be "articulable", something that you can put it into words that describe what you saw, heard or even smelled about an employee.**
 - This requirement is important because under FMCSA rules a manager must document their suspicions in writing after sending an employee for testing.

- **There's one other thing you should understand about how "reasonable suspicion" regulations apply to you as a manager.**
 - When you have a “reasonable suspicion” that an employee has a substance abuse problem, or is actually "under the influence", federal law requires you to take action, and refer the driver for immediate drug and alcohol testing.

- **Don't expect employees who are substance abusers to make it easy for you to identify them.**
 - Their goal is to continue to indulge their habit, and they can be very clever about hiding drug or alcohol use in the workplace.

- **It's not likely that you will actually catch a driver taking drugs or drinking alcohol or get a glimpse of drug paraphernalia or even the substances themselves.**
 - So you need to learn how to recognize the signs of substance abuse because that's the type of evidence you're more likely to see in the course of a workday.

- But to do this successfully, you have to get to know the employees you supervise first.
- **For example, habitual substance abuse will often cause a person to neglect their grooming and personal hygiene.**
 - As a result you might see an employee coming to work unshaven, with uncombed hair and even increased body odor.
- **Drug or alcohol use can also lead to changes in an employee's personality, so a person who was once easygoing can suddenly become irritable, sulky or even paranoid.**
 - Being late for work more than usual, or missing work altogether without a good reason are also "red flags".
 - Because substance abusers need money to support their habit, they may begin to ask for cash advances on their paychecks as well
- **In addition to changes such as these, employees who are abusing drugs or alcohol may show physical symptoms... which can vary depending on what substance they are using.**
- **Depressants, such as alcohol, barbiturates and opioids, slow down the body's reactions.**
 - So people under their influence appear drowsy, slur their speech and have difficulty with balance and coordination.
- **Stimulants, such as cocaine and methamphetamine, speed up the user's metabolism, so a user can display agitation, tremors, and rapid, excessive talking.**
 - "Snorting" drugs cause an employee to have chronic sniffles or nosebleeds.
 - Marijuana users may cough excessively.
- **The eyes of someone who is "using" can appear "glassy", bloodshot or watery, and their pupils may look unusually large or small.**
 - They may try to hide this by wearing sunglasses.

- **And while what you see can be very important, don't neglect your sense of smell.**
 - Stay alert for the odor of alcohol or marijuana on an employee's breath or clothing.
 - If an on-duty driver's breath smells of alcohol, that observation alone is reason enough to refer them immediately for “reasonable suspicion” testing.

- **Meeting with a driver to inform them that you are sending them for “reasonable suspicion” testing may be one of the most difficult things you'll have to do as a manager.**
 - But it's also one of the most important.

- **Fortunately, there are ways to prepare yourself so that the process goes more smoothly, and procedures you can follow to help you carry it out effectively.**
 - First, make sure you have a thorough knowledge of your company's drug and alcohol policies.
 - Familiarize yourself with federal drug and alcohol testing regulations as well, especially those that address “reasonable suspicion”.

- **Sometimes when you approach an employee about “reasonable suspicion”, they will admit that they have a problem and ask you for help.**
 - This is called "self-admission".
 - While it can be a hopeful sign, an employee who self-admits must still take the drug or alcohol test.

- **Under federal regulations, an employee can't avoid the consequences of their substance abuse by asking for help after they are "caught".**
 - If your company has its own policies about self-admission, you should know what they say as well.

- **Remember that no matter how conscientious you are about “reasonable suspicion”, you will never have a complete picture of the situation until the test results come back.**
 - So it's very important to respect an employee's right to privacy and maintain confidentiality when you deal with them.

- **Do not raise the issue of “reasonable suspicion” testing or the possibility of drug and alcohol abuse in public, where other employees could overhear.**
 - Instead, say something like, "Would you mind stepping into my office? I'd like to talk with you for a minute".
- **Once you're in private, address the driver calmly and professionally.**
 - Don't accuse them of anything. Just describe what you have observed.
 - Explain that under the circumstances you are required by federal law to refer them for “reasonable suspicion” testing.
- **It's common at this point for an employee to become upset or angry.**
 - They may also feel scared, especially if they do have a substance abuse problem.
- **Don't allow yourself to get emotional in return. Staying cool is how you maintain control of the situation.**
 - If a driver makes denials and excuses, hear them out, but don't back off from your decision to send them for testing.
- **By law, “reasonable suspicion” is all the justification you need.**
 - Reversing your decision undermines your authority as a manager and degrades the effectiveness of your testing program.
 - So be sure to follow through.
- **Remember... if an employee is indeed "under the influence", you should not let them drive themselves to a testing site.**
 - Arrange transportation for them.

*** * * SUMMARY * * ***

- **“Reasonable suspicion” drug and alcohol testing enables motor carrier managers to prevent an employee who may be impaired from getting behind the wheel.**
- **For suspicion to be "reasonable", the Federal Motor Carrier Safety Administration (FMCSA) requires it to be based on specific observations of facts about how a driver looks, acts, speaks or smells.**
- **A manager who has “reasonable suspicion” that an employee is using drugs or alcohol is required by federal law to refer that employee for immediate drug or alcohol testing.**
- **When informing an employee about a “reasonable suspicion” referral, you should always respect the employee's right to privacy.**
- **Now that you understand the purpose of “reasonable suspicion” drug and alcohol testing, and know how to implement it, you can help ensure that public highways are safer for everyone... every day!**