

DOT 'REASONABLE SUSPICION' **TESTING... FOR MANAGERS AND** **SUPERVISORS (PART I)**

COURSE OUTLINE

- **In the United States, more than 42,000 people died in auto accidents in 2022.**
 - Another 1.5 million car accidents resulted in injuries.
- **To help reduce these numbers, it's especially important for professional drivers who transport people and materials on public roads every day to drive safely.**
 - So the government has established special regulations for transportation employers and employees who hold "commercial driver's licenses" (CDLs").
- **These standards, created by the Department of Transportation (DOT) and its "sub-agency" the Federal Motor Carrier Safety Administration (FMCSA), focus on drug and alcohol use by employees who have "safety sensitive" jobs, including drivers who operate trucks or buses on public roads.**
- **The rules say that commercial drivers must not use or possess alcohol, or any illicit drug while they are driving or are "on call" for assignment and may eventually be driving.**
 - They also cannot report for work or remain on duty when they are under the influence of alcohol or any illicit drug... or have used alcohol within four hours prior to reporting for work or receiving a notice to report.
- **Drivers are also forbidden to report for duty or to remain on duty while using a prescription medication that is prohibited by FMCSA regulations or motor carrier policy unless a physician has determined that the employee can perform their duties safely while taking it.**
 - Use of certain types of over-the-counter medications can be prohibited as well.
- **These regulations apply to all CDL drivers who operate commercial motor vehicles that...**
 - Have a Gross Vehicle Weight Rating greater than 26,000 pounds.
 - Are transporting more than 16 passengers (including the driver).
 - Are carrying hazardous materials.

- **They can also apply to mechanics dispatchers, warehouse workers or other employees who have "safety sensitive" jobs or act as "occasional" or "fill-in" drivers.**
 - To help ensure that these regulations are followed, motor carriers are required to set up drug and alcohol testing programs for their employees.
- **If an employee fails a test for any reason, they must be removed from their driving activities immediately.**
 - The DOT also prescribes a minimum set of requirements that violators must complete in order to return to duty.
- **But it's important to understand that all "return to work" decisions will ultimately be made by a driver's employer, based upon their own policies.**
 - For instance, there is no guarantee that an employee's old job will still be waiting for them even if they fulfill the DOT's return-to-duty requirements.
- **Since the FMCSA maintains a database of violators which is available to all employers, other motor carriers will know if a driver has a history of drug or alcohol violations.**
 - So, for the sake of their current jobs as well as future livelihood, drivers of commercial motor vehicles should keep their name out of that database.
- **In spite of all that's done to try to combat it, driving "under the influence" continues to be one of the major causes of accidents.**
 - So 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 and supervisors 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 and supervisors are most likely to see signs of a problem because they have regular contact with drivers.

- **As a result, "Reasonable Suspicion" testing gives them a way to:**
 - Intervene immediately when they suspect that an employee is impaired by drugs or alcohol.
 - Take action when changes in an employee's appearances or behavior over time indicate that they may have a substance use disorder.
 - Both of these situations will result in requiring the employee to undergo drug or alcohol testing.
- **By referring employees for testing, a manager...**
 - Helps identify people who have a substance use disorder.
 - 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).**
 - But 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.
- **The agency's regulations specify what types of observations are needed to establish "suspicion", and how a substance use disorder can show itself in an employee's appearance and behavior.**
 - Managers can make use of this guideline 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 they are informing an employee that they are referring them for drug or alcohol testing.**
 - Following these procedures won't necessarily make the conversation a pleasant experience.
 - But they will help make it go more smoothly and prevent later blowback from a disgruntled employee.
- **During the holiday, when a partygoer has had too much to drink, you take their keys away to prevent them from driving.**
 - But 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 a strain on employee relations.
 - 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."*
- **First, 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 an 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 impaired... especially if they also appear disheveled, walk unsteadily or slur their speech.**
 - These are what the FMCSA calls "specific" observations.
 - Each one of them records a distinguishable fact about the driver.
- **There are also two other criteria that "Reasonable Suspicion" observations must meet.**
 - They must be "contemporaneous", that is 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 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 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 use disorder, or they are actually "under the influence", Federal law requires you to take action, and refer the driver for immediate drug and alcohol testing.
- **The goal of someone with a substance use disorder is to continue to engage in their habit, and they can be very clever about hiding drug or alcohol use in the workplace.**
 - So don't think that they will make it easy for you to identify them.
- **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 substances themselves.**
 - So you need to learn how to recognize the signs of a substance use disorder, because that's the type of evidence you're more likely to see in the course of a workday.
- **But do this successfully, you first have to get to know the employees that you supervise.**
 - That way you have a feeling for what is "normal" for them, and can establish a baseline for distinguishing any tell-tale changes in their appearance or behavior.
- **For example, a substance use disorder 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".
 - And because a person with a substance use disorder needs 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 with substance use disorders may show physical symptoms... which can vary depending on what substance they are using.**
 - Alcohol and some drugs slow down the body's reactions.
 - So that people under the influence appear drowsy, slur their speech and have difficulty with balance and coordination.
- **Other drugs can speed up the user's metabolism, so they can display agitation, tremors and rapid, excessive talking.**
- **Their eyes of someone who has a substance use disorder can appear "glassy", bloodshot or watery and their pupils may look unusually large or small... which they may try to hide by wearing sunglasses.**
 - While what you see can be very important, don't neglect your sense of smell.
 - Stay alert for the odor of alcohol or the smell of drugs such as 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.**
- **There are four categories of behavioral signs and symptoms that are associated with the use of illegal or controlled drugs. Changes in...**
 - "Psychomotor" activity.
 - Interactions with others.
 - Speech and verbal communication patterns.
 - Personality.
- **"Psychomotor" activity involves how the body moves, often in response to outside stimuli.**
 - The effect that a drug can have on an employee's psychomotor activity will depend on what type of substance it is.

- **Cocaine or amphetamine users typically feel energized.**
 - They are often restless, and hyperactive.
 - They can not sit or stand still and will constantly fidget.
 - Their movements can appear jerky or misdirected.
- **Sedatives or narcotics on the other hand generally slow down motor functions.**
 - So users of heroin and other opioids will typically move slowly and methodically.
 - They may seem to "nod off" or even be in a stupor.
 - They can also have difficulty maintaining their balance, appear unsteady or even stumble when they walk.
- **Hallucinogenic drugs like LSD or PCP can produce bizarre behavior where an employee's movements will be "out of sync" with the environment.**
 - Their movements can be exaggerated and dramatic as well.
 - They can even look like they are "miming", responding to people or things that aren't there.
- **Marijuana users can have the most subtle symptoms of all, with harder to notice motor function changes.**
- **However, in general they will have somewhat slower motor responses than usual, including:**
 - Poor hand-eye coordination.
 - Delayed reaction times.
 - Being a little unsteady on their feet.
- **Another thing that you can look for to determine if an employee may be using drugs is changes in how they interact with others.**
 - This is not necessarily "drug-specific", but is more dependent on how an employee responds to the effect of a drug.
 - So many of these changes can occur with whatever drug they are using
- **Specifically how an employee "interacts" can vary significantly.**
 - Some drugs will make them irritable, hostile or withdraw form social interaction entirely.
 - Other substances can result in employees who are unusually talkative, boisterous and even silly.
 - Reactions can include suspiciousness or paranoia as well.

- **With such a wide range of possible reactions, the key is to be alert to changes in an employee's normal behavior.**
 - If they are typically laid back and easy to get along with but become irritable and hostile, something has changed.
 - Seeing these types of shifts, along with changes in an employee's psychomotor activity or appearance, could well justify a "Reasonable Suspicion" test.
- **A third type of indication that an employee may be using illegal or controlled substances is their speech patterns.**
 - In general, stimulants tend to speed up speech and users will often speak rapidly, even manic-like.
 - They can be extremely talkative and at times sound breathless.
- **Narcotic users on the other hand can have thick, slurred or even incoherent speech.**
 - While people using hallucinogens often have nonsensical, dreamlike speech patterns that don't fit the situation that they are in.
- **All of these changes in speech patterns can vary from drug to drug and employee to employee.**
 - They can also range from being subtle to exaggerated.
 - In the extreme, psychoactive drugs can result in slurred enunciations, incoherent speech or being totally unresponsive.
- **In addition to changes in behavior, there are often physical signs that an employee could have a substance use disorder.**
 - As with behavioral issues these can range from the subtle to the extreme.
- **One thing a manager or supervisor needs to be cognizant of is their employees' personal grooming.**
 - Generally, a person's attention to their appearance diminishes with drug use.
- **Extreme hairstyles, make-up or clothing that would not normally be appropriate in the workplace may be associated with drug use as well.**
 - This is often due to the employee's new link to a lifestyle involving the use of drugs.
 - This does not mean that just because an employee adopts a new "look" that they are involved with drugs.

- **However, like anything else, these changes may be a normal exploration of the employee's lifestyle.**
 - It's when it is combined with other signs that the employee may be using drugs a "Reasonable Suspicion" test could be called for.
- **The eyes can be another good indicator of a substance use disorder.**
 - Eye movements can be dramatically affected by drugs, and in fact are often used by police to make judgements about "drug intoxication".
 - But they can be difficult to read by someone who is not trained.
- **The size of a person's pupils is an indicator that is more easily observed by a layperson.**
 - Many controlled substances cause changes in the pupil's size, both constricting and enlarging them, depending on the drug.
- **Other eye conditions that are associated with substance use disorders include:**
 - Red or bloodshot eyes.
 - Excessive tearing or watery eyes.
 - Eyes that appear unfocused or are unresponsive to movement or light.
- **"Body odor" can be another indication that an employee may have a substance use disorder.**
 - Marijuana is the drug most often noticed as a result of its smell, giving off a distinct odor that is often described as "sweet or acrid".
 - Other drugs can cause the smell of a user's sweat to change and become pungent or acidic.
- **Other physical signs of a substance use disorder include:**
 - Profuse sweating.
 - Shivering or shaking.
 - Dramatic changes in skin color, such as a flushed or pallid complexion.
- **While many of these signs can be indicators of a substance use disorder, it is important to remember that they are not unique to controlled substances.**
 - Alone they are not necessarily enough to warrant a "Reasonable Suspicion" test.
 - But if they are observed along with other signs of a possible substance use disorder, the combination could well justify a test.

*** * * SUMMARY * * ***

- **As we've seen, "Reasonable Suspicion" drug and alcohol testing helps to keep impaired drivers off the road.**
- **As a manager, you can ensure that the process runs smoothly and is conducted fairly by following federal regulations, company policies and good human resource practices.**
- **"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", it must be based on specific observations of facts about how a driver looks, acts, speaks or smells.**
- **There can be both "behavioral" and "physical" signs that someone may have a substance use disorder.**
- **Managers and supervisors need to learn the types of behaviors that can indicate an employee could be dealing with a substance use disorder.**
- **A manager who has a "reasonable suspicion" that an employee may have a substance use disorder is required by 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 the DOT's "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!**