

Operating a Blended Workplace: DOT vs. non-DOT

It can be challenging to operate a blended, comprehensive drug-free workplace program for an employer who is subject to the Department of Transportation (DOT) regulations, as well as non-DOT employees. Over the last couple decades we have been asked several times, “Since I have CDL drivers subject to DOT and other employees who are not, can I just have one drug-free workplace policy/program that covers everyone?” For practical and operational reasons, we recommend employers have separate policies that work in concert.

Granted, many elements of the DOT requirements are considered to be best practice and, because of their defensibility, it is prudent for employers to apply the protocols to non-mandated employees. For example, this includes DOT testing methodology, definitions of what constitutes a positive drug and/or alcohol test, confirmatory testing for non-negative screens, and general statements about the company commitment to safety and productivity. But there are some MAJOR differences

between the two that make operating your program difficult if everything is combined into one document.

DOT Mandates are Limiting

Using DOT’s Federal Motor Carrier Safety Administration (FMCSA) specifics, here are just a few areas of critical limitations:

The FMCSA requirements, long established in federal law, ensure safety as it relates to the CDL driver’s role

	DOT Program	Non-DOT Program
Accident definition warranting a post-accident test	Very narrow and applicable primarily to driving situations where the company’s driver is cited	Broader definition applicable to both driving and non-driving situations
Tested drugs	Only permitted to test for five specific drugs	Tests typically look for more than five drugs and can be scheduled to include commonly abused prescription medications
Random testing	25% for drugs and 10% for alcohol	Drugs only, at whatever percentage suits the needs of the company or another authority (Only those employees mandated by the DOT can be in the DOT random pool. May have a separate “all company” pool, but non-DOT employees cannot be in the DOT pool).
Definition of safety-sensitive functions/positions	Only applicable to CDLs	Applicable to ALL employees
Reasonable suspicion	Can only be based on acute signs (i.e., here and now)	Can be based on acute <i>and/or</i> progressive signs and patterns
Testing for new employees	Negative result must be received before driver can start safety-sensitive activities	Can be more flexible to test within the new-hire period (e.g., first 30 days of employment)

and culture. But factors change, such as the preferred drugs of abuse. Most workplaces have employees beyond solely those who are mandated. To maximize the safety of all employees, these nuances and differences require decisions and standardized operations.

Applying only the guidelines required under DOT does not provide all the safety practices necessary in today's workplaces. A company's policy development team will need to make thoughtful decisions and articulate whether, and in what sequence, either or both policies are to be observed. Both of the policy documents can reference the other where there are intersections.

Today's employees are abusing drugs beyond the 5-panel drug test designated by DOT. So should the driver be tested for additional drugs of abuse? If the employer desires this for safety objectives, once the DOT requirements have been satisfied a second collection and test must be executed under a different policy and non-federal chain-of-custody form. Such action would need to be standardized and practiced consistently to prevent subjective determinations or discrimination.

Issues such as the criterion for reasonable suspicion, what qualifies as a testable accident and what constitutes safety-sensitive roles (beyond the CDL's role), call for thoughtful consideration and specific safety measures. The receptionist who drives three times a week to the bank is routinely performing safety-sensitive activities for the company and should conceivably be subject to post-accident testing that falls outside of FMCSA. The employee, whether mandated or not, who exhibits a pattern that leads a trained supervisor to suspect the influence of alcohol or drugs, needs to be subject to reasonable suspicion testing even if the situation lacks acute evidence (what one sees, smells and hears in the here-and-now). Keep in mind that it can cause the company liability if they

can't show clear and concise reasons for a reasonable suspicion test based on current use. Showing up late 3 times a week, for instance, will not past muster in a court of law.

Operationalizing Your Drug-Free Blended Program

Circumstances where DOT requirements differ from a company's comprehensive drug-free workplace program can be particularly confusing for supervisors who are responsible for implementing the program. When there is duplication (e.g., random testing), it is important to have policies and procedures standardized and directions clearly outlined. This way, if an alcohol/drug situation arises with a CDL, for example, supervisors will know to refer to the DOT policy (i.e., complying with federal law first) and then refer to the company's non-DOT policy to pick up where DOT leaves off or is silent.

To effectively blend your DOT and non-DOT programs it is imperative that you have a clear and legally-sensitive game plan. Beyond DOT requirements, it will be valuable that your policy development team works diligently to uncover any additional state laws or other authorities that could affect the choices you make for your program and operations. For example, if you operate in a state with benefits or liability-limit options for drug-free workplaces, you might be able to limit unemployment exposures and reduce workers' compensation premiums if your company follows the specific program's required criterion.

So the task at hand:

1. Do your homework and identify all the issues needing to be addressed in order for your company to maintain safety and limit liability related to alcohol and drug use by any employee regardless of their role.

2. Beyond your DOT program documents, craft a second policy to satisfy authorities and your company preferences around definitions, testing details, consequences, rules, etc.
3. Review each policy and insert notes to the readers, where appropriate, to remind individuals under what conditions they will be subject to—DOT policies and/or the company's comprehensive drug-free workplace policy.
4. Create an operational flow and train supervisors so they can follow a clear set of directions (a "roadmap") as they respond to alcohol and drug issues involving DOT-mandated employees.
5. Review all policies and make adjustments as needed (no less than annually).

Operating a blended drug-free workplace program does not need to be difficult. However, to work in each unique environment, it takes company-specific focus up front. ■



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and maintain drug-free workplaces. With more than 24 years of experience and servicing 1,700 clients annually, *Working Partners*® crafts policies, train employees and supervisors, and connects organizations with affordable testing and assistance programs. Dee's work includes building drug-free operational systems for large-scale applications including Ohio's Bureau of Workers' Compensation drug-free workplace premium discount program which offered the nation's deepest discounts for over 13 years. Additionally, her work with Nationwide Enterprise's two year, 1.5 million man-hour arena construction project is credited for keeping workers' compensation payout to under \$400,000.