

Drug Testing Issues During the Current COVID-19 Outbreak

Cities, as employers of Department of Transportation (DOT) employees (i.e. those regulated by the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, the Federal Railroad Administration, and the Pipeline and Hazardous Materials Administration), are required to comply with the drug and alcohol training and testing requirements as set out in federal law. The current situation involving COVID-19 has made following these requirements, as well as other drug testing policies contained in employee handbooks, difficult to say the least.

On March 23, 2020, DOT issued guidance on handling testing during this pandemic. Under the guidance, the DOT recognizes the difficulty in finding testing resources in many areas, such as available testing sites and medical review officers, as well as closures and quarantines that may impede an employer's ability to comply. In any circumstance where an employer is unable to comply in a timely manner, the employer should still document the reasons why and then comply as soon as possible.

Even though DOT recognizes these concerns, employers must still follow the regulations when compliance is not possible. For example, if an employer is unable to perform a pre-employment drug and alcohol test due to the ability to locate a lab that can perform the test, the employer cannot allow the new hire to begin work in the safety-sensitive position until the testing is actually performed.

There may be other situations, where the employee is fearful of taking a test or entering a lab during this time, out of concern for being exposed to the virus. If this is the situation, the employer needs to consider being flexible with the employee while also evaluating whether or not the situation warrants being reported as a test refusal.

City personnel policies will also likely address how other employees must be tested and following the guidelines set out by the DOT during the pandemic should be considered and any variation from the policy should be documented. And as with DOT employees, once the pandemic ceases, the normal policies should immediately go back into place.

The DOT guidance can be found at <https://www.transportation.gov/odapc/compliance-with-dot-drug-and-alcohol-testing-regulations> and employers should check back often to see if there have been any additional changes. As with everything else right now, changes tend to happen very quickly and without much notice.

For questions on this or other personnel matters contact Personnel Services Manager Andrea Shindlebower Main or Courtney Risk Straw Personnel Services Attorney.