

POLICY

ESTABLISHING DRUG AND ALCOHOL TESTING

POL-ALL-204-03

1. Employees Are Subject to Drug and Alcohol Testing

Under WTA authority, all employees are subject to reasonable-suspicion, post-accident, return-to-duty, and follow-up drug and alcohol testing. In addition, employees performing safety sensitive functions are also subject to pre-employment drug and random drug and alcohol testing. An employee may be randomly tested for prohibited drug use anytime while on duty.

Pre-employment Testing: A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual is required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that time, they must take and pass a pre-employment test before returning to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation and treatment plan meeting DOT requirements.

Reasonable Suspicion Testing: Safety-sensitive employees and *all other WTA employees* are subject to a drug and/or alcohol test when WTA has reasonable suspicion to believe that the employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing is made by a trained supervisor or other trained company official on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee.

Employees are subject to reasonable suspicion drug testing any time while on duty. Covered employees are subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the

employee is to perform safety-sensitive functions or just after the employee has ceased performing such functions.

Post-Accident Testing:

Fatal Accidents

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests are conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by WTA using the best information available at the time of the decision, is tested.

Non-fatal Accidents

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests are conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.
- (3) In addition, any other covered employee whose performance could have contributed to the accident, as determined by WTA using the best information available at the time of the decision, will be tested.

Under WTA authority, non- safety-sensitive employees are subject to testing following work related vehicle accidents when there is reasonable suspicion that drug or alcohol use may be a factor in the accident.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

Random Testing: Random drug and alcohol tests are unannounced and unpredictable. The dates for administering random tests are spread reasonably throughout the calendar year. Random testing is conducted at all times of the day and week when safety-sensitive functions are performed.

The selection of employees for random drug and alcohol testing are made by a scientifically valid method such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee has an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments are random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided at least 3 hours before the end of the shift.

Management Staff and Dispatchers are required to maintain strict confidentiality in arranging for replacement personnel. Notifying any other WTA employee regarding the potential scheduling of a random test is grounds for discipline, up to and including termination.

Return to Duty Testing (Re-entry to Work): Under FTA authority and in accordance with 49 CFR Part 40, safety-sensitive employees who previously tested positive on a drug or alcohol test, and who, under WTA discipline policy are allowed to return to work, are subject to observed collection drug testing and/or alcohol testing or both prior to being released for duty by a Substance Abuse Professional. Test results must be negative. *This also applies to non-safety-sensitive employees under WTA authority.*

Under WTA authority, safety sensitive and other WTA employees who have come forward prior to a positive drug or alcohol result or tested positive with a breath alcohol concentration of 0.00 to 0.39 and been retained by the WTA are not be able to return to duty until they have been evaluated and released for duty by a Substance Abuse Counselor. The counselor determines the testing frequency. The employee must test negative for alcohol, and/or obtained a verified negative test for drugs before returning to duty. Employees who have

received management referrals may be required to participate in return-to-work and follow-up testing.

Follow up Testing: In accordance with 49 CFR Part 40 employees who are allowed to return to work following a violation of this policy will be required to undergo frequent random observed collection drug and/or alcohol testing during the period of their re-entry contract with a minimum of six randomly scheduled tests during the first twelve months following their return. The SAP recommends the frequency and duration of the testing for up to 60 months.

Under WTA authority, safety-sensitive employees and other WTA employees requiring return-to-duty drug and alcohol testing not required under FTA guidelines, are subject to unannounced drug and/or alcohol tests as determined by the WTA's Substance Abuse Counselor. There shall be no fewer than six tests in the 12 months following the return to work. The specific number of follow-up tests are established by the counselor and be conducted for up to 60 months.

Union Representation during Testing: *Represented employees required to submit to any drug or alcohol test, excluding random and return-to-work testing, are granted the opportunity for union representation upon request. This opportunity, however, will not preclude WTA from proceeding with the testing procedure if the union representative is not available within 30 minutes of notification that a drug or alcohol test is required.*

2. WTA Establishes Prohibited Conduct

Under FTA regulations, discipline for program violations are determined and carried out within each Agency's authority. While not inclusive, the following list contains conduct prohibited under this program. *All of these behaviors result in corrective action, up to and including termination. If appropriate, law enforcement officials are notified.*

Refusal to Submit to a Drug or Alcohol Test

In addition to directly declining to submit to a drug or alcohol test, any of the following actions will be considered a refusal:

- Failure to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer.
- Failure to remain at the testing site until the testing process is complete. Provided, that an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test.
- Fail to provide a urine specimen for any drug test or an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations.
- Failure to permit the observation or monitoring of provision of a specimen in the case of a directly observed or monitored collection (see Sections 40.67(i) and 40.69(g)).

- Fail to provide a sufficient amount of urine or breath specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- Fail or decline to take a second test as directed by the collector or WTA for drug testing.
- Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER (under section 40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment.
- Failure to cooperate with any part of the testing process (e.g. refusal to empty pockets when directed by the collector, behaving in a confrontational way that disrupts the collection process, failure to wash hands after being directed to do so by the collector).
- Failure to follow the observer's instructions to raise and lower clothing and turn around to permit the observer to determine if any type of prosthetic or other device is present that could interfere with the collection process during a directly observed test
- Possession or wearing of a prosthetic device that could be used to tamper with the collection process
- Admitting to the collector or MRO that the specimen is adulterated or substituted.
- Failure to remain available following an accident, i.e. leaving the scene of an accident before a testing decision is made or prior to being released by a supervisor/manager.
- Clearly obstructing the collection process.
- Not complying with a request for a drug/alcohol test.
- Failure or refusal to take a second test the employer or collector has directed be taken.
- Failure to sign the certification at Step 2 of the Alcohol Test Form.

In such cases, an employee is referred to a SAP for assessment and is provided with other resources that may be available for assistance. *WTA will not extend re-employment opportunities to employees who refuse to submit to drug or alcohol tests.*

Providing False Information and/or Attempting To Contaminate Or Alter A Urine Specimen:

- Providing false information about a urine specimen and/or attempting to contaminate a urine specimen.
- If the MRO reports a verified adulterated or substituted test result, the employee is considered to have refused to take a drug test.

Refusal or Failure to Comply With Treatment:

- Refusing or failing to comply with treatment and after-care.

Sale, Transfer, or Possession with Intent to Deliver:

- Engaging in the sale or attempted sale, purchase or transfer, or possession with intent to deliver illegal drugs, unauthorized substances or alcohol on WTA property, in WTA vehicles or equipment, or while on WTA business.

Possession

- Having any amount of illegal drugs, unauthorized substances or alcohol in WTA vehicles or while conducting WTA business.

Pre-duty Use of Alcohol

- *Under WTA authority, reporting to work with any detectable level of alcohol in your system.*
- According to FTA rule 655.31(b), reporting to work with a breath alcohol concentration of 0.04 or greater.
- Reporting to work if they have used alcohol within four (4) hours of reporting to work.

On-call employees

- Consuming alcohol during the period of their on-call status.
- Not informing the supervisor of any inability to perform safety-sensitive functions before commencing work.
 - Any employee who acknowledges the use of alcohol during an on-call status may be referred to WTA's EAP program for assessment.
 - Any employee reporting to work having consumed alcohol during on-call status and failing to notify their supervisor is subject to reasonable-suspicion testing.
 - Any employee who acknowledges use of alcohol during an on-call status but claims ability to perform safety-sensitive work is required to take an alcohol test before performing work.

Failure to Notify WTA of Criminal Drug or Driving-While-Intoxicated Conviction

- *Employees must notify WTA of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.*
- *Employees must notify WTA of any moving violation involving drugs or alcohol causing the loss of driver's license by state or local law enforcement involving drugs or alcohol.*

3. WTA Establishes Discipline for Program Violation

WTA is a drug free workplace and has a zero tolerance for drug and/or alcohol abuse. See REF-ALL-204-03, Summary of Consequences of Refusals or a Positive Test.

Pre-employment Testing

WTA rescinds the conditional offer of employment if an applicant tests positive for drugs. Employees seeking to transfer to a safety-sensitive position are denied that transfer and may be subject to discipline. If the applicant or transfer-seeking employee holds a Commercial Driver's License, the WTA reports the positive test result to the Washington State Department of Licensing.

Random Testing

Under WTA authority, an employee with a breath alcohol concentration (BAC) of .02 or more, but less than .04, is removed from duty and subject to discipline, up to and including termination. If the alcohol results are accompanied with an incident or a record of poor job performance, the employee is terminated. If the alcohol results are not accompanied with any incident or a poor performance record, the employee is placed on a Suspension without Pay (10 days), with the following conditions:

- *The employee is directed to available resources for assistance and must contact a Substance Abuse Counselor for assessment within 24 hours of the referral*
- *Following the 10-day suspension period, the employee may use accrued paid leave while absent for treatment*
- *The employee may access his or her medical benefits to pay for rehabilitation, subject to the conditions and limits of the plan*
- *Prior to returning to work, the employee must sign and agree to all provisions of a re-entry to work agreement*

Under FTA authority, an employee with a breath alcohol concentration of .02 or more, but less than .04 is immediately removed from safety sensitive for at least 8 hours. An employee with a BAC of .04 or greater, or with a positive drug test, is removed from duty and his or her employment is terminated. The employee is referred to a SAP for assessment and will be provided with other resources that may be available for assistance. In such cases, the employee has no opportunity for re-employment.

Reasonable-Suspicion Testing, Post-Accident Testing, Return-to-Duty/Follow-up Testing

An employee with a breath alcohol concentration of .02 or greater, or a positive drug test, will not be allowed to return to work and his or her employment is terminated. (The removal from duty and termination of an employee with a breath alcohol concentration greater than .02 but less than .04 is exercised on WTA's own authority.) The employee is referred to a SAP for assessment and is provided with other resources that may be available for assistance. In such cases, the employee has no opportunity for re-employment.

Self-Referral for Drug or Alcohol Abuse

Under WTA authority, an employee, who self-refers for a drug- or alcohol-abuse problem, is required to comply with conditions put forth in a return-to-duty agreement. Employee who fails to comply with any of the terms and conditions of the return-to-duty agreement are removed from duty and employment terminated. The employee is referred to a Substance Abuse Counselor for assessment and is provided with other resources that may be available for assistance. In such cases, the employee has no opportunity for re-employment.

4. WTA Establishes Drug and Alcohol Testing Processes

Testing is conducted to assure a high degree of accuracy and reliability, using techniques, chain of custody procedures, equipment and laboratory facilities

approved by the U.S. Department of Health and Human Services and called for in the regulations (49 CFR Part 40). Both alcohol and drug testing is conducted in an environment which affords maximum privacy.

Drug Testing: Analytical urine testing is conducted for all DOT prohibited substances as listed in 49 CFR Part 40 (see REF-ALL-202-04). An initial drug screen is conducted on each specimen after a split sample is provided to the laboratory. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry is performed. A positive test result above the minimum thresholds set forth by the Federal regulations and verified by the MRO is a violation of this program.

If a positive test is received for any substance, the Medical review Officer (MRO) will conduct an interview with the employee to determine if there is a legitimate medical explanation for the result. If a legitimate prescription is established the MRO will report the result negative. If the MRO determines in his/her reasonable medical judgement the employee may be medically unqualified according to DOT Agency regulations, or if continued performance is likely to pose a significant safety risk, the employee will have five days to have their prescribing physician contact the MRO before reporting it to WTA. *If reported, WTA will remove the employee from safety sensitive work until they no longer present a significant safety risk.*

If there is reason to believe an employee is under the influence of a substance other than the DOT covered substances listed in Part 40, WTA reserves the right to perform a separate drug test for additional drugs under the Agency's own authority using standard laboratory testing protocols. This separate test is performed on a second, separate sample, i.e., the test will not be performed on an aliquot separated from the DOT sample. Also based on WTA's independent authority, WTA may rely on drug tests performed by law enforcement if an employee is unable to provide a urine specimen for post-accident testing.

Alcohol Testing: Tests for alcohol concentration are conducted using National Highway Traffic Safety Administration-approved evidential breath testing devices operated by trained technicians.

A random or reasonable suspicion test may only be conducted for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions or just after the employee has ceased performing such function.

An employee who tests at .02 BAC or above is retested within 15 to 30 minutes of the first test. This is considered a confirmatory test. Under WTA authority, a confirmed alcohol concentration of .02 or greater is considered a positive alcohol test and a violation of this policy. Under FTA authority, a confirmed alcohol concentration of .04 or greater is considered a positive test and also a violation of this program.

If an employee is unable to provide a breath specimen following an accident, WTA, under its own authority, may rely on alcohol tests performed by law enforcement.

RETESTS AND OBSERVED TESTS

Retest or Observed Testing: Employees who test positive for drugs or are deemed to have refused the test because of adulteration and substitution may request within 72 hours of notification, a test of the split sample, as all specimens are split and the non-tested portion stored for a period of time. Employees do not have access to a test of their split specimen following an invalid result. There are certain situations that may require the employee to provide, at the collection site, another urine or breath sample, i.e., when insufficient urine or breath provides an inadequate sample or the technician has reason to suspect tampering with the sample. Under the latter circumstances a second collection may be conducted under observed conditions. Following a drug test with a negative dilute result the employee is required to undergo another test. Depending on the level of creatinine reported, the MRO may direct the second test to be collected under direct observation. Should the second test result in a negative dilute result, the test is considered a negative and no additional testing will be required unless directed by the MRO.

OBSERVED COLLECTIONS

Under FTA authority observed collections are required in the following circumstances:

- All return-to-duty tests
- All follow-up tests
- If the MRO reported that the initial test was negative dilute with a creatinine level between 2-5mg/dl
- Any time the employee is directed to provide another specimen because the temperature on the original specimen was out of the accepted temperature range of 90F° - 100 F°
- Any time the employee is directed to provide another specimen because the original specimen appeared to be tampered with
- Any time a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen
- Any time the employee is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result
- Any time the employee is directed to provide another specimen because the MRO determined that the original specimen was positive, adulterated or substituted but had to be cancelled because the test of the split specimen could not be performed.

The employee who is being observed is required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and undergarments to show the same gender collector, by turning around, that they do not have a prosthetic device.

5. Employees Must Report Their Use of Legally Obtained Drugs

Employees adversely affected because of their use of any legally obtained drugs (prescription or non-prescription) cannot perform a safety-sensitive job. Prior to commencing work, each employee must report prescription drug use which may affect his or her ability to perform any safety-sensitive function. Employees taking medication with cautionary labels provide proper medical authorization to work from a physician. Employees failing to report use of any prescription or non-prescription drug affecting work will be subject to corrective action, up to and including termination.

6. Positive Drug or Alcohol Tests Are Reported to the Department of Licensing

Confirmed positive drug or alcohol test results or a refusal to test are reported as a positive to the Washington State Department of Licensing (DOL) for all CDL holders in accordance with RCW 46.25.

7. The Human Resources Division Receives Test Results

The Drug and Alcohol Program Manager (DAPM) or Designated Employer Representative (DER) receives all drug and alcohol test results with specific back-ups identified to the Medical Review Officer. If an employee receives a positive alcohol test, the transporting supervisor is authorized to receive positive alcohol test results to prevent the employee from returning to work.

Test results are maintained in a secure confidential file, separate from an employee's personnel file. Disclosure of tests results within WTA management is on a need-to-know basis. WTA may disclose test results when the information:

- Is compelled by law or by judicial or administrative process
- Is requested, in writing by the employee
- Is requested by a subsequent employer, and authorized by employee in writing
- Has been placed at issue in a formal dispute or grievance between the WTA and the employee
- Is needed by medical personnel, such as a substance abuse professional, for the diagnosis or treatment of the employee
- Is needed in administering an employee benefit plan, such as drug or alcohol treatment
- Is requested by any DOT or State agency with regulatory authority over the employer or any other conditions outlined in Federal drug and alcohol regulations

8. Managers and Supervisors Have Special Responsibilities

Managers and supervisors assist WTA in maintaining dignity and confidentiality in the administration of this program. Managers and supervisors communicate information regarding drug and alcohol incidents and test results strictly on a need to know basis. Trained managers and supervisors are expected to base testing requests on objective observations of contemporaneous and articulable behavior and to thoroughly document observations.

Violations of the policy with regard to maintaining employee dignity and confidentiality may result in discipline, up to and including termination.

Topic: Policy Management
Effective Date: March 1, 2018
Approved by: Pete Stark, General Manager
 Cancels:
See Procedure:
See Task:
See Form:
See Reference: REF-ALL-204-02 Safety Sensitive Positions
REF-ALL-204-03 Summary of Consequences of Refusals or Positive Tests
REF-ALL-204-04 DOT Covered Substances 49CFR Part 40
See Related Policy: POL-ALL-204-01 Establishing WTA’s Drug and Alcohol Abuse Prevention Program
POL-ALL-204-02 Designating WTA as a Drug and Alcohol Free Workplace
POL-ALL-204-04 Training Employees on the Drug and Alcohol Abuse Prevention Program
POL-ALL-204-05 Receiving Drug and Alcohol Abuse Assistance
See Also:
Union Notification: January 19, 2018

Approval:

General Manager

Date