

BUSINESS POLICY LETTER

TO: All Members of the University Community

2004:02

DATE: September 27, 2004

COMMERCIAL DRIVER'S LICENSE (CDL) ALCOHOL AND CONTROLLED SUBSTANCES TESTING POLICY

1. POLICY AND REGULATORY BASIS

- A. The Ferris State University Alcohol and Controlled Substances Testing Policy (the "Policy") is established to comply with the United States Department of Transportation (DOT) regulations which require the University to conduct various alcohol and drug tests of its employees who are required to hold a commercial drivers license (CDL).
- B. These Procedures are established to comply with federal law (The Omnibus Transportation Employee Testing Act of 1991 and corresponding regulations found in Title 49, Code of Federal Regulations) requiring that the University conduct alcohol and controlled substance tests of certain transportation workers.
- C. The broad purpose of the regulations is to detect and deter conduct which may jeopardize the individual health, safety and well-being of University employees, students, and the public, and to enhance their overall safety by establishing an alcohol misuse and drug prevention program.

2. TO WHICH EMPLOYEES DOES THE POLICY APPLY?

- A. The Policy applies to all employees of Ferris State University who are required to hold a commercial drivers license (CDL) and who operate a commercial motor vehicle (CMV) as defined below. These employees include employees who operate a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - i. has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
 - ii. has a gross vehicle weight rating of 26,001 or more pounds; or

- iii. is designed to transport 16 or more passengers, including the driver; or
 - iv. is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act.
- B. The Policy applies to current employees (full time and part time) and current employees applying to move into a safety-sensitive function and/or one requiring a CDL.

3. WHAT DOES THE LAW AND THESE REGULATIONS REQUIRE?

- A. Covered employees are prohibited from:
- i. reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater;
 - ii. being on duty or operating a CMV while possessing alcohol (unless the alcohol is manifested and transported as part of a shipment);
 - iii. using alcohol while on the job, including during breaks or meals;
 - iv. performing safety-sensitive functions within four (4) hours after using alcohol;
 - v. using alcohol within eight (8) hours following an accident, or until he or she undergoes a post-accident alcohol test, whichever occurs first, where the individual is required to take a post-accident test under these procedures and Federal law;
 - vi. refusing to submit to a post-accident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a follow-up alcohol or controlled substances test required under this Policy and Federal law. Adulteration or dilution of a specimen during the testing procedure will be considered refusal to submit to a test;
 - vii. reporting for duty or remaining on duty requiring the performance of safety-sensitive functions when the covered individual uses any controlled substance, except when the use is pursuant to the instructions of a physician who had advised the covered individual

that the substance does not adversely affect the covered individual's ability to safely perform a safety-sensitive function; and

- viii. reporting for duty, remaining on duty or performing a safety-sensitive function if the covered individual tests positive for a controlled substance.

4. WHAT TESTS ARE REQUIRED?

Employees are required to submit to drug and/or alcohol testing, including but not limited to urinalysis, breath, and blood screens under the following circumstances. Before performing a test, management must notify the employee that the test is being performed pursuant to the D.O.T. regulations.

- A. **Pre-Employment and Pre-Promotion.** An applicant for (or a current employee moving to) a position subject to the Federal Highway Administration (FHWA) testing requirements (i.e., jobs requiring a "CDL") must undergo a drug test and receive a negative result.
- B. **Reasonable Suspicion.** Where management has reasonable suspicion to believe that an employee is under the influence of alcohol or a prohibited substance while on duty, an employee will be required to submit to testing. Management's determination that reasonable suspicion exists must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations must be made during, just preceding, or just after the period of the work day that the driver is required to be in compliance. The observations may include indications of the chronic and withdrawal effects of controlled substances and/or alcohol.

When a supervisor has reasonable suspicion under this part, he/she must record, in writing, the observations that led to this conclusion within a reasonable time of the observed behavior. The supervisor should attempt to secure a second management witness to observe the employee. The second management witness should collaborate their observations in writing within a reasonable period of time. The supervisor must then accompany and escort the employee to the designated collection site.

If a supervisor is unable to obtain a reasonable suspicion test, he/she shall nonetheless not permit an employee to remain on duty if the driver is under the influence or impaired by alcohol or controlled substance as indicated by the behavioral, speech, and performance indicators of such misuse. In this case, the employee will be permitted to return to work when:

- i. an alcohol test shows a concentration of less than 0.02; or
- ii. twenty-four (24) hours have elapsed since the reasonable suspicion observations; or
- iii. substance abuse testing shows/demonstrates that the person is no longer under the influence of a controlled substance.

C. **Post-Accident.** As part of a post-accident investigation, and as soon as practicable following an accident involving a commercial motor vehicle, the driver of the vehicle must be tested for alcohol and controlled substances if:

- i. there was a death involved; or
- ii. the driver received a citation for a moving traffic violation arising from the accident and someone (driver or other persons) required immediate medical treatment away from the scene of the accident; or
- iii. the driver received a citation for a moving traffic violation and one of the vehicles had to be towed from the scene of the accident.

An alcohol test should be administered within two (2) hours (and must be administered no later than eight (8) hours) following the accident. A controlled substance test must be administered within thirty-two (32) hours following the accident. If the tests are not administered within these time frames, a report must be prepared to explain why the test(s) were not promptly administered. A driver who is subject to post-accident testing must remain readily available for the testing (unless injury prevents), or shall be deemed to have refused to submit to testing.

D. **Random Selection.** As part of a random selection process, the random testing of drivers will be unannounced and spread reasonably throughout the year. Upon being ordered by a supervisor, the driver must immediately proceed to the test site. The order will be made and the testing will be performed during the work hours of the employee which may be extended, if necessary, to accomplish the testing.

The minimum annual percentage rate for random alcohol testing is ten percent (10%) of the average number of driver positions. The minimum annual percentage rate for random controlled substances testing is fifty percent (50%) of the average number of driver positions.

In the event the employee does not have access to transportation to the collection site, the supervisor will be responsible for arranging it.

The covered employees will be randomly selected using a scientifically valid method such as social security numbers or payroll identification numbers.

- E. **Return-to-duty and follow-up testing.** Before a driver returns to duty requiring the performance of a safety-sensitive function after engaging in prohibited behavior regarding alcohol or controlled substances, or after having tested positive for controlled substances, the driver must undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02 and/or a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substance use. Following a determination that a driver is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the driver will be subject to unannounced follow-up alcohol and/or controlled substance testing as directed by a substance abuse professional for up to sixty (60) months. The number and frequency of the tests will be determined by the professional, but will consist of at least six (6) tests in the first twelve (12) months following the driver's return to duty and may continue for up to five (5) years. (See also "What happens if an employee tests positive?" below).

5. HOW WILL THE TESTING BE DONE?

- A. **For controlled substances:** D.O.T. regulations require testing for marijuana, cocaine, opiates, amphetamines and phencyclidine. The University will set up one (1) or more collection sites. The site will have all necessary personnel, equipment, and supervision to provide for the collection, security, temporary storage and shipping of urine specimens to a certified drug testing laboratory. Collection of the urine samples will allow individual privacy, unless there is a reason to believe that a particular individual may alter or substitute the specimen. The collection site will be responsible for the specimen. The specimen cannot be adulterated or diluted during the collection procedure. Once the specimen has been collected from the individual, the temperature of the specimen is measured, the collection container is sealed and labeled, the chain of custody forms are completed, and the specimen is sent to the laboratory for testing.

Test results are given to an Medical Review Officer (MRO) or appropriate person or agent to be designated by management for analyzing and reporting to the University.

- B. For alcohol: The employee will report to the Breath Alcohol Technician at the testing site, which will afford privacy to the individual being tested. After the employee provides an adequate amount of breath for testing, the results are printed onto the breath alcohol test form and shown to the employee, and the form is signed by both the Technician and the employee. If the result is an alcohol concentration of less than (0.02), no further testing is required, and the results are transmitted to the University in a confidential manner. If the result is an alcohol concentration of 0.02 or greater, a confirmation test is performed within thirty (30) minutes. The results of the initial test and the confirmation test are printed on the breath alcohol test forms, signed by both the Technician and the employee, and transmitted to the University in a confidential manner. Notwithstanding the foregoing, the test results are not invalid where an employee refuses to sign or otherwise fails to sign the form.

6. WHAT HAPPENS IF AN EMPLOYEE TESTS POSITIVE?

- A. The law requires that an employee will not be permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employee tests positive for alcohol. In addition, an employee will not be permitted to return to work until he/she:
- i. has undergone a return to duty alcohol or controlled substance test (see “Return to duty and follow up testing.” section above); and
 - ii. has been evaluated by a substance abuse professional who will determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use. If the driver is identified as needing assistance, and a rehabilitation program has been prescribed, the driver will be evaluated to determine that he/she has properly followed the treatment/program. The substance abuse professional will determine that the employee has successfully complied with any recommended course of treatment. The University will provide information on contacting substance abuse professionals, counselling and treatment programs.
- B. Management will follow University policies and procedures regarding sanctions for violations of this Policy, including, but not limited to the applicable University Drug-Free Workplace Policy, other relevant Board of Trustees and administrative policies, and relevant collective bargaining agreements.

7. WHO WILL PAY FOR THE TESTING?

A. The University will pay for all drug and alcohol testing with the exception of:

- i. Split specimen testing – If an employee tests positive to a controlled substance test, he/she may request that the split specimen be tested. The employee must pay for this test.
- ii. Return to duty and follow-up testing. The employee must pay for all return-to-duty and follow-up testing that is required.

8. WHO HAS ACCESS TO TEST RESULTS?

Except as required by law or federal regulation, or where the employee authorizes release of information, no information about specific alcohol and controlled substance testing will be released by the University to outside parties. An employee is entitled, upon written request, to obtain copies of any records pertaining to his/her use of alcohol or controlled substances, including any records pertaining to his/her alcohol or controlled substances tests.

9. WHAT RECORDS MUST THE UNIVERSITY RETAIN?

A. The university is required to maintain records of its alcohol misuse and controlled substance prevention program in a secure location with controlled access as follows:

- i. Five (5) year record retention requirement: Records of any employee alcohol test results indicating an alcohol concentration of 0.02 or greater; documentation of refusals to take required alcohol or controlled substance tests; verified controlled substance test results; equipment calibration documentation; and documentation of employee evaluations and referrals.
- ii. Two (2) year record retention requirement: Records related to the collection process and training.
- iii. One (1) year record retention requirement: Records of any negative test results.

10. WHAT TRAINING WILL SUPERVISORS RECEIVE?

All supervisors of drivers performing safety-sensitive functions will receive at least sixty (60) minutes of training on alcohol misuse and an additional sixty (60)

minutes of training on controlled substance use to assist them in determining whether reasonable suspicion exists to require a driver to undergo testing. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. It will also cover available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to appropriate agencies, and/or referral to Management.

11. WHO SHOULD I CONTACT WITH QUESTIONS ABOUT THIS POLICY AND PROCEDURES?

Employees should contact HR with questions about the interpretation or application of this Policy.

Any employee with a current alcohol or substance abuse condition is encouraged to seek assistance through the Employee Assistance Services program (EAS) before running into issues under or problems under this Policy. Contact HR for EAS information. Employees who voluntarily self-identify as needing assistance may also contact HR at 591-2150.

12. AMENDMENT

The Board of Trustees delegates to the President the authority to amend this Policy: in order to comply with current law and regulations or any future change in the law and/or regulations; with respect to the testing requirements and procedures; or with respect to administration of the Policy.

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Contact Office: Human Resources (x2150)

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