Information

Driver's Alcohol and Controlled Substance Testing

Effective

May 14, 1996

Number

PER-1.20

Applicability

This policy applies to University Faculty and Staff.

Administrative Authority

Vice President for Human Resources

Responsible Unit

Human Resources

Miller Information Technology Center Rm 02C

2315 South First Street Walk

Louisville, KY 40292

Phone: 502-852-6258
Email: askhr@louisville.edu

History

Revision Date(s): December 14, 2021 (minor edits); August 24, 2022 (minor edit); April 1, 2026 (minor revision)

Reviewed Date(s): March 8, 2016

Categories

Reason for Policy:

To help prevent accidents and injuries resulting from the misuse of alcohol or the use of controlled substances by drivers of commercial vehicles and to comply with the Omnibus Transportation Employee Testing Act of 1991.

Statement:

It is the policy of the university to administer complete commercial driver's license (CDL) physical examinations and alcohol and controlled substance testing for all employees whose job duties require a commercial driver's license (CDL) and/or the transporting of hazardous materials.

This policy is applicable to all university faculty and staff whose job duties require a commercial driver's licenses and/or the transporting of hazardous materials. All covered employees will be provided with a written notice of the availability of information regarding the Omnibus Transportation Act, its testing requirements, and a copy of this policy, which provides for compliance with the federal requirements.

Nothing in this policy lessens the university's ability to discipline in accordance with the university's disciplinary policies. The minimum sanctions in this policy and federal law shall not lessen the university's ability to impose greater sanctions, up to and including termination under Staff Personnel Policy and Procedures Section PER 4.14 Separations, PER 1.15: Drug Free Workplace and Drug-Free Schools Notice.

The University of Louisville expressly reserves the right at any time to modify, alter, or amend this policy in whole or in part. The University shall have the unlimited right

to amend this policy at any time, retroactively or otherwise, in such respect and to such extent as may be necessary to meet any legal requirement and to the extent as necessary to accomplish this purpose. The President or his designee is hereby granted authority to issue interpretations and clarify rules under this policy and to coordinate it with or modify other rules of the university as required from time to time for compliance with the law.

Related Information:

Required Testing

Any covered employee shall be tested for alcohol and controlled substances in accordance with the following:

1. Pre-Employment Testing

Prior to the first time the covered employee performs safety- sensitive functions for the university, he or she will undergo testing for controlled substances. The controlled substances test must be verified by a medical review officer indicating a negative test result. Pre-employment testing for substance abuse is not required:

1. When the covered employee has participated in a drug testing program within the previous 30 days (49 CFR 382.301 (c) (1)).
2. While participating in a prior drug testing program and was tested for controlled substances within the past 6 months (from date of application with the employer) or participated in a random controlled substances testing program for the previous 12 months (from the date of application with the employer). (49 CFR 382.301 (c) (2) (i), (ii)).
3. If the University ensures that no prior employer has knowledge or records of a violation of the regulations or the controlled substances, use rule of another U.S. DOT agency within the previous 6 months (49 CFR 382.301 (c) (3)).

2. Post-Accident Testing

As soon as practicable following an accident, the university must test each surviving covered employee for alcohol and controlled substance if:

1. The covered employee was performing a safety sensitive function with respect to the vehicle and the accident involved the loss of human life; or
2. The employee receives a citation under state or local law for a moving traffic violation arising out of the accident; (49 CFR 382.303).
3. If a required post-accident alcohol test is not administered within two hours following the accident, the University must submit a report to the U.S. DOT stating why the test was not promptly administered. In the event a post-accident alcohol test is not administered within eight hours following an accident, attempts to administer the test must cease. The U.S. DOT report must contain an explanation of the events that resulted in the failure to administer the test.

3. Random Testing

Under the random testing requirements, the university must randomly select covered employees at various times for alcohol and substance abuse testing. The selection process is based on a scientifically valid method. A minimum of twenty five percent (25%) per year of all covered employees will be tested for alcohol use. A minimum of fifty percent (50%) per year of all covered employees will be tested for substance abuse.

Note: Covered employees may only be tested for alcohol misuse while performing safety-sensitive functions; immediately before performing a safety-sensitive function; or immediately after he or she has ceased performing a safety-sensitive function 49 CFR 382.305 (1).

Any employee identified for alcohol and substance abuse testing will be advised where and when to report. Usually, testing shall be conducted during an employee's normal hours. Random testing dates and times shall be unannounced; (49 CFR 382.305).

4. Reasonable Suspicion Testing

If an appropriate university official determines a reasonable suspicion exists that a covered employee has violated the rules for alcohol misuse or controlled substances use, the employee shall be required to be tested for alcohol misuse or substance use. Any employee identified will be advised where and when to report for testing. Testing shall be conducted during an employee's normal work hours. (49 CFR 382.307)

5. Return-To-Duty Testing

Before the covered employee returns to duty in a safety-sensitive function following a violation of the rules for alcohol misuses or controlled substances use, the covered employee must be evaluated and undergo testing. The alcohol test must have results less than 0.02 before returning to a safety-sensitive function. Controlled substance testing must be verified as negative results (49 CFR 382.605 (c) (1)).

6. Follow-Up Testing

Each covered employee, who has returned to duty involving the performance of a safety-sensitive function, and identified by a substance abuse professional (SAP) as needing assistance in resolving problems with alcohol misuse or with controlled substances will be required to have a follow-up test. Under the Omnibus Transportation Employee Testing Act of 1991, a minimum of six (6) unannounced follow- up tests will be conducted at an approved medical testing facility, during the first twelve (12) months following an employee's return to duty. A covered employee shall pay for follow-up tests (49 CFR 382.605) (c) (2) (ii)).

Testing Administration

1. Facility

The names and locations of approved facilities will be provided to covered employees upon implementation of this policy. Changes to the approved list of test sites will be provided to covered employees in a timely fashion. This notice may include use of a mobile van or another approved on-site testing facility.

2. Test

Alcohol and controlled substance tests shall be administered as follows:

1. **Alcohol:** A covered employee shall be tested for alcohol by a trained breath alcohol technician utilizing an Evidential Breath Testing Device (EBTD).
2. **Controlled Substances:** A covered employee being tested for controlled substances shall be required to provide a urine sample which will be split into two bottles by a collection site employee. The collection site employee will complete a chain of custody form and ship both bottles to a Department of Health and Human Services (DHHS) certified laboratory for analysis.

3. Failure to Report for Testing

Any covered employee/applicant scheduled for testing, who does not report immediately for testing upon notification shall be considered for disciplinary actions under university procedures pending an investigation. Any covered employee, who is involved in an accident in which the employee is performing a safety-sensitive function and who does not submit for testing, shall be presumed to have refused testing and shall not drive a commercial vehicle until an investigation is conducted. Disciplinary actions under university policies and procedures including suspension or separation could be imposed on the employee.

4. Absence During Random Testing

A covered employee, who has been on a layoff or who is off work for a flex leave period, during which the employee was not subject to random testing, shall submit to alcohol and controlled substance testing when returning to work.

Test Results

Test results are communicated by the approved medical testing facility to the Vice President for Human Resources or designee, as soon as possible, following the administering of the tests. In a timely manner, upon the notification by the Human Resources official, the immediate supervisor will communicate the test results, in writing, to the covered employee.

1. Procedures for negative test results:

1. If the test results do not indicate alcohol misuse or controlled substance use, the covered employee may continue performing safety-sensitive functions as scheduled.
2. If the test results do not indicate alcohol misuse or controlled substance use, the applicant for a position requiring a CDL will continue to be considered for the position.

2. Procedures for positive test results:

1. If the test results indicate alcohol use or controlled substance use, the employee will be referred to a substance abuse professional (SAP) for assistance (49 CFR 382.605) and may be subject to appropriate discipline under university policies (see Staff Personnel Policy and Procedures Section

PER-5.01, PER-1.15, and Drug Free Schools Notice).

2. If the tests indicate alcohol misuse or controlled substance use, the applicant will not be considered for employment in the CDL required position (see Staff Personnel Policy and Procedures Section PER-5.01, PER-1.15, and Drug Free Schools Notice).

3. Confidentiality

All test results shall be recorded and communicated in a confidential manner. The Medical Review Officer (MRO) will discuss a test result indicating controlled substance use with the affected covered employee to ascertain whether the covered employee/applicant is taking prescription drugs. A test of the split urine sample will be conducted as appropriate under the Omnibus Transportation Employee Testing Act of 1991. It should be noted that the use of prescription drugs which may affect one's ability to perform a safety-sensitive function is a violation of federal law.

4. Retention of Test Results

Negative test results shall remain on file for a minimum period of one (1) year with the approved medical testing facility, with which the university has a contract to provide testing and record keeping. All records relating to the collection process will be kept on file with the approved medical testing for a minimum of two (2) years. Records on training shall be kept by the Affirmative Action/Employee Relations Office for a minimum of two (2) years.

Records of any alcohol test results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, equipment calibration documentation, and documentation of employee evaluations and referrals shall be retained for a minimum period of five (5) years by the approved medical testing facility.

Records of covered employee verified "positive" controlled substance test results, documentation of refusals to take a required controlled substance test, and documentation of employee evaluations and referrals shall be retained for a minimum period of five (5) years by the approved medical testing facility.

Alcohol Violations

For alcohol violations, the federal law 49 CFR 383.51(c) mandates the following minimum sanctions: (49 CFR 382.201, 382.204, 382.205, 382.207 382.301, 382.605).

1. A covered employee with an alcohol concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform safety-sensitive functions until the next scheduled duty period, but not less than twenty four (24) hours following administration of the initial test. However, federal law states such employee shall be prohibited from driving for a period of one (1) year following an alcohol test indicating an alcohol concentration of 0.02 or greater when the covered employee has been involved in a fatal accident.
2. A covered employee with an alcohol concentration of 0.04 or greater shall not drive a commercial motor vehicle for a period of sixty (60) consecutive days.
3. A covered employee who, during any three-year period, is found (as a result of alcohol testing conducted by the university in conformity with federal alcohol testing requirements or a federal, state, or local government official) to have an alcohol concentration of 0.04 or greater in two separate incidents may not drive for a period of 60 consecutive days.
4. A covered employee who, during any three (3) year period, is found (as a result of alcohol testing conducted by the university in conformity with federal alcohol testing requirements or a federal, state, or local government official) to have an alcohol concentration of 0.04 or greater three or more times in separate incidents shall not drive for a period of one hundred twenty (120) consecutive days.
5. In addition to any driving prohibitions, a covered employee who is found through testing (conducted in conformity with the federal rules) to have an alcohol concentration of 0.04 or greater may not perform any safety-sensitive functions until he or she has been evaluated by a substance abuse professional (SAP), completed any rehabilitation required by the substance abuse professional, and tests at less than 0.02 for the presence of alcohol (49 CFR 382.605). * NOTE: the minimum sanctions in this policy and federal law shall not lessen the university's ability to impose greater sanctions, up to and including suspension or termination under Drug Free Workplace and Drug Free Schools Notice.

Controlled Substance Violations

For controlled substances violations, federal law mandates the following minimum sanctions:

1. For any offense, a covered employee shall be referred to a substance abuse professional (SAP) and shall submit a urine specimen that has a "negative" result prior to return to duty.
2. For a second offense with a three (3) year period, a covered employee shall not drive a commercial vehicle for sixty (60) consecutive days.
3. For a third offense or greater within a three (3) year period, a covered employee shall not drive a commercial vehicle for one hundred twenty (120) consecutive days.
4. Any covered employee who refuses to be tested shall not drive a commercial vehicle for a minimum of one (1) year and until he/she has submitted a urine specimen that has a "negative" result. * NOTE: The minimum sanctions in this policy and federal law shall not lessen the university's ability to impose greater sanctions, up to and including suspension or termination under PER-5.01.

Training

Training will be provided to University officials to determine whether or not reasonable suspicion exits to conduct an alcohol and/ or controlled substance test. Individuals shall receive sixty (60) minutes of training on alcohol misuse and an additional sixty (60) minutes of training on controlled substance use. The training will assist them on determining whether reasonable suspicion exists to require an employee to undergo testing. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol and/or controlled substance use (49 CFR 382.603 (a)).

Omnibus Transportation Employee Testing Act of 1991

PER 4.14: Separations

PER 1.15: Drug Free Workplace

Drug-Free Schools Notice

PER 5.01: Discipline

Definitions:

For purpose of this policy, the following definitions will apply:

A. **Alcohol:** The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl or isopropyl alcohol.
B. **Alcohol use (or use alcohol):** Any consumption of any beverage, mixture, or preparation, including any medication, containing alcohol
C. **Alcohol concentration:** The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
D. **Breath Alcohol Technician (BAT):** An individual who instructs an assists in the alcohol testing process and operates an evidential breath testing device (EBTD).
E. **CFR:** Code of Federal Regulations. Title 49 Code of Federal Regulations Parts 40, 325, 382, 383, 385, 386, 387, 390-397, 399, pertain to the U.S. Department of Transportation Federal Highway Administration (April 1995).
F. **Collection site:** A place designated by the university where employees/applicants present themselves for the purpose of providing a specimen provided by those employees/applicants.
G. **Commercial vehicles** or **CMV** include any of the following:
    1. CLASS A: Any combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 or more pounds provided the vehicle being towed is in excess.
    2. CLASS B: Any single motor vehicle with a GVWR of 26,001 or more pounds or any vehicle towing a vehicle less than 10,000 pounds GVWR.
    3. CLASS C: Any vehicle with a GVWR of less than 26,001 pounds that is either a) transporting hazardous materials for which placarding is required, or b) designed to transport sixteen (16) or more passengers including the driver.
H. **Confirmation test:** For alcohol testing means a second test, following a screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration. For controlled substance testing means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

I. **Controlled substance:** Marijuana, cocaine, opiates, amphetamines and phencyclidine.
J. **Covered employee:** Any University of Louisville employee who performs a safety sensitive function(s), requiring a commercial driver's license (CDL). This includes, but is not limited to: full-time, regularly employed drivers, casual, intermittent, temporary, part-time, or occasional drivers. These function(s) may constitute part or all of the job duties in the operation of a university owned, leased, or borrowed commercial motor vehicle. The term includes an applicant for employment. Covered employees are university employees (including mechanics who may test drive a repaired vehicle) who operate a commercial vehicle (see definition of commercial vehicles) owned or leased by the university.
K. **Driver time:** All time spent at the driving controls of a CMB in operation.
L. **EBTD or evidential breath testing device:** An EBTD approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List" (CPL) of Evidential Breath Measurement Devices" and identified on the CPL as conforming with the model specifications available from the NHTSA and Office of Alcohol and State Programs (49 CFR 40.3).
M. **Medical Review Officer (MRO):** A licensed physician (medical doctor or doctor of osteopathy) who is responsible for receiving laboratory results generated by the university's alcohol and controlled substance testing program, who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate a covered employee's medical history and any other relevant biomedical information.
N. **Omnibus Transportation Employee Testing Act of 1991:** Implemented on February 15, 1994. Every college and university will be required to conduct pre-employment, reasonable suspicion, random, and post-accident alcohol and controlled substances testing of each applicant for employment or employee who is required to obtain a CDL.
O. **Performing (a safety-sensitive function):** A covered employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.
P. **Safety-sensitive function:**
    1. All time the covered employee is inspecting equipment as required by U.S. DOT regulations or otherwise inspecting, servicing, or conditioning any

CMV at any time.
2. All driving time as defined in the term driving time in this policy.
3. All time a covered employee is loading or unloading or supervisor or assisting in the loading or unloading of a CMV, attending a CMV being loaded or unloaded, remaining in readiness to operate the CMV, or in giving or receiving receipts for shipments loaded or unloaded.
4. All time spent by a covered employee performing the driver requirements of U.S. DOT regulations relating to accidents.
5. All time spent by a covered employee repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.

Q. **Screening test (or initial):** In controlled substance testing, is an immunoassay screen to eliminate "negative" urine specimens from further analysis. In alcohol testing, an analytic procedure to determine whether a covered employee may have prohibited concentration of alcohol in a breath specimen.

R. **Substance Abuse Professional:** A licensed physician or licensed or certified psychiatrist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselor Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance-related disorders.

1. CLASS A: Any combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 or more pounds provided the vehicle being towed is in excess.
2. CLASS B: Any single motor vehicle with a GVWR of 26,001 or more pounds or any vehicle towing a vehicle less than 10,000 pounds GVWR.
3. CLASS C: Any vehicle with a GVWR of less than 26,001 pounds that is either a) transporting hazardous materials for which placarding is required, or b) designed to transport sixteen (16) or more passengers including the driver.

1. All time the covered employee is inspecting equipment as required by U.S. DOT regulations or otherwise inspecting, servicing, or conditioning any CMV at any time.
2. All driving time as defined in the term driving time in this policy.
3. All time a covered employee is loading or unloading or supervisor or assisting in the loading or unloading of a CMV, attending a CMV being loaded or unloaded,

remaining in readiness to operate the CMV, or in giving or receiving receipts for shipments loaded or unloaded.
4. All time spent by a covered employee performing the driver requirements of U.S. DOT regulations relating to accidents.
5. All time spent by a covered employee repairing, obtaining assistance, or remaining in attendance upon a disabled CMV.

Responsibilities:

Administration of Policy

Administration of this policy is the responsibility of the Vice President for Human Resources and the department with covered employees. Department heads are responsible for ensuring that the creation of any position or the addition of responsibilities requiring a commercial driver's license (CDL) is communicated to the Vice President for Human Resources.