

When Are Employee “Stand-Downs” Allowed?

by Pat Weaver and Tim Harris

DOT clarifies policy for removing drug-tested employees from the job

Several new provisions were introduced in the U.S. Department of Transportation (DOT) revised drug and alcohol testing rule (49 CFR Part 40) published on December 19, 2000. A provision introducing waivers for “stand-downs” has created confusion and misunderstanding within the transit industry.

The term “stand-down” refers to an employer practice of temporarily


explains that “standing-down” the employee is premature if done before the MRO verification process is complete. It could be considered to undercut the rationale for the MRO review and has the potential to compromise confidentiality. It may result in unfair stigmatization of the employee as a drug user.

Recognizing, however, that some employers advocate stand-downs as a means to enhance safety and reduce

Some of the confusion about this issue has resulted from policies that require employees to be removed from service pending drug and alcohol test results following accidents and reasonable suspicion determinations. This practice is not considered a stand-down under the DOT rule, as the “incident” was the reason for the person being removed from duty, not the laboratory test result. In this case, the employer has no knowledge of the drug test result, only that a drug test was required.

Similarly, employers have been confused by how the stand-down prohibition relates to the practice of removing employees from duty following a non-negative test result (i.e., positive, adulterated, substituted) while awaiting the split specimen test result. Once the MRO has completed the review process and verified a test as positive/non-negative, the employer is required to immediately remove the employee from safety-sensitive duties. The employee’s removal cannot be delayed while awaiting the split specimen result. This is not a stand-down as defined in the DOT rule because the laboratory test result is already verified by the MRO before the employer is notified of the test result.

Under the DOT rule, a stand-down is narrowly defined and specifically associated with the notification of the employer of a positive laboratory test result without MRO verification. This provision does not affect employer policies that require the removal of employees from safety-sensitive duties for any other reason not addressed in the regulation.



Stand-downs have been prohibited under the DOT regulations, but the new rule includes a mechanism for employers, on a case-by-case basis, to seek waivers if certain conditions are met.

removing an employee from the performance of safety-sensitive duties upon learning that the individual had a confirmed laboratory positive drug test, but before the MRO has completed the verification process.

Stand-downs have always been prohibited under the DOT regulations and continue to be so under the new rules. MROs are not permitted to inform employers of a laboratory positive test until the MRO has determined if there is a legitimate medical explanation for the test result and verified the test as either positive or negative.

The preamble to the rule

liability, the new rule (Section 40.21) includes a mechanism for employers, on a case-by-case basis, to seek waivers if certain conditions are met. Specifically, the employer must have a well-founded stand-down plan that effectively protects the interests of the employees, including confidentiality. The plan must be based on a sound factual basis that represents a genuine and plausible safety concern. The

FTA anticipates that few transit employers will be able to meet the stringent requirements delineated in the waiver request process and will not seek to make a policy or procedural change.