



Kansas RTAP Fact Sheet

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What is “Reasonable Suspicion?”

Before you jump to conclusions about suspected staff drug or alcohol abuse, make sure your suspicion is well-grounded.

by Tim Harris and Ira Allen

How comfortable are you in making the call to send an employee for a drug or alcohol test? Drug and alcohol testing requirements of the Federal Transit Administration may require a lot of attention to detail, but, for the most part, they are extremely clear about when drivers or people in other safety-sensitive positions should be tested. When you are contacted by the drug and alcohol testing administrator to send an employee for a random test, you send him or her. If one of your vehicles is in an incident in which someone is injured, you send the driver for a test.

But what about reasonable suspicion testing? Do you know what to look for? Do you know how to be equitable and document information properly so that you reduce the chances that you’ll be charged with trying to “get” someone? What exactly is *reasonable* suspicion? Tim Harris of the Mental Health Consortium, Inc., the Kansas rural transit drug and alcohol testing administrator, provides some valuable guidance.

FTA regulations require a safety-sensitive employee to submit to a test when the employer has reasonable

suspicion that the employee has used a prohibited drug or has misused alcohol, as defined by the regulations.

Requesting an employee to undergo a reasonable suspicion test must be based on *“specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odor of the safety-sensitive employee.”* In this context, contemporaneous means that a request for an employee undergo reasonable suspicion testing must occur close to the time the supervisor makes the observations delineated above.

If a supervisor (trained to identify the signs and symptoms of drug and alcohol use) reasonably concludes that objective facts may indicate drug use or alcohol misuse, this is sufficient justification for testing.

A supervisor who will be called upon to make a reasonable suspicion determination must be trained in the facts, circumstances, physical evidence, physical signs and symptoms, or patterns of performance and/or behavior that are associated with use, misuse, and abuse. Supervisors must be also trained in the proper procedures for confronting and referring the employee for testing.

This training includes at least 60 minutes covering the signs and symptoms of drug abuse, and an

additional 60 minutes of training on signs and symptoms of alcohol misuse. One item that should be covered in supervisor training is the documentation process for drug and alcohol testing. This documentation is important for a number of reasons.

Proper documentation:

- outlines a pattern of performance;
- assists in making a fair, impartial assessment;
- helps the employee recognize the problem;
- allows rapid action to be taken;
- protects the supervisor.

Guidelines for documentation include:

- maintain an employee working file;
- record all noteworthy incidents/ behavior;
- be timely in documentation;
- be specific about types of incidents/ occurrences, dates times, places and others involved;
- keep notes legible and chronologically organized;
- don’t record incidents occurring off the job;
- don’t record gossip or hearsay;
- maintain confidentiality.

Because “reasonable” is a subjective term, supervisors must properly document their suspicion. This protects

both the supervisor and the agency in the case of litigation by a disgruntled employee. Objective facts substantiating a supervisor's reasonable suspicion can be classified as either short-term or long-term indicators.

Short-term indicators include:

- poor physical coordination/slow reactions or slurred speech;
- the odor of marijuana/methamphetamine/crack cocaine smoke in the area;
- hand tremors or unsteady walking;
- dilated or constricted pupils;
- disorientation/unusual restlessness;
- combative behavior, loud arguing or fighting;
- the presence of drug paraphernalia and or observing the employee ingest, inject, smoke, or inhale (snort) a prohibited substance.

Long-term indicators include:

- work performance problems, including deterioration in quantity and/or quality of the employee's work;
- problems with attendance such as tardiness and increasing absenteeism;
- increased accidents and injuries;
- poor judgment and difficulty in concentration;
- negligence in personal hygiene or pale or sickly complexion;
- social withdrawal, including isolation, overreaction to criticism, and lack of eye contact;
- emotional changes such as noticeable signs of anxiety or depression, paranoia, or excessive laughing.

It is not the supervisor's job play the heavy or to make the employee understand all the ramifications of their actions.

Clinical diagnosis of an alcohol or drug problem is not the responsibility of supervisors, but they are responsible for assessing and regulating work performance. When an employee's performance begins to deteriorate for whatever reason, the supervisor has the right and responsibility to intervene. The supervisor needs not be an expert on alcohol and drugs to intervene appropriately if substance abuse is suspected; the intervention should be

focused on the employee's performance problem.

Reasonable suspicion testing is not a full-scale addiction intervention. It is not the supervisor's job to make the employee understand all the ramifications of their actions. It is not the supervisor's job to be the bad guy or to play the heavy. However, it is important to remember that drug and alcohol use in the workplace, especially by employees performing safety

Tips for "Being Reasonable"

To appropriately perform this function of their job, supervisors should:

- *Be attentive.* Be ready to recognize employee problems (e.g., accidents, frequent lateness, mood swings) that may or may not be related to alcohol or other drug abuse.
- *Observe.* Focus on specific aspects of job performance.
- *Document.* Keep an ongoing record of the employee's performance.
- *Focus on job performance.* Avoid judging, diagnosing, or counseling the employee.
- *Be thoughtful.* Stay nonjudgmental and recognize the employee's point of view.
- *Be straightforward.* Stick to the facts of job performance; don't get sidetracked.
- *Be consistent.* Follow the same procedures for all employees.
- *Maintain confidentiality.* Discuss employee problems in private and keep the discussion between the two of you.
- *Refer.* Encourage troubled employees to seek help from the resources available in the workplace or the employee assistance program.
- *Follow up.* Continue to assess employee job performance over a period of time.

testing. But remember, if you are suspicious of an employee, it is also your duty to be reasonable.

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