

NORTH RISK PARTNERS | **PATRON DOT Compliance**

**THE FEDERAL DRUG & ALCOHOL PROGRAM:
ENSURING A COMPLIANT AND SAFE
WORKPLACE**

NOVEMBER 2025

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PRESENTER

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Patron

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LOGISTICS

- ? Ask questions via the Questions box
- 📄 Two-question survey at the end
- 📹 Webinar is recorded


Follow-up email sent tomorrow with link to slides & recording!



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AGENDA

- Part 382 Drug & Alcohol Regulations
- Employer / Motor Carrier Responsibilities
- Who is Required to Comply with Sec. 382
- Selecting a Designated Employer Representative (D.E.R.)
- Required Trainings (Reasonable Suspicion Training)
- Types of Testing Required
- Positives and Refusals
- Return to Duty and Follow-up Program
- Federal Drug & Alcohol Clearinghouse Program
- Record Keeping
- CBD Derived Product Consumption Advisory



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STRUCTURE OF PART 382

Subpart A - General
 This part applies to service agents and to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State and are subject to:

- (1) The commercial driver's license requirements of [part 383 of this subchapter](#);
- (2) An employer who employs himself/herself as a driver must comply with both the requirements in this part that apply to employers and the requirements in this part that apply to drivers. An employer who employs only himself/herself as a driver shall implement a random alcohol and controlled substances testing program of two or more covered employees in the random testing selection pool.

Purpose (§382.101)

- ✓ Establishes programs to prevent accidents caused by alcohol or controlled substance misuse.
- ✓ Ensures safety for commercial motor vehicle (CMV) operations.
- ✓ Works in conjunction with 49 CFR Part 40 (testing procedures).






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APPLICABILITY (§382.103)

- Applies to employers and drivers operating CMVs requiring a CDL.
 - > **Weight:** Has a gross vehicle weight rating (GVWR) of 26,001 pounds or more.
 - > **Passenger capacity:** Is designed to transport more than 15 passengers (including the driver).
 - > **Hazardous materials:** Transports hazardous materials in quantities that require the vehicle to be placarded.
 - > **Interstate commerce:** Uses public highways in interstate commerce to transport property or passengers.
- Includes interstate and most intrastate operations.
- Exceptions include:
 - ✓ Drivers not required to hold a CDL.
 - ✓ Military, fire, and emergency vehicles.
 - ✓ Certain farm vehicle operations.

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RELATIONSHIP TO OTHER LAWS (§382.105)

- Must be used with 49 CFR Part 40.
- Does not override state/local laws unless in direct conflict.
- Employers may establish stricter substance testing policies.

If you as the employer, or your insurer wish to establish a zero-tolerance policy for your entire workplace - ensure that it aligns with your state's drug and alcohol testing laws and that all terms and conditions are clearly laid out within the contents of your written policy. Acknowledgement/receipt of policy must be signed and dated by all employees subject to the policy.

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KEY DEFINITIONS (§382.107)

- Actual Knowledge: Employer's verified observation or report of substance use.
- Alcohol concentration: 0.04 or higher is prohibited.
- Controlled substances: Marijuana, cocaine, opioids, amphetamines, PCP.
- Safety-sensitive functions: Driving, waiting to be dispatched, loading, unloading, inspecting, etc.

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EMPLOYER RESPONSIBILITIES

USEFUL REFERENCE

- Employers must implement and enforce a compliant testing program.
- Must ensure only fully qualified drivers perform safety-sensitive duties.
- Responsible for compliance of all service agents and third parties.
 - With the contracting of a C-TPA (Consortium Manager), it remains your responsibility to ensure compliance with your program. Do not assume that the C-TPA will be fulfilling your obligation to do so. They are there to assist you in managing your recordkeeping and in some cases, advise you on training, procedural and regulatory guidance.

Learn more about best practices by downloading the ODAPC's brochure at: [Best Practices for DOT Random Drug and Alcohol Testing](#)

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EMPLOYER RESPONSIBILITIES & COMPLIANCE

- **Keep policies, training, random pools, and records up to date.**
 - It's crucial to the success of your program that awareness and organization are a constant practice. Don't let complacency affect your compliance. Stay on top of it.
- **Maintain a clear written policy.**
 - As forementioned, your policy must include all regulatory required language. Any terms and conditions that are above and beyond should be clearly and concisely laid out and not conflict with those required by Federal or State statute.
- **Train supervisors & educate drivers.**
 - There are solutions and training courses available to you and your drivers. For motor carriers especially, it's required that there are certain supervisory positioned staff that have certification for recognition and awareness of controlled substance and alcohol use. Drivers and other safety-sensitive function employees require education as well. For all organizations - knowledge is power and will help your program run smoothly.
- **Keep all records organized.**
 - This is something that will cause a lot of problems if not practiced regularly. With the digitalization that's available now, recordkeeping has become easier and is mandatory.


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COMPONENTS OF A DOT FMCSA DRUG AND ALCOHOL POLICY


Make this information available to your drivers



Identify the DER



The categories of drivers subject to the requirements



The safety-sensitive functions of the drivers



Prohibited conduct



The circumstances when a drug and alcohol test is required



The procedures used for drug and alcohol testing



The requirements that a driver must submit to a drug and alcohol test


An explanation of a refusal to test and its consequences



Consequences for violations


Consequences for alcohol concentration from 0.02 to 0.039


The requirement that personal info will be reported to the Clearinghouse


Information about the effects of substance abuse in the workplace and access to EAP info

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2. SUBPART B – PROHIBITIONS

- **Alcohol Concentration:** No driver shall report for duty with an alcohol concentration of 0.04 or greater.
- **On Duty Use:** A driver cannot use alcohol while performing safety-sensitive functions.
- **Pre-duty Use:** A driver cannot perform safety-sensitive functions within four hours after consuming alcohol.
- **Post-Accident Use:** A driver cannot consume alcohol or eight hours following an accident or until a post-accident test is completed - (any alcohol screening done at the accident scene by law enforcement does not satisfy the Post-Accident testing requirement).
- **Controlled Substances:** A driver is prohibited from using controlled substances.

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ADDITIONAL POST - ACCIDENT RESTRICTIONS & CRITERIA

Department of Transportation (DOT) regulated accidents:

- **Drug testing:** Within 32 hours of the accident.
- **Alcohol testing:** Within 8 hours of the accident.
- **When testing is required:** These time frames apply if the accident involved a commercial motor vehicle and resulted in a fatality, a disabling injury to a person requiring medical treatment away from the scene, or a vehicle being towed from the scene.

General industry (OSHA) accidents:

- **When testing is allowed:** An employer may conduct a drug test if they believe that the employee's drug use could have reasonably caused the accident.
- **What is prohibited:** OSHA prohibits blanket post-accident testing policies and testing solely to avoid paying workers' compensation claims, as these can deter employees from reporting injuries.
- **Employer discretion:** The employer can test the individual at their discretion, but the test must be conducted in a way that does not punish employees for reporting injuries or that is not discriminatory.

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DECISION TREE VISUAL

FMCSA Post-accident Drug and Alcohol Testing Criteria

- Fatality**
Anyone involved
- Bodily injury**
Requiring medical treatment
- Disabling damage**
Requiring a tow

Citation issued?

YES

Drug & Alcohol Test Required

NO

Testing Not Required

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POST-ACCIDENT TESTS

There are time limits for post-accident alcohol tests.

If a test is not administered within **2 hours** following the accident, prepare and maintain on file a record stating the reasons the test was not promptly administered.

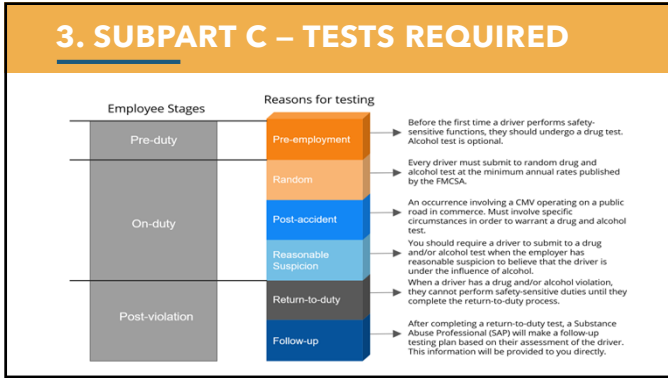
If a test is not administered within **8 hours** following the accident, cease attempts to administer an alcohol test and prepare and maintain the same record.

There's also a time limit for post-accident drug tests.

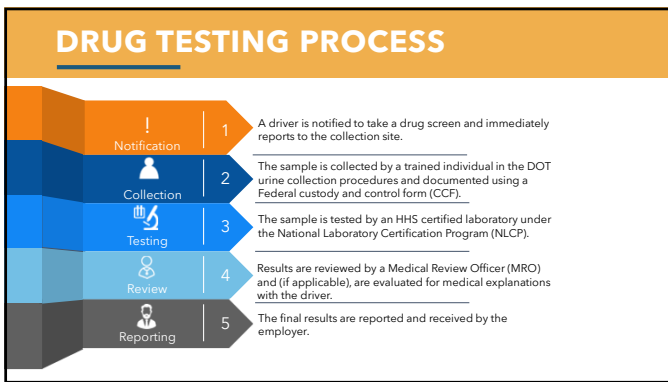
If a test is not administered within **32 hours** following the accident then stop your attempts to administer a drug test. Prepare a record stating the reasons the test was not promptly administered.

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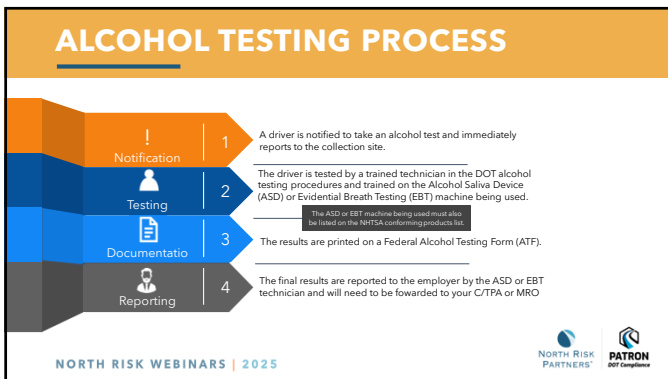
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4. SUBPART D – TEST RESULTS & RECORDS

Notification: Employers must notify drivers of pre-employment, random, reasonable suspicion, and post-accident test results if they are verified positive as soon as possible once results are posted or are receive actual knowledge of the positive result via email notification.

Positive results: Employers must inform the driver of which substance was verified positive. Employers must also make reasonable efforts to notify the driver to contact a Medical Review Officer (MRO) for a positive controlled substance test. (24 hour Start Clock)

Negative results: For Pre-employment, Return to Duty and Reasonable Suspicion testing, employers must not allow a driver to operate a commercial motor vehicle prior to receiving a verified negative result.

Employer/Employee notifications: Employers must notify drivers of pre-employment, random, reasonable suspicion, and post-accident test results if they are verified positive.

Documentation: Employers must document the reason if a required post-accident test was not conducted within the required time limits, (32 hours for drugs 8 hours for alcohol).

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RECORD RETENTION SCHEDULE

Maintain records according to this schedule

ONE YEAR	TWO YEARS	FIVE YEARS	INDEFINITE
Records of negative and canceled controlled substances test results and alcohol test results with a concentration of less than 0.02.	Records related to the alcohol and controlled substances collection process (except calibration of evidential breath testing devices).	Records of driver alcohol test results indicating an alcohol concentration of 0.02 or greater Records of driver verified positive controlled substances test results Documentation of refusals to take required alcohol and/or controlled substances tests Driver evaluation and referrals, Calibration documentation	Records related to the education and training of breath alcohol technicians, screening test technicians, supervisors, and drivers shall be maintained by the employer while the individual performs the functions which require the training and for two years after ceasing to perform those functions.
	Records related to the administration of the alcohol and controlled substances testing program, including records of all driver violations A copy of each annual calendar year DOTMIS report.		

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WHAT ARE DOT/MIS REPORTS?

Management Information Summary (MIS) - A summary of the results of your alcohol and controlled substances testing programs.

If you're notified, during the month of January, of a request by the FMCSA to report the employer's annual calendar year MIS, prepare and submit the report to the FMCSA by March 15 of that year.

! A service agent or C/TPA can prepare this for you.

To submit your DOT MIS forms electronically, go to:

<https://damis.dot.gov/Login/Login.asp>

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WHAT IF I HAVE MORE THAN ONE COVERED EMPLOYEE?

If you have a covered employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for the same employer), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs **more than 50%** of his or her duties.

! You may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

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5. SUBPART E – CONSEQUENCES FOR VIOLATIONS

Whether the employee who violates your drug and alcohol program's policy is Federally regulated or subject to your own company policy – there must be corrective action taken and consequences following any violation. These should be clearly and concisely laid out in the contents of your written policy.

Consequences for Employees subject to 49 CFR Part 40 (Part 40):

Immediate Removal from Safety-Sensitive Functions: An employee who refuses to complete any required testing, excluding the pre-employment screening, tests positive for drugs or has an alcohol concentration of 0.04 or greater, must be immediately removed from performing safety-sensitive duties.

Return-to-Duty Process: The employee cannot return to safety-sensitive duties until they have successfully completed the return-to-duty (RTD) process. This involves an evaluation by a DOT-qualified Substance Abuse Professional (SAP), potential treatment or education, follow-up testing, and a negative RTD test result.

Refusal to Test: Refusing a drug or alcohol test is treated the same as a positive result and incurs the same consequences.

Agency-Specific Penalties: Specific DOT agencies may impose additional penalties. For example, an FAA certificate holder may have their certificate revoked, or a railroad employee who refuses a test may be prohibited from performing regulated service at any railroad for a minimum of nine months.

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5. SUBPART E -CONSEQUENCES FOR VIOLATIONS CONT'D

Consequences for Employers:

Hefty Fines: Employers can face substantial civil penalties, with fines ranging from hundreds to tens of thousands of dollars per violation, and sometimes exceeding \$100,000, depending on the severity and frequency of the non-compliance and if hazardous materials are involved.

Suspension or Revocation of Operating Authority: In severe cases or for repeated violations, a company's operating authority may be suspended or revoked by the governing DOT agency (e.g., FMCSA), which can effectively halt operations.

Public Interest Exclusions (PIE): The Department of Transportation can issue a PIE, preventing employers from using the services of a non-compliant service agent (e.g., lab, MRO, C/TPA).

Criminal Penalties: In cases of willful disregard for regulations, employers may face criminal charges and penalties.

Legal Liabilities and Reputational Damage: Non-compliant companies can face significant legal liabilities and severe damage to their reputation, especially if a violation is linked to an accident.

Recordkeeping and Program Deficiencies: Penalties can be issued for various deficiencies, such as failing to implement a testing program, not maintaining proper records, or allowing an employee to perform safety-sensitive functions without a required test.

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6. SUBPART F – TRAINING & REFERRAL

Requirements for training land in several areas of your compliance as it relates to drug and alcohol testing. A C-TPA can often provide you with the necessary courses and training materials as an additional service.

1. DER (Designated Employer Representative)

An employee that **takes action** to remove an employee from safety-sensitive duties and to make decisions in the facilitation of testing and evaluation processes. They also **receive test results** and other communications from the C-TPA and other entities involved with the testing and evaluation process (LAB, MRO, SAP) on behalf of the employer.

2. Supervisor Training for Reasonable Suspicion Determination

Anyone who is in direct contact with employees/drivers that are subject to drug and alcohol testing should be certified with the completion of training course that covers recognition and awareness of someone under the influence of controlled substances and alcohol. The course must consist of a minimum of 1 hour covering controlled substance use and 1 hour covering alcohol use. There should be multiple people with this certification as needed to covering all locations as well as an personnel with the training, but who is subject to the testing themselves.

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6. SUBPART F – TRAINING & REFERRAL CONT'D

- When a safety-sensitive functioning employee violates your drug and alcohol testing program or policy, it may be necessary to refer them to an EAP (employee assistance program) or for the DOT regulated employee, it becomes a requirement to refer them to a SAP (substance abuse professional).
- This should be done directly and confidentially with that employee within 48 hours of receipt of a positive test or if the employee is On Duty at the time you become aware of the violation, that employee must be immediately removed from any safety sensitive function until their status in the Clearinghouse has once again been restored to "Driver Not Prohibited".
- The Driver Not Prohibited status can only be achieved once the involved SAP has reported the employee's completion of their initial evaluation, educational requirements, and the employer or C-TPA has reported the Negative results from the Return to Duty Testing into the FMCSA Clearinghouse. The presence of the "Driver Not Prohibited" status must be verified by conducting a FULL Query.

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7. SUBPART G – CLEARINGHOUSE IMPLEMENTATION

- Basically, the Clearinghouse has been involved in your recordkeeping process since its implementation on January 6th, 2020. For all driver applicants who would be operating equipment that requires a CDL, you must receive a negative pre-employment drug test results as well as obtain their record from the FMCSA Clearinghouse that shows them as Driver Not Prohibited prior to placing them into service.
- Annually, you must conduct queries into the Clearinghouse for every commercially licensed driver you employ whether they are currently operating or would be considered an emergency or intermittent driver for any of your CMVs that would require a CDL to drive out on public roadways.
- Once a query has been conducted for a driver through your account, the Clearinghouse will notify the account administrator, typically via email of any change in status or reporting being submitted for that driver.

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REFUSAL TO TEST

For each report of a **refusal to test**, the employer must report the following information:

1. Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was designated as a service agent for an employer who employs himself/herself as a driver when the reported refusal occurred (if applicable); and
2. Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported.

We will provide usable copy of the document involved with your obligation to issue a SAP Referral to an employee or applicant who refuses any required testing or produces a positive result on any required drug and alcohol testing. We'll refer to it as the SAP REFERRAL ACKNOWLEDGEMENT FORM.

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PREVIOUS EMPLOYER INQUIRIES

What are **previous employer inquiries**?

- For new applicants, employers must request alcohol and drug test history from previous employers.
- The employer must request information from all DOT-regulated employers that employed the driver within the previous 3 years and the scope of the information requested must date back 3 years.

! As of January 6, 2020, employers must use the Drug and Alcohol Clearinghouse to comply with the requirements above. Exception: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the employee's follow-up testing plan directly from the previous employer.

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ANNUAL QUERIES

- If the limited query shows that **information exists** in the Clearinghouse about the individual driver, the employer must conduct a **full query within 24 hours**.
- If not within 24 hours, the driver can't perform any safety-sensitive function until the employer conducts the full query and the results confirm that the driver's Clearinghouse record contains no prohibitions.
- If any information is entered into the Clearinghouse about a driver during the 30-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify you.

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8. SUBPART H – CBD DERIVATIVES ADVISORY: THINGS TO BE AWARE OF

Due to the 2018 Farm Bill that legalized the sale of hemp/hemp derivatives with the expectation that the finished product contained no more than 0.3% delta-9 THC by dry weight. These products such as oils, edibles, tinctures, topical creams, beverages and electronic vaporizing apparatuses.

- **Full-spectrum CBD:** This type of product contains all the naturally occurring compounds of the hemp plant, including a trace amount of THC that is below the 0.3% legal limit. This is believed to offer an "entourage effect," where all compounds work together for enhanced benefits.
- **Broad-spectrum CBD:** For those who wish to avoid THC completely, broad-spectrum products include other beneficial hemp compounds but have the THC specially removed.
- **CBD isolate:** This is a pure CBD product that contains no other cannabinoids, terpenes, or THC.

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8. SUBPART H – CBD DERIVATIVES ADVISORY: THINGS TO BE AWARE OF (CONT'D)

While Federally, you only need to be 21 years of age to purchase these products and legal to possess - your state may not permit either. Please remember these other factors to consider when making the decision to consume these types of products. Others, including the manufacturer's packaging will tell you that the likelihood of it showing up on a drug test is minimal. In truth, it's very dependent on how much and how often it's consumed.

- **Check state laws:** While federally legal, some states have their own restrictions on the sale or possession of CBD products
- **Potential for drug test issues:** Consuming full-spectrum CBD products with trace amounts of THC can potentially cause a positive drug test, especially with frequent use, as THC can accumulate in the body. If you have to take drug tests for employment, you may want to opt for broad-spectrum or isolate products.
- **Verify lab results:** Due to inconsistencies in manufacturing and labeling, it is important to buy from a reputable company that provides a Certificate of Analysis (COA) for their products. This confirms the THC content is below the legal limit.

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8. SUBPART H – CBD DERIVATIVES ADVISORY: THINGS TO BE AWARE OF (CONT'D)

The availability of these types of products has never been greater. The most prominent would be the smoke-shop - in states where recreational Cannabis has not legalized yet. There are shops that are strictly selling CBD/Delta-9 as well as tobacco products. They appear in many specialty Non-alcoholic beverages sold along side beer & seltzers.

- **Online stores:** Many companies sell CBD products directly through their websites. Shopping online allows you to compare products and review lab results before purchasing.
- **Specialty shops and dispensaries:** Local CBD and hemp stores are available in many areas.
- **Major retail chains:** Stores like Walgreens and CVS have offered CBD topicals in select states since 2019.

If you hold a CDL, you should consider abstaining from use of all CBD products that claim to have less than the .03% or less THC concentration, as it may compound in your system and result in a positive drug screen result.

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SERVICES THROUGH PATRON



DRUG & ALCOHOL CONSORTIUM ADMINISTRATION (C/TPA)

We offer federally regulated or Non-DOT consortiums & stand alone pools. You'll enjoy an extensive collection site network & MRO services. Go paperless with your drug and alcohol test orders!



DRUG-FREE SAFE WORKPLACE PROGRAMS

Patron (formerly Admin 2000, Inc.) is a recognized, well-documented, Drug-Free Workplace and Safe Workplace C/TPA. The staff at Patron will show you how to beat the high cost of worker's Compensation insurance with our Employer Services and Risk Management programs.



REASONABLE SUSPICION SUPERVISOR TRAINING

Certify your in-house Designated Employer Representative (DER) to identify, conduct, and understand when to administer reasonable suspicion drug & alcohol testing. This includes coordinating the quarterly random drug & alcohol tests with the selected drivers.

DOT-FMCSA DESIGNATED EMPLOYER REPRESENTATIVE (DER)

- Comprehensive scenario-based learning on DOT (FMCSA) drug testing compliance
- Course Length: 40 minutes
- Audience: HR, Safety & Risk Management Professionals


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QUESTIONS?

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UPCOMING WEBINARS

Employer Essentials



Watch your inbox for invitations

Thursday, Nov. 20 | 11:00 a.m. to 12:00 p.m.

Cyber Vulnerability Management: Safeguarding Your Organization

Thursday, Dec. 4 | 11:00 a.m. to 12:00 p.m.

Buy-Sell Planning: Protecting Your Business from Unexpected Risks

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