

FMCSA Drug and Alcohol Clearinghouse Rule Deadline – Employers of DOT regulated employees have you registered yet?

Labor & Employment Law Update

on December 20, 2019

While the Federal Motor Carrier Safety Administration's (FMCSA) Clearinghouse Rule became effective on January 4, 2017, it has been a while so here is a reminder that the Rule goes into effect on **January 6, 2020**, just over a week away.

Despite delays, be assured the Clearinghouse website is now allowing employers to register. So before you open that first present or have an eggnog in your favorite moose mug to enjoy the holidays, make sure you are registered and understand the new requirements. While the Clearinghouse's FAQ's are extremely helpful in providing information, here is a quick refresher.

The FMCSA amended its regulations to establish a database that will contain information about violations of DOT/FMCSA drug and alcohol testing programs for holders of CDLs, including test results and test refusals. This database is called the Commercial Driver's License (CDL) Drug and Alcohol Clearinghouse A.K.A. the "Clearinghouse." The purpose behind forming the Clearinghouse and establishing regulations for employers regarding the Clearinghouse is to improve roadway safety by identifying and making readily available information regarding commercial motor vehicle drivers who have committed drug and/or alcohol violations that would render them ineligible to operate a CMV on behalf of a carrier or transportation company.

Under the regulations, *ALL* DOT/FMCSA-regulated employers, Medical Review Officers, Substance Abuse Professionals, consortia/third-party administrators and other service agents are required to report violations of DOT drug and alcohol testing regulations by applicants and employees to the Clearinghouse.

Additionally, the regulations require *ALL* DOT/FMCSA-regulated employers to conduct a query of the Clearinghouse, pursuant to an electronic consent from an applicant, as part of the pre-employment driver investigation process, as well as a query for each current CDL driver employee on an annual basis. Essentially,

instead of mailing, faxing, email or sending a messenger pigeon to prior employers disclosed by an applicant, FMCSA-regulated employers now must conduct a “query” or search of the Clearinghouse to see if the applicant has tested positive for drugs or alcohol in violation of DOT drug and alcohol rules, and if so, if they have completed the required evaluation and treatment before being eligible to operate a CMV again.

Who does this impact? Anyone who is required to conduct DOT drug and alcohol tests for safety sensitive transportation employees, including owner-operators, contractors and volunteers, as well as service agents. Quite simply anyone employing CDL drivers who operate commercial motor vehicles (CMVs) on public roads, including:

- Interstate motor carriers
- Federal, State, and local governments and municipalities
- School Districts and Civic organizations (may include, disabled veteran transport, boy/girl scouts, etc.)
- Faith-based organizations

Remember, “operating” can be as simple as a mechanic test driving a tractor before it goes back into service or a warehouse worker whose job it is to move trucks/trailers around the yard.

When do I have to do a Query? Pre-employment and on an annual basis for all current employees who are required to have a CDL and drive a CMV on a public roadway.

How much is this going to Cost? Generally, queries will cost \$1.25 each, but bundled options and high volume packages are available.

What else do I need to know? In addition to doing queries and reporting positive drug and/or alcohol tests, under § 382.601 of the DOT regulations, employers will have to provide “educational materials that explain the requirements [of the Rule] and the employer’s policies and procedures” to meet the Rule. In other words, either information regarding the Clearinghouse or revised employee policies notifying employees that the following will be reported to the Clearinghouse:

- A verified positive, adulterated, or substituted drug test result
- An alcohol confirmation test with a concentration of 0.04 or higher
- A refusal to submit to a drug or alcohol test
- An employer’s actual knowledge, as defined at 49 CFR § 382.107 regarding:

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- On duty alcohol use pursuant to 49 CFR § 382.205;
- Pre-duty alcohol use pursuant to 49 CFR § 382.207;
- Alcohol use following an accident pursuant to 49 CFR § 382.209; and
- Controlled substance (including Cannabis) pursuant to 49 CFR § 382.213
- A Substance Abuse Professional's report of the successful completion of the return-to-duty process
- A negative return-to-duty test
- An employer's report of completion of follow-up testing

Employers will also need to have drivers sign an acknowledgment that they received copies of the notice or policy amendments and maintain copies of such for their records.

Finally, to ensure compliance the Rule also implements penalties provisions. Specifically, § 382.507 incorporates the penalty provisions in § 521(b)(2)(C) of Title 49 of the Code of Federal Regulations that impose a \$2,500 fine for each offense.

As such, in light of the upcoming deadline, we recommend that employers not only register and start running queries and reporting positive tests after January 6, 2020, but amend their policies and/or provide as noted above in order to be in compliance with the Rule requirements.

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