



Remember Federal Requirements Before Reinstating Drunk Employees to Perform Safety-Sensitive Job Duties

FOCUS: Labor & Employment Corner

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Many municipalities employ drivers to perform safety-sensitive functions. What if one of these drivers arrives at work and appears to be under the influence of alcohol or a controlled substance? What can you do? What should you do?

The first step most employers should and do take is to determine whether cause exists under its established policies or a collective bargaining agreement to require a substance test. If cause exists, then the municipality-employer arranges for the employee to take a substance test. If test results confirm that the driver had an excess amount of alcohol or a controlled substance, the employer then determines the appropriate level of discipline based on its established policies, work rules, and the employee's employment record.

After the employee has served whatever penalty has been imposed, some may wonder if the employer is free to reinstate the employee to his or her prior job. The answer depends. If the job involves safety-sensitive functions, the answer is, "No, not yet." Rather, the employer must ensure compliance with federal regulations.

Under federal regulations, an employee who is found to have an alcohol level of 0.02 or greater but less than 0.04 cannot return to work and perform safety-sensitive functions until the start of the driver's next regularly scheduled duty period – but at least 24 hours after the substance screen.

If the driver is found to have an alcohol level of 0.04 or higher or the presence of a controlled substance (except when the use is pursuant to the instructions of a licensed medical practitioner), the driver must meet additional requirements before being reinstated.

1. The driver must obtain an evaluation from a substance abuse professional (SAP).

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2. After successful compliance with the SAP's evaluation recommendations, the driver must take a return-to-duty test, which cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and treatment. The employee must have a negative drug test result and an alcohol test with an alcohol concentration of less than 0.02.
 3. Only after the employer ensures that these requirements have been met can the driver be allowed to return to his or her prior job and resume performance of safety-sensitive functions.
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