STATE UNIVERSITY OF NEW YORK DOWNSTATE MEDICAL CENTER
POLICY REGARDING THE OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991

I. INTRODUCTION

The Omnibus Transportation Employee Testing Act of 1991 ("OTETA") requires the Federal Aviation Administration ("FAA"), Federal Highway Administration ("FHWA"), Federal Railroad Administration ("FRA"), and the Federal Transit Administration ("FTA") to establish rules requiring alcohol and drug testing programs for employees engaged in safety-sensitive functions in the aviation, motor carrier, rail, and transit industries. The State University of New York ("SUNY") Downstate Medical Center is required to comply with FHWA rules.

The resulting regulations are complex. This policy addresses the legal issues raised by the implementation of the drug and alcohol testing rules, focusing on the FHWA regulatory requirements, as they affect the SUNY Downstate Medical Center.

II. REQUIREMENTS OF FHWA REGULATIONS AND THE SUNY DOWNSTATE MEDICAL CENTER

A. Effective Date: May 24, 1996

B. Covered Employees

All employees who are considered "safety-sensitive" are covered by the Act. A safety-sensitive employee is defined as one who has a commercial driver’s license ("CDL") and operates or may be called upon by the SUNY Downstate Medical Center to operate a commercial motor vehicle ("CMV"). A commercial motor vehicle is one that:

1. weighs over 26,000 pounds; or

2. is designed to carry 16 or more people, including driver; or

3. is used to transport hazardous materials which is required to be placarded.

C. Prohibited Conduct - Alcohol

1a. Covered employees shall not report for duty or remain on duty requiring the performance of safety-sensitive functions while having a blood alcohol concentration (BAC) of .02% or greater.
b. No employer, having actual knowledge that a covered employee has a BAC of .02% or greater, shall permit the covered employee to perform or continue to perform safety sensitive functions.

2a. Covered employees shall not be on duty or operate a commercial motor vehicle while those employees possess alcohol unless the alcohol is manifested, i.e., listed on the invoice of goods being transported, and transported as part of a shipment.

b. No employer, having actual knowledge that a covered employee possesses unmanifested alcohol, may permit that employee to perform or continue to perform safety-sensitive functions.

3a. Covered employees shall not use alcohol while performing safety-sensitive functions.

b. No employer, having actual knowledge that a covered employee is using alcohol while performing safety-sensitive functions, shall permit that employee to perform or continue to perform safety-sensitive functions.

4a. Covered employees shall not perform safety-sensitive functions within four (4) hours after using alcohol.

b. No employer, having actual knowledge that a covered employee has used alcohol within four (4) hours, shall permit that employee to perform or continue to perform safety-sensitive functions.

5a. Any covered employee required to take a post-accident alcohol test shall not use alcohol for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

6a. Covered employees shall not refuse to submit to a required alcohol test. Failure to cooperate fully with the requirements of any alcohol test, including accurate completion of the required documentation, will be treated as a refusal. A refusal is considered to be a positive test.

b. No employer shall permit a covered employee who refuses to submit to a required test to perform or continue to perform safety-sensitive functions.

D. Prohibited Conduct - Drugs

1a. A covered employee shall not report for duty or remain on duty requiring the performance of safety-sensitive functions when using any drug, except when the use is pursuant to the instructions of a physician who has advised the employee that the drug use does not adversely affect his/her ability to safely operate a commercial motor vehicle. A covered employee is required to inform his/her supervisor when using therapeutic drugs as defined in Appendix A that adversely affect his/her ability to perform safety-sensitive functions. Employees should
contact their physician or pharmacist to determine if a drug being used contains any of the substances listed in Appendix A.

b. No employer, having actual knowledge that a covered employee has used a drug, shall permit that employee to perform or continue to perform a safety-sensitive function.

2a. A covered employee shall not report for duty, remain on duty or perform a safety-sensitive function, if that employee tests positive for drugs.

b. No employer, having actual knowledge that a covered employee has tested positive for drugs, shall permit that employee to perform safety-sensitive functions.

3a. A covered employee shall not refuse to submit to a required drug test. Failure to cooperate fully with the requirements of any drug screening test, including accurate completion of the required documentation, will be treated as a refusal. A refusal shall be treated as a positive test.

b. No employer shall permit a covered employee who refuses to submit to a required drug test to perform or continue to perform safety-sensitive functions.

E. Performance of Safety-Sensitive Functions

1. A covered employee is considered to be performing a safety-sensitive function during any period in which he or she is (i) actually performing, (ii) ready to perform, or (iii) immediately available to perform any safety-sensitive functions.

2. Safety-sensitive functions include:

a. All time at an employer's plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the covered employee has been relieved from duty by the employer.

b. All time inspecting equipment or inspecting, servicing, or conditioning any commercial motor vehicle at any time.

c. All driving time (i.e., all time spent at the driving controls of a commercial motor vehicle in operation).
d. All time, other than driving time, in or upon any commercial motor vehicle except
time spent resting in a sleeper berth.

e. All time loading or unloading a commercial motor vehicle, supervising, or assisting
in the loading or unloading, attending a CMV being loaded or unloaded, remaining
in readiness to operate the CMV, or in giving or receiving receipts for shipments
loaded or unloaded.

f. All time required by the covered employee to handle accidents in which that
employee is involved.

g. All time repairing, obtaining assistance, or remaining with a disabled CMV.

F. Defining Alcohol and Drugs

1. Alcohol is defined as the intoxicating agent in beverage alcohol (ethyl alcohol), as
well as methyl and isopropyl alcohol. There is no exception for medicinal alcohol,
(e.g., cough medicine, mouthwash, etc.).

2. Drugs are defined as controlled substances. The following drugs are included in
drug testing:

   Marijuana (THC metabolite)
   Cocaine
   Amphetamines
   Opiates
   Phencyclidine (PCP)

G. Required Tests

1. Pre-employment Testing

a. Before a new covered employee can perform any safety-sensitive function, that
employee must pass a drug test.

b. Exception

    i. A new covered employee may be exempt from this drug test if he or she was
subject to an Omnibus drug testing program within the previous thirty (30)
days, and either:

        • passed all tests within the previous six (6) months,
        -or-
        • participated in a random drug program for the prior twelve (12)
        months (even if not tested).

SUNY Downstate Medical Center will confirm that no prior employer, of whom SUNY
Downstate Medical Center has knowledge, has a record of any violation of the Omnibus
rules within the prior six (6) months. To satisfy this exception, SUNY Downstate Medical
Center must verify information from prior employers.
2. Random Testing
   
a. Percentage of employees to be tested initially:
      a minimum of 25% subject to alcohol testing
      a minimum of 50% subject to drug testing
   
b. The FHWA will alter the alcohol testing percentage by industry in future years based on the reported violation rates.
      Range: 10% to 50%
   
c. The selection of covered employees to be tested is random with each employee having an equal chance to be selected each time. The same covered employee may be tested more than once in a year.
   
d. Alcohol and drug testing is spread throughout the calendar year and is unannounced.
   
e. Alcohol testing must occur immediately before, during, or immediately after, the employee is performing a safety-sensitive function.
   
f. A SUNY Downstate Medical Center vehicle will be provided to employees for transportation to the testing site, if available.
   
g. A SUNY Downstate Medical Center vehicle may not be driven by an employee whose BAC tests at .02% or greater.

3. Reasonable Suspicion Testing
   
a. A covered employee shall undergo an alcohol and/or drug test when the employer has reasonable suspicion to believe that the employee has violated any of the regulatory prohibitions. Possession of alcohol, by itself, is not a sufficient basis to require reasonable suspicion testing.
   
b. A reasonable suspicion must be based on specific, current, observations concerning the covered employee's appearance, behavior, speech, and/or body odors. These observations must be made by a trained supervisor. In the case of drug use, they can include indications of the chronic effects of drug use or the effects of withdrawal.
   
c. A trained supervisor who makes the determination of reasonable suspicion cannot conduct the test.
   
d. If a reasonable suspicion alcohol test is not administered within two (2) hours following the observations, the employer shall prepare and maintain on file a record stating the reasons the alcohol test was not administered promptly. In addition, if not administered within eight (8) hours, the employer shall cease attempts to have the test administered, and shall prepare and maintain the record.
listed above. The covered employee cannot return to the performance of safety-sensitive functions until he or she passes an alcohol test or after twenty-four (24) hours have elapsed since the initial observation, whichever is earlier.

e. A reasonable suspicion drug test will be administered as soon as practicable following the initial observations. A covered employee cannot return to the performance of safety-sensitive functions until the results of the drug test are reported as negative to the employer, consistent with Section 72 of the Civil Service Law.

f. Using the reasonable suspicion form, a trained supervisor must document the reasons that lead to the alcohol and/or drug test prior to requesting the tests. Confirmation from a second trained supervisor should also be documented prior to requesting the test. If after making a reasonable effort, another trained supervisor cannot be located within 30 minutes of the initial observation, or the confirming supervisor does not agree with the observations of the first trained supervisor, the test may still be requested by the first trained supervisor.

g. An employer is precluded from finding a violation of the FHWA rules based on alcohol-related observation alone; there must be an alcohol test to support action.

h. The employee must not drive to the testing site. Transportation will be provided by the SUNY Downstate Medical Center.

4. Post-Accident Testing

For the purpose of this policy, an accident is defined as an incident involving a commercial motor vehicle in which there is (i) a fatality, and/or (ii) an injury treated away from the scene, and/or (iii) a vehicle is required to be towed from the scene.

a. As soon as practicable following an accident, the employer must conduct alcohol and drug testing of each covered employee:

i. who received a traffic citation for a moving violation arising from the accident, or

ii. in an accident involving the loss of human life, or

iii. in an accident involving an injury that requires treatment away from the scene.

b. If an alcohol test is not performed within two (2) hours after the accident, the employer shall prepare and maintain on file a record stating the reason an alcohol test was not promptly administered. In addition, if not administered within eight (8) hours, the employer shall cease attempts to have the test administered, and shall prepare and maintain the record listed above.

c. If a drug test is not performed within thirty-two (32) hours, the employer shall cease attempts to have the test administered, and shall prepare and maintain on file a record stating the reason a drug test was not promptly administered.
d. Subject to the covered employee's need for medical treatment, that employee must contact his/her supervisor immediately. Additionally, the covered employee must remain available for tests at the accident scene or, with permission of officials at the scene, must report to the office of his/her immediate supervisor (or designee). Failure to comply will be treated as a refusal and hence, considered to be a positive test. The covered employee must not perform any safety-sensitive functions before the test has been administered or until the time limits in 4 b. and c. have been met. Additionally, following the accident, the covered employee must not use alcohol before reporting to the testing site.

e. The employer may rely on the results of an alcohol and/or drug test conducted by government officials provided those tests are properly conducted in accordance with the provisions of 4 b. and c. and the employer receives a copy of the results.

f. The employee must not drive to the testing site. Transportation will be provided by the SUNY Downstate Medical Center.

5. Return-to-Duty Testing

If a covered employee has tested positive for alcohol at a level of .04% blood alcohol concentration or greater, and/or has tested positive for drugs, he or she must pass an alcohol test with a blood alcohol concentration of less than .02% and a drug test before returning to duty. Prior to returning to duty, employees will be responsible for their own transportation to the testing site. After returning to duty, the covered employee will be subject to follow-up testing.

6. Follow-up Testing

After returning to duty following a positive drug and/or alcohol test, the covered employee will be subject to random unannounced follow-up alcohol and/or drug testing as directed by the substance abuse professional. A minimum of six (6) tests will be administered within the first year after returning to duty, as directed by the substance abuse professional. Follow-up testing may extend up to five (5) years. A SUNY Downstate Medical Center vehicle will be provided for transportation to the testing site.

H. Testing Procedures

1. Drug Testing

a. SUNY Downstate Medical Center through the use of certified laboratories, will maintain a clear and well-documented procedure for collection, shipment and analysis of urine specimens. Detailed specimen collection procedures will ensure the security of the collection process, the chain of custody, and the privacy of the individual donor. These procedures will include the utilization of a standard drug testing custody and control form; the use of a clean, single-use specimen bottle that is securely wrapped until filled with a specimen; the use of a shipping container in which the specimen and associated paperwork may be transferred and which can be sealed and initialed to prevent undetected tampering; and written procedures and instructions pertaining to collection sites and personnel.
The FHWA regulations also contain extensive rules regarding laboratory personnel and laboratory analysis and procedures.

b. A collection site person must have successfully completed training to carry out the collection function or must be a licensed medical professional or technician who is provided instruction for collection under the FHWA regulations.

c. Drug testing regulations require split sample specimen collection whereby a second sample may be tested at the donor’s request if the primary sample test result is reported as positive.

d. Regulations generally require that drug testing records remain confidential. SUNY Downstate Medical Center will contract with laboratories to maintain the records in confidence and to disclose information related to a positive drug test only to the donor, the employer, or the decision maker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual and arising from a certified positive drug test. Covered employees who are the subject of a drug test shall have access to the records relating to the test upon written request.

e. In the event that a covered employee tests positive for drug use, a medical review officer ("MRO") conducts a final review of the test results and ordinarily interviews the employee to assess possible alternate medical explanations for the results. The MRO makes the final determination as to whether a test result is reported positive or negative to the employer.

f. If the MRO determines that the covered employee's drug test is to be reported as positive, then that employee shall be removed from all safety-sensitive functions and shall be referred to a substance abuse professional for evaluation.

2. Alcohol Testing

a. SUNY Downstate Medical Center shall use an evidential breath testing device to test the alcohol concentration in the covered employee's breath. The test shall be performed by a breath alcohol technician. Breath alcohol technicians must complete a course of instruction for operation of evidential breath testing devices approved by the National Highway Traffic Safety Administration.

b. Alcohol testing shall be conducted in a location that affords both aural and visual privacy to the individual being tested. The covered employee will first submit to a screening test. If that employee's blood alcohol concentration level is .02% or above, then he or she must submit to a confirmation test.

c. If the covered employee's blood alcohol concentration on the confirmation test is between .02% and .039% inclusive, then the covered employee must be removed from safety-sensitive functions for at least 24 hours after the administration of the test.

d. If the covered employee's blood alcohol concentration on the confirmation test is .04% or above, then he or she must be removed from all safety-sensitive functions and shall be referred to a substance abuse professional for evaluation.
e. SUNY Downstate Medical Center shall maintain records of alcohol testing in a secure manner. Those records shall be available to the covered employee upon written request. SUNY Downstate Medical Center shall also permit access to all facilities utilized in complying with the alcohol testing rules to the United States Secretary of Transportation or any other United States DOT agency with regulatory authority over the employer. In addition, SUNY Downstate Medical Center may disclose information maintained to a covered employee or the decision maker in a lawsuit, grievance or other proceeding initiated by or on the behalf of that employee and arising from the results of the test. SUNY Downstate Medical Center shall also maintain records regarding the inspection and maintenance of each evidential breath testing device and the training of each breath alcohol technician for at least two years.

III. CONSEQUENCES OF VIOLATING THE STATE UNIVERSITY OF NEW YORK DOWNSTATE MEDICAL CENTER POLICY REGARDING OTETA

A. Pre-employment/Prospective Employees

Individuals with offers of employment who test positive on a pre-employment drug test will not be selected for the position. Additionally, the applicant will not be considered for future employment in a safety-sensitive position until he/she:

1. provides SUNY Downstate Medical Center with proof of successful rehabilitation, or

2. has successfully participated in an Omnibus drug testing program since the positive test.

B. Current Employees

A covered employee who has violated any part of this policy governing random, reasonable suspicion, post-accident, and/or follow-up testing, will be required to leave the workplace for a minimum of 24 hours, and may be required to see a substance abuse professional before returning to work, depending on the violation. Additionally, a Notice of Discipline may also be issued, seeking penalties ranging from a fine to termination from State service. Each offense is considered a violation of the policy. A second offense is the second time the policy has been violated regardless of the type of violation or length of time that has elapsed since the first violation. Employees may also be independently subject to penalties if their conduct violates the SUNY Downstate Medical Center Policy on Alcohol and Controlled Substances in the Workplace.

A covered employee whose blood alcohol concentration has tested at .04% or greater or who has tested positive for drugs must be evaluated by a substance abuse professional (i.e., a licensed physician, psychologist, social worker, or certified alcohol and drug abuse counselor). The substance abuse professional will determine what assistance or treatment, if any, the covered employee needs in resolving his/her problems associated with alcohol and/or drug abuse. If the substance abuse professional determines that the employee must undergo a rehabilitation program, then that employee must successfully complete that program before being cleared to return to work.
Refusal to participate in any rehabilitation recommended by the substance abuse professional will result in the issuance of a Notice of Discipline seeking termination. Employees continuously absent for one (1) year will be subject to termination under Section 73 of the Civil Service Law.

1. **First Violation**
   a. The employee must leave the workplace.
      • If the covered employee’s blood alcohol concentration tests between .02% and .039%, such leave is for 24 hours.
      -or-
      • If the covered employee’s blood alcohol concentration tests at .04% or greater, or that employee tests positive for drugs, such leave will extend until successful completion of any rehabilitation recommended by the substance abuse professional and return-to-duty testing.
      -and-
   b. SUNY Downstate Medical Center may issue a Notice of Discipline seeking penalties ranging from a fine to termination from State service.

2. **Second Violation**
   a. The employee must leave the workplace.
      • If the covered employee’s blood alcohol concentration tests between .02% and .039%, such leave is for 24 hours.
      -or-
      • If the covered employee’s blood alcohol concentration tests at .04% or greater or that employee tests positive for drugs, the employee will be referred to a substance abuse professional.
      -and-
   b. SUNY Downstate Medical Center may issue a Notice of Discipline seeking penalties ranging from a fine to termination; or enter into a disciplinary settlement agreement.

C. **Returning to duty**

A covered employee who does not pass a return-to-duty test (i.e., his/her blood alcohol level tests at .02% or greater or tests positive for drugs) will not be permitted to return-to-duty, must continue to participate in any rehabilitation program recommended by the substance abuse professional, and is subject to the consequences outlined in III (B) of this policy. Employees continuously absent for one (1) year will be subject to termination.
under Section 73 of the Civil Service Law. Note: Failure of the follow-up test is considered the second violation of this policy.

D. Follow-up

If the covered employee does not pass a follow-up test, that employee will be subject to the consequences outlined in III. B. of this policy. Note: Failure of the follow-up test is considered the second violation of this policy.

IV. DESCRIPTION OF ABUSE AND AVAILABLE TREATMENT RESOURCES

A. Description of Abuse

1. Alcohol

Alcohol causes a number of marked changes in behavior. Even low doses significantly impair judgment and coordination required to drive a motor vehicle safely, increasing the likelihood that the driver will be involved in an accident. Low to moderate doses of alcohol also increase the incidence of a variety of aggressive acts, including spouse and child abuse. Moderate to high doses of alcohol cause marked impairments in higher mental functions, severely altering a person’s ability to learn and remember information. Very high doses cause respiratory depression and death. If combined with other depressants of the central nervous system, much lower doses of alcohol will produce the effects just described.

Repeated use of alcohol can lead to dependence. Sudden cessation of alcohol intake is likely to produce withdrawal symptoms, including severe anxiety, tremors, hallucinations, and convulsions. Alcohol withdrawal can be life-threatening. Long-term consumptions of large quantities of alcohol, particularly when combined with poor nutrition, can also lead to permanent damage to vital organs such as the brain and liver.

Mothers who drink alcohol during pregnancy may give birth to infants with fetal alcohol syndrome. These infants have irreversible physical abnormalities and mental retardation. In addition, research indicates that children of alcoholic parents are at greater risk than other youngsters of becoming alcoholics.

2. Controlled Substances

The use of controlled substances, can lead to physical and psychological dependence, behavioral changes, physical and psychological damage, and possible death.

Possible effects from the use of illegal narcotics include euphoria, drowsiness, respiratory depression, constricted pupils, and nausea. Narcotic overdoses can produce slow and shallow breathing, clammy skin convulsions, coma, and possible death. Withdrawal symptoms can include tremors, panic, cramps, nausea, chills, and sweating.

The unlawful use of depressants can cause slurred speech, disorientation, and drunken behavior. Overdoses can produce weak and rapid pulse, coma, and possible death. Withdrawal syndrome can include tremors, delirium, convulsions, and possible death.
Illicit use of stimulants can cause increased alertness, excitation, euphoria, increased pulse rate and blood pressure, insomnia and loss of appetite. Agitation, increase in body temperature, hallucinations, convulsions, and possible death are the effects of stimulant overdose. Withdrawal syndrome can include apathy, long periods of sleep, irritability, depression, and disorientation.

Possible effects of the use of hallucinogenics include illusions, hallucinations and altered perceptions of time and distance. Overdoses can produce longer, more intense effects, psychosis, and possible death.

The use of cannabis can produce euphoria, reduced inhibitions, increased appetite, and disoriented behaviors. Overdoses can result in fatigue, paranoia, and possible psychosis. Cannabis withdrawal can occasionally produce insomnia, hyperactivity, and decreased appetite.

B. Treatment Resources

Employees at the SUNY Downstate Medical Center are served by an Employee Assistance Program (EAP), which provides individualized substance abuse information and referrals to appropriate community agencies. The EAP coordinator also takes into consideration the employee's health insurance benefits to ensure making the best possible match. Services provided by the EAP office are free to all SUNY Downstate Medical Center employees and their families. Information about EAP can be obtained by calling (270-1489). Access to treatment centers and other information sources are referenced in Appendix B.

V. RELATED LAWS AND REGULATIONS

The FHWA considers the OTETA requirements to be in full agreement with the Americans With Disabilities Act ("ADA") and the Family Medical Leave Act ("FMLA"). Consult those statutes for more information about how these policies relate to the Omnibus Transportation Employee Testing Act of 1991.

VI. QUESTIONS

The campus contact for implementation and training for the Omnibus Transportation Employee Testing Act of 1991 is Adriana Conde-Billy, Deputy Director of Labor Relations, Extension 3019. If you have any questions regarding this policy, contact your immediate supervisor or the Labor Relations Office. For more information about drug and/or alcohol abuse and treatment programs, contact EAP at (718) 270-1489.