

Hot Topics for Tennessee cities and towns

Nov. 6, 1995 #18

Revised: Attention All Cities with Fewer than 50 Employees with Commercial Drivers' Licenses

Drug Testing Deadline Looms for Employees with Commercial Drivers' Licenses

The Jan. 1, 1996, federal deadline is approaching to institute drug and alcohol testing for cities with fewer than 50 employees who are required to have commercial drivers' licenses (CDLs).

These federal mandates, which were applicable in 1995 to cities with 50 or more CDLs are now required of all employees who drive the following:

- ▶ vehicles with a gross weight of more than 26,000 pounds (either the weight registered for the vehicle or the manufacturer's weight, whichever is greatest);
- ▶ trailers with a gross weight in excess of 10,000 pounds;
- ▶ vehicles designed to transport more than 15 passengers, including the driver; or
- ▶ any vehicles that haul placarded hazardous materials.

The definition of "driver" under the regulations includes regular city employees, part-time and occasional drivers, leased drivers, and independent contractors. Emergency vehicle drivers (police, fire and ambulance) are exempt in Tennessee.

Cities are responsible for instituting and carrying out programs that include urine drug testing at laboratories, breath alcohol testing, and drug and alcohol abuse awareness education for supervisors and employees. To administer the tests, cities may use their own employees for breath alcohol testing, but must contract with private companies, or join a consortium of governments and businesses pooled together to administer drug testing. City police officers cannot give breath alcohol testing unless it is part of a traffic violation.

Cities must conduct the following alcohol and/or drug tests on employees required to have CDLs:

Pre-employment — These are performed before a new CDL employee goes to work for a city (drug test only) or when an employee is transferred to a position requiring a CDL.

-over-



Post-accident — If an employee is ticketed after an accident, he or she must be tested. If a city-driver is involved in a fatal collision but isn't ticketed, he or she must still be tested.

Reasonable suspicion — Tests are conducted when a trained supervisor or city official suspects alcohol or drug use based on an employee's behavior. All supervisors must receive at least one hour of training on signs and symptoms of drug abuse and at least one hour of training on signs and symptoms of alcohol abuse.

Random — Such unannounced and unexpected tests are performed just before, during, or right after an employee drives. Each year, 25 percent of the drivers must be randomly tested for alcohol, and 50 percent must be randomly checked for drugs.

Return-to-duty and follow-up — Employees who previously tested positive for drugs or alcohol must pass another test before they can drive again. They are then subjected to at least six random tests during the next year. Follow-up testing may continue for five years.

The new regulations don't require cities to provide rehabilitation, pay for treatment, or reinstate a driver who tests positive for drugs or alcohol. However, if a city returns such an employee to driving duties, the city must make sure the driver:

- ▶ has seen a substance abuse counselor;
- ▶ complies with treatment;
- ▶ takes a return-to-duty test; and
- ▶ is subject to random follow-up tests.

Cities must keep detailed records about drug and alcohol infractions, their policies and testing requirements, and resources for employees with drug or alcohol problems.

A strong word of caution: There's an immense liability risk attached to testing government employees for drugs and alcohol, and lawsuits springing from violating an employee's Fourth Amendment rights can break a city. The Supreme Court says that to avoid such constitutional breaches, cities must follow established policies and engage qualified personnel to properly conduct drug and alcohol tests.

MTAS can provide cities with a list of organizations that perform substance abuse testing. The MTAS list is by no means comprehensive, and MTAS neither encourages nor discourages cities from engaging any of the listed companies. The information is only intended as a starting point for cities considering which testing agency to retain.

Drivers must have a copy of the city's testing policies and material explaining the regulations before any testing program begins. MTAS has prepared an extensive model policy that is available upon request. MTAS encourages cities to have their drug and alcohol testing policies reviewed by their city attorney, MTAS, or another knowledgeable source.

#####

Hot Topic Teleforum
November 16, 1995
1:30 - 4:30 p.m. (EST) / 12:30 - 3:30 p.m. (CST)

To learn more about mandatory drug and alcohol testing, plan to attend a three-hour teleforum on November 16 at nine different locations throughout the state. Sponsored by The University of Tennessee Center for Government Training and Municipal Technical Advisory Service, the teleforum will include more detailed information on how to comply with the new federal requirements and policy options for drug and alcohol testing of city employees with CDLs.

<u>Locations:</u>		<u>Space available</u>
Kingsport	105 University Boulevard	14
Nashville	1720 West End Avenue, Room 508	45
Jackson	West Tennessee Center for Agriculture Extension and Public Service 605 Airways Boulevard, Room 105	16
Martin	The University of Tennessee at Martin 209 Gooch Hall	21
Memphis	The University of Tennessee, Memphis 956 Court, Coleman Building Room A-138	35
Lawrenceburg	Vivian Shields Memorial Community Learning Network 1620 Springer Road	25
Knoxville	The University of Tennessee, Knoxville Communications Building, Suite 61, Studio B	18
Chattanooga	The University of Tennessee at Chattanooga 520 Oak Street, Frist Hall, Room 301	21
Fayetteville	Motlow Community College 1802 Winchester Highway, Room 118	30

Teleforum participants will receive three hours of elected credit in The University of Tennessee Municipal Training Program.

Space is limited at all locations. Deadline to register is November 14. For more information about the teleforum or to receive a registration form, call the UT Center for Government Training office at (615) 327-2656.

TM
 Authorization No. E14-1050-00-002-95
 The University of Tennessee does not discriminate on the basis of race, sex, color, religion, national origin, age, handicap, or veteran status in provision of education opportunities or employment opportunities and benefits.
 The University does not discriminate on the basis of sex or handicap in its education programs and activities, pursuant to requirements of Title IX of the Education Amendments of 1972, Public Law 92-318, and Section 504 of the Rehabilitation Act of 1990, Public Law 101-336, respectively. This policy extends to both employment by and admission to the University.
 Inquiries concerning Title IX, Section 504, and the Americans With Disabilities Act of 1990 should be directed to Cary W. Baskette, Director of Business Services, 109 Student Services and Administration Building, Knoxville Tennessee 37996-0212, (615) 974-6622. Charges of violation of the above policy should also be directed to Mr. Baskette.

The University of Tennessee
 Municipal Technical Advisory Service
 600 Henley Street
 Suite 120
 Knoxville, Tennessee 37996-4105



MTAS Mission Statement

The Municipal Technical Advisory Service (MTAS) was created in 1949 by the state legislature to enhance the quality of government in Tennessee municipalities. An agency of The University of Tennessee's Institute for Public Service, MTAS works in cooperation with the Tennessee Municipal League and affiliated organizations to assist municipal officials.

By sharing information, responding to client requests, and anticipating the ever-changing municipal government environment, MTAS promotes better local government and helps cities develop and sustain effective management and leadership.

MTAS offers assistance in areas such as accounting and finance, administration and personnel, fire, public works, law, ordinance codification, communications, and wastewater management. MTAS houses a comprehensive library and publishes scores of documents annually.

MTAS *Hot Topics* are information briefs that provide a timely review of current issues of interest to Tennessee municipal officials. *Hot Topics* are free to Tennessee local, state, and federal government officials and are available to others for \$2 each. Photocopying of this publication in small quantities for educational purposes is encouraged. For permission to copy and distribute large quantities, please contact the MTAS Knoxville office at (615) 974-0411.



Printed on Recycled Paper