

OMNIBUS TRANSPORTATION ACT – ALCOHOL AND CONTROLLED SUBSTANCES

POLICY NUMBER: RESERVED FOR FUTURE USE

POLICY TYPE: ADMINISTRATIVE

RESPONSIBLE OFFICIAL TITLE: DIRECTOR OF HUMAN RESOURCES

RESPONSIBLE OFFICE: DIRECTOR OF HUMAN RESOURCES

I. POLICY STATEMENT

In an effort to assist in the prevention of accidents and injuries resulting from the misuse of alcohol and/or the use of controlled substances by drivers of commercial vehicles and to comply with the Omnibus Transportation Employee Testing Act of 1991, it is the policy of Northern Kentucky University (NKU) to administer commercial driver's license (CDL) alcohol and controlled substance testing to all employees whose job duties require a CDL and/or the transporting of hazardous materials.

This policy is applicable to all NKU faculty, staff and students whose job duties require a CDL and/or the transporting of hazardous materials. All covered employees will be provided with a written notice of the availability of information pertaining to the Omnibus Transportation Act, its testing requirements, and a copy of this policy which provides for compliance with the federal requirements.

This policy is not intended to lessen NKU's ability to discipline in accordance with University policies and procedures and disciplinary practices, up to and including termination for violations of this policy.

Required Testing:

Any covered employee shall be tested for alcohol and controlled substances in accordance with the following:

1. Pre-Employment Testing:

Prior to the first time the covered employee performs safety-sensitive functions for the University, he or she will be required to undergo test(ing) for controlled substances. The controlled substances test must be verified by a medical review officer indicating a negative test result.

Pre-employment testing for substance abuse is not required:

A. When the covered employee has participated in a drug testing program within the previous 30 days (49 CFR 382.301 (c) (1)).

B. While participating in a prior drug testing program and was tested for controlled substances within the past 6 months (from the date of application with the employer) or participated in a random controlled substances testing program for the previous 12 months (from the date of application with the employer). (49 CFR 382.301 (c) (2) (i), (ii)).

C. If the University ensures that no prior employer has knowledge or records of a violation of the regulations or the controlled substances use rule of another U.S. DOT agency within the previous 6 months (49 CFR 382.301 (c) (3)).

2. Post-Accident Testing:

As soon as practicable following an accident, the University must test each surviving covered employee for alcohol and controlled substances if:

- A. The covered employee was performing a safety-sensitive function with respect to the vehicle and the accident involved the loss of human life, or
- B. The employee receives a citation under state or local law for a moving traffic violation arising out of the accident; (49 CFR 382.303).

If a required post-accident alcohol test is not administered within two hours following the accident, the University must submit a report to the U.S. DOT stating why the test was not promptly administered. In the event a postaccident alcohol test is not administered within eight hours following an accident, attempts to administer the test must cease. The U.S. DOT report must contain an explanation of the events that resulted in the failure to administer the test.

3. Random Testing:

Under the random testing requirements, the University must randomly select covered employees at various times for alcohol and substance abuse testing. The selection process is based on a scientifically valid method. A minimum of twenty five percent (25%) per year of all covered employees will be tested for alcohol use. A minimum of fifty percent (50%) per year of all covered employees will be tested for substance abuse.

Note: Covered employees may only be tested for alcohol misuse while performing safety-sensitive functions; immediately before performing a safety-sensitive function; or immediately after he or she has ceased performing a safety-sensitive function (49 CFR 382.305 (1)).

Any employee identified for alcohol and substance abuse testing will be advised where and when to report. Usually, testing shall be conducted during an employee's normal hours. Random testing dates and times shall be unannounced; (49 CFR 382.305).

4. Reasonable Suspicion Testing:

If an appropriate University supervisor or other official determines a reasonable suspicion exists that a covered employee has violated the rules for alcohol misuse or substance use, the employee shall be required to be tested for alcohol misuse or substance use. Any employee identified will be advised where and when to report for testing. Testing shall be conducted during an employee's normal work hours (49 CFR 382.307).

5. Return-to-Duty Testing:

Before the covered employee returns to duty in a safety-sensitive function following a violation of the rules for alcohol misuse or controlled substances use, the covered employee must be evaluated and undergo testing. The alcohol test must have results less than 0.02 before returning to a safety-sensitive function. Controlled substance testing must be verified as negative results (49 CFR 382.605) (c) (1).

6. Follow-Up Testing:

Each covered employee, who has returned to duty involving the performance of a safety-sensitive function, and identified by a substance abuse professional (SAP) as needing assistance in resolving problems with alcohol misuse or with controlled substances will be required to have a follow-up test. Under the Omnibus Transportation Employee Testing Act of 1991, a minimum of six (6) unannounced follow-up tests will be conducted at an approved medical testing facility, during the first twelve (12) months following an employee's return to duty. A covered employee shall pay for follow-up tests (49 CFR 382.605) (c) (2) (ii)).

Testing Administration:

1. Facility:

The names and locations of approved facilities will be provided to covered employees in accordance with this policy. Changes to the approved list of test sites will be provided to covered employees in a timely fashion as needed.

2. Test:

Alcohol and controlled substance tests shall be administered as follows:

A. Alcohol: A covered employee shall be tested for alcohol by a trained breath alcohol technician utilizing an Evidential Breath Testing Device (EBTD).

B. Controlled Substances: A covered employee being tested for controlled substances shall be required to provide a urine sample which will be split into two bottles by a collection site employee. The collection site employee will complete a chain of custody form and ship both bottles to a Department of Health and Human Services (DHHS) certified laboratory for analysis.

3. Failure to Report for Testing:

Any covered employee/applicant scheduled for testing, who does not report for testing upon notification within one (1) hour following the scheduled appointment time, shall be considered for disciplinary actions under University procedures pending an investigation. Any covered employee, who is involved in an accident in which the employee is performing a safety-sensitive function and who does not submit for testing, shall be presumed to have refused testing and shall not drive a commercial vehicle until an investigation is conducted. Disciplinary actions under University policies and procedures up to and including suspension or termination could be imposed on the employee.

4. Absence During Random Testing:

A covered employee, who has been on a layoff or who is off work on an approved leave of absence, during which the employee was not subject to random testing, shall submit to alcohol and controlled substance testing upon returning to work.

Test Results:

Test results are communicated by the approved medical testing facility to the Office of Human Resources or designee, as soon as possible, following the administering of the tests. In a timely manner, upon notification by Human Resources, the immediate supervisor or department head or representative will

communicate the test results, in writing, to the covered employee.

1. Procedures for Negative Test Results:

A. If the test results do not indicate alcohol misuse or controlled substance use, the covered employee may continue performing safety-sensitive functions as scheduled.

B. If the test results do not indicate alcohol misuse or controlled substance use, the applicant for a position requiring a CDL will remain in the applicant pool and continue to be considered for the position.

2. Procedures for Positive Test Results:

A. If the test results indicate alcohol use or controlled substance use, the employee will be referred to the Employee Assistance Program for assistance (49 CFR 382.605) and may be subject to additional disciplinary action under University policies, up to and including termination.

B. If the tests indicate alcohol misuse or controlled substance use, the applicant will not be considered for employment in the CDL required position.

3. Confidentiality:

All test results shall be maintained and communicated in a confidential manner. The Medical Review Officer (MRO) will discuss a test result indicating controlled substance use with the affected covered employee to ascertain whether the covered employee/applicant is taking prescription drugs. A test of the split urine sample will be conducted as appropriate under the Omnibus Transportation Employee Testing Act of 1991. It should be noted that the use of prescription drugs which may affect one's ability to perform a safety-sensitive function is a violation of federal law.

4. Retention of Test Results:

Negative test results shall remain on file for a minimum period of one (1) year with the approved medical testing facility, with which the University has a contract to provide testing and record keeping. All records relating to the collection process will be kept on file with the approved medical testing facility for a minimum of two (2) years. Records on training shall be kept by the Office of Human Resources for a minimum of two (2) years.

Records of any alcohol test results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take alcohol tests, equipment calibration documentation, and documentation of employee evaluations and referrals shall be retained for a minimum period of five (5) years by the approved medical testing facility.

Records of covered employee verified "positive" controlled substance test results, documentation of refusals to take a required controlled substance test, and documentation of employee evaluations and referrals shall be retained for a minimum period of five (5) years by the approved medical testing facility.

Alcohol Violations:

For alcohol violations, the federal law 49 CFR 383.51 (c) mandates the following minimum sanctions: (49 CFR 382.201, 382.204, 382.205, 382.207, 382.301, 382.605).

1. A covered employee with an alcohol concentration of 0.02 or greater but less than 0.04 shall not be permitted to perform safety-sensitive functions until the next scheduled duty period, but not less than twenty four (24) hours following the administration of the initial test. However, federal law states such employee shall be prohibited from driving for a period of one (1) year following an alcohol test indicating an alcohol concentration of 0.02 or greater when the covered employee has been involved in a fatal accident.

2. A covered employee with an alcohol concentration of 0.04 or greater shall not drive a commercial motor vehicle for a period of sixty (60) consecutive days.

3. A covered employee who, during any three-year period, is found (as a result of alcohol testing conducted by the University in conformity with federal alcohol testing requirements or a federal, state, or local government official) to have an alcohol concentration of 0.04 or greater in two separate incidents may not drive for a period of sixty (60) consecutive days.

4. A covered employee who, during any three (3) year period, is found (as a result of alcohol testing conducted by the University in conformity with federal alcohol testing requirements or a federal, state, or local government official) to have an alcohol concentration of 0.04 or greater three or more times in separate incidents shall not drive for a period of one hundred twenty (120) consecutive days.

In addition to any driving prohibitions, a covered employee who is found through testing (conducted in conformity with the federal rules) to have an alcohol concentration of 0.04 or greater may not perform any safety-sensitive functions until he or she has been evaluated by a substance abuse professional (SAP), completed any rehabilitation required by the substance abuse professional, and tests at less than 0.02 for the presence of alcohol (49 CFR 382.605).

* NOTE: the minimum sanctions in this policy and federal law shall not lessen NKU's ability to impose greater sanctions, up to and including suspension or termination as outlined in our policies and procedures manual.

Controlled Substance Violations:

For controlled substance violations, federal law mandates the following minimum sanctions:

1. For any offense, a covered employee shall be referred to a substance abuse professional (SAP) and shall submit a urine specimen that has a "negative" result prior to returning to duty.

2. For a second offense within a three (3) year period, a covered employee shall not drive a commercial vehicle for sixty (60) consecutive days.

3. For a third offense or greater within a three (3) year period, a covered employee shall not drive a commercial vehicle for one hundred twenty (120) consecutive days.

4. Any covered employee who refuses to be tested shall not drive a commercial vehicle for a minimum of one (1) year and until he/she has submitted a urine

specimen that has a “negative” result.

* NOTE: The minimum sanctions in this policy and federal law shall not lessen NKU’s Ability to impose greater sanctions, up to and including suspension or termination as outlined in our policies and procedures manual.

II. ENTITIES AFFECTED

Faculty and Staff

IV. DEFINITIONS

- “Alcohol” is the intoxicating agent in beverage alcohol, ethyl or other low molecular weight alcohol including methyl or isopropyl alcohol.
- “Breath Alcohol Technician” (BAT) refers to an individual who instructs and assists in the alcohol testing process and operates an evidential breath testing device (EBTD).
- “Collection Site” refers to a place designated by the University where employees/applicants present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.
- “Collection Site Person” refers to a person who instructs and assists at a collection site and who receives and makes a screening examination of the urine specimen provided by those employees/applicants.
- “Covered Employee” refers to a University Employee who performs a safety-sensitive function(s), requiring a CDL. This function(s) may be a part or all of the job duties in the operation of a University owned, leased or borrowed commercial motor vehicle. This term includes an applicant for employment.
- “EBTD” is an evidential breath testing device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath placed on NHTSA’s “Conforming Products List (CPL) of Evidential Breath Measurement Devices.”
- “Medical Review Officer” (MRO) refers to a licensed physician (medical doctor or doctor of osteopathy) who is responsible for receiving laboratory results generated by the University’s alcohol and controlled substance testing program, who has knowledge of substance abuse disorders and who has appropriate medical training to interpret and evaluate an employee’s/applicant’s confirmed positive test result together with the employee’s/applicant’s medical history and any other relevant biomedical information.
- “Screening test or initial test” is an immunoassay screen to eliminate “negative” urine specimens from further analysis. In alcohol testing, the test is an analytical procedure to determine whether a University employee/applicant may have a prohibited concentration of alcohol in a breath specimen.

X. TRAINING

Training will be provided to appropriate supervisors and University officials to determine whether or not reasonable suspicion exists to conduct an alcohol and/or controlled substance test. Individuals shall receive sixty (60) minutes of training on alcohol misuse and an additional sixty (60) minutes of training on controlled substance use. The training will assist them on determining whether reasonable suspicion exists to require an employee to undergo testing. The training will

cover the physical, behavioral, speech, and performance indicators of probable alcohol and/or controlled substance use (49 CFR 382.603 (a)).

NKU reserves the right at any time to modify, alter or amend this policy. NKU shall have the unlimited right to amend this policy at any time, retroactively or otherwise, in such respect and to such extent as may be necessary to meet any legal requirements and to the extent necessary to accomplish this purpose. The President or his designee is hereby granted authority to issue interpretations and clarify rules under this policy and to coordinate it with or modify other policies and procedures of the University as required to ensure compliance with state and federal laws.

REVISION HISTORY

REVISION TYPE	MONTH/YEAR APPROVED
Choose an item.	
Choose an item.	