

# **Kansas Administrative Regulations**

## **Department of Administration**

### **Article 9.—Hours; Leaves; Employee-Management Relations**

#### **1-9-26. Preduty controlled substances testing for employees in positions assigned commercial driver functions.**

(a)(1) For purposes of this regulation, "the act" means the provisions of 49 U.S.C. app. § 2717, as amended, that apply to the preduty controlled substances testing of employees in positions assigned commercial driver functions.

(2) This regulation shall apply to any existing, filled position to which the appointing authority assigns duties that result in the position becoming a commercial driver position, thereby subjecting the incumbent employee to the requirements of the act, including its controlled substances testing requirements and the provisions of the act regarding release of alcohol and controlled substances test information by previous employers.

(b) Each employee who is an incumbent in a position to which commercial driver functions are assigned shall be informed of the provisions of the act and this regulation in writing and shall sign a statement agreeing to participate in the controlled substances testing before administration of the test. The appointing authority shall advise each employee required to submit to controlled substances testing under the act of the following aspects of the testing program:

- (1) The methods of controlled substances testing that may be used;
- (2) the substances that may be identified;
- (3) the consequences of a refusal to submit to a controlled substances test or of a confirmed "positive" test result; and
- (4) the reasonable efforts utilized by the state to maintain the confidentiality of results and any medical information that may be provided.

(c) If an incumbent employee fails to participate in the required controlled substances test, refuses to sign the written authorization required under subsection (b) of this regulation, or refuses to provide written authorization for release of alcohol and

controlled substances test information by previous employers, the employee shall not begin performing the safety-sensitive functions. A subsequent refusal to participate in the required testing or to sign the written authorization shall be grounds for the following consequences:

(1) Discipline under K.S.A. 75-2949f, and amendments thereto, for any employee with permanent status, including an employee serving a probationary period due to a promotion from a position in which the employee had permanent status; or

(2) termination, for any temporary employee, any employee in trainee status, or any employee serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

(d) This subsection shall apply only to employees with permanent status, including employees with permanent status who are serving a probationary period due to a promotion.

(1) Except as provided by paragraph (d)(3), an incumbent employee in a position to which commercial driver functions are assigned shall not be subject to dismissal solely on the basis of a confirmed "positive" test result if the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program, as provided by the act. However, the employee shall be subject to dismissal in accordance with K.S.A. 75-2949f, and amendments thereto, if the employee has previously had a confirmed "positive" test result or the equivalent, if the employee committed some other violation of the act, or if the employee fails to successfully complete an appropriate and approved alcohol and controlled substance assessment and any recommended education and treatment program prescribed by the substance abuse professional. This regulation shall not preclude the appointing authority from proposing disciplinary action in accordance with K.S.A. 75-2949d, and amendments thereto, for other circumstances that occur in addition to a confirmed "positive" test result or another violation of the act and that are normally grounds for discipline.

(2) The provisions of (d)(1) relating to a confirmed "positive" test shall apply if the information obtained from a prior employer under the act indicates that, within the preceding two years, both of the following have occurred:

(A) The employee violated any of the provisions of the act.

(B) The employee failed to complete the requirements for returning to work under the act, including an evaluation by a substance abuse professional, a return-to-duty alcohol test, controlled substances test, or both, and completion of any rehabilitation or treatment program prescribed by the substance abuse professional.

(3) Each employee who takes any of the following actions shall be subject to dismissal pursuant to K.S.A. 75-2949f, and amendments thereto:

(A) Intentionally adulterates, tampers with, or substitutes a sample provided for alcohol or controlled substances testing;

(B) violates the chain-of-custody or identification procedures; or

(C) falsifies a test result.

(4) If disciplinary action is warranted based on the provisions of this regulation, the appointing authority shall afford the employee due process in accordance with K.S.A. 75-2949, and amendments thereto.

(e) An employee shall be subject to termination if both of the following conditions are met:

(1) At the time the employee is given notice of the assignment of commercial driver functions to the employee's position, the employee is a temporary employee, is in trainee status, or is serving a probationary period, other than an employee with permanent status who is serving a probationary period due to a promotion.

(2) One or more of the following has occurred:

(A) The employee has a confirmed "positive" test result or the equivalent.

(B) The information obtained from a prior employer under the act indicates that, within the preceding two years, both of the following occurred:

(i) The employee violated any of the provisions of the act.

(ii) The employee failed to complete the requirements for returning to work under the act, including an evaluation by a substance abuse professional, a return-to-duty alcohol test, controlled substances test, or both, and completion of any rehabilitation or treatment program prescribed by the substance abuse professional.

(C) The employee takes any of the following actions:

(i) Intentionally adulterates, tampers with, or substitutes a sample provided for controlled substances testing;

(ii) violates the chain-of-custody or identification procedures;

(iii) falsifies a test result; or

(iv) violates any other applicable provision of the act.

(f)(1) Each appointing authority shall be responsible for maintaining strict security and confidentiality of the alcohol and controlled substance testing records in that agency. Access to these records shall be restricted to the following individuals:

(A) The agency's personnel officer, the agency's appointing authority, the secretary of administration, the director, or any of their respective designees;

(B) persons in the supervisory chain of command;

(C) the agency's legal counsel; or

(D) the department of administration's legal counsel.

(2) Further access to these records shall not be authorized without the express consent of the director.

(Authorized by K.S.A. 75-3706 and K.S.A. 2005 Supp. 75-3747; implementing K.S.A. 75-3746 and 75-3707; effective, T-1-1-26-95, Jan. 26, 1995; effective May 30, 1995; amended June 20, 1997; amended Sept. 18, 1998; amended Jan. 12, 2007.)

\*\*\*\*\* Authenticated Kansas Administrative Regulation \*\*\*\*\*