

Kansas Administrative Regulations

Department of Administration

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

1-9-25. Alcohol and controlled substances tests for employees in commercial driver positions.

(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 alcohol and controlled substance testing of employees in commercial driver positions.

(2) This regulation shall apply to any employee in a commercial driver position who may be required to submit to an alcohol or controlled substances test in accordance with the act.

(b) Any appointing authority may ask any current employee in a commercial driver position within that agency to submit to alcohol and controlled substances tests under the provisions of the act as a condition of employment. Refusal to comply with this requirement shall be considered the equivalent of receiving a confirmed "positive" test result for referral or disciplinary actions.

(c)(1) Each employee required to submit to alcohol or controlled substances tests shall be notified of that requirement in writing. Each appointing authority shall provide to each current employee in a commercial driver position within that agency detailed materials containing the information identified in paragraph (c)(2). These materials shall be provided to each current employee before the start of alcohol and controlled substances testing by the agency and to each employee subsequently hired or transferred into a commercial driver position.

(2) The information provided to each employee in a commercial driver position shall include the following:

(A) The identity of the person designated by the appointing authority to answer drivers' questions about the materials;

(B) the categories of drivers who are subject to the provisions of the act;

(C) sufficient information about the safety-sensitive functions performed by those drivers to specify during which periods of the workday the driver is required to be in compliance with the act;

(D) specific information concerning driver conduct that is prohibited by the act;

(E) the circumstances under which a driver will be tested for alcohol or controlled substances under the act;

(F) the procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct driver;

(G) the requirement that each driver submit to alcohol and controlled substances tests administered in accordance with the act;

(H) an explanation of what constitutes a refusal to submit to an alcohol or controlled substances test and the attendant consequences;

(I) the consequences for drivers found to have violated the act, including the requirement that the driver be removed immediately from safety-sensitive functions, and the referral, evaluation, and treatment procedures under the act;

(J) the consequences for drivers found to have an alcohol concentration exceeding permissible levels established under the act;

(K) information regarding postaccident procedures and the instructions necessary for the employee to be able to comply with the postaccident testing requirements; and

(L) information concerning the following:

(i) The effects of the use of alcohol and controlled substances on an individual's health, work, and personal life;

(ii) the signs or symptoms of an alcohol or a controlled substances problem, whether the driver's own problem or that of a coworker; and

(iii) the available methods of intervening when an alcohol or a controlled substances problem is suspected, including confrontation, referral to the state employee assistance program, referral to management, or a combination of these methods.

(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)(2), an employee shall not be subject to dismissal solely on the basis of a confirmed "positive" test result or the equivalent or a violation of any other provision of the act if the employee has not previously had a confirmed "positive" test result or the equivalent or any other violation of the act and the employee successfully completes an appropriate and approved alcohol and controlled substance assessment and any recommended education or treatment program. 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 or any 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) 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.

(3) If disciplinary action is warranted under 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 dismissal if both of the following conditions are met:

(1) At the time the employee is given written notice of an appointment for an alcohol or controlled substances test, 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) The employee has a confirmed "positive" test result or the equivalent or takes any of the following actions:

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

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

(C) falsifies a test result; or

(D) 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 substances records in that agency.

Access to these records shall be restricted to the following personnel:

(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 Sept. 18, 1998; amended October 1, 1999; amended Jan. 12, 2007.)

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