

Training Personnel for Reasonable Suspicion

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What is Reasonable Suspicion?

- Reasonable Suspicion Testing refers to a test conducted following a determination by a trained professional that an employee is exhibiting signs and symptoms which suggest some level of impairment may be present.
- "Reasonable" and "Suspicion" are central to the determination.
 - Not "certainty" or "conclusive."
- Still a structured test with regulatory requirements (Part 40).

Reasonable Suspicion is NOT...

- Determining a specific substance of impairment/ingestion.
- Diagnosing a physiological, medical, or psychiatric issue.
- A “back up” test when you want to test.



Reasonable Suspicion in the regulations

49 CFR Section 655.14 – Education and training programs

(b)(2) **Supervisors.** Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Reasonable Suspicion is required

49 CFR Section 655.21 – Drug testing

(a) An employer shall establish a program that provides testing for prohibited drugs and drug metabolites in the following circumstances: pre-employment, post-accident, reasonable suspicion, random, and return to duty/follow-up.

49 CFR Section 655.31 – Alcohol testing

(a) An employer shall establish a program that provides for testing for alcohol in the following circumstances: post-accident, reasonable suspicion, random, and return to duty/follow-up. An employer may also conduct pre-employment alcohol testing.

When it is required

49 CFR Section 655.43 – Reasonable suspicion testing

- (a) An employer shall conduct a drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse.
- (b) An employer's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. A supervisor(s), or other company official(s) who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

What is Reasonable Suspicion?

Role in Testing Array

- Pre-Employment
- Random
- Post-Accident
- Reasonable suspicion
- Return-to-Duty/Follow-Up



When it gets deployed

Drugs:

Anytime a safety-sensitive employee is on duty.

Alcohol:

Just before, during, or just after the performance of a covered duty.

49 CFR Section 655.43(c)



The requirements

- The employee must be safety-sensitive.
- The employee must be on duty (drugs) or within time requirements for alcohol.
- *A trained* supervisor/company official must make evaluation.
- The supervisor/company official must be *authorized* to make determinations.
 - Must be able to *require* a test.

Who can order the test? Training requirements

49 CFR Section 655.14 – Education and training programs

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- *This means the transit employer decides who can make these determinations.*

Training requirements

49 CFR Section 655.14 – Education and training programs

(b)(2) *Supervisors.* Supervisors and/or other company officers authorized by the employer to make reasonable suspicion **determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.**

- *120 minutes at a minimum. May also include other company protocols to assist in the determination.*

Who should be trained?

- The transit employer should have a clear understanding of who should be trained.
 - Primary point of contact with safety-sensitive employees
 - Regular shift contact with safety-sensitive employees
 - End or middle-shift contact with safety-sensitive employees

Who should be trained?

- The transit employer should have an understanding of how employees interact.
 - Dispatch
 - Maintenance
 - Yard supervision

Trained but not Authorized

- The transit employer may choose to provide training for certain employees without authorizing them to evaluate and require tests.
- These employees become part of the referral system for recognizing impairment risk.

Trained AND Authorized

- Trained and authorized must understand how refusals work.
(See: 49 CFR 655.49)
- Requiring an employee to test is the same as all other test types (random, post-accident, etc.).
- DAPM must also understand how reasonable suspicion tests work.

The Process



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Initial Suspicion

- Information from any source
 - Witness
 - Phone tip
 - Report from other employee



Approach and Evaluation

- The trained supervisor must:
 - Witness criteria that indicates possible impairment.
 - Determine that the employee is eligible to be evaluated.
 - Determine that there are not plausible reasons for what they are witnessing,
 - Order a test or release the employee
 - Document decision either way
 - Complete the requirements



Documentation

- Document the entire process from initial suspicion/source up to the completion of the test.
- Document what was said and what occurred.
- Record times, locations, and witnesses

QUIZ: Right or Wrong?

- The outcome of the test will vindicate the employee.
- A supervisor can use Reasonable Suspicion testing instead of random or post-accident testing.
- More than one supervisor is required.
- Every evaluation must result in a test.
- All reasonable suspicion tests are directly observed.



ANSWERS: Right or Wrong?

- The outcome of the test will vindicate the employee **wrong**.
- A supervisor can use Reasonable Suspicion testing instead of random or post-accident testing **wrong**.
- More than one supervisor is required **wrong**.
- Every evaluation must result in a test **wrong**.
- All reasonable suspicion tests are directly observed **wrong**.

Difficult Decisions

- The inter-personal dynamics of the workplace are the biggest obstacle to reasonable suspicion testing.
- Trained supervisors or company officials must be willing to put aside personal feelings when safety considerations are needed.
- Management must support supervisors.

Thank you!

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