

CHAPTER 33 - VEHICLES FOR HIRE

ARTICLE I. GENERAL PROVISIONS

DIVISION 2. OPERATING AUTHORITY

Sec. 33-029. Drug free workplace.

(a) Upon application for or request for renewal of an operating permit, each holder or applicant shall deliver to the director a statement certifying that the holder or applicant has established for its employees and drivers a drug free workplace policy. If this statement is not delivered to the director, the director or his designated agent may deny the application or renewal and may deny approval of the driver for whom the holder failed to deliver the statement.

(b) Each holder shall enforce the drug free workplace policy it has established and provide proof that drivers are being tested to the director within ten days of:

(1) Receipt of a written request for such proof from the director whenever the director has good cause to believe that production of such proof is in the best interest of the public; or

(2) The first date on which any new driver operates a vehicle under the holder's operating permit.

(c) The purpose of this provision is to protect public safety by deterring the unsafe use of drugs and alcohol by drivers of vehicles for hire, by requiring each permit holder to establish certain standards for drug testing of employees and drivers, known as a drug free workplace. Uniform standards and requirements regarding testing of employees, licenses and job applicants must be put into place to protect the rights of individuals. The minimum standards set forth in this provision helps ensure public safety is promoted without unduly infringing on the privacy and dignity of employees and drivers.

At a minimum, the holder must adopt in writing a detailed policy setting forth the specifics of such a program which includes the utilization of the test for alcohol and other substances listed under subsection (e) of this section, and that includes at least the following information:

(1) A statement of the holder's policy regarding drug and alcohol use by employees and drivers. The policy shall include a zero-tolerance statement for which termination or cancelation of a driver's contract will result if a positive test result is obtained following an accident involving a permitted vehicle. Declining a test shall be considered the same as a positive test result.

(2) The job classifications for which employees, drivers and job applicants are subject to testing;

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- (3) The circumstances under which testing may be required;
- (4) The substances as to which testing may be required;
- (5) The testing methods and collection procedures to be used;
- (6) The consequences of a refusal to participate in the testing;
- (7) The adverse action that may be taken based on the testing procedure or results;
- (8) The right of an individual to explain in confidence positive test results;
- (9) The right of the individual to obtain all information related to the testing of that individual;
- (10) Confidentiality requirements for the testing;
- (11) The available appeal procedures, remedies and sanctions; and
- (12) The substance abuse programs for education and treatment available to the individual.

(d) The holder shall post notice of the policy in prominent employee and driver access areas and give a written copy of the policy to each driver, applicant and affected employee. Notice shall be posted, and the policy distributed any time the policy is changed.

(e) At a minimum, a holder shall insure that the testing complies with either Texas Department of Transportation 5-panel urine drug test standards or tests for the following substances:

Amphetamines;

Cannabinoids;

Cocaine;

Phencyclidine;

Methaqualone;

Opiates;

Barbiturates;

Benzodiazepines;

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Synthetic Narcotics; and

Methadone.

All laboratory security, chain of custody, transporting and receiving of specimens, specimen processing, retesting, and storage of specimens, instrument calibration and reporting of results shall be in accordance with the National Institute on Drug Abuse standards.

(f) At a minimum, every holder shall insure that the following types of testing are included:

(1) Post accident testing: all drivers shall be tested immediately after any automobile accident resulting in outside medical attention being required for any party involved, a fatality, or property or vehicle damage, or if the driver received a citation. The driver shall be tested for alcohol during this test.

(2) Testing for cause: if reasonable suspicion exists to believe the employee or driver is under the influence of drugs or alcohol and could adversely affect performance of duties and responsibilities.

(3) Applicant testing: any person applying to drive under the holder's operating permit to shall submit to testing no more than seven days prior to the day on which said driver first operates a vehicle in connection with the holder's operating permit, Pedicab and group cycle drivers shall be exempt from applicant drug testing.

(4) Random testing: because there is likelihood that a driver may harm the public if impaired by alcohol or drug use, all drivers shall be subject to random testing. Other employees or drivers may be subject to random testing if injury to the public may occur if the employee or driver is impaired by drug or alcohol use.

(5) Testing after prior use--employees or drivers who have received a confirmed positive test result within the past year may be required to submit to testing at reasonable intervals for a period of one year after the test.

(6) Drivers that do not comply with or refuse a test shall constitute a positive test results.

(7) The director may request for a test for any of the above reasons at the permit holder's expense. All results for all testing shall be sent the director within 24 hours of testing. If a driver has a positive test, the results should also include documentation of actions taken by the company.