

New Central Database of CDL Drivers with Past Drug and Alcohol Testing Violations

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Beginning January 6, 2020, employers of Commercial Motor Vehicle (CMV) drivers must comply with new reporting requirements of a Federal Motor Carrier Safety Administration's (FMCSA) 2017 rule establishing the Commercial Driver's License Drug and Alcohol Clearinghouse (CDL Clearinghouse). The 2017 FMCSA Rule applies to all employers whose employees drive CMVs and violate the Department of Transportation's (DOT) drug and alcohol testing program requirements. This includes municipalities and their drivers who are required to possess a Commercial Driver's License (CDL).

The FMCSA 2017 Rule will have two major impacts on municipal employers that employ CDL drivers in safety-sensitive positions: 1) employers will be required to report all violations of the DOT's Drug and Alcohol Testing Program to the CDL Clearinghouse; and 2) employers will be required to query the system before making any new hires and once a year for all current employees. However, due to a recent extension, employers will not need to begin complying with the query requirement until **January 6, 2023**, but may begin voluntarily accessing the database immediately.

The CDL Clearinghouse has been established in an effort to improve roadway safety by creating a central depository of CDL drivers' drug and alcohol program testing history. The CDL Clearinghouse is intended to prevent a CDL driver who is prohibited from operating a CMV from doing so before completing the return-to-duty process. In the past, the absence of a centralized database has permitted CDL drivers to resume safety-sensitive functions following a positive test, either by finding work with a new employer or moving to a new jurisdiction. Under the 2017 FMCSA Rule, the CDL Clearinghouse record will now "follow" the driver regardless of how many times they change employers or move to a new jurisdiction.

Employers will now be required to report information to the CDL Clearinghouse about positive drug test results, alcohol test results showing a blood alcohol level while on duty of greater than 0.04, refusals to test, and any other drug and alcohol program violations of which the employer has actual knowledge. Employers must report violations by the end of the third business day following the triggering event. Employers are only required to report the results of DOT-mandated drug and alcohol test results. Once a driver has failed a drug or alcohol test, employers are only required to report negative return-to-duty tests, not all negative tests results thereafter, as only the initial return-to-duty test will change the driver's eligibility status. The substance abuse professional that the employee works with following a positive drug or alcohol test will upload information regarding the driver's progress through the return-to-duty protocol.

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When an employer receives actual knowledge of a violation, the employer must gather and submit additional information and documentation to the CDL Clearinghouse, including the date and time the violation occurred, the names and contact information of any corroborating witnesses, and evidence to support each allegation. The employer must also provide all such information to the employee and, in the absence of tangible evidence, the employer must sign and file an affidavit attesting to each factual allegation. While the FMCSA Rule does not intend to impose sanctions on inadvertent reporting errors, due to the significant consequences drivers face as a result of a false report, the 2017 FMCSA Rule prohibits individuals from reporting information they “know or should know is false or inaccurate.”

Effective January 6, 2023, before hiring a new CDL driver to operate a CMV, employers must query the CDL Clearinghouse for information regarding past violations and whether the driver has successfully completed the return-to-duty process. The employer must also conduct an annual query on each CDL driver it employs, although the employer may conduct a limited query that will indicate only whether there is any new information in the CDL Clearinghouse about the driver. If any new information about the driver whose information was queried is entered into the CDL Clearinghouse within 30 days of the employer’s query, the employer will receive a notification regarding the new information. To ensure accurate and current information, substance abuse professionals are required to report information regarding a driver’s progress through the return-to-duty protocol.

Please note that, in accordance with the federal Privacy Act, 5 USC §552a, employers will be required to obtain electronic consent from each driver before requesting information from the CDL Clearinghouse, and the CDL Clearinghouse will not release information without receiving confirmation of that consent.

Please contact any member of the firm’s Labor and Employment Practice Group at 617-556-0007 with questions concerning these changes, reporting obligations, and any potential bargaining obligations with affected unions.

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