



# COVID-19 and compliance with DOT drug and alcohol testing regulations

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In light of the coronavirus (COVID-19) situation and its effects on the operations of companies and public health facilities, the U.S. Department of Transportation (DOT) has published a guidance document for DOT-regulated employers, employees, and service agents on compliance with the DOT and modal drug and alcohol testing programs (the guidance). The guidance "does not have the force and effect of law and is not meant to bind the public in any way;" however, it is "intended only to provide clarity regarding existing requirements under the law." An overview of the guidance is provided below, and the full guidance can be found [here](#).

With respect to DOT-regulated employers (employers), the guidance provides the following:

- Employers must continue to comply with applicable DOT training and testing requirements.
- Recognizing that compliance may not be possible in certain areas due to the unavailability of program resources, the guidance instructs employers to make a reasonable effort to locate the necessary resources, including considering mobile collection services for required testing if the fixed-site collection facilities are not available.
- If an employer is unable to conduct DOT drug or alcohol training or testing due to COVID-19-related supply shortages, facility closures, state or locally imposed quarantine requirements, or other impediments, the employer should, consistent with DOT agency requirements, document why a test was not completed.
- If training or testing can be conducted later (e.g., supervisor reasonable suspicion training at the next available opportunity, random testing later in the selection period, follow-up testing later in the month), the employer is to do so in accordance with applicable modal regulations.
- If employers are unable to conduct DOT drug and alcohol testing due to the unavailability of testing resources, the underlying modal regulations continue to apply. As an example, without a negative preemployment drug test result, an employer may not permit a prospective or current employee to perform any DOT safety-sensitive functions, or in the case of the Federal Aviation Administration, you cannot hire the individual (See 14 Code of Federal Regulations § 120.109(a)(1) and (2)).
- Employers should review the applicable DOT agency requirements for testing to determine whether flexibilities allow for collection and testing at a later date.

- It is the employer's responsibility to evaluate the circumstances of an employee's refusal to test and determine whether or not the employee's actions should be considered a refusal as per 49 Code of Federal Regulations § 40.355(i). However, given the COVID-19 situation and the resulting public health risk, DOT asks employers to be sensitive to employees who indicate they are not comfortable or are afraid to go to clinics or collection sites.
- DOT asks employers to verify with the clinic or collection site that it has taken the necessary precautions to minimize the risk of exposure to COVID-19.
- Employers should revisit back-up plans to ensure the plans are current and effective for the current outbreak conditions. Employers should also have regular communications with service agents regarding the service agent's availability and capability to support the employer's DOT drug and alcohol testing program.

With respect to DOT-regulated employees, the guidance provides that if an employee is experiencing COVID-19-related symptoms, he/she should contact his or her medical provider, and if necessary, let the employer know about his or her availability to perform work. If an employee has COVID-19-related concerns about the drug and alcohol testing, he or she should discuss them with the employer. It is, however, the employer's responsibility to evaluate the circumstances of the employee's refusal to test and determine whether or not the employee's actions should be considered a refusal as per 49 Code of Federal Regulations § 40.355(i).

Finally, the guidance provides that service agents (e.g., collectors, breath alcohol technicians, laboratories, medical review officers, or substance abuse professionals) should continue to provide services to employers if it is possible to do so in accordance with state or local mandates related to COVID-19. If a service agent has concerns about COVID-19 when testing or interacting with employees, the guidance urges that the service agent follow its company policy, directions from state and local officials, and guidance from the Centers for Disease Control and Prevention.

Should you have any questions regarding DOT drug and alcohol testing compliance, please do not hesitate to reach out to the Hogan Lovells contacts below.

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