

Regulatory Requirements for Education and Training

By Joe Reilly, Joe Reilly & Associates, Inc.

One of my favorite topics to explain to employers is the concept of a Drug Free Workplace. This concept typically describes a DOT, Non DOT, and/or state law-required employer-sponsored substance abuse prevention or Drug Free Workplace Program, which includes five major components. The components of the Drug Free Workplace Program include a written policy, employer education, supervisor training, Employee Assistance Program (EAP), and drug testing. Three of these components—employee education, supervisor training, and Employee Assistance Program (EAP)—are often overlooked.

This article will identify the ins and outs of these three components, including the mandated requirements under the DOT operating administrations and list resources which will be helpful for both employers and DATIA members to access specific employee education and supervisor training programs.

To begin with, let's identify each of these three components and then expand on the DOT agency requirements for employee education, training, and EAP. Employee Education: The employees need to understand the specifics of the Drug Free Workplace Program, including the policy, general information about alcohol and drug addiction, and what type of help is available for individuals with related problems. Education to employees can be provided using a variety of approaches, including orientation programs for new hires, video presentation, print materials, online information resources, seminars, and in-person and online trainings. DOT programs and many state law programs require some aspect of employee education to be included in the Drug Free Workplace Program.

Supervisor Training: As the individuals closest to its workforce and those responsible for policy enforcement, supervisors should be trained. This training should ensure that supervisors understand the company's Drug Free Workplace policy and their role to maintain a safe, secure, and productive environment for employees. Supervisors' responsibilities should include monitoring employees' performance, staying alert to and documenting performance problems, and enforcing the policy. It is critical that prior to making referrals for drug testing based on reasonable suspicion those supervisors be trained on how to make that determination. Some aspect of Supervisor Training is required by DOT programs and most state law programs. This type of training is recommended for all Drug Free Workplace Programs.

Employee Assistance Program (EAP): EAPs are intended to help employees deal with personal problems that might adversely impact their work performance, health, and well-being.

Many times these are employee benefit programs offered by employers, typically in conjunction with a health insurance plan. An EAP program may include a list of resources available to employees for assistance, an internal program with staff members within the organization providing services, or utilization of an external vendor through which an employer contracts for EAP services. There are also integrated models of EAP programs which combine features of the internal and external types of EAPs as well as consortia and

peer assistance groups which deliver EAP services. Bottom line, programs vary, but the EAP is always a mechanism for which an employee can seek help for personal problems, including substance abuse issues that may affect job performance.

DOT Agencies Require Supervisor Training and Employee Education

Searching in 49 CFR Part 40 (PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS), you will not find the terms “employee education” or “supervisor training.” This does not mean, however, that there are not requirements in DOT drug and alcohol testing programs for employee education or supervisor training.

As a result of the Omnibus Transportation Employee Testing Act of 1991, certain DOT Agencies established drug and alcohol testing regulations to ensure that aircraft, trains, trucks, and buses were operated in a safe and responsible manner. These DOT agencies have specific drug and alcohol testing regulations in addition to the DOT 49 CFR Part 40, as shown in the chart on page 21.

The requirements for each DOT agency for employee education, supervisor training, and EAP vary. The chart below lists the regulations and requirements. As an example, according to FMCSA Part 382, Section 603, regarding “Training for Supervisors”: persons designated to determine whether reasonable suspicion exists (supervisors), in order to require a driver to undergo testing under FMCSA 382.307, must receive at least 60 minutes of training on alcohol misuse and 60 minutes of training on controlled substances use. The training must cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances. FMCSA Part 382 also requires that employers distribute to employee’s educational materials that explain the DOT and FMCSA regulations, as well as the employer’s policies and procedures with respect to the drug and alcohol testing requirements. In summary FMCSA, which regulates over 10 million drivers, requires both employee education and supervisor training. For EAP, the Substance Abuse Professional (SAP) process, under DOT 49 CFR Part 40, is required for any donor who violates the DOT drug and alcohol testing policy.

The most common supervisor training programs include 60 minutes of training on alcohol misuse and 60 minutes training on drug abuse; however, the agency regulations should always be reviewed. Supervisor training programs are typically provided with live presentations, video presentations, or online training. In general, for DOT programs, the employee educational materials should include at least the following and should be displayed and distributed:

- The name and contact information of persons assigned to answer questions about the program.
- The duties of the employees who are subject to the program.
- Employee conduct that is prohibited by the regulations.
- The requirement that employees must be tested for drugs and alcohol.
- When and under what circumstances employees will be tested.
- The testing procedures that will be used.
- An explanation of what constitutes a refusal to test.

- An explanation of the consequences of refusing a test.
- The consequences of violating the DOT rules.
- Information on the effects of drugs and alcohol on a person's health, work, and personal life
- The signs and symptoms of drug use and alcohol misuse.
- The name and contact information of an individual or organization that can provide counseling and access to treatment programs.

Employee Assistance Programs (EAPs) are mentioned in 49 CFR Part 40; section 40303 states "(b)... You may also make use of SAP and Employee Assistance Program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations, nothing in this section permits an employer to fail to carry out its obligations with respect to follow-up testing (see §40,309)." Although EAP programs are not always required by DOT agencies, the agency regulations may require posting of EAP information or mandating that employee educational material contain information on how employees can get in touch with their Employee Assistance Programs and community service hot lines.

As an example, FAA14 CFR part 121, Appendix I, VIII requires the employers provide an Employee Assistance Program either internally or by contract.

Compliance is important!

DOT agency auditors will verify that employee and supervisor training requirements are maintained. Generally, records that must be maintained include:

- Educational materials for employees.
- Documentation showing how educational materials were made available to employees.
- List of supervisors responsible for making reasonable suspicion and reasonable cause determinations.
- Supervisory training lesson plans and course materials.
- Attendance lists for supervisors who received this training.
- Under FRA, supervisor post- accident training lesson plans, course materials, and attendance lists.

Help is Available

There are many resources available to help employers comply with the education, training, and EAP requirements. Third Party Administrators (TPAs) and other drug testing providers have an opportunity to assist their client with these requirements, and this can enhance the client service experience. Employers are looking for this value-added service, which can help with compliance and create an additional profit center for those selling drug and alcohol testing services. Many TPAs have developed their own programs and provide to their clients live presentations, videos, and other various educational materials. There are many other additional resources available, as well as vendors that offer reseller programs. Some of these resources available are listed on the chart below. The implementation of education and training, along with the availability of EAPs helps all involved to better understand the

DOT drug and alcohol testing requirements and the dangers of employee drug and alcohol abuse; the result is often a much safer and more productive workplace.

Department of Labor Working Partners for an Alcohol and Drug Free Workplace

www.dol.gov/workingpartners

Available online is the Drug Free Workplace Advisor Program Builder, which provides many great resources for education and training, including power point presentations, handouts, fact sheets, and trainer instructions.

Substance Abuse & Mental Health Services Administration (SAMHSA) Division of Workplace Programs (DWP)

www.workplace.samhsa.gov/WPWorkit

Great site with an abundance of information and resources, particularly the Drug Free Workplace Kit, which includes brochures, fact sheets, promotional materials, and links to other web sites of interest. DWP has unique and nationally important regulatory, knowledge development, and technical assistance roles and responsibilities for Federal and non-Federal workplaces, with respect to their Drug Free Workplace policies and programs.

Drug & Alcohol Testing Industry Association (DATIA)

www.datia.org

800-355-1257

DATIA maintains a searchable database for all drug & alcohol testing providers. Many of the DATIA members provide supervisor training and employee education. Searching for the category Supervisor/Employee Training brings up 77 providers of this type of service.

FTA Drug Si Alcohol Program

www.transit-safety.volpe.dot.gov/DrugAndAlcohol

Provides a great deal of assistance to transit systems, including technical assistance, seminars, training events, newsletters, and other publications, which together can provide the FTA education and training requirements.

Many DATIA members have asked about selling Supervisor Training services to their clients but do not want to develop their own programs to sell. The resources listed below are companies that offer Reseller programs for Supervisor Training services, this makes for a great opportunity for a drug testing provider to expand his/her product offerings. Visit DATIA's searchable data base (www.datia.org) for a complete list of all DATIA members offering Supervisor/Employee Training products with many of these folks offering similar partner programs.

Alpha Pro Solutions (APS)

www.alphaprosolutons.com

800-277-1997

A full line of web-based training courses for the Drug Free Workplace industry. Offers Supervisor Signs and Symptoms training suitable for non-DOT employers but also in full compliance with all DOT modes. APS also offers an Employee Drug & Alcohol Awareness Course on the web. Both courses include video testimonies from former workplace drug

abusers, chapter quizzes, a final test, and a printable certificate with an email to the company training administrator upon course completion

Compliance Information Systems (CIS) Aware Training

www.awaretraining.com

800-647-9070 ext. 611

A completely web-based training program for both general employee and DOT supervisor—60/60 reasonable suspicion training. CIS training is available 24/7/365, and licenses can be purchased as needed. TPAs and other drug and alcohol testing industry service providers can take advantage of CIS' turn-key reseller program that allows them to offer this training on their own branded site.

Foley Services

www.foleyservices.com

800-253-5506

A wide variety of training products are available and Foley has a complete Reseller program working with TPAs so they can offer full service to their clients.

JJ Keller & Associates, Inc.

www.jjkeller.com

877-564-2333

Materials deal primarily with US Department of Transportation (DOT) drug and alcohol testing regulations, although some human resource (non-DOT) materials have been introduced, and new HR items maybe developed in the future. Products include a detailed DOT drug and alcohol testing manual, a driver VHS/DVD training kit, a supervisor reasonable suspicion training VHS/DVD training kit, employee (non-DOT) awareness VHS/DVD training kit, individual components of the training kits, and online training materials for employees, drivers, and supervisors.

Superior Training Solutions, Inc. (STS)

www.stsfirst.com

512-847-6687

A mission to create and update supervisor and employee substance abuse training courses for covered and non covered industries that are reasonably priced and easily accessible. STS courses and manuals interactively engage and entertain students while providing a please format for dealing with substance abuse. Courses can be purchased either directly from STS or from several TPA resellers.



Joseph Reilly Past Chairman Drug & Alcohol Testing Industry Association