



COMMERCIAL MOTOR VEHICLE DRIVER POLICY/PROGRAM

APPLICABILITY

The City's Commercial Motor Vehicle Driver Policy and Program applies to all employees currently holding a Commercial Driver's License (CDL) as a requirement of their position; who obtain a commercial motor vehicle license as a part of their employment, and to all persons (promotional or outside candidates) making application with the City of Providence for positions which require a CDL license.

PURPOSE

The City of Providence is committed to providing a safe working environment for employees, serving our constituents in the best manner possible, protecting City property, and complying with Federal, State and local regulations concerning the operation of Commercial Motor Vehicles. The purpose of this document is to outline the City of Providence's policy regarding employees holding Commercial Driver's licenses and its controlled substance and alcohol testing program in compliance with applicable federal law and rules.

The City of Providence's Commercial Motor Vehicle Policy/program outlines the three (3) main areas of responsibility of its commercial motor vehicle driver's license holders:

- I. Responsibility to maintain a valid CDL license
- II. Responsibility to notify the employer
- III. Responsibility to participate in an alcohol and controlled substance testing program.

I. RESPONSIBILITY TO MAINTAIN A VALID LICENSE

You must carry a valid CDL license on your person at all times when working. Employees who are at work without their CDL license will be sent home and/or will be subject to disciplinary action.

While it is the CDL license holder's responsibility to be familiar with the requirements of maintaining a valid CDL license, the City of Providence wishes to emphasize the following State and Federal CMV rules.

- An employer may not let you drive a commercial motor vehicle if you have more than one license or if your CDL is suspended or revoked.
- You are not allowed to hold a mobile telephone to conduct a voice communication or dial a mobile telephone by pressing more than a single button when driving.
- You are not allowed to send or read text messages while driving.
- You must be properly restrained by a safety belt at all times while operating a commercial motor vehicle.

II. REQUIREMENT TO NOTIFY

You must notify your department supervisor/director and Human Resources immediately if there has been any action taken against your license for any traffic violations (except parking), including but not limited to suspension, revocation, cancellations or if you are disqualified from CDL driving. This is true no matter what type of vehicle you were driving.

Employees with a CDL license (CDL) are subject to State reporting requirements and should consult the RI Department of Motor Vehicles website for more information at <http://www.dmv.ri.gov/licenses/commercial/>.

III. REQUIREMENT TO PARTICIPATE IN AN ALCOHOL AND CONTROLLED SUBSTANCE TESTING PROGRAM

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration passed *The Omnibus Transportation Act*, which was intended to create an alcohol and controlled substance free transportation industry. The controlled substance and alcohol testing that is conducted under this act is called Federal or DOT (Department of Transportation) testing.

In addition to the federal testing requirements, the City of Providence has established specific policies and practices for its CDL-covered employees. The following policy and procedures regarding the use of controlled substances and alcohol, required tests, testing procedures, test results and their consequences, apply to CDL-covered employees performing safety-sensitive duties.

If you have questions about the information in this policy, contact Human Resources.

A. Employees subject to federal DOT testing

The Federal DOT alcohol and controlled substance testing rules apply to every person who operates a commercial motor vehicle (CMV) in interstate or intrastate commerce. This includes individuals who only operate a CMV occasionally or in an emergency.

B. Definition of Safety Sensitive Functions

A CDL employee is performing a safety sensitive function at the following times:

- All time on City property, public property, or other property waiting to be dispatched to drive,
- All time inspecting, servicing or conditioning any CMV at any time,
- All CMV driving time,
- All time other than driving time in or upon any CMV,
- All time loading or unloading a vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded,
- remaining in readiness to operate the vehicle, or in giving receipts for shipments loaded or unloaded,
- All time spent performing driver requirements relating to accidents, and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

C. Prohibited conduct

CDL-covered employees **may not**:

- use any illicit (illegal) controlled substance.*
- possess any illegal controlled substance while assigned to or performing safety-sensitive functions.
- use any legal prescription which is a controlled substance (or possess it while assigned to or performing safety-sensitive functions), **unless** taking it in accordance with the instructions of a licensed medical provider, and that medical provider has advised that it will not adversely affect your ability to safely operate a CMV.
- use or possess alcohol while assigned to or performing safety-sensitive functions. This includes anything that contains alcohol, such as mouthwash and cough medication.
- perform safety-sensitive functions within four (4) hours after using alcohol.
- report for duty or remain on duty if:
 - under the influence or impaired by alcohol
 - have a blood alcohol concentration of .02 or greater
- refuse to submit to any test for alcohol or controlled substances (refusal also means adulterating or substituting a specimen).

* **Note:** Medical marijuana, even if legally prescribed in a state, is an illegal drug under federal law. The use of medical marijuana is prohibited conduct for CDL-covered employees.

D. Prescription medicine and over-the-counter (OTC) drugs

These may affect a driver's fitness for duty or ability to perform duties safely. It is the CDL-covered employee's responsibility to know how the medications taken for health reasons affect the ability to perform his/her job in a safe manner. You should always ask your medical provider how any medication you are taking will affect your ability to operate a CMV safely.

You may use prescribed medications and OTC drugs and still perform your safety-sensitive duties; however, you must meet the following standards:

- **Prescription medication** must be prescribed to you by a licensed medical provider, such as your personal doctor.
 - The medication must be used at the dosage prescribed or authorized.
 - The prescription must be valid (not expired).
 - It is your responsibility to review prescriptions with your physician to determine if it impacts your ability to safely operate a CMV.
 - If it is determined that a necessary medication could cause impairment to the safe performance of your duties, contact Human Resources.
- An **over-the-counter medication** must not prevent you from safely performing your job, and must be used at the dosage prescribed or authorized.

E. Testing

CDL-covered employees are subject to testing for controlled substances and alcohol. The employee's CDL license is the only acceptable form of identification at the testing site.

Once the collection process has started, if the CDL-covered employee leaves the collection facility before it is completed, it will be considered a **refusal to test**.

Refusal to submit to testing of breath and/or urine for alcohol and/or controlled substance is considered a positive result and will require a review by management. This may necessitate discipline, up to and including termination.

Where an employee has already tested positive, any further positive results in any alcohol and controlled substance testing will be considered grounds for termination.

F. Categories of Testing

Controlled substance and alcohol tests will be conducted at the following times:

1) Pre-employment

All persons making application with the City of Providence for positions which require a Commercial Driver's License are subject to controlled substance testing. This applies both to outside applicants and to current employees who are transferring into a CDL-covered position. Controlled substance testing is required prior to the first time an employee performs safety-sensitive duties.

Note: If an employee has been unavailable for random testing for 30 calendar days or longer (usually due to an extended absence), a "pre-employment" test is required before he/she can be returned to safety-sensitive duties.

- a. Current employees seeking a promotion with a positive pre-employment test result:
 - the job offer will be withdrawn.
 - the employee will be subject to the protocol for a positive test result outlined in this policy.
 - during this period of treatment or counseling, the employee will not be allowed to work.
 - the employee must have completed a return-to-duty controlled substance test with a negative result.
 - if the result of the return to duty test is negative, the employee will be allowed to return to work at his/her former position. Further positive results in any alcohol and controlled substance testing will be considered to be grounds for termination.
 - if the result of the return to duty test is positive, the employee will not be allowed to return to work at his/her former position.
- b. Prospective Employees:

In those situations where a prospective employee either refuses to be tested or whose test results are positive, the conditional offer of employment by the **City of Providence** will be withdrawn.

2) Random

The Federal Motor Carrier Safety Administration (FMCSA) annually determines what minimum percentage of the CDL-covered workforce must be tested on a random basis for controlled substances and for alcohol.

Each month, the City's testing vendor uses a computer program to randomly select a percentage of the required annual number of tests each month. Employees may be randomly selected for both a controlled substance and alcohol test, or just a controlled substance test. So that employees cannot anticipate when testing may happen, random testing may occur on any day of the month. Employees randomly selected by the vendor for a test are immediately put back into the random test pool, so the chance of being picked is the same each time.

3) Reasonable Suspicion

Reasonable suspicion controlled substance and alcohol testing is required when the employer has made certain observations as to a driver's appearance, behavior, speech or body odor that s/he may be unfit for performing safety sensitive duties. The person making this determination must have received CDL Supervisor Training under the City's program.

When such observations have been made, the employee will be required to report to a designated collection site for both alcohol and controlled substance testing.

An employee is **not** to be allowed to drive either his/her own vehicle to a City-owned vehicle to a test site when there is reasonable suspicion of alcohol or controlled substance use. A supervisor will drive the employee to the test site and, if appropriate, the employee will be provided transportation home.

4) Post-Accident

As soon as practicable following an accident, tests for **alcohol and controlled substances** shall be administered to employees performing safety-sensitive functions, if:

- the accident involves the loss of human life **OR**
- the driver receives a citation under State or local law for a moving traffic violation arising from the accident **AND**
 - an injury to any person one of the individuals involved in the accident immediately receives medical treatment away from the scene **OR**
 - one or more of the vehicles involved in the accident must be towed from the scene.

In such cases, all work related activity being performed by the employee is to cease immediately. The driver of the vehicle is to be transported to the designated testing site by their supervisor. The driver is not to transport him/herself to the testing site in either a private or City-owned vehicle.

Drug tests must be performed within thirty-two (32) hours following the accident.

Alcohol tests should be conducted within 2 hours, but in no case more than 8 hours, after the accident. CDL employees must refrain from all alcohol use until the test is complete.

The requirement to test for alcohol and drugs following an accident shall in no way delay necessary medical attention for injured people or prohibit a safety-sensitive employee from leaving the scene of an accident to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

However, an employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.

The results of breath or urine testing conducted by Federal, State or local officials having independent authority for the test may be considered to meet the requirements, provided the test conforms to the testing requirements and that the results are obtained by the City.

5) Return-to-Duty

In the event a driver has had a positive alcohol or controlled substance test, prior to being able to return to work, the employee must undergo a City-arranged return-to-duty test with the following results:

- Alcohol: resulting concentrations of less than .020 and/or
- Controlled substance: verified negative result.

Return-to-duty tests are not conducted until the employee has been cleared to return to work by an approved Substance Abuse Professional (SAP).

Urine specimen collections for return-to-duty drug tests are observed collections; a same gender employee of the collection site will conduct the observation.

6) Follow-up

After a driver who has had a positive alcohol or controlled substance test (which includes refusals to test and engaging in prohibited conduct) returns to work, he/she is subject to a minimum of **6 follow-up** alcohol and/or controlled substance tests within the first 12 months. The follow-up testing may continue for up to 5 years. The number, type and frequency of the follow-up tests are at the discretion of the Substance Abuse Professional (SAP) who evaluated the employee after the initial positive test.

- The employee is not permitted to know in advance the dates of the follow-up tests.
- Urine specimen collections for follow-up controlled substance tests are observed collections.
- Follow-up testing is in addition to all other federally required testing to which the employee is still subject.

G. TEST RESULTS

1. Negative dilute

Effective March 1, 2015, all employees and/or applicants of the City of Providence with a controlled substance test result of “negative-dilute” shall be subject to retesting.

2. Negative with Comment

Some controlled substance test results may be reported as “negative” because there is a valid prescription. Under FMCSA rules, the MRO may recommend a medical evaluation. If so, the City will remove the CDL license holder from work until it is determined that the employee may safely operate a CMV. The affected employee may use sick time to cover the time out of work.

3. Positive Alcohol test with a level of 0.02 - 0.039

- The employee will be suspended without pay for a minimum of 24 hours
- Retest is not required for a return to work.

4. Positive Alcohol test with a level of 0.040 or greater or a Positive Controlled Substance test

The employee will be removed from safety-sensitive functions and suspended without pay until he/she has completed the following:

- Substance abuse evaluation;
- Rehabilitation when necessary;
- When a substance abuse professional determines that the employee has successfully complied with any required rehabilitation;
- When the employee has completed a return-to-duty controlled substance and/or alcohol test. Alcohol test results must show a concentration below 0.02; controlled substance test results must be negative.
 - If either the controlled substance test is positive or the result of the alcohol test is 0.02 or above, the employee will not be allowed to return to work and his/her employment will be terminated.
 - If the results are negative, the employee will be allowed to return to work at his/her former position.
- At the time the employee returns to work, he/she will again be subject to all aspects of alcohol and controlled substance testing, which includes both follow-up testing procedures as well as continued participation in the random testing pool.

Where an employee has already tested positive, any further positive results in any alcohol and controlled substance testing will be considered grounds for termination.

H. Split Specimen Testing

Should the employee dispute the positive result of a controlled substance test, he/she may request that a second test be performed on the split sample specimen.

This test will be performed at the employee's expense. If the test facility requires payment in advance, the City will authorize the test and seek reimbursement from the employee.

Refusal to Test

Federal regulations prohibit CDL license holders from refusing a test. The following are some examples of conduct that the regulations define as refusing a test:

- Failing to appear for any test after you were directed to do so by the City.
- Failing to remain at the testing site until the testing process is completed.
- Failing to provide a urine or breath sample.
- Failing to permit the observation or monitoring of your providing a urine specimen.
- Failing to provide a sufficient urine or breath sample (when it has been determined through the required medical evaluation that there was not adequate medical explanation for the failure).
- Failing to take a second test when directed to do so.
- Failing to cooperate with any part of the testing process, including but not limited to:
- Refusing to empty your pockets
- Behaving in a confrontational manner with the collector
- Failing to wash your hands when directed to do so.
- Failing to obtain a medical evaluation as part of a “shy bladder” or “shy lung” procedure.
- Failing to sign Step 2 of the Alcohol Test Form.
- Providing a urine specimen that is verified as adulterated or substituted
- Failing to follow the observer’s instructions during a directly observed urine collection.
- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process
- Admitting to the collector or MRO that you adulterated or substituted a specimen.

I. Consequences of a Refusal to Test

A determination of refusal to test has the same consequences as those for a positive test. CDL employees who refuse to submit to a test will be subject to discipline, up to and including discharge.

J. Consequences of engaging in Prohibited Conduct

Engaging in prohibited conduct has the same consequences as those for a positive test.

K. Recordkeeping

Confidential records will be maintained within the Human Resources Department and will only be made available to persons within the City as required to carry out the provisions of this policy. Confidential records will only be released outside of the City by written approval of the employee or as allowed by law.

L. Resources available for assistance

Employee Assistance is available for employees who have personal problems associated with alcohol or and controlled substance misuse which may be affecting their work. Please contact Human Resources Department, Benefits Department or Local 1033 for information.

M. CDL license holders are subject to the rules and regulations of the City of Providence’s Vehicle Use Policy, Driver’s License Verification Policy and Vehicle Incident Reporting Policy.

N. Where there are differences in the requirements under the Omnibus Transportation Act and this policy, the Act takes precedence.

**OUR PROGRAM’S DESIGNATED EMPLOYER REPRESENTATIVE (DER) IS:
 Heather Kilkenny, Confidential Assistant to the Director of Human Resources
 421-7740 ext. 5617/hkilkenny@providenceri.gov**