

QUESTION:

When an employer is inquiring about an applicant's previous DOT drug and alcohol test results, is the employer required to send the inquiry via certified mail?

ANSWER:

- No. Certified mail is not required.
- The employer can make this inquiry through a variety of means, including mail (certified or not), fax, telephone, or email.
- However, the employer must provide the former employer the signed release or a faxed or scanned copy of the employee's signed release.
- The former employer must respond via a written response (e.g., fax, letter, email) that ensures confidentiality.
- The employer should document an attempt or attempts to contact and contacts with previous employers, no matter how they were made, so that it can show a good faith effort to obtain the required information.

QUESTION:

When a previous employer receives an inquiry from a new employer for drug and alcohol testing information, does the previous employer provide information it may have received from other employers in the past?

ANSWER:

- As an employer, when you receive an inquiry about a former employee, you must provide all the information in your possession concerning the employee's DOT drug and alcohol tests that occurred in the two years preceding the inquiry.
- This includes information you received about an employee from a former employer (e.g., in response to the Federal Motor Carrier Safety Administration's pre-employment inquiry requirement).
- It is not a violation of Part 40 or DOT agency rules if you provide, in addition, information about the employee's DOT drug and alcohol tests obtained from former employers that dates back more than two years ago.
- If you are an employer regulated by the FAA, this does not impact your requirements under the Pilot Record Act.

QUESTION:

If an applicant admits to testing positive on or refusing to take a pre-employment test within the past two years, must the applicant be held out of safety-sensitive duties if he or she did not complete the return-to-duty process (i.e., the SAP process)?

ANSWER:

- If the applicant admits that he or she had a positive or a refusal to test result on a pre-employment test, the employer is not permitted to use the applicant to perform safety-sensitive duties until and unless the applicant documents successful completion of the return-to-duty process.
- This Part 40 requirement applies whether or not the pre-employment positive or refusal occurred before, on, or after August 1, 2001.
- Should no proof exist that the return-to-duty process was successfully complied with by the applicant, a current return-to-duty process must occur before the individual can again perform safety-sensitive functions.

QUESTION:

When an employee leaves an employer for a period of time (but not exceeding two years) and returns to that same employer, must the employer once again seek to obtain information it may have received previously from other employers?

ANSWER:

- No. If the information received previously is still on file with the employer, the employer need not seek to obtain the testing data again.
- However, the employer must seek information from all other employers for whom the employee performed safety-sensitive duties since the employee last worked for the employer.

QUESTION:

May the previous employer delay sending an employee's drug and alcohol testing information to the gaining employer pending payment for the cost of the information?

ANSWER:

- No. Part 40 specifically requires that previous employers immediately provide the gaining employer with the appropriate drug and alcohol testing information.
- No one (i.e., previous employer, service agent [to include C/TPA], employer information / data broker) may withhold this information from the requesting employer pending payment for it.

QUESTION:

Will FMCSA- and FAA-regulated employers complying with the drug and alcohol information records check requirements contained in the Federal Motor Carrier Safety Administration (FMCSA) regulation 49 CFR Part 391 and the Federal Aviation Administration (FAA) Pilot Record Improvement Act be considered compliant with 40.25?

ANSWER:

- Yes. Employers who are required by and who comply with the FMCSA's three-year requirement for obtaining and providing employee drug and alcohol testing information are considered to have satisfied the two-year requirement contained in 40.25.
- Likewise, employers who are required by and who comply with the FAA's five-year requirement for obtaining and providing employee drug and alcohol testing information are considered to have satisfied the two-year requirement contained in 40.25.
- These employers do not need to seek separately the 40.25 information if the employer adheres to the FMCSA and FAA regulations, as appropriate, for obtaining an employee's prior drug and alcohol testing information.