

QUESTION:

May an employer have a policy of declining to hire applicants who have a negative dilute test result on a pre-employment drug test?

ANSWER:

- The Department's rules do not require an employer to hire anyone. That decision is an employer's.
- While §40.197(b) authorizes an employer to obtain one additional test following a negative dilute result (in pre-employment or other testing situations), a negative dilute test result is a valid negative test for DOT's purposes.
- Because a negative dilute test result is a negative test for DOT program purposes, the employer is authorized to have the applicant begin performing safety-sensitive functions.
- If the employer declines to hire the applicant in this situation, the employer's decision is based solely on its own policy. The employer cannot claim that its action is required or authorized by DOT rules.