

QUESTION:

Can the employer himself or herself act as a Designated Employer Representative (DER), as opposed to appointing another employee to play this role?

ANSWER:

- The employer (e.g., the owner of a small business) may act personally as the DER.
- The employer may also appoint an employee or employees to play this role.
- The DER must exercise his or her authority to remove an employee from safety sensitive functions either directly or by causing the employee to be removed from performing these functions (e.g., by having the employee's supervisor effect the actual removal).
- The employer may not delegate the DER role to a service agent. Only the employer or an actual employee of the employer may perform this function.
- The Department will not authorize a "DER-for-hire" concept (e.g., a person under contract by several companies to serve as their DER), either.

QUESTION:

If a C/TPA is hired as an “independent safety consultant” that executes all aspects of the employer’s safety and drug and alcohol testing programs, can the C/TPA act as a DER?

ANSWER:

- Service agents are prohibited from acting as DERs under any circumstances.
- The fact that an organization that is called an “independent safety consultant” acts as a consultant to an employer for purposes of executing a drug and alcohol testing or safety program does not make it any less a service agent. It is still prohibited from acting as a DER.