

QUESTION:

May an employer conduct follow-up testing under company authority that goes beyond the follow-up testing which the SAP determines necessary?

ANSWER:

- No. The regulation (at 40.307(d)(4)) and SAP guidelines state that employers must not impose additional testing requirements that go beyond the SAP's follow-up testing plan. This includes additional testing requirements under company authority.
- In addition to follow-up testing and random testing, an employer has other means available to ascertain an employee's alcohol- and drug-free performance and functions.
 - The employer can choose to monitor the employee's compliance with the SAP's recommendations for continuing treatment and/or education as part of a return-to-duty agreement with the employee.
 - The employer can conduct reasonable suspicion testing if the employee exhibits signs and symptoms of drug or alcohol use.
 - The employer can meet regularly with the employee to discuss the employee's continuing sobriety and drug-free status.
- The Department is not opposed to an employer discussing his or her desires for having more than the minimum rule requirement (i.e., 6 tests in the first year) for follow-up testing with SAPs they intend to utilize.