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Checking Driving Histories of CDL-Holders and Annual Program Review

There have been several recent changes at the State and Federal level concerning employers of workers with Commercial Drivers' Licenses. The purpose of this Bulletin is to provide information on the new regulations, review other significant regulations, and provide an annual to-do checklist for public employers of CDL drivers.

New Jersey's recent medical marijuana regulations do not change the Federal laws strictly prohibiting the use of marijuana by CDL drivers or employees performing other safety sensitive functions. Drivers should be reminded of their obligation to surrender their CDL if they begin using cannabis, even if under a doctor's care.

On January 6, 2020, the U.S. Department of Transportation's (USDOT) Drug and Alcohol Clearinghouse (Clearinghouse) became fully operational. Along with it came regulations that all employers of drivers with CDLs must follow. Among them is, **at least once a year, employers of CDL-holders must both 1) query the Clearinghouse and 2) check State Motor Vehicle Records about the driving histories of their CDL holders. Starting January 6, 2020 employers and drug and alcohol testing agencies must report test failures or refusals in the Clearinghouse.**

In order to query the Clearinghouse, employers must first go online and register as an employer in the Clearinghouse. The registration period is now open. Employers will also need to purchase a Query Plan in order to start conducting queries. There is a \$1.25 charge for each query. They can be purchased in packages ranging from 1 to more than a 1,000.

Registration in the Clearinghouse is optional for CDL-holders. **The Safety Director recommends employers require registration in the Clearinghouse and granting the employer Limited Access as part of their employment agreement.** Drivers should understand not being registered in the Clearinghouse restricts the driver's employment options, and their ability to monitor their own records. Also, if a query of the Clearinghouse shows a note in the driver's record, the driver has 24 hours to go into the system, register, and grant the employer Full Access or else the employer may not permit the driver to perform any safety sensitive activity.

To grant the employer Limited Access, the driver will need to sign a consent form. A model form is available at the bottom of the MEL CDL webpage, <https://njmel.org/mel-safety-institute/model-policies/driver-policies/>. Again, employers who cannot verify a driver's clean drug and alcohol history in the Clearinghouse may not, by law, allow a driver to operate a CDL vehicle or perform any safety sensitive activity.

The Safety Director recommends employers work with CDL drivers to register in the Clearinghouse and grant the employer Limited Access as quickly as possible. Consider self-imposing a deadline of January 31, 2020. On February 3, query the Clearinghouse and take appropriate actions depending on the results of the query. If a Limited Query indicates a drug or alcohol note in the driver's history, the employer has 24 hours to have the driver grant Full Access online in the Clearinghouse before the driver must not be permitted to operate a CDL-vehicle or perform any other safety sensitive function.

Employers must also check the State's motor vehicle records (MVR) or driver's abstracts of CDL-drivers each year. In New Jersey, MVRs are verified using the NJ Customer Abstract Information Retrieval (NJ CAIR) Program offered through the New Jersey Motor Vehicle Commission. Visit their homepage at <https://www.state.nj.us/mvcbiz/Records/CAIR.htm>. Drivers must also acknowledge, in writing, that MVRs are checked each year by the employer.

This bulletin is intended for general information purposes only. It should not be construed as legal advice or legal opinion regarding any specific or factual situation. Always follow your organization's policies and procedures as presented by your manager or supervisor. For further information regarding this bulletin, contact your Safety Director at 877.398.3046.

Designate one or two authorized individuals to order the MVRs from the N.J. Motor Vehicle Commission. MVRs may not be obtained through the local Police Department. Authorized individuals may be the Clerk, an Administrator, a Human Resource representative, or the Police Chief. The designated individual must understand they may not share the information with unauthorized individuals as required by the Driver Privacy Protection Act. **Remember, these are confidential reports.** Department heads who review or act upon the MVR reports must also be aware of the confidential nature of driving histories.

As part of a comprehensive risk control program, public employers should establish acceptable and unacceptable criteria for driving histories. Work with the organization's attorney and administration to establish the levels. Educate drivers on your criteria. The policy must be enforced consistently and without discrimination.

The medical evaluation and qualifications regulations for intra-state exempt CDL drivers have not changed. While most drivers who operate commercial motor vehicles solely for a public employer are exempt from having bi-annual physicals by a DOT-certified medical examiner, they are not exempt from meeting the physical requirements of the USDOT as defined in 49 CFR 391, Subpart E. Employers should annually remind workers that under 49 CFR 391.41(a)(1)(i) it is an obligation of the driver to not operate a commercial motor vehicle if they are not physically qualified. Knowingly violating this law exposes the driver to severe consequences. CDL drivers who drive interstate, or hold Hazardous Material or Passenger endorsements are not exempt from the medical evaluations.

The USDOT requires employers of CDL-holders to have a written policy that defines the roles, rights and responsibilities of drivers and the organization's administration. A comprehensive Policy should include the following components:

- Drug and alcohol testing types, test protocols and criteria, and consequences for violations – A Model Program Drug & Alcohol Template is available at <https://njmel.org/mel-safety-institute/model-policies/driver-policies/> CDL drivers should also be required to disclose medications that could affect their ability to operate commercial motor vehicles and the procedures for when a notification is made.
- Identity of the Designated Employer Representatives and Substance Abuse Professionals
- Medical qualifications and evaluations.
- Reporting motor vehicle convictions to the employer

To assist members, the Safety Director provides the following annual To-Do list for your CDL Driving Program.

- Review changes to State or Federal regulations and update the organization's written Policy if needed
- Verify name and contact information of the Designated Employer Representative and their alternate, name and contact information of the Medical Review Officer, and name and contact information of the Substance Abuse Professional.
- Verify vendor(s) responsible for Reasonable Suspicion and Post-Accident drug and alcohol testing is available 24/7/365 and the information is provided to supervisors of CDL drivers.
- Supervisors of CDL drivers have received Reasonable Suspicion training.
- Motor vehicle records of all drivers are checked using the NJMVC CAIR system. A file is maintained with current drivers' signed acknowledgment forms.
- Drug and alcohol violations of CDL drivers are queried in the USDOT Drug and Alcohol Clearinghouse. A file is maintained with signed Limited Access forms for current CDL drivers.
- CDL drivers were reminded verbally and in writing of their obligations to disclose to the employer
 - Suspensions, revocations, or cancellations immediately
 - Moving violation convictions, except parking violations, within 30 days
 - Medical conditions that could affect their ability to operate a commercial motor vehicle
 - Prescription or over-the-counter medications that could affect their ability to operate a commercial motor vehicle.

Please contact the Office of the Safety Director if further information is needed.