

Drug & Alcohol Program

Sean Oswald

3:00 – 3:30





D&A TESTING: COVID-19

DESPITE COVID-19 RESTRICTIONS: ALL USDOT-FTA DRUG & ALCOHOL
REGUALTIONS CONTINUE TO APPLY

- Major Impact: Pre-Employment, Return-To-Duty, Follow-Up
 - No Test = No Safety-Sensitive Functions
 - FMCSA WAIVERS ARE NOT APPLICABLE FOR FTA EMPLOYEES
- Other Impacts: Post-Accident, Reasonable Suspicion, Random
 - USDOT recognizes some requirements may become impossible to comply with
 - You must still document why a test was not completed



D&A TESTING: COVID-19

FAQs / BEST - PRACTICES

- What Should I Do If I Have An Employee Selected for Random Testing But They Are Unavailable Due To COVID Furlough?
- Should I Leave Furloughed Employees In The Random Testing Pool?
- If I Have Employees Returning From Furlough... Do I Need To Do A New Pre-Employment Test?
- Due To COVID Related Reduction In Service, I Have Employees On Duty, But Not Performing Safety-Sensitive Duties, Can/Should I Still Be Doing Random Testing?



D&A TESTING: COVID-19

FAQs / BEST - PRACTICES

- What If My Employee Doesn't Feel Comfortable Going To Our Collection Site For A Required Drug/Alcohol Test Due To Concerns Related To COVID-19?
 - It is EMPLOYER'S responsibility to evaluate circumstances of an employee's refusal to test (40.355(i))
 - Employer's have ultimate discretion to make a reasonable judgement call



D&A TESTING: COVID-19

FAQs / BEST - PRACTICES

- What If The Training Credentials Of My Service Agent(s) (i.e., BAT, Collector, MRO, SAP) Have Expired And They Are Unable To Get Them Renewed Due To COVID-19 Restrictions?
 - USDOT Issued A “STATEMENT OF ENFORCEMENT DISCRETION FOR SAPs AND SERVICE AGENTS” On 4/4/2020. This is good through 9/30/2020
 - https://www.transportation.gov/odapc/Statement_of_Enforcement_Discretion_SAPs_and_Service_Agents



D&A TESTING: COVID-19

FAQs / BEST - PRACTICES

- Our Agency Has A “2nd Chance” Policy ... Can The SAP Assessments Required to Return Our Employee To Duty Following Positive Test Be Conducted Remotely Due To COVID-19 Concerns?
 - USDOT Issued A “STATEMENT OF ENFORCEMENT DISCRETION FOR SAPs AND SERVICE AGENTS” On 4/4/2020. This is good through 9/30/2020
 - Allows SAP the option to due a remote evaluation/assessment (typically this is prohibited)
 - Requirements Apply



CORRECTING FLAWS IN CCF/ATFs

- Any & All Flaws in CCFs/ATFs Must Be Addressed & Documented
 - Affidavits of Correction/Memorandum For the Record (MFR)
 - Not all flaws (IN FACT MOST FLAWS) will not cause a test to be cancelled
 - Just because the flaw doesn't cancel the test DOESN'T mean you don't have to document/correct the flaw
 - You as the employer have responsibility to review and correct all flaws on all CCFs/ATFs



CORRECTING FLAWS IN CCF/ATFs

- There Are 3 Categories of Flaws
 1. Fatal Flaws
 - Canceled test (automatic)
 2. Major Correctable Flaws
 - MUST be corrected ... If not, they become “fatal” and the test will be canceled
 3. Other Correctable Flaws
 - Employer must document the flaw, but these will never cause test to be canceled



CORRECTING FLAWS IN CCF/ATFs

- Affidavits of Correction
 - Generally completed/Signed by the person who made the error
 - Needs to identify the test and other vital information
 - At minimum, must list 3 main items:
 1. Identify the flaw
 2. Identify what the correct information should have been
 3. Identify what has been done to ensure the same error will not reoccur in the future
 - Certain situations may require further information

GDOT UPCOMING TRAINING

- *VIRTUAL TRAINING*

Fall Drug & Alcohol Program Training
October 13-16, 2020





D&A Take-aways

Mandatory One-Hour Training

Available Online:

FTA Drug Awareness 60 minute video:

<https://www.bing.com/search?q=fta+drug+awareness+video&src=IE-SearchBox&FORM=IESR4N>



Civil Rights Act

September 1, 2020

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Civil Rights Act of 1964

- ◆ The **Civil Rights Act of 1964**, enacted on July 2, 1964, is a landmark civil rights and labor law that outlaws discrimination based on race, color, religion, sex, or national origin. It also prohibits unequal application of voter registration requirements, and racial segregation in schools, employment, and public accommodations.



Eleven Sections of the Civil Rights Act

- ◆ Title I - Bars unequal application of state voter registration requirements for federal elections.
- ◆ Title II - Prohibits discrimination in public places.
- ◆ Title III – Prohibits discrimination for access to public property and facilities.
- ◆ Title IV – Authorizes the Attorney General to address certain equal protections violations based on sex, among other bases, in public schools and institutions of higher education.
- ◆ Title V – Expanded the U S Commission on Civil Rights.
- ◆ Title VI – Prohibits discrimination from participation in, being denied the benefits of, or being subjected to discrimination under any program or activity receiving federal financial assistance.

Eleven Sections of the CIVIL RIGHTS ACT (continued)

- ◆ Title VII - Prohibits discrimination in virtually every employment circumstance on the basis of race, color, religion, gender, pregnancy, or national origin. Equal Employment Opportunity (EEO)
- ◆ Title VIII – Prohibits discrimination in housing in the sale, rental, and financing of dwellings, and in other housing-related transactions, based on race, color, religion, sex, familial status, national origin, and disability.
- ◆ Title IX – Prohibits discrimination on the basis of sex in educational programs and activities that receive or benefit from federal financial assistance.
- ◆ Title X – Created the Community Relations Service that would assist in disputes involving discrimination claims.
- ◆ Title XI - Gives the right to a jury trial to a defendant accused of certain categories of criminal contempt in a matter arising under title II, III, IV, V, VI, or VII of the Act.



Poll Question

Which of the eleven Civil Rights Sections apply to federally funded public transportation?

Answer:

II, III, VI, VII



Impact on Public Transportation

- ◆ Title II: Public transportation vehicles, bus shelters, transfer stations, and other facilities are public places.
 - Transportation systems must ensure equal access to all persons to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation without discrimination on the ground of race, color, religion, or national origin.

Impact on Public Transportation (continued)

- ◆ Title III: Public transportation vehicles, bus shelters, transfer stations, and other facilities are public property.
 - Transportation systems must ensure equal access to all persons to facilities and vehicles without discrimination on the ground of race, color, religion, or national origin.

Impact on Public Transportation (continued)

- ◆ Title VII: Public transportation systems must ensure that people have the right to work and advance on the bases of merit and ability, regardless of their race, sex, color, religion, disability, national origin, or age.
- ◆ Equal Employment Opportunity (EEO) requirements
 - Full Program: Employs 100 or more transit-related employees, and Requests or receives capital or operating assistance in excess of \$1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of \$250,000 in the previous Federal fiscal year.
 - Abbreviated Program: Employs between 50-99 transit-related employees, and Requests or receives capital or operating assistance in excess of \$1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of \$250,000 in the previous Federal fiscal year.
 - All Recipients: EEO statement, advertisement with hiring, and certification of compliance

Impact on Public Transportation (continued)

- ◆ Title VI: Public transportation receives federal funding and therefore must ensure that services and benefits do not, in any way, exclude participation or discriminate.
 - Level and Quality of Public Transportation Service Is Provided In a Nondiscriminatory Manner
 - Promote Full and Fair Participation In Public Transportation Decision-Making Without Regard to Race, Color, or National Origin
 - Ensure Meaningful Access To Transit-Related Programs and Activities By Persons With Limited English Proficiency

Title VI Plan is required





Poll Question

What are examples of Title VI discrimination?

- a.) Denying a trip to an elderly passenger due to the transit system's safety concerns.**
- b) Developing a fixed route that operates with less frequency in an area of protected populations.**
- c.) Posting of Title VI protections and compliant procedures on the vehicle.**
- d) Requiring individuals with limited English proficiency to purchase bus passes in lieu of paying the fare upon boarding.**

Answer: a, b, d

Posting of protections and complaint procedures is required based on locations stipulated in the Title VI plan.

Civil Rights – Special Grantee Circumstances

Special Circumstances

Circumstance	Compliance Requirement
Subrecipient Is Not a Governmental Entity, But a Private Nonprofit Corporation	Preparation of a Title VI Program Required
Subrecipient Does Not Service the Community-at-Large, But a Population Strictly Designated By the State	Preparation of a Title VI Program Required
Subrecipient Provides Only Limited Transportation to Clients Only	Preparation of a Title VI Program Required
Entity Is a Primary Recipient and Subrecipient	Preparation of a Title VI Program Required; Submit To All Primary Recipients



Title VI Basic Requirements

Title VI Assurance

- ◆ Must Accompany Every Application for Financial Assistance From FTA (“Standard Assurance”)
- ◆ Must Submit Annual “Certs and Assurances”
- ◆ Primary Recipients Collect and Submit Title VI Assurances From Subrecipients



Title VI Guidance

- ◆ FTA Circular 4702.1B
- ◆ Effective October 1, 2012
- ◆ Download at:
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_Title_VI_FINAL.pdf



Title VI Requirements

Program Elements

- Title VI Notice to the Public
- Complaint Procedures
- Complaint Form
- List of Investigations, Lawsuits, and Complaints
- Public Participation Plan
- Language Assistance Plan
- Information Regarding Siting of Fixed Facilities
- Table Depicting Racial Composition of Membership of Non-Elected Boards/Committees



Title VI Best Practices

What Must Be Translated?

- ◆ Vital Documents
 - Consent Forms
 - Complaint Forms
 - Intake or Application Documents
 - Written Notices of Rights
 - Notices of Denials, Losses, or Decreases in Benefits or Services
 - Notices Advising LEP Persons of Language Assistance Services



Title VI Best Practices

Can We Use Google Translate?

- ◆ FTA Frowns on “Mechanical Translation”
- ◆ Permissible for Non-Vital Documents
- ◆ Must Confirm That Translated Vital Documents Accurately Convey Rights



Title VI Plan Adoption

- ◆ The Title VI Program Must Be Approved by the Recipient's Board of Directors or Appropriate Governing Entity or Official(s) Responsible For Policy Decisions Prior to Submission to GDOT



Title VI Compliance

Common Issues

- ◆ Improper Four Factor Analysis
- ◆ Confusion that Safe Harbor is 5% Population or 1,000 People, Whichever is Higher, When in Fact it is Whichever is Lower
- ◆ No Information on How to File a Complaint Readily Available to the Public
- ◆ Lack of complaint tracking and recordkeeping
- ◆ Expanding the Title VI Notice Language Beyond Race, Color, and National Origin
- ◆ Broken or Outdated Website Links to Access the Title VI Plan and Complaint Form



Title VI Compliance

Common Issues

- ◆ Failure to Provide Continuous Opportunity for Public Input
- ◆ Section 5311 Fixed Mode Providers Not Including Service Policies and Standards in their Programs
- ◆ Failure to Translate Vital Documents or Improper Translation
- ◆ Failure to Update Plan as Needed and Every Three Years
- ◆ Use of Outdated Demographic Information



Questions

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Thank you!