



Transportation Employers Required to Comply With New Drug Testing and Anti-Texting Rules; OSHA Announces Intent to Crack Down on All Employers for Requiring Texting While Driving

The federal government has increased its efforts to address workplace safety hazards such as drug use and texting while driving.

Employers with commercial motor vehicle operators, pipeline workers or other transportation employees under the jurisdiction of the Department of Transportation (DOT) must comply with new drug testing rules as of October 1, 2010. The required five-panel test will now include new initial testing in the amphetamines group for MDMA and confirmatory testing for MDMA, MDA and MDEA. The final rule also mandates changes to the Custody and Control Form (CCF) and laboratory reporting procedures, and is intended to create consistency with many of the requirements of the Department of Health and Human Services.

Additionally, the Federal Motor Carrier Safety Administration (FMCSA) recently announced a final rule banning commercial motor vehicle operators from text messaging while driving. The final rule will go into effect October 27. "Texting" broadly includes generating or reading any sort of text message from an electronic device while operating a commercial motor vehicle including while the vehicle is temporarily stopped at traffic lights or because of traffic. Other DOT agencies, including

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Contacts:

[D. Lewis Clark Jr.](#)
+1.602.528.4065
+1.614.365.2703
+1.212.407.0124

[Norman Davis](#)
+1.305.577.2988

[Susan C. Hastings](#)
+1.216.479.8723

[Greta M. Kearns](#)
+1.614.365.2835

[Michael W. Kelly](#)
+1.415.954.0375

[Casey J.T. McCoy](#)
+1.213.689.5153
+1.415.954.0200

[Merrell B. Renaud](#)
+1.703.720.7845

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the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration, have also published final rules addressing texting recently. Finally, OSHA has announced its intention to join DOT in a multi-pronged initiative including enhanced enforcement activity against employers who require texting while driving.

The stakes are high. In addition to posing serious risks to the public and employees, drug use and texting while driving or operating safety equipment subjects employers and employees to potential civil and criminal exposure. All employers should take the opportunity to review their policies and procedures regarding these and other serious safety issues, and employers subject to DOT's jurisdiction should ensure their policies are updated to reflect the required changes.

For assistance in updating your policy or for further information regarding these new rules, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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