




May 7, 2018

To: Executive Committee

From: Darrell E. Johnson, Chief Executive Officer 

Subject: Amendments to the Orange County Transportation Authority Drug and Alcohol Policy Manual

Overview

In accordance with the Drug and Alcohol Policy (# HROD-HR-420.17DRUG), revisions to the Drug and Alcohol Policy Manual, are subject to management review and Board of Directors' approval.

Recommendations

- A. Authorize the Chief Executive Officer, or designee, to increase the Orange County Transportation Authority's random alcohol testing rate from 20 percent to 50 percent annually for all safety-sensitive employees in order to emulate the current testing rates for drugs (Manual Section 5.5G Policy Section VIIA).
- B. Authorize the Chief Executive Officer, or designee, to replace the obsolete table of drug testing thresholds (Manual Section 5.4), with "drugs or classes of drugs to be tested and the applicable threshold levels for positive findings shall be determined by current Department of Transportation and Federal Transit Administration regulations."
- C. Authorize the Chief Executive Officer, or designee, to make all necessary edits to ensure Attachment B (Disclosure of Prescription and Over-the-Counter Drugs form), prescription drug use physician review requirements (Manual Section 4.2A), are mandatory under Orange County Transportation Authority policy.
- D. Authorize the Chief Executive Officer, or designee, to change the requirement for drug and alcohol testing at the time of an employee's Department of Motor Vehicles medical recertification and/or physical examinations to implementing a biennial testing requirement and continuing with more proactive and stringent Department of

Transportation random testing and prescription drug safeguard measures (Manual Section 5.5B, 5.5G, 6.2C, Attachment B, and Policy Section VIIA).

- E. Authorize the Chief Executive Officer, or designee, to remove the Facilities Maintenance Department from the list of regulated safety-sensitive positions (Manual Section 9), in compliance with the federal definition.

Discussion

The Health, Safety, and Environmental Compliance Department oversees the Drug and Alcohol compliance program, and has assessed program compliance and program management efficiencies in accordance with the Department of Transportation (DOT) and the Federal Transit Administration (FTA) requirements (Attachment A, Attachment B).

The Orange County Transportation Authority's (OCTA) compliance with current DOT-required monthly random, post-accident, pre-employment, reasonable suspicion, and follow-up drug and alcohol testing provides a preemptive and reasonable approach to combating substance abuse within OCTA's safety-sensitive workforce. The federal DOT/FTA - required population testing rates are currently 25 percent for drug and 10 percent for alcohol. Knowing that random testing is best for detecting and deterring substance abuse, OCTA currently tests 50 percent of its safety sensitive population, double the regulatory required rate for drugs, and 20 percent for alcohol. For consistency purposes, and to proactively combat one of the highest abused substances, OCTA's staff requests to increase the number of random alcohol tests from 20 percent to 50 percent. This allows random alcohol testing of more than two times the current number of safety-sensitive employees and serves as an additional measure to combat the industry's three-year increase in random alcohol positive rates as reported by the DOT.

Effective January 1, 2018, the DOT expanded its list of drugs and drug classifications to include additional Schedule II Controlled Substances in order to align with the U.S. Department of Health and Human Services (DHHS). In doing so, the DOT provided OCTA a greater ability to screen for semi-synthetic opioid drugs that were not singularly identified in the prior drug testing panel. With this DOT adoption, the existing list within the OCTA Drug and Alcohol Policy Manual is outdated. In order to ensure OCTA always applies current drug classifications and testing thresholds, it will serve OCTA to not include the DOT and FTA table, but instead make reference to its adherence by adding the statement "drugs or classes of drugs to be tested and the applicable threshold levels for positive findings shall be determined by current DOT and FTA regulations."

Further efforts adopted by OCTA to mitigate the risk of legal drug use include Attachment B (Disclosure of Prescription and Over-the-Counter Drugs form) of the Drug and Alcohol Manual. This non-regulatory program, designed to provide additional safety measures, should require safety-sensitive employees to formally disclose the use of any legal prescription drug, not limited to, but including, controlled substances. This current process should also require a licensed physician to determine if an employee under prescribed medication is able to perform the essential functions of their job duties in a competent and safe manner (Attachment B, Prescription drugs – Physician review form).

Even with the passing of recent medical and recreational marijuana use law in California, OCTA continues to uphold the federal rule and abide by the continued marijuana testing parameters set forth by the DOT. This stance is supported by DOT compliance guidance that states “We will not change our regulated drug testing program based upon these guidelines to federal prosecutors” and “The Department of Transportation’s Drug and Alcohol Testing Regulation – 49 CFR Part 40, at 40.151(e) – does not authorize medical marijuana under a state law to be a valid medical explanation for a transportation employee’s positive drug test result.”

The OCTA Drug and Alcohol Policy Manual requires safety-sensitive employees to submit to a predictive drug and alcohol test each time they undergo a Department of Motor Vehicle (DMV) medical certification exam (Manual Section 5.5B and 6.2C). There is one legal and another administrative concern associated with this self-imposed policy. The legal concern with this requirement is that “unhealthy” employees are subject to additional drug and alcohol testing beyond the requirement of “healthy” employees. This could be construed as a disparate impact/treatment liability. On the administrative management side, employees are allowed to perform their DMV medical recertification and the associated drug and alcohol screening on their own time. In addition, the disciplinary action associated with a positive drug or alcohol test under these circumstances does not always lead to termination and subsequently result in a discrepancy among the discipline applied to all other positive test scenarios. Further clarifying, while off duty, if an employee’s test results at the time of DMV recertification or an annual or bi-annual physical examination are positive for alcohol or any illegal drug, the employee will only be suspended without pay for a minimum of thirty days and be required to enter an OCTA-approved substance abuse treatment program (Section 6.2C). Under section 6.1B, all other employees who undergo drug and alcohol screening for all other circumstances are subject to, and have historically led to termination. This policy does not allow OCTA to apply uniform disciplinary action due to the single fact that an employee can choose to conduct the tests on their own personal time. It is staff’s intention that all positive test results lead to termination in order to protect OCTA and the public which we serve.

To substitute the screening efforts of the DMV testing, staff proposes to implement a new testing policy that would require all safety-sensitive employees to conduct a biennial drug and alcohol test. Every two years, OCTA will screen its entire safety-sensitive employee population through administratively managing non-random monthly tests. This will serve the same purpose as the existing DMV medical certification tests, without the associated liability and/or disciplinary action concern.

The recommendation to remove the Facilities Maintenance titles from the list of safety-sensitive positions has direct regulatory implication. By FTA's definition, these three job classifications are not safety-sensitive. Removing these titles will bring us into compliance with the federal definition. The FTA defines safety-sensitive functions in Part 655, Section 655.4, as employees performing any of the following:

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver's license
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

OCTA Facilities Maintenance employees are not required to have a commercial driver's license and do not perform safety-sensitive tasks.

Summary

Staff is recommending the Board of Directors authorize the Chief Executive Officer to make necessary modifications to the Drug and Alcohol Policy Manual in compliance with OCTA's Drug and Alcohol Policy. These proposed changes will replace the DMV medical certification testing protocols with a new biennial testing requirement, increase OCTA's ability to perform random drug and alcohol testing, remove an outdated DOT reference table, and properly classify the Facilities Maintenance employees as non-safety-sensitive.

Attachments

- A. Human Resources & Organizational Development Division – Drug and Alcohol Policy - Redlined
- B. Orange County Transportation Authority (OCTA) - Drug and Alcohol Policy Manual – 2018 Revision - Redlined

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