

Reminder Notice - Direct Observation In Effect For All DOT Return-to-Duty & Follow-Up Drug Testing

- DOT Return-to-Duty (RTD) and Follow-Up drug tests are applicable to return-to-duty, safety-sensitive transportation industry employees -- truck and bus drivers, train engineers, pilots, subway operators, ship captains, & pipeline emergency response personnel, among others -- who have already failed or refused to take a prior test.
- The Department carefully considered the safety need for this mandatory Direct Observation requirement; and the United States Court of Appeals for the District of Columbia Circuit unanimously agreed that the Department's action was reasonable, justified, and Constitutional.
- Conducting all DOT RTD and Follow-Up tests under Direct Observation has been an employer requirement of Federal law since August 31, 2009.
 - This includes the RTD and Follow-Up tests of employees whose initial violations of DOT rules occurred or whose series of DOT Follow-Up tests began before August 31, 2009.
 - This also includes employees determined by the Substance Abuse Professional (SAP) to need Follow-Up drug testing in addition to Follow-Up alcohol testing.
- Direct Observation must include a same gender observer's check for prosthetic and other devices that could be used to cheat a drug test. This check is in addition to the observer's subsequently watching the employee urinate into the collection container.
- If a collector, Medical Review Officer (MRO), Third Party Administrator (TPA), or other service agent learns that a Direct Observation collection using the required procedures was not conducted, the employer needs to be informed.
 - Upon learning that a Direct Observation collection using the required procedures was not conducted, the employer needs to direct the employee to have an immediate recollection under Direct Observation.
 - Subsequently, MROs will follow the procedures at 40.162(b) for working with multiple verified results for the same testing event.
- No other tests [e.g., Pre-employment, Random] can be substituted for DOT RTD and Follow-Up testing.
- Service Agents – such as SAPs, collectors, MROs, and TPAs – should periodically remind employers they serve that all DOT RTD and Follow-Up tests must be conducted under Direct Observation.