
(a) A towing company adopting paragraphs (1) - (12) of this subsection will comply with Texas Occupations Code, §2308.158.

(1) Purpose and Scope. This drug and alcohol testing policy provides guidance to supervisors and towing operators about their responsibilities under this policy. Except as stated in paragraph (12), this policy applies to all towing operators and all towing operator job applicants.
(2) Definitions. The words and terms used in this policy shall have their ordinary meaning unless the words or terms are used in Texas Occupations Code, Chapter 2308 or Title 49 Code of Federal Regulation Part 40, in which event the words or terms shall have the meaning designated in those regulations.

(3) Consent Form.

(A) Before a drug or alcohol test is administered, towing operators and applicants are required to sign a consent form authorizing the test and permitting release of test results to the medical review officer (MRO), the company, and the department. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the drug and alcohol testing policy.
(B) The consent form shall set forth the following information:

(i) the procedure for confirming and verifying an initial positive test result;

(ii) the consequences of a verified positive test result; and

(iii) the consequences of refusing to undergo a drug or alcohol test.

(C) The consent form also provides authorization for certified or licensed attending medical personnel to take and have analyzed appropriate specimens to determine if the tested drugs were present in the towing operator’s or applicant’s system.

(4) Compliance with Drug and Alcohol Testing Policy. The failure or refusal by a towing operator or applicant to cooperate
fully by signing necessary consent forms or other required documents or the failure or refusal to submit to any test or any procedure under this policy in a timely manner will be grounds for refusal to hire or for termination. The submission by an applicant or employee of a urine sample that is not his/her own or is a diluted specimen shall be grounds for refusal to hire or for termination.

(5) General Rules. This drug and alcohol testing policy is governed by these general rules:

(A) towing operators shall not take or be under the influence of any drugs unless prescribed by the employee's licensed physician.

(B) towing operators are prohibited from engaging in the manufacture, sale,
distribution, use, or unauthorized possession of illegal drugs at any time.

(C) All towing company property is subject to inspection at any time without notice. There should be no expectation of privacy in or on such property. Towing company property includes, but is not limited to, vehicles, desks, containers, files, and lockers.

(D) Any towing operator convicted of violating a criminal drug or alcohol statute shall inform his/her supervisor of such conviction (including pleas of guilty and nolo contendere) within five days of the conviction occurring. Failure to inform the supervisor subjects the employee to disciplinary action up to and including termination for the first offense. The towing company will notify the Texas Department of Licensing and Regulation
of the conviction (including pleas of guilty and nolo contendere).

(6) Types of Tests

(A) Pre-employment. All applicants for positions requiring a towing operator’s license, who have received a conditional offer of employment, must take a drug test before receiving a final offer of employment.

(B) Annual. All towing operators employed by a towing company must complete at least one scheduled drug test each 12-month period from the date of the initial license or renewal.

(C) Random Testing. In addition to annual testing, towing operators are subject to random urine drug and alcohol testing. Under this policy, annual random test for drugs and alcohol of at least 25 percent of
the total number of towing operators is required.

(i) A minimum of 15 minutes and a maximum of two hours will be allowed between notification of a towing operator for random urine drug and alcohol testing and the actual presentation for specimen collection.

(ii) Random donor selection dates will be unannounced with unpredictable frequency.

(iii) Each licensed towing company participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed towing operators participating in and tested by the consortium.

(D) Return-to-Duty and Follow-Up.
(i) Any towing operator who has violated this drug and alcohol testing policy and is allowed to return to work must submit to a return-to-duty test. Follow-up tests will be unannounced, and at least six tests will be conducted in the first 12 months after a towing operator returns to duty. Follow-up testing may be extended for up to 60 months following return to duty. The test results of all return to duty and follow-up must be negative.

(ii) The towing operator will be required to pay for his or her return-to-duty and follow-up tests accordingly.

(iii) Each licensed towing company participating in a consortium must ensure that the consortium performs random drug testing on at least 25% of the total number of the licensed towing company’s
towing operators employed by or under contract with the towing company.

(7) Drug Testing. The drugs for which tests are required under this policy are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opiates.

(8) Specimen Collection Procedures.

(A) All urine specimens will be collected by a laboratory that is certified and monitored by the Federal Department of Health and Human Services.

(B) Drug and alcohol testing procedures include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Only the primary specimen is opened and used for the urinalysis. The split specimen bottle
remains sealed and is stored at the laboratory.

(C) If the analysis of the primary specimen confirms the presence of drugs or alcohol, the towing operator has 72 hours to request sending the split specimen to another Federal Department of Health and Human Services (DHHS) certified laboratory for analysis. The towing operator will be required to pay for his or her split specimen test(s).

(D) For the towing operator’s protection, the results of the analysis will be confidential except for the testing laboratory. After the MRO has evaluated a positive test result, the towing operator will be notified, and the MRO will notify the company.
(E) The towing company will notify the department of the positive test result. Notification to the department must occur within 3 days of receipt of the confirmed test results from the MRO. The notification must include the:

(i) towing operator’s name;
(ii) towing operator’s license number;
(iii) date of the positive test;
(iv) substance detected by the drug and alcohol test; and
(v) disciplinary action imposed violation of the drug testing policy.

(9) Reporting and Reviewing of Drug and Alcohol Testing Results.

(A) The company shall designate a medical review officer (MRO) to receive, report, and store testing information
transmitted by the laboratory. This person shall be a licensed physician with knowledge of substance abuse disorders.

(B) The laboratory shall report test results only to the designated MRO, who will review them in accordance with accepted guidelines and the procedures adopted by the Federal Department of Transportation.

(C) Reports from the laboratory to the MRO shall be in writing or by fax. The MRO may talk with the towing operator by telephone upon exchange of acceptable identification.

(D) Neither the company, the laboratory, nor the MRO shall disclose any drug or alcohol test results to any other person except under written authorization from the towing operator, unless such results
are necessary in the process of resolution of accident (incident) investigations, requested by court order, or required to be released to parties having a legal right-to-know as determined by state and federal law.

(10) Distribution of Information to Towing Operators. The minimal distribution of information for all towing operators will include the display and distribution of:

(A) informational material on the physical and mental effects of drugs and alcohol;

(B) an existing community services hotline number, available drug and alcohol counseling, rehabilitation, and assistance program;
(C) the company’s policy regarding the use of prohibited drugs and/or alcohol; and

(D) the consequences or disciplinary action that may be imposed upon VSF employees for violating the drug and alcohol policy.

(11) Consequences of a Confirmed Positive Drug and Alcohol Test.

(A) Job applicants will be denied employment if their initial positive pre-employment drug test results have been confirmed.

(B) If a towing operator’s positive drug and alcohol test result has been confirmed, the towing operator will stand down from towing operation duties and may be subject to disciplinary action up to and including termination.
(C) The company may consider the following factors in determining the appropriate disciplinary action: the towing operator’s work history, length of employment, current work assignment, current job performance, and existence of past disciplinary actions.

(D) No disciplinary action may be taken pursuant to this drug and alcohol policy against towing operators who voluntarily identify themselves as drug or alcohol users, obtain counseling, rehabilitation and comply with return to duty and follow-up drug and alcohol testing.

(12) Exceptions.

(A) Towing operators subject to random drug and alcohol testing under Title 49, Code of Federal Regulation, Part 40 who have been randomly tested in the 12-
month reporting period are exempt from the annual test requirement, provided that the towing operator’s tested negative and the negative test results are submitted to and verified by the MRO.

(B) Towing operators holding a valid Towing Operator License issued by the department who are tested for drugs and alcohol in accordance with 16 Texas Administrative Code Chapter 85 are exempt from this section.

(b) Independent drug and alcohol testing policy.

(1) A towing company may file an independent drug and alcohol testing policy.

(2) The filing must describe how the independent drug and alcohol testing policy is as stringent as each provision of
the model policy set forth in subsection (a).

(c) Compliance. A towing company is required to adopt and implement an alcohol and drug testing policy that complies with subsection (a) or (b).