Pennsylvania does not have a statute or regulation that generally prohibits or regulates workplace drug and alcohol testing by private employers. However, Pennsylvania’s unemployment compensation law and Pennsylvania case law establish some parameters for workplace drug testing.

In addition, transportation employees in Pennsylvania, such as drivers of commercial motor vehicles, must comply with the Pennsylvania Public Utility Commission’s Motor Carrier Transportation Regulations regarding workplace drug testing. These regulations incorporate the U.S. Department of Transportation (DOT) Federal Motor Carrier Safety Administration’s (FMCSA) drug and alcohol testing rules.

**Pennsylvania Case Law**

In Pennsylvania, there is no rule dictating when drug testing in the workplace is allowed or prohibited in all circumstances. Instead, courts will assess an employer’s drug testing policy to determine whether it violates the employees’ right to privacy.

Pennsylvania courts apply a balancing test that seeks to determine whether a reasonable person would find the employer’s program highly offensive. Courts weigh the employee’s privacy interests against the employer’s interest in maintaining a substance-free workplace.

If the court determines that an employer’s drug testing policy or procedure violates the employee’s right to privacy, and the employee was discharged as a result of the test, the employer may be liable for wrongful discharge.

However, at least one court has upheld an employer’s right to discharge an employee who tested positive for drugs or alcohol, even when the reliability of the test was disputed.

**Pennsylvania Unemployment Compensation Law**

Pennsylvania’s unemployment compensation law upholds an employer’s right to discharge an employee following a positive drug test. In Pennsylvania, an employee is ineligible for unemployment compensation if he or she was discharged or suspended because of:

- A failure to submit to a legitimate drug test; or
- A failure to pass a legitimate drug test.

For Pennsylvania’s unemployment compensation purposes, all employer drug tests must be conducted under the employer’s established substance abuse policy.

**Alcohol and Drug Testing Rules for Transportation Employees**

Pennsylvania’s Motor Carrier Transportation Regulations regarding workplace drug testing for transportation employees incorporates the federal FMCSA’s rules. The FMCSA’s alcohol and drug testing rules apply to all employees who operate a commercial motor vehicle in commerce in any state and their employers. The regulations require testing in certain circumstances for all of the following substances:

- Alcohol;
- Marijuana;
- Cocaine;
- Opiates;
- Amphetamines; and
- Phencyclidine (PCP).
Drug and Alcohol Testing Laws

Pre-Employment Testing
Pre-employment drug testing is required, and negative test results must be received before a motor carrier can allow a driver to perform a safety-sensitive function. The pre-employment test is only required for controlled substances, although alcohol testing is permitted.

Reasonable Suspicion Testing
When a trained supervisor or employer has reasonable suspicion to believe that a driver has used alcohol and/or controlled substances, the employer is required to perform a drug and alcohol test for that driver.

Random Testing
Random drug and alcohol testing is unannounced testing based on a random selection of drivers. The selection must be made by a scientifically valid method, and all drivers must have an equal chance of being tested. The names of drivers who are selected for testing must be kept confidential until the time that the carrier notifies the driver to take the test. Once the driver is notified, he or she must immediately proceed to the testing facility and undergo testing. Every driver’s name that is selected for testing must be returned to the selection pool so that all drivers have an equal chance of being selected at any time.

Random drug and alcohol testing are both required, as follows:

- Random alcohol tests can only be administered just prior to, during or just after a driver performs a safety-sensitive function.
- Random controlled substances tests can be conducted at any time, if the driver is notified.

Post-Accident Testing
Post-accident testing must be administered for all CDL drivers who are:

- Involved in fatal crashes; or
- Cited for moving violations arising from a crash that involves a vehicle being towed or an injury requiring medical attention away from the scene.

An alcohol test must be conducted within eight hours of the crash. A controlled substances test must be conducted within 32 hours of the crash.

Testing Procedures
The official testing procedures are based on those established by HHS. These procedures include urine sample collection, laboratory procedures and reporting and recordkeeping of final results. Only laboratories certified by HHS under the National Laboratory Certification Program (NLCP) may be used.

A driver who has tested positive for any of the substances will be notified, and may discuss the positive test results with a qualified Medical Review Officer (MRO) before a result is reported to the employer. The driver will have an opportunity to explain any special circumstances to the MRO. The MRO has the authority and responsibility for reporting the results to the carrier’s alcohol and drug program management for action.

Consequences
A driver who has violated DOT alcohol and drug regulations or who refuses to submit to a test is prohibited from performing DOT safety-sensitive duties for any motor carrier until he or she completes the Substance Abuse Professional (SAP) evaluation, referral and education/treatment process.

MORE INFORMATION
For more information on drug testing laws in Pennsylvania, contact Odell Studner.

For more information on the FMCSA’s alcohol and drug testing regulations, visit the FMCSA website.