

Positive Drug Tests: What Happens After Your Employee is Referred to the EAP

Eileen Schmitz, Vice President, Personal Assistance Services

Many employers have implemented drug-free workplace (DFW) policies that require testing under a variety of conditions: random, post-accident, for cause, reasonable suspicion. In some organizations, an employee who tests positive is subject to immediate termination. Some DFW policies, however, allow for an employee to be referred to the EAP for treatment in lieu of immediate termination. In these cases, the employee signs a Last Chance Agreement (LCA) and the employer makes a mandatory referral to the EAP. Employers with safety-sensitive positions that fall under federal Department of Transportation (DOT) regulations must follow strict procedures for testing, referral to qualified Substance Abuse Professionals (SAP), treatment compliance verification, and post-return-to-work testing.

The Benefits of Drug-Testing

Employees may perceive testing to be punitive, intrusive and “big brother”; however, there are significant benefits to testing, both for employees and employers:

- Drug testing promotes a safe work environment for all employees. It is a risk-management strategy that reduces the rate of accidents and liability for losses in the workplace (employee injuries, death, material and equipment losses, etc.) associated with drug use and working under the influence of alcohol or illicit substances.
- For those employees who have made poor choices related to alcohol or drug use, a positive drug test and potential termination of employment serve as a motivator to engage in education and significant behavioral changes. The addiction process for most substance users develops over many years. Negative consequences, such as financial problems, family conflict, relational issues, job performance decline and health concerns accumulate gradually. The employee may be unwilling or unable to connect his or her substance use with these negative consequences. A positive drug test, with a consequence of suspension and possible termination for non-compliance with the EAP treatment plan may be the first time an employee is held accountable for his/her poor choices.
- Not all employees who test positive are substance-dependent or in need of intensive treatment. Some may be in the early stages of substance abuse or have made



poor choices, but nonetheless will benefit from education and awareness interventions.

- Research conducted by the National Institute on Alcohol Abuse and Alcoholism (NIAAA) has concluded that employees who are in serious trouble with alcohol showed significant improvement in drinking behavior and job performance during the months immediately following an intervention (in this case, referral to the EAP for positive test).

Making the Referral

When an employee has tested positive and your DFW policy allows for a referral to the EAP for treatment in lieu of termination, call PAS to make a referral for assessment and EAP treatment plan development. The following information is needed for a referral:

- Employee’s name
- Your name, and names of employer representatives who should be on Release of Information for compliance reporting. For DOT referrals, this should include the DER (Designated Employer Representative)
- Employee’s job title, whether job is considered safety-sensitive, employee holds a CDL, falls under DOT regulations
- Is employee suspended? If so, for how long?
- Under what conditions did employee test positive? Random? Reasonable suspicion? Post-accident? Other?
- Substance employee tested positive for
- Date of the test
- Testing panel used by your organization

The EAP’s Role: Assessment and Treatment for DFW and DOT referrals

PAS counselors and case managers place a high priority on engaging with referred employees to be a source of support – not merely acting as the “treatment police”. The goal is for employees to stay engaged with the EAP in the months following treatment and return-to-work in order to support their sobriety, bolster their ability to make better decisions about substance use, or possibly help them eventually recognize and accept the disease process progression if they are vulnerable to relapse.

DFW referrals: When an employee testing positive under DFW policy calls PAS to set up services, a PAS Client Services Representative will notify you that the employee has called to engage. The employee will be scheduled for an assessment and will be asked to sign an Authorization for Release of Information (ROI) which allows PAS to

Positive Drug Tests: What Happens After Your Employee is Referred to the EAP (continued)



communicate with you regarding the employee's compliance with recommendations for treatment. At the initial appointment, a PAS counselor assesses the nature and severity

of the employee's substance use, prescribes an appropriate plan of treatment, and facilitates his or her engagement in the process to become drug free and maintain sobriety. For DFW referrals, PAS does not communicate the findings of the assessment or the details of recommended treatment, respecting the employee's privacy in dealing with their substance use concerns (this is different for DOT referrals – see next paragraph).

DOT referrals: PAS also provides Qualified Substance Abuse Professional (SAP) services as required under DOT regulations when a DOT-regulated safety sensitive employee is found to be in violation of DOT-mandated drug and/or alcohol test or refuses to take the test. In the event of a violation, the employee must immediately be removed from all safety-sensitive functions and is required to successfully complete the evaluation and rehabilitation process in order to return to safety-sensitive duty for the current or future employer. The SAP makes treatment and/or education recommendations for the employee and monitors the employee's progress through completion. Based upon a follow-up evaluation, the SAP issues written documentation of the employee's compliance with treatment recommendations, eligibility to perform a safety sensitive job and prescribes a schedule of follow-up testing.

In both DFW and DOT situations, the employee's eligibility for return-to-work is contingent on negative return-to-work test results administered by the employer. The decision to return the employee to active duty is at the discretion of the employer.

Frequently Asked Questions

Sending my employee to the EAP on a mandatory referral seems drastic. Does making an employee get treatment really work?

Yes, a mandatory referral, a last chance agreement, and the possibility of employment termination are significant actions. But referral to the EAP is one of the most effective means of motivating an employee to get help for illicit drug or alcohol use that interferes with job performance and puts the safety of him/herself and others at risk. The purpose of a mandatory referral is to help the employee cease illegal substance use and to stop violating company policy. You are putting significant resources at the employee's disposal to help the employee become successful, follow company policy and stay safe.

On the EAP side, PAS counselors can ask your employees difficult and personal questions about their lives that your company should not ask. The PAS counselor is in the posi-

tion to become your employee's ally in recovery. Facing the possibility of termination, your employee has the opportunity to examine the very real consequences of his/her substance use and what he/she stands to lose as a result.

How does the counselor know what kind and level of care (treatment) is needed?

PAS counselors have received advanced training in substance abuse assessment and care planning. They also employ standard assessment tools, recognized in the professional substance abuse treatment community for their validity and value in identifying level of care and intervention methods based on level of substance use and dependence. PAS follows level of care guidelines prescribed by ASAM (American Society of Addiction Medicine) criteria. Treatment recommendations are reviewed by a clinical review team to ensure that the highest quality of assessment, care and engagement are achieved.

How long does it take? Why is it taking so long?

Every employee's substance use pattern and contributing psychosocial factors are different. Therefore treatment recommendations are customized to the needs of each employee. The duration of treatment will vary, depending on:

- Recommended level of care
- The employee's level of engagement in treatment and motivation to complete recommendations
- The employee's ability to abstain from illicit substances
- The employee's successful completion of recommendations

Your employee will not be recommended for consideration for return-to-work until he or she has completed all recommendations (for safety-sensitive/DOT positions) or has minimally demonstrated acceptable engagement and progress in treatment (DFW referrals), is clear of illicit substances and the EAP consultant has reason to believe your employee will continue to progress in treatment after return-to-work and maintain sobriety and/or abstinence post return-to-work.

What is the spectrum of treatment?

Depending on use history and psychosocial factors (legal, financial, family relationships, social, etc.), treatment may range from education to medical detoxification and inpatient rehabilitation. In general terms, the level of care progression is:

1. Outpatient education and counseling
2. Intensive outpatient
3. Partial hospitalization (day only)
4. Inpatient rehabilitation

In most every case, 12-step or other support group attendance is recommended as well. The minimum required treatment for any DFW referral is outpatient education and counseling.

Who is responsible for the cost of treatment and compliance test?

The employee is responsible for the cost of treatment and

Positive Drug Tests: What Happens After Your Employee is Referred to the EAP (continued)

sliding fee payments based on ability to pay or reduced-fee community-based services.

My employee is in treatment—why does he/she still have to go to 12-step meetings? Are support group meetings optional?

Support group meeting attendance that is part of the overall treatment recommendation is not optional.

Twelve-step, or other group support meetings provide additional support, education and exposure to the negative consequences of substance use and how to arrest addiction disease progression. PAS' goal is not only to return your employee to work, but to also challenge his/her mind with the reality of continued use, support his or her sobriety and/or abstinence and provide a venue in which he or she can obtain ongoing peer support to maintain those gains.

How does the counselor know when the employee is ready to be sent for the return-to-work process?

In some cases, the employee may be expected to complete all recommendations prior to return-to-work based on the assessment, engagement in treatment and level of motivation to follow through with recommendations. Employees referred under DOT regulations must complete treatment recommendations prior to return-to-work. Employees in non-safety sensitive positions may be eligible for return-to-work prior to completion of treatment when the employee has demonstrated adequate progress in treatment and has successfully returned a negative compliance drug screen. In these cases, treatment will continue after return-to-work in order to support the employee's recovery.

Does PAS also drug test the employee?

PAS requires all employees referred for positive drug test to submit to a least one compliance drug screen prior to return-to-work, using an equivalent substance use testing panel of the employer. Drug screens administered at a treatment facility are not considered adequate evidence of compliance, since these may be administered at various intervals during treatment and documented results are not consistently available from a treatment facility. The PAS compliance screen should never be used by the employer as a return-to-work test. The employer's policy regarding return-to-work testing must be followed when an employee is considered for return-to-work.

Will I get regular updates on an employee's progress in treatment when I refer him/her to PAS?

Yes. At the initial appointment, the employee is asked to sign a Release of Information (ROI) to the designated employer contact. After the assessment is completed and treatment recommendations are made, the employee will sign a treatment plan detailing the expectations for treatment. PAS' Clinical Services Liaison will communicate with you when the employee has completed the initial appointment, when a subsequent appointment is scheduled, and set a date with you to report ongoing compliance with treatment recommendations. Update frequency is determined between you and the Clinical Services Liaison,

based on your needs, but is generally done on a weekly or bi-weekly basis.

If you are recommending my employee for return-to-work, why does he/she still have treatment recommendations?

Some treatment recommendations may be completed post return-to-work and will not interfere with work scheduling. Once your employee has demonstrated substantial and adequate progress in treatment, has provided a clean compliance drug screen, and is no longer suspended per your company's DFW policy, and if additional treatment recommendations do not interfere with work scheduling, you may be able to consider your employee for return-to-work prior to completion of all treatment. However, in order for your employee to remain compliant with treatment and fulfill the requirements of your DFW policy, your employee must complete treatment, even after return-to-work. PAS will continue to report compliance with treatment to you until treatment is complete. Return-to-work before all treatment is complete is at the employer's discretion.

Why does treatment interfere with one employee's work schedule but not another employee's work schedule?

Treatment recommendations are customized to the needs of each employee. Depending on the level of care determined by the assessment and ASAM placement criteria, treatment may include attendance at a facility-based program for multiple hours per week, during times that may interfere with the work schedule. PAS understands the importance of returning employees to work as quickly as possible, in the interest of both the employee and employer. PAS also wants to ensure that each employee receives best-in-class and clinically appropriate care based on their needs. An employee who does not receive adequate treatment support is much more likely to use again and test positive again, resulting in termination. This is a costly loss to the employer and the employee.



Will I get follow-up testing recommendations?

For DOT referrals, you will always receive testing recommendations customized to the use patterns of your employee. For DFW referrals, PAS will send testing recommendations when requested. In all cases, PAS recommends that you conduct a return-to-work drug test and continue testing your employee randomly per your company's DFW policy post return-to-work.

One of our employees tested positive for marijuana (THC), was suspended and referred to PAS for treatment. The employee tells me that he is doing outpatient counseling after work hours. His suspension is over, but our PAS contact reports that he is not yet eligible for return-to-work. Why shouldn't he be allowed to return to work?

There are a couple of reasons PAS may not deem an employee eligible for return-to-work: 1) the employee contin-

Positive Drug Tests: What Happens After Your Employee is Referred to the EAP (continued)

ues to return a positive drug test; and 2) the employee has not made adequate progress in treatment. If a company returns an employee to work prior to producing a clean drug test, the company assumes all liability associated with such a decision. It is in itself a violation of the company's DFW policy, and it places the company "at risk" for liability should the employee become involved in a work-related accident. In addition, it creates a precedent for how other employees who test positive may expect to be managed (not following company policy) and weakens the incentive for employees to successfully complete treatment or maintain sobriety.

What happens when an employee with a CDL tests positive on a random Department of Transportation (DOT) drug test? What are our next steps?

In most cases, SAP services are provided through PAS' EAP agreement with your company. (If SAP services are not included in your EAP agreement, your employee will be required to cover the cost of the SAP evaluation and case management.)



Your company's Designated Employee Representative (DER) will notify PAS of the mandatory referral. DOT regulations require that

an employee testing positive under DOT regulations be removed from safety-sensitive duties until evaluation and treatment are satisfactorily completed. The employee will be evaluated by a Substance Abuse Professional through PAS. It is the SAP's responsibility to assess the employee's substance use, make recommendations regarding treatment and report when treatment recommendations have been completed. The SAP will provide written verification of assessment and treatment compliance per DOT guidelines. After return-to-work, PAS will continue to monitor ongoing treatment recommendations if needed and report compliance.

My employee tested positive but told me that she used only one time and has never used before; it was a mistake and she doesn't have a problem. Now PAS is recommending that this employee enter a treatment program. The employee is extremely unhappy, feels the evaluation was unfair and doesn't want to follow through. What should we do?

The PAS EAP consultant has experience and specialized training in substance use assessment, treatment and care management. PAS' clinical review team carefully reviews all treatment recommendations to ensure they are clinically appropriate and that your employee is offered every opportunity to succeed – not only in treatment compliance, but also in achieving and maintaining sobriety for the long term.

It's quite common for employees to be cooperative initially with a mandatory referral but then to become frustrated with the process and resistant to treatment recommendations as they are confronted with the negative con-

sequences of drug or inappropriate alcohol use in the workplace: suspension, loss of income, costs associated with treatment, etc. This is part of the denial and deflection process associated with substance abuse and dependence. If your employee begins to complain about the treatment recommendations or claim that the assessment process was unfair, redirect the employee back to PAS for follow-up discussion. Remember that it was the employee who violated the company's DFW policy and is therefore being given a "Last Chance" to follow through on treatment recommendations in lieu of termination. It is in the company's best interest to require that all employees follow the terms of the DFW policy, including compliance with treatment recommendations.

An employee that is unwilling to follow treatment recommendations will be reported as "non-compliant" with the terms of the mandatory referral and it is in the company's best interest to implement the consequences described in the DFW policy for non-compliance, or in the "Last Chance Agreement" if one was signed by the employee. This can be difficult to do, especially if the employee was otherwise productive. But not following through sends the message that non-compliance with the Drug-Free Workplace policy is acceptable, working under the influence of illicit substances or alcohol is acceptable, and it sets a precedent for future referrals. Furthermore, it puts your company at risk for liability and perpetuates the employee's denial of his/her problem.

One of our employees disclosed they have a drug problem. What do I do? Can I make a mandatory referral to the EAP?

If your company's DFW policy mandates that the company make a mandatory referral on the basis of self-disclosure, follow the process as outlined above for a mandatory referral for positive drug test. In these cases, the employee is treated as being "deemed positive".

If your company's DFW policy does not stipulate a referral or disciplinary process for self-disclosure, you may still make a referral to the EAP, on the basis of the employee's self-disclosed substance use. However, treatment compliance cannot be mandated in these cases in lieu of termination (i.e. there is no "Last Chance Agreement"). While a "strong recommendation" is made to the employee to attend EAP for help with substance use concerns, it is ultimately the employee's choice and decision to use the EAP.



Personal Assistance Services
(800) 356-0845
www.paseap.com