

Breathalyzer Tests

Dear NETS Members,

Update August 30, 2010

Amy Lokken of Coca Cola Enterprises sent a question regarding breathalyzer tests. Please see her full question, below.

Responses follow Amy's question.

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Thank you for your replies.

Please contact me if you have any questions or suggestions.

Jack Hanley
NETS
Executive Director

jhanley@trafficsafety.org

Question

I have some questions that I would like to pose out to the group related to the handling of a refusal to take a breathalyzer test.

1. Do you have a policy for refusal to take a breathalyzer test administered by police?
2. Who does your policy apply to (check all that apply)?
 - CMV drivers
 - Company passenger vehicle drivers
 - Drivers who submit mileage for reimbursement (if this selection - what level of mileage submission?)
3. What type of action do you take on someone who has a refusal to take a breathalyzer?
4. How long have you had this policy in place?
5. Have you had any challenges to the policy? If yes, can you share any detail?

Amy Lokken
Director of Safety, NABU
alokken@cokecce.com

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Breathalyzer Tests

	Responses	Do you have a policy for refusal to take a breathalyzer test administered by police?	Who does your policy apply to (check all that apply) 1. CMV drivers 2. Company passenger vehicle drivers 3. Drivers who submit mileage for reimbursement (if this selection - what level of mileage submission?)	What type of action do you take on someone who has a refusal to take a breathalyzer?	How long have you had this policy in place?	Have you had any challenges to the policy? If yes, can you share any detail?
1	Anonymous	Yes, it is in the same category (major traffic offense) as a failed test	Applies to all	The driver is no longer allowed to drive on company business or a company provided vehicle until the charge has been cleared. If work accommodations during this time cannot be made, the employee is terminated.	7 years=	No challenges
2	Quintiles <i>Steve Meyers</i> Steve.meyers@quintiles.com	Policy does not specifically address this situation.	1 : N/A 2: Yes 3: Yes	This would be viewed as the same as a DUI conviction and would be based on the police report.	3 yrs+	No challenges

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3	sanofi-aventis <i>Tom Consentino</i> <i>Thomas.Cosentino</i> <i>@sanofi-aventis.com</i>	Most police departments will write a citation in the event a person refuses to take a breathalyzer test. We proceed with a DUI process when the citation is written, not when conviction is proven. We may not terminate the person at this time, unless there are other factors, but we will begin the process of implementing a program for the person	1. We do not have CMV drivers 2. Yes 3. No, not included	We have a detailed "last chance" program for drivers who receive a citation for DUI. They must report it within 24 hours or they are terminated. Once they report, a committee reviews, the committee is made up of HR, Medical and Legal. If the committee does not terminate them, they are required to prove they can still drive (license has not been suspended or revoked), or they can get to their sales calls by not driving the company vehicle, if the license is suspended. The last chance program includes an alcohol ignition interlock, installed at the drivers expense for one year, EAP counseling (must complete the full recommended sessions as the health care provider recommends, even if it extends beyond the one year), random drug and alcohol testing during work hours.	2006+	Challenges, if a person does not cooperate, they are terminated.

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4.	Eli Lilly <i>Beth Stamer</i> stamer_beth_a@lilly.com	Yes	Company passenger vehicle drivers	Our policy is clear that refusal to submit to a Breathalyzer is the same as a conviction of DUI - all DUI processes apply.	7 years	Not to my knowledge
5.	Pfizer <i>Teri Snow</i> theresa.l.snow@pfizer.com	Yes	Yes – sales reps	It's not acceptable to not cooperate with law enforcement. It's treated as a policy violation if our drivers refuse. Then they receive a written notice.		
6.	Roche <i>Rocco Di Taranto</i> rocco.di_taranto@roche.com	Yes	1. Yes 2. Same as employee 3. No	Company car is revoked	10 years +	Only as it has been applied to new hires. New hires cannot be hired when the MVR check returns as "Unacceptable" as defined by the fleet policy.

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7.	Merck <i>Bob Holman</i> robert_holman@merck.com	No, we let the legal process of implied consent take precedent.	1. N/A 2. we have a comprehensive policy for Company Drivers, including misconduct and DUI 3. not apply at this time	We do an initial fact finding to determine if there were any aggravated circumstances - if not, await adjudication to be completed. Because Company Drivers must have a current valid driver's credential, those convicted of refusal usually lose their license for 6 months to a year. This means that they no longer meet a basic condition of employment to have a license and are then separated for failure to meet basic requirements.	Informally for many years, formally for the past 4.5 years	Not really can't drive, can't do the job. On the side, you plan to apply this to reimbursed drivers, would be very interested in your experience there

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8.	Forest <i>Deb Burns</i> <i>DBurns@forestpharm.com</i>	Yes, any refusal to take a breathalyzer test must be reported to the Fleet Department and the driver's direct supervisor within 24 hours.	We only have passenger vehicles in our fleet	A formal review is conducted by a board made up of senior management. Disciplinary action to be taken is determined and can be up to and including possible termination.	7 years	There have been no serious challenges to this policy.
9.	GE <i>Jeri Hall</i> <i>Jeri.Hall@med.ge.com</i>	No - we expect our employees to follow the law; to my knowledge we have not had anyone refuse this.	N/A	Since we don't have a policy - there would be no action.	N/A	N/A
10.	Nationwide <i>Kathy Konicki</i> <i>KONICKK@nationwide.com</i>	Yes.	1. We don't have any CMV drivers. 2. Yes. 3. Yes - at 2,000 miles/year	Treated exactly as a charge or conviction of DUI/DWI/OMVI.	Formally for 12 years.	No, never challenged.
11.	Ecolab	Ecolab treats a	Our policy applies to	treat it as a critical event, which	Since 2003	That I am aware

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	Ryan Rebman Ryan.rebman@ecolab.com	refusal to submit to test as a critical event and worth the same amount of points as receiving a DUI/DWI	anyone who drives a company vehicle or drives their personal vehicle and receives reimbursement	could lead to being taken out of the company car, possible termination or other depending on situation		of - our driver policy specifically states can hold people accountable for ticket received - not always what the final plea or adjudication of the citation is.
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12.	AstraZeneca Mary Rose mary.rose@astrazeneca.com	We presume the employee is innocent until proven guilty by the state. While they may refuse a breathalyzer, we wait until they have completed the court process before we determine their fate. Of course, if they cannot maintain a valid license, they are separated from the company. If they are given a provisional license, we look at those on a	All employees who drive a company owned or leased vehicle.	For any DUI, we immediately place those individuals on unpaid leave and they are referred to our Employee Assistance Program to determine if substance abuse counseling is necessary. If it is decided the individual can retain employment with the company, they will not be allowed back to work until they have cleared the EAP process and they can provide court documentation that their license remains valid. This typically means the individual cannot return to work until their hearing has been held.	Our Motor Vehicle Safety & Usage Policy has been in effect for numerous years and has always contained an element to address DUI's. But, we refined our DUI management process to clarify and formalize the decision making and data collection process for	We have had some issues with managers who want to retain someone with a DUI, but unless that individual can prove they have a valid license and they had a stellar driving and performance record prior to their DUI incident, those individuals are separated from the company. In cases where the individual is cleared to return to work, they are
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		<p>case-by-case basis to determine whether the restrictions can be accommodated and even then, those individuals will have to have had a stellar performance record prior to the DUI. Under no circumstance do we permit someone who is required by the court to install an interlock device on a company vehicle. As a result, those individuals are typically separated from the company. (If a DUI is recorded by a permissible driver, those individuals will be removed from the program immediately for a minimum of 12 months. If the employee</p>			<p>HR, Legal, SH&E and management within the past 3 years.</p>	<p>placed on a Final Written Warning with restrictions that specifies the expectations for performance and any additional violations/citations will result in immediate termination. An FWW also limits the rating they can achieve on their performance review, their bonus is impacted and they are ineligible for certain awards.</p>
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		requests their permissible driver be reinstated, that will only occur if a check of their motor vehicle record confirms they have a valid license and their risk points do not exceed our criteria for low risk.)				
13	DHL <i>Gregory Clark</i> <i>Gregory.Clark@dhl.com</i>	No - This question or issues surrounding it has never arisen		I guess this relates to company action as opposed to legal enforcement, In this case the individual would be entered into the relevant disciplinary process, however breathalyzing is not a blanket policy, some of our customers often dictate the process or system for their own standards, DSC don't have a standard method at this time (although we do have preferred suppliers where a need exists) and there are many other constraints such as union agreements etc the application of the breathalyzer process is agreed at local level, this can be "with cause" or "random" depending on local agreement.	10 Yrs + where it exists	Unions in the past have been the main challengers, nothing I'm led to believe in areas such as civil liberties or employment laws, however the aspect of testing with "cause" seems to have softened and is probably due to the developed safety culture as well as the heavy regulated profile of the UK & I, the random testing

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				Additionally where testing IS carried out we usually conduct both Alcohol and Drug Testing (Urine or Saliva Tests) as opposed to just Breathalyzer for alcohol.		regime remains challenging unless specifically required by clients.
14	DHL (USA) <i>Craig Hisle</i> craig.hisle@exel.com	Yes; Our minimum driver standards address motor vehicle alcohol related infractions under the MVR qualification requirements. A refusal to take a Breathalyzer falls within this category. Most states will suspend a driver's operating credentials once the driver refuses to submit to a Breathalyzer. We further define a disqualification window from the infraction date of 5 years.	Our policy applies to our commercial motor vehicle drivers and operators of noncommercial equipment used to support operational activities.	A driver's refusal will result in a disqualification and may result in termination	10+ years	We have experienced no challenges to the policy.

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