
From: Richard Wooten [mailto:richard.wooten@cottercc.com]
Sent: Thursday, October 23, 2008 3:09 PM
To: zzMSHA-Standards - Comments to Fed Reg Group
Subject: RIN 1219- AB41

October 23, 2008

Dear Sirs:

I would like to comment on the proposed drug and alcohol testing rule:

1. Currently my company performs drug testing. If we have a failure on a post accident or random test we follow our policy which states: If the employee that fails has completed the new hire 90 day probationary period then he/she is remanded to the EAP program for counseling and subject to random testing, failure to perform either is grounds for immediate dismissal. In addition, said employee returns to the probationary period for 180 days and is subject to unannounced testing during that period. If the employee has not completed the probationary period of either 90 or 180 days and fails a drug test then the employee is immediately dismissed. This program works. I opposed being mandated to give every employee a second chance automatically. Also would removing employees from safety sensitive jobs constitute a change in duty similar to restricted duty that would require reporting under the Part 50 requirements.
2. Our clinic will not provide blood testing. This would require that we set up a contract with a hospital laboratory to provide blood alcohol test. This would require our employees to report two separate locations to conduct the testing If mandated we would have no choice to make this type of arrangement. I agree with the testing but this places an additional burden on companies confronted with this problem. Many rural areas with limited medical availability would also be confronted with this problem.
3. Random drug testing should be conducted at a minimum on a quarterly basis. Even this is subject to problems but at least the testing would be frequent enough to provide some deterrence. Annual drug testing would not be much of a deterrent. Our drug training and testing provider highly recommends monthly testing if you truly want your program to be a deterrent. The area we live in has major drug issues within the community and people can be very creative at circumventing the system. Even though companies could opt to a higher frequency it has been my experience that most companies will only perform the minimum required.
4. Since alcohol usage is legal then I could accept the mandate to provide EAP counseling on the first offense. Currently we do not do alcohol testing except under suspicion. If the employee comes to the company with a concern or problem we work with them through the EAP program. The caveat is simple they must participate and complete the program to keep their job. If they are required to attend based on testing and refuse then they are immediately terminated.

I thank you for the opportunity to comment on the regulation. I very much am in favor of this requirement and think it has been a long time coming.

Have A Nice Day

Richard Wooten

AB41-COMM-92

Health & Safety Supervisor

Cotter Corporation

Canon City, CO