



START WITH SAFETY

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CHANGE TO SAFETY PERFORMANCE HISTORY BEGINNING JANUARY 6

The day has almost arrived: Come January 6, 2023, the Drug and Alcohol Clearinghouse will finally contain three years' worth of data. That means that employers will no longer use the safety performance history (SPH) to request FMCSA drug and alcohol testing history from previous employers.

Will employers still need to request a SPH from previous employers? Yes, employers will still send the SPH form to former employers. The only difference is that employers cannot ask about an individual's drug and alcohol testing history. The motor carrier must still inquire about the driver's DOT crash history and general employment information (dates employed, vehicles operated, and so forth).

Is the SPH form changing? Employers should contact their vendors to see if an updated SPH form is available. If the motor carrier uses a third party to help assemble the driver qualification file and/or manage the drug and alcohol program, the carrier must ensure the service agent is aware of the new requirements. Employers or service agents who want to use existing stock of SPH forms must cross out the drug and alcohol testing history section of the form before sending it to a previous employer.

How will employers learn whether a prospective employee has an unresolved FMCSA drug or alcohol violation? Beginning on January 6, 2023, employers will rely solely on a pre-employment query of the Drug and Alcohol Clearinghouse to determine whether a potential employee has any unresolved FMCSA drug or alcohol violations. Clearinghouse queries, unlike the SPH records request, must be completed before the individual drives for you. Consent for the pre-employment query is provided through the driver's personal Clearinghouse account.

In what situations must an employer still obtain drug and alcohol information from a previous employer after January 6, 2023?

There are two situations in which an employer must still contact a former employer for drug and alcohol information:

- The driver used to work for a different mode. Motor carriers must continue to ask DOT drug and alcohol questions of former employers where the driver was subject to Part 40 testing under another mode (air, pipeline, transit, maritime, rail). This information is pertinent and must be investigated since a violation under another mode carries over to highway (FMCSA). The driver must provide specific written consent before the former employer may respond. This information is requested using a form other than the safety performance



history document. This is the case currently and will continue to be the process after January 6, 2023.

- The driver has an unresolved DOT drug or alcohol violation. If the motor carrier learns that a driver has a violation and did not complete the return-to-duty and/or follow-up program, the motor carrier must contact the former employer to determine where the process left off. This may involve requesting copies of records, such as the substance abuse professional (SAP) follow-up testing plan, completed follow-up tests, and the like. Of course, the driver must provide specific written consent for the release of such records. This has always been the case and continues going forward.

WHAT DOES OSHA COUNT AS EMPLOYEE EXPOSURE RECORDS?

Employers must retain employee exposure records for 30 years. Since OSHA could issue citations for failing to keep these records, employers need to understand exactly what OSHA considers an "employee exposure record." The standard at 1910.1020 defines these records to include certain sampling for toxic or hazardous substances, as well as records of hazardous chemicals used. These are rather broad categories, however.

Testing for a hazardous substance in Subpart Z would create an exposure record. Those regulations cover asbestos, lead, chromium, formaldehyde, and many others. In addition, the tables in 1910.1000 list hundreds of substances from carbon dioxide to vegetable oil mist. Even testing for harmful substances that are not listed could create an employee exposure record. Measuring things like noise, vibration, temperature extremes, or particulate matter will usually create an exposure record that must be retained for 30 years. However, measuring conditions in a normal range (such as office temperature readings) does not create an exposure record. Not every sample or measurement will create an exposure record. OSHA clarified that exposure records describe the identity of, and possibly the level of exposure to, a toxic substance or harmful physical

Upcoming Training Events

Walking & Working Surfaces

Dec 8, English & Spanish

(No Management Series will be held during the month of December)

For more information email us at rmsafety@catto.com



CLAIMS CORNER



TX UBER DRIVERS RECEIVE \$4.2M FOR DATA BREACH

Texas Attorney General Ken Paxton announced that his office has completed its distribution of \$4.2 million in redress payments to approximately 42,000 Texans whose personal information was compromised in a 2016 data breach at ride share company Uber Technologies, Inc.

Eligible Texans are Uber drivers whose personal information was accessed during a 2016 data breach, which Uber failed to disclose until November 2017. Drivers who first signed up to drive for Uber after the breach are not eligible.

Texas obtained its judgment as part of a multistate effort. The judgment included injunctive terms designed to strengthen Uber's data security practices and corporate governance and included a required payment to Texas of approximately \$6.5 million dollars.

agent. For example, if an indoor air quality evaluation sampled the HVAC system, the results might identify non-toxic bacteria typical in office or work environments. In that case, the result would not be an employee exposure record.

Known Hazards. If employers test for a substance with known human health effects, OSHA considers the results to be an employee exposure record even if the levels are below a listed action level or permissible exposure limit (PEL). The standard is not limited to records showing that exposure is excessive, but rather on the mere fact that occupational exposure exists. Now, if exposures are below the action level, the employer can usually stop monitoring — at least unless a process or work practice changes in a way that could increase exposure. However, if exposures are above the action level but below the PEL, employers usually need to continue periodic monitoring, all of which become exposure records. The standard does not cover situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations. Finally, OSHA notes that employee questionnaires are not exposure records because they don't characterize exposures. However, if the questionnaires address medical information, they may be "employee medical records" under 1910.1020. For example, the employee questionnaire under the respiratory protection standard is a medical record, but not an exposure record.

DISTRACTED DRIVING

Distractions have always been a risk for drivers, but today's distractions are more frequent and more complicated than ever. We have a population that often has too much to do and too little time. Many people use their driving time to multi-task behind the wheel.

Recognizing Distractions. Personal devices like cellphones are some of the most common

and most dangerous types of distractions. Texting while driving is especially dangerous because it takes away everything you need to be safe: your eyes, hands, and mind.

Vehicle Technologies like GPS systems and touchscreens for entertainment can be a distraction. There are some required technologies for professional drivers like electronic logging devices and dash cameras. These gadgets might increase safety and convenience in many ways, but they can also increase driver risk and distraction if not used properly.

Anything you touch, besides your driving controls, are physical distractions. They take your hands off the wheel and your eyes off the road.

Other types of distractions fall into two categories: *Visual and Mental*.

Visual distractions lure your eyes off the road, such as a fancy car, a herd of deer, beautiful scenery, or a crash scene. If you need to check something out, find a place to park your vehicle and then look. Mental distractions draw your mind away from driving. Some examples are planning your schedule, worrying about where you need to be, or daydreaming about your next vacation. Be careful! Mental distractions can make you completely blind to hazards, earning them names like inattention blindness and highway hypnosis.

Avoid Distractions. Avoid being distracted while on the road by preparing for distractions before you start your trip:

- Program your GPS,
- Set your radio or entertainment player,
- Make any necessary calls, and
- Check your directions and/or instructions.
- Keep distractions to a minimum. Be prepared before you start your trip. Think about your trip before it begins. You should focus on four activities for safe driving:
- Scan the road;
- Check mirrors;
- Read instruments, gauges, and other essential controls; and
- Operate the vehicle safely.



Clarks Women's Navy Canvas Shoes

Hazard: Chemical

Brother Power Adapters + AirSure Dynamic Filtration Air Purifiers

Hazard: Electrical Shock

Anker Play Bolt Foldable Childrens Scooters

Hazard: Lead Poisoning

Tangame Busy Toy Houses

Hazard: Lead Poisoning, Phthalate Exposure

RadWagon 4 Electric Cargo Bikes

Hazard: Fall, Crash

MYX I, II & II Plus Exercise Bicycles

Hazard: Injury

Stashables Children's Toy Ramps

Hazard: Lead Poisoning