

CDL-DRIVERS: ANNUAL RECORD CHECKS & PROGRAM REVIEW BEST PRACTICES

This bulletin reminds employers and managers about the regulations affecting Commercial Drivers' Licenses (CDL).

In January 2020, the U.S. Department of Transportation's (USDOT) Drug and Alcohol Clearinghouse (Clearinghouse) became operational. Employers, including New Jersey public employers, of CDL holders should have registered with the Clearinghouse and at least once a year, employers must:

1. **Query the Clearinghouse of the drug and alcohol records of their drivers.** Starting January 6, 2020, employers and drug and alcohol testing agencies must report test failures or refusals in the Clearinghouse. To query the Clearinghouse, employers must purchase a Query Plan. There is a \$1.25 charge for each query. They can be purchased in packages ranging from 1 to more than 1,000 queries.
2. **Check New Jersey Motor Vehicle Records about the driving histories of their CDL holders.**
3. **Update the Drivers' File of each CDL-holder.**

Employers must have CDL-holders grant them **Limited Access to their records by signing the [General Consent of Limited Queries](#) of the FMCSA Drug and Alcohol Clearinghouse.** Employers who cannot verify a driver's clean drug and alcohol history in the Clearinghouse may not, by law, allow a driver to operate a CDL vehicle or perform any safety-sensitive activity.

Registration in the Clearinghouse is optional for CDL holders. It is recommended employers encourage their drivers to register. Drivers should understand not being registered in the Clearinghouse restricts their ability to monitor their records and can impact their future employment options. If an employer's query of the Clearinghouse shows a note in the driver's record, the driver has 24 hours to enter the system, register, and grant the employer Full Access to investigate the record in question. Until this happens, the employer may not permit the driver to perform any safety-sensitive activities.

Employers must also check the State's Motor Vehicle Records (MVR), or driver's abstracts, of CDL drivers each year.

In New Jersey, MVR are verified using the [N.J. Customer Abstract Information Retrieval](#) (NJ CAIR) Program offered through the New Jersey Motor Vehicle Commission. MVR may not be checked through the local Police Department.

Employees must acknowledge in writing that their MVR will be checked periodically. New Jersey Motor Vehicle Commission requires employees to sign an acknowledgment that they are aware the employer obtains driving history abstracts before operating a motor vehicle on employer business and periodically thereafter. A model [Consent Form](#) is available.

Designate one or two authorized individuals to order the MVR from N.J. Motor Vehicle Commission. Authorized individuals may be the Clerk, Administrator, Human Resource representative, or the Police Chief. The designated individual must understand they may not share the information with unauthorized individuals as required by the Driver Privacy Protection Act.

Remember, these are confidential reports. Department heads who review or act upon the MVR reports must also be aware of the confidential nature of driving histories.

Part of a comprehensive risk control program, public employers should establish acceptable and unacceptable criteria for driving histories. Work with the organization's attorney and administration to establish the levels. Educate drivers on your criteria. The policy must be enforced consistently and without discrimination.

The medical evaluation and qualifications regulations for intra-state exempt CDL drivers have not changed. While most drivers who operate commercial motor vehicles solely for a public employer are largely exempt from having bi-annual physicals by a DOT-certified medical examiner, they are not exempt from meeting the physical requirements of the USDOT as defined in 49 CFR 391, Subpart E. Employers should annually remind workers that under 49 CFR 391.41(a)(1)(i) the driver must not operate a commercial motor vehicle if they are not physically qualified. Knowingly violating this law exposes the driver to severe consequences. CDL drivers who drive interstate or hold Hazardous Material or Passenger endorsements are not exempt from the medical evaluations.

New Jersey's cannabis regulations do not change the Federal laws strictly prohibiting the use of marijuana by CDL drivers or employees performing other safety-sensitive functions. Drivers should be reminded annually of their obligation to surrender their CDL if they begin using cannabis, even if under a physician's care.

The USDOT requires employers of CDL-holders to have a written policy that defines the roles, rights, and responsibilities of drivers and the organization's administration. A comprehensive policy should include the following components:

- Drug and alcohol testing types, test protocols and criteria, and consequences for violations – [A Model Controlled Substances and Alcohol Use and Testing Policy](#) is available. CDL drivers should also be required to disclose medications that could affect their ability to operate commercial motor vehicles and the procedures for when a notification is made.
- Identity of the Designated Employer Representatives and Substance Abuse Professional.
- Providers for reasonable suspicion and post-accident drug and alcohol testing on a 24/7/365 basis.
- Reasonable suspicion training for supervisors or CDL drivers, including the process for taking the driver in question to a drug and alcohol testing center.
- Post-accident drug and alcohol testing protocols.
- Reporting of motor vehicle convictions to the employer by holders of CDL.
- Annual training of CDL drivers.