



City of Chattanooga

Stan Sewell
Director

INTERNAL AUDIT
City Hall
Chattanooga, Tennessee 37402

Ron Littlefield
Mayor

March 24, 2010

Mayor and City Council
City of Chattanooga
Chattanooga, TN 37402

RE: CDL Drug Testing, Audit 09-17

Dear Mayor Littlefield and Council Members:

Attached is the Internal Audit Division's report on the Personnel Department's CDL Drug Testing Policy and Procedures.

We thank the management and staff of the Personnel Department and Benefits Office for their cooperation and assistance during this audit.

Sincerely,

Stan Sewell, CPA, CGFM
Director of Internal Audit

cc: Dan Johnson, Chief of Staff
Donna Kelley, Personnel Director
Madeline Green, Benefits Coordinator
Audit Committee Members
Freeman Cooper, Chief of Police
Randy Parks, Fire Chief

**PERSONNEL DEPARTMENT
CDL DRUG TESTING
AUDIT 09-17
February 16, 2010**

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Auditor



Audit Director

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INTRODUCTION

The Federal Motor Carrier Safety Administration (FMCSA), a division of the US Department of Transportation (DOT), adopted regulations requiring certain commercial motor vehicle operators to be tested for alcohol and drugs in order to reach a goal of an alcohol and drug free transportation environment. The regulations, notated in the Federal Code of Regulations (CFR) at 49 CFR Part 40, require testing for all employees required to have a commercial driver's license (CDL) for work. These tests include Pre-employment, Reasonable Suspicion, Random, and Post Accident.

The City of Chattanooga adopted resolution number 18020 in 1989, establishing the policy for drug and alcohol use by employees. That resolution was replaced by number 22153, adopted May 25, 1999. The new resolution changed the previous language requiring disciplinary action for any employee who tested positive for illegal drugs to be termination, instead of only being subject to termination. This creates the City's zero tolerance policy.

The testing program is administered by the Benefits office in conjunction with the Wellness clinic, whose staff (Carehere) actually administers the tests and reports the results. To ensure compliance with the DOT random testing requirement, the test subjects are randomly selected by Carehere from a listing of eligible employees furnished by the Benefits office. These tests are randomly performed each quarter by Carehere, with the samples being processed by their lab, and the results being sent to the Medical Resource Officer (MRO) in Nashville. The employees are first contacted by this doctor if the results show positive. If the positive cannot be explained, the City is notified that the employee tested positive, leaving any action to be taken up to the City.

STATISTICS

There are currently about 208 employee positions that require a Commercial Drivers License (CDL) as a condition for employment with the City. Based on the federally required sample size of 50% for drugs and 10% for alcohol, approximately 104 employees would have been tested for drugs during the audit period and 21 would have been tested for alcohol.

STATEMENT OF OBJECTIVES

This audit was conducted in accordance with the Internal Audit Division's 2009 Audit Agenda. The objectives of this audit were to:

1. Determine if the City's policy complies with Federal and State Mandates;
2. Determine if random testing is being done in accordance with policy;
3. Determine if positive tested employees were terminated per City Policy.

STATEMENT OF SCOPE

Based on the work performed during the preliminary survey and the assessment of risk, the audit scope will cover the operations period of calendar year 2009.

STATEMENT OF METHODOLOGY

We reviewed the City Code, Federal Law, and other Federal Regulations related to drug testing. We interviewed staff, and source documentation was obtained from the City's Benefit Office as well as the City's Health Care provider, CAREHERE, who also administers the tests. Original records as well as copies were used as evidence and verified through physical examination.

STATEMENT OF AUDITING STANDARDS

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

AUDIT CONCLUSIONS

Based upon the test work performed and the audit findings noted below, we conclude that:

1. The City's policy complies with Federal and State mandates;
2. Random testing is being performed in accordance with the policy; and
3. No employees tested positive during calendar year 2009.

NOTEWORTHY ACCOMPLISHMENTS

CAREHERE, who administers the drug testing for the City, does an outstanding job of following and documenting the process as required by the statute. The City is following the drug testing requirements as notated in the DOT regulations.

While the finding discussed below may not significantly impair the operations of the Fire and Police Departments, it does present risks that can be more effectively controlled.

NO FIRE AND POLICE ARE BEING TESTED

During the selection of the employees to be randomly chosen for testing, no Fire and/or Police employees are included. While reviewing relevant laws and regulations during our audit, we noted that the City Code states in Section 2-143(b) that “All employees of the department of fire and police who are participants in the Fire and Police Pension Fund ... shall be subject to testing for drugs and alcohol in a manner comparable to regulations of the US Department of Transportation for testing of commercial motor vehicle drivers.” Section 2-143(c) requires that the Fire Chief and Police Chief develop written policies and procedures to facilitate the random testing as required by Section 2-143(b).

RECOMMENDATION 1

We recommend the department heads of the Fire and Police Departments create and implement policies and procedures for drug and alcohol testing as required by the City Code. We further recommend those policies utilize the resources already in place with CAREHERE through the Personnel Department’s Benefit Office.

AUDITEE RESPONSE (PERSONNEL)

There was no response from the Personnel Department.

AUDITEE RESPONSE (POLICE)

There was no response from the Police Department.

AUDITEE RESPONSE (FIRE)

The Fire Department would like to discuss this further with Personnel, the City Attorney and the Mayor to determine a course of action. There were related court cases in the past and we would like to get legal advice before setting a policy.

AUDITOR COMMENT

The referenced court cases were reversed in 1990, after rulings by the United States Supreme Court in 1989. The Sixth Circuit Court of Appeals, based upon the Supreme Court rulings, has found that random drug testing for firemen is legal.