



## FAQS FOR EMPLOYERS

### If I am terminating an employee, do I still need to provide a list of SAPs?

Yes. DOT requires the employer to provide SAP names and contact information, regardless of whether the employee is returning to safety-sensitive functions for you or not. If you are terminating the employee, but the employee intends to apply for another job in the transportation industry, successful completion of the DOT return-to-duty process is still required. The employee must receive SAP information from you, the employer that he/she was working for when the violation occurred.

DOT regulation 40.287 prohibits employers from charging an employee for a list of SAPs.

### As an employer, do I have to pay for an employee's SAP services?

DOT doesn't specify who must pay for SAP services. As an employer, you can decide if you will pay for these services or not. If you plan to make employees responsible for paying for SAP services, it's advisable to include this in your written employee policy.

### I need my employee back as soon as possible. How long will this SAP process take?

The process can take several weeks or even months. The SAP must conduct an extensive evaluation, which may require several visits with the employee. The SAP must then develop a plan for treatment and education, and do follow-up visits to verify that the employee is complying with the plan.

### What happens if my employee doesn't need treatment?

This isn't possible. DOT rules prohibit a SAP from determining that an employee needs no treatment or education. The SAP must make a recommendation for treatment or education or both.

### How do I know that the SAP I am using knows the rules?

Only trained SAPs who have passed an exam can provide SAP services. You can verify that a SAP has completed qualification training and the exam by viewing his or her SAPlist profile.



However, as an employer, you are ultimately responsible for ensuring that a SAP is properly credentialed, trained, and has passed an exam. DOT regulations give you the authority to request this information from each SAP that you use. You can ask a SAP to fax or mail copies of his/her training documentation to you, for your files. If the documentation you receive is questionable, you may request additional information, or you may decide to look for a different SAP.

### I've been told that SAPs need case managers to oversee what they are doing. Is this required by the DOT regulation?

The regulation does not mention the use of case managers. The practice of SAPs working under a case manager developed in the early days of this regulation, when some SAPs didn't understand the rules and there was no requirement that they had to be trained. The addition of a case manager was important for quality assurance.

Assuming a SAP's training met DOT's requirements, and the SAP has the requisite professional skills and qualifications, the SAP should be able to work independently. However, you may feel more comfortable using a SAP who provides services under a case manager. The choice is yours.

### What if I think a SAP's recommendation is too harsh, or will take too long?

DOT gives full authority to a SAP to make decisions that are therapeutically appropriate. DOT also has made it very clear that a SAP's primary responsibility is not to get an employee back to work, but rather to protect the safety of the traveling public. A SAP's recommendation stands and no one can change it. Neither employers or employees are permitted to seek another assessment from a second SAP. (This is called "SAP shopping," and is specifically prohibited by the regulation. [40.295])

### What if I can't wait for this employee any longer? Can I terminate him or her?

As the employer you may take whatever job action you want to take, considering, of course, any agreements or contracts that are relevant. If you terminate the employee, the employee will be free to seek employment with another DOT-covered employer, but only if he/she successfully completes the SAP's recommended plan.

### I plan to take this employee back. When can I conduct a return-to-duty test?

The return-to-duty test cannot be conducted until you have received the SAP's follow-up evaluation report stating that the employee has complied with the recommendation. [40.305(a)] If you do conduct



the test in advance, DOT will require that the test must be conducted again, just before the employee returns to safety-sensitive duty.

### I'm not sure I want to take this employee back. Can I ask the SAP for his/her opinion?

No, you can't ask the SAP to help you with this decision. As the employer, the decision about taking an employee back is yours alone. The SAP is required to report to you only that the employee has or has not complied with the recommendation. At that point, employment decisions are up to you.[40.305(c)]

### The SAP reports I received don't offer much information. Can I get more info?

No. The regulations specify exactly what a SAP must put into a report. [40.311] You may be putting the SAP in a position of liability if you ask the SAP to provide more information than is permitted by the regulations.

Most of the information relates to the employee and where he/she works. But the Initial evaluation must include the SAP's recommended plan for treatment. The follow-up evaluation must include the SAP's clinical determinations related to compliance or non-compliance. If the employee complied, the SAP's report must also include a required follow-up testing plan.

### Can I ask the SAP to provide specific dates when follow-up tests should be conducted?

No. The regulations state that the SAP cannot make those determinations. [40.307(d)(3)] As the employer, you know your employee's work schedule. You will be the first to observe "performance issues" that suggest an employee may have returned to using drugs. Therefore DOT considers that you, the employer, are in the best position to decide when to require an employee to submit to a follow-up test.

### Who pays for follow-up drug tests?

DOT doesn't specify who pays for these tests. As an employer, this is a decision that you can make. It could also be affected by labor agreements that you may have. You can decide to pay for all of the follow-up tests, or you may split the cost with the employee, or you may pass the entire cost along to the employee. Whatever you decide to do, it's a good idea to include this information in your written employee policy.



## Can I tell my employee what his entire follow-up testing plan will be?

No. DOT considers the follow-up testing plan to be confidential. Neither the SAP nor the employer can share that information with the employee. [40.329, Technical Amendment, 8-1-2001]

## If I notify an employee of a follow-up test, and he/she claims to not have money to pay for it, can I postpone the test?

No. Reimbursement for follow-up tests (and for an employee's requested retest of a split specimen) cannot interfere with the tests being conducted. If you notify an employee of a follow-up test, the employee must immediately go to a collection site. Reimbursement is a separate issue, and you will have to address that later. If an employee tries to avoid a follow-up test by saying he has no money to pay for it, you can call this a refusal to be tested, which is a violation and now requires a new SAP assessment and return-to-duty process.

## A SAP recommended 10 follow-up tests in the first year, and 5 in the second year. I'd like to increase the number of tests, out of concern for public safety. Can I?

No. The regulations give the SAP complete authority over the follow-up testing plan. An employer cannot increase (or decrease) the SAP's recommended number of tests. [40.307(d)(4)]

## The SAP's follow-up testing plan for my employee feels too frequent. Can I omit some of the tests?

No. DOT requires the employer to conduct all the tests that the SAP has required. [40.309] Auditors may decide to compare a SAP's report with the required plan, to the number of tests that were actually conducted. As the employer, you will be responsible for tests not conducted.

## How should I track follow-up testing for an employee, so I can be certain that all the tests are conducted?

There's no easy answer to this question. Many of the follow-up tests will probably be spur-of-the-moment decisions. "Let's do a test today."...no particular reason. However, you should also look at follow-up testing as a tool to use when something "doesn't seem quite right", but there are no documentable symptoms for reasonable suspicion. Perhaps the employee has been absent a lot, but has no good excuse. Or you just suspect something strange is going on, or the employee "hasn't been



himself lately.” Using one of the follow-up tests will at least confirm or disprove your suspicions. And you don’t have to explain anything. It’s just a follow-up test.

Just be careful to not order more (or fewer) follow-up tests than the SAP ordered. Auditors will want to see that you followed the SAP’s follow-up plan exactly.

## I am hiring an employee who had a violation where he previously worked. He is under a follow-up testing plan. What is my responsibility?

If you hire an employee who hasn’t completed a follow-up testing plan, you are now responsible for having documentation of the employee’s negative return-to-duty test and all follow-up tests that were ordered by the SAP. Don’t trust an employer’s word for how many of these tests were already conducted. Ask the previous employer to forward copies of the employee’s return-to-duty test and all follow-up tests that have been conducted. You need to have them in your files. If the previous employer is unable to provide them to you, you should assume the tests were never conducted, and you’ll have to start at the beginning, maybe even with a return-to-duty test.

DOT requires an employer to keep all return-to-duty documentation for 5 years. Even though a return-to-duty test or follow-up tests are negative, an employer must still keep the paperwork for 5 years, as evidence that the tests were conducted. Auditors will expect to see this documentation in your file.

## Where can I find a SAP who is certified/approved by DOT?

Some SAPs say that they are certified or approved. But the DOT does not have a certification or approval process for Substance Abuse Professionals (SAPs). The most a SAP can be is qualified under the DOT requirements [40.365(b)(10)], and have completed SAP qualification training and a SAP exam. That’s it. There is no certification or designation of approval by DOT.

When you search for SAPs in the [SAPlist directory](#), verify their qualifications by clicking to view their profiles.