The U.S. Department of Transportation’s Federal Motor Carrier Safety Administration (“FMCSA”) announced on June 5, 2020 an extension of the waiver period that is available when a commercial motor vehicle driver has been out of the random testing pool for 30 days or more and then returns to work. Ordinarily, an absence of 30 days or more from the random testing pool triggers a pre-employment drug test upon returning to work. 49 CFR § 382.301. FMCSA now has extended this period to 90 days, given that many employers furloughed drivers during the pandemic but are starting to return employees to work.

FMCSA stated that: “[t]he administrative and cost burdens of pre-employment testing for furloughed drivers outside the random testing pool for more than 30 days falls on motor carrier employers at the very time they are attempting to return to expanded levels of operation. The Agency finds that temporary regulatory relief from this burden will aid in the economic recovery of motor carriers impacted by the
COVID-19 public health emergency, without negatively impacting safety. FMCSA also concludes that this waiver will aid in the Nation’s overall economic recovery by enabling the efficient resumption of the transportation of people and cargo throughout the United States.”

This 90-day waiver period is in effect from June 5, 2020 through September 30, 2020. Employers are reminded that if they wish to take advantage of the waiver (i.e., no drug test), they must comply with all of the requirements of 49 CFR § 382.301(b). Specifically, the employer must ensure that:

1. The driver has participated in a controlled substances testing program that meets the requirements of this part within the previous 30 days [now 90 days]; and

2. While participating in that program, either:
   (i) Was tested for controlled substances within the past 6 months (from the date of application with the employer), or
   (ii) Participated in the random controlled substances testing program for the previous 12 months (from the date of application with the employer); and

3. The employer ensures that no prior employer of the driver of whom the employer has knowledge has records of a violation of 49 CFR Part 382 or the controlled substances use rule of another DOT agency within the previous six months. Specifically, this last requirement means that the employer must conduct a query of the FMCSA Clearinghouse to ensure that there is no violation that would prevent the driver from performing safety-sensitive duties, and the employer must conduct the safety performance history investigation required by 49 CFR §§ 40.25, 382.413, and 391.23.

In addition, FMCSA requires employers to report accidents involving drivers who drive under this waiver. The report must be made by e-mail to MCPSD@DOT.GOV and must be made within 5 business days of the accident.

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