SEARCHES—GENERAL RULE

Citizens, including District employees, have a right to be free from unreasonable searches and seizures. *U.S. Const. Amendment IV; Tex. Const. Art. I, Sec. 9*

The District may search an employee or an employee's property if:

1. There are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct; and
2. The search is reasonably related in scope to the circumstances that justified the interference in the first place.

O'Connor v. Ortega, 480 U.S. 709 (1987); New Jersey v. T.L.O., 469 U.S. 325 (1985)

In addition, the District may search an employee's workplace for noninvestigatory, work-related purposes, if there are reasonable grounds to believe that the search will turn up evidence that the employee is guilty of work-related misconduct. *O'Connor v. Ortega, 480 U.S. 709 (1987)*

DRUG / ALCOHOL TESTING

Blood, urine, and breath tests of public employees to determine drug use are searches under the Fourth Amendment of the U.S. Constitution. *Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602 (1989)*

RANDOM DRUG TESTING

The District may conduct drug tests, without a warrant and without individualized suspicion, when the test serves special governmental needs that outweigh the individual's privacy expectation. *Skinner v. Railway Labor Executives Ass'n, 489 U.S. 602 (1989); Nat'l Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989)*

SAFETY-SENSITIVE POSITIONS

Random alcohol and drug testing of employees in "safety-sensitive" positions may be permissible when the intrusiveness of the search is minimal and the Board is able to demonstrate that the drug-testing program furthers its interest in ensuring the physical safety of students. "Safety-sensitive" positions include those that involve the handling of potentially dangerous equipment or hazardous substances in an environment including a large number of children. *Aubrey v. Sch. Bd. of LaFayette Parish, 148 F.3d 559 (5th Cir. 1998)*

Note: The following testing requirements apply to every employee of the District who operates a commercial motor vehicle and is subject to commercial driver's license requirements in accordance with federal regulations.

TESTING OF DRIVERS

The District shall conduct testing, in accordance with federal regulations, of commercial motor vehicle operators for use of alcohol or a controlled substance that violates law or federal regulation. *49 U.S.C. 31.306; 49 CFR Part 382*

COMMERCIAL MOTOR VEHICLE DEFINED

A commercial motor vehicle is defined as a motor vehicle used to transport passengers or property that:

1. Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers, including the driver.

49 CFR 382.107

TESTING PROCEDURES

The District shall ensure that all alcohol or controlled substances testing conducted under 49 CFR Part 382 complies with the procedures set forth in 49 CFR Part 40. *49 CFR 382.105*

TESTS REQUIRED

Required testing includes pre-employment, postaccident, random, reasonable suspicion, return-to-duty, and follow-up testing. No driver shall refuse to submit to a postaccident alcohol or controlled substances test, a random alcohol or controlled substances test, a reasonable suspicion alcohol or controlled substances test, or a return-to-duty or follow-up alcohol or controlled substances test. The District shall not permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions. *49 CFR 382.211, .309*

EDUCATIONAL MATERIALS

The District shall provide educational materials that explain the federal requirements and the District's policies and procedures with respect to meeting these requirements and shall ensure that a copy of these materials is distributed to each driver before the start of alcohol and controlled substances testing under this policy and to each driver subsequently hired or transferred into a position that requires driving a commercial motor vehicle. Written notice to representatives of employee organizations of the availability of this information shall also be provided. The materials shall include detailed discussion of at least the items listed at 49 CFR 382.601. *49 CFR 382.601*

REPORTS

A district required by federal safety regulations to conduct alcohol and drug testing of an employee who holds a commercial driver's license shall report the following information to the Department of Public Safety:

1. A valid positive result on an alcohol or drug test and whether the specimen producing the result was a dilute specimen.

   "Valid positive result" means an alcohol concentration of 0.04 or greater on an alcohol confirmation test, or a result at or above the cutoff concentration levels listed in 49 CFR 40.87 on a confirmation drug test.

   "Dilute specimen" means a specimen with creatinine and specific gravity values that are lower than expected for human urine.

2. A refusal to provide a specimen for an alcohol or drug test.

3. An adulterated specimen or substituted specimen, as defined at 49 CFR 40.3, on an alcohol or drug test.

For purposes of this requirement, the term "employee" includes applicants for employment subject to preemployment testing.

Trans. Code 644.251–.252; 49 CFR 40.3