



A bold voice for transportation workers

CONGRESS SHOULD REJECT LEGISLATING THE SCIENCE OF DRUG TESTING

The working people represented by TTD's 32 member unions are part of the six million transportation employees who comply with Department of Transportation (DOT) regulations that require drug and alcohol tests in order to obtain and maintain employment. Unfortunately, Congress is poised to blow a hole in the DOT's decades-long drug testing regime rooted in scientific and technical standards established by the experts at the Department of Health and Human Services (HHS). These standards have helped to ensure these tests are reliable, accurate, and unbiased.

But now the scientists and experts are being pushed aside by motor carrier industry lobbyists and politicians. Congress is considering legislation (HR 1467/S 806) that would circumvent sound science in order to permit the use of hair in DOT drug tests, despite the continuing, unresolved concerns that hair testing poses a high risk of false results and biases. Transportation labor stands united against HR 1467/S 806 and any effort to permit the use of hair as an alternative specimen in federal drug tests before HHS has determined whether this type of testing is appropriate and has established uniform testing protocols. Until then, Congress should scrap this legislation and the Obama Administration should oppose it.

In every mode of transportation and across various job types, passing a DOT drug test is a condition of employment. While we have always fought to improve the drug and alcohol testing rules to ensure their fairness and accuracy, and to protect due process rights, we share the goal of keeping drug and alcohol use out of our transportation system. But given that failing a federal drug test can cost workers their jobs or prevent them from even gaining employment, there must be complete confidence in the accuracy and reliability of that test result. Hair specimen testing falls well short of that standard.

The problems with hair testing are well known and should continue to prevent the use of hair as an alternative specimen in workplace drug testing. To begin with, when hair specimen is used in a drug test, it can test positive for a drug the donor did not actually ingest. That's because drugs in the environment can be absorbed into hair, contaminating the specimen and falsely producing a positive result. To date, there is no scientific consensus regarding the existence of a biomarker to conclusively prove the presence of that drug is the result of ingestion rather than contamination. To account for this contamination factor, drug testing labs use methods intended to wash away externally absorbed drugs; however, there is no scientific consensus on a method capable of completely removing externally absorbed drugs from hair. The residue left behind is particularly troubling in hair tests, as the concentration at which labs test for drugs in hair is extremely small. Thus, even the slightest amount of an absorbed drug can produce a positive test result.

Further, hair testing has inherent biases that make it incapable of consistently testing all individuals in a fair and even way. Evidence shows that a variety of factors wholly unrelated to drug use can influence how drugs are incorporated into hair. For instance, certain hair treatments, such as bleaching, coloring and straightening have been shown to make hair more susceptible to binding with drugs. Evidence also shows that drugs bond at high rates to melanin, the pigment causing dark hair, leading to serious and troubling concerns about racial bias and unfair treatment of those with dark hair.

A pending civil rights lawsuit in federal court in Boston highlights concerns that hair testing disproportionately impacts certain individuals and is racially biased. A group of African Americans, including several former Boston police officers who were terminated for testing positive for cocaine, sued the City of Boston and the Boston Police Department, alleging that the Department's hair drug testing program disproportionately affected certain officers on the basis of race. After reviewing eight years of data showing African American officers tested positive at greater rates than their Caucasian counterparts, the United States Court of Appeals for the First Circuit found that the plaintiffs proved "beyond reasonable dispute" a prima facie case of disparate impact under the Civil Rights Act.¹

TTD and affiliates were proud to stand with medical professional and civil and worker rights groups to raise attention to the inherent biases and limitations of hair specimen testing by sending a [letter](#) to the leadership of the House Transportation and Infrastructure Committee and the Highways and Transit Subcommittee. This letter called on Congress to allow the existing process for establishing DOT drug testing standards to continue. That process, which Congress implemented by enactment of the Omnibus Transportation Employee Testing Act of 1991, requires DOT to rely on the experts at HHS for determining which specimens are suitable for use in federal drug tests. The law instructs DOT to adopt HHS's Mandatory Guidelines for Federal Workplace Drug Testing Programs as the foundation of DOT's policies for testing transportation workers for the illegal use of drugs and alcohol.

HHS has considered permitting hair as an alternative to urine in the past, but decided not to proceed citing concerns from federal agencies. Earlier this year, HHS's Substance Abuse and Mental Health Services Administration asked stakeholders for information on the current scientific state of hair testing. While transportation labor submitted comments that counseled caution and reiterated issues that must be addressed, the science-based process that HHS is using to evaluate hair testing is the correct one. Congress should defer to this process.

Despite this fact, proponents of hair testing have inserted language in the Senate-passed Surface Transportation bill that would immediately permit employers to test bus and truck drivers' hair for drugs before HHS has made its determination on hair specimen or created scientific and technical guidelines. This provision would sweep away decades of sound public policy that requires federal mandatory drug testing be based on a rigorous process of scientific review and decision-making. As a result, this change would result in flawed tests and too many workers unfairly forced out of

¹ This case was referred back to the US District Court for the District of Massachusetts which found that the Department's hair drug testing program, while biased, should still be permitted. The group of African American police officers are currently appealing this ruling. The First Circuit's finding of a prima facie case of disparate impact under the Civil Rights Act has not been overturned.

the motor carrier industry. We are pleased that the Surface Transportation bill approved last week by the House Transportation and Infrastructure Committee modifies the Senate approach to help ensure that HHS can play its traditional role in evaluating alternative specimens. TTD will continue to urge lawmakers to resolve the issue of hair testing in a manner that is based on science and established approval procedures, not on pressure from industry lobbyists.

While these legislative measures would directly impact workers in the motor carrier industry, TTD and affiliates are well aware that changes to one transportation mode's policies can have a cascading impact across all the modes. Our unions' members are committed to maintaining a drug-free workplace, but we expect the tests they take are reliable and fair. Hair testing at this time cannot meet that standard, and we stand united in opposition to allowing hair specimen testing in federal drug tests before HHS develops appropriate scientific and technical standards and authorizes its use.

Policy Statement No. F15-02
Adopted October 28, 2015