

May 22, 2009

Dear Valued EDPM Client:

We wanted to provide you with an update on the DOT Rule change for Direct Observation (DO) requirement.

Below is the message from Jim Swart, Director of the Office of Drug and Alcohol Policy and Compliance for the Department of Transportation, dated May 21, 2009:

We are pleased to announce that on May 15, 2009, the United States Court of Appeals for the District of Columbia Circuit unanimously upheld DOT's direct observation drug testing rules applicable to return-to-duty, safety-sensitive transportation industry employees who have already failed or refused to take a prior drug test. The Court found that the rules were not arbitrary or capricious and did not violate the Fourth Amendment constitutional prohibition on unreasonable searches and seizures.

Because there is an opportunity for the parties to seek rehearing of the Court's ruling, the Court's stay of the direct observation rule continues in effect. **Direct observation collections for follow-up and return-to-duty testing will remain an employer's option for the duration of the rehearing process.** We will provide status updates to you on a regular basis.

Safety is the highest priority of the U.S. Department of Transportation and the upholding of our direct observation drug testing rules helps to support this mission.

EDPM will continue to keep you updated as more information becomes available.

Thanks.