

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: OCTOBER 19, 2011

SUBJECT: FITNESS FOR DUTY ("FFD") POLICY UPDATE

ACTION ITEM

REASON FOR CONFIDENTIAL INFORMATION:

This report contains recommendations, discussion and information that are subject to solicitor-client privilege, and this report contains information relating to labour relations.

RECOMMENDATION

It is recommended that the Commission:

1. Approve additions to the FFD Policy currently in place at the TTC, which would include the introduction of random alcohol and drug testing for Safety Sensitive, Specified Management and Designated Executive positions.
2. Receive the information as set out in the Confidential Attachment; and
3. That the confidential information as set out in the Confidential Attachment remain confidential in its entirety as it contains material which is subject to solicitor-client privilege, litigation privilege, and relates to labour relations.

FUNDING

There are no funds included in current budgets related to the implementation of random alcohol and drug testing. The additional costs would include: funding to extend existing contracts with our alcohol and drug policy expert, Ms. Barbara Butler, funding to develop and deliver appropriate communication and training, funding for testing related technology and service delivery, additional testing costs, additional costs related to future litigation and any other applicable and directly related unforeseen costs. These amounts, once determined will be included in future operating budget submissions.

BACKGROUND

In 2010 the TTC rolled out its FFD Policy. The purpose of the FFD Policy is to ensure that a framework is in place to assist the TTC in fulfilling its obligation to protect the health and safety of all TTC employees, customers and the general public. The FFD Policy supports this goal by setting out explicit expectations that employees attend work unaffected by fatigue, alcohol and/or drugs.

The FFD Policy provides for alcohol and drug testing in certain scenarios for persons occupying/ being hired into positions that: are deemed to be safety sensitive, oversee safety sensitive positions or designated executive management positions. This includes the ability to test as part of an investigation should someone appear to be unfit for work due to alcohol or drug use ("Reasonable Cause Testing"), and/or as part of an investigation into a significant work-related incident ("Post Incident Testing"). Non TTC employees being hired into safety sensitive positions and TTC employees moving from non safety sensitive positions to safety sensitive positions are also subject to testing ("Certification Testing").

Employees are warned that violation of the FFD Policy will result in discipline up to and including dismissal. Employees with proven and medically supported alcohol and/or drug addictions are accommodated to the point of undue hardship provided they comply with the assessment process, recommended treatment, and follow-up monitoring provisions.

This FFD Policy is devised in such a manner so as to promote early intervention and address dysfunctional behaviour that can pose a risk to the workplace and the public. The ability to test employees holding certain positions is a tool to assist the TTC in managing employee behaviour and to assist in ensuring the provision of a safe workplace and transit system.

Safety is one of the cornerstones of TTC corporate culture. Not only are all TTC employees obliged to ensure a safe workplace at the TTC, but they are also tasked with requiring the delivery of a safe transit service to the public. The TTC has an obligation to take all appropriate steps to implement policies and procedures that will promote a safe workplace and service. It is the opinion of staff that the implementation of random alcohol and drug testing for the safety sensitive, specified management and designated executive positions, is required as an appropriate step to improve safety in the workplace and to the public.

Please note that the following documents are included as appendices:

Appendix #1: The TTC's FFD Policy

Appendix #2: The Commission Report dated September 18, 2008.

DISCUSSION

In September 2008, TTC staff recommended that the Commission approve in principle a FFD Policy that would include: assistance programs, prevention measures, and investigative tools, including alcohol and drug testing in the following circumstances:

1. Employees in safety sensitive, specified management and designated executive positions would be subject to reasonable cause, post incident, post violation, post treatment, applicant and random testing; and
2. All other employees that do not fit in the proposed categories above would be subject to post violation and post treatment testing in appropriate cases.

The recommendations made to the Commission in 2008 were based on consultation with both Management and Union counsel (Associated confidential attachments to the 2008 Commission Report are included in the Confidential Attachment). The report also included a list of all alcohol and drug related incidents that impacted the TTC between January 2006 and June 2008. The report highlighted incidents where Operators were found to be under the influence of alcohol while in revenue operations, as well as the "Lytton Subway Work Car Fatality" in 2007, where the Coroner's report noted that the operator of the workcar had measurable levels of Tetrahydrocannabinol (THC) in his system, and that the level indicated that the drug was probably used during his shift. This incident resulted in the death of the workcar operator, two crew members being seriously injured, and other crew members having lengthy absences as a result of the trauma. This incident was a key factor in prompting a review of the TTC's existing Drug and Alcohol policy.

On September 18, 2008 the Commission approved the TTC's recommendations, except for the introduction of random testing. As such, the revised FFD Policy took effect in 2010 and allowed for the following:

Safety Sensitive, Specified Management and Designated Executive Positions ("Designated Positions"):

1. Reasonable Cause Testing → this includes a breathalyser test for alcohol and oral fluid drug test;
2. Post Incident Testing → this includes a breathalyser test for alcohol and oral fluid drug test;
3. Certification / Pre Employment Testing → employees applying for a designated position from a non-designated position (internal) are subject to a drug test in the form of a urine sample collection (urinalysis) and a breath alcohol test. External candidates are tested for drugs only by way of urinalysis.

All oral fluid and urine samples are collected by a third party and are analyzed in a certified laboratory.

All Employees

Where an employee either voluntarily comes forward to disclose a substance abuse problem, or where an employee violates the FFD Policy and conditions of ongoing employment are put into place, the employee is required to pass a "Return to Duty" alcohol and drug test by way of breathalyzer and urinalysis, prior to being returned to duty. Subsequently, the employee may also be subject to "Post Treatment Monitoring" which would consist of unannounced alcohol and/or drug testing by way of breathalyzer and urinalysis. In this situation, dates for testing are selected on a random basis through our independent testing service.

TTC staff continue to believe that the introduction of random alcohol and drug testing is imperative to ensuring a safe workplace and a safe service to the general public. In 2008 staff recommended that random alcohol and drug testing be introduced, and this was not approved by the Commission. As will be discussed in greater detail throughout this report, the introduction of the FFD Policy as approved, has not fully addressed the alcohol and drug problem at the TTC. Furthermore, and again to be discussed in greater detail, in the United States, where random alcohol and drug is mandatory in certain industries, data shows that random testing acts as a deterrent to alcohol and drug use in the workplace. While privacy concerns may exist with respect to random testing, it is the position of TTC staff that the obligation to provide a safe workplace to employees and a safe service to the public outweighs such concerns. Therefore, a policy which requires alcohol and drug testing, including random testing for designated positions, should be in place.

Each of the TTC's three unions was offered an opportunity to provide feedback on the FFD policy and to meet with Human Resources representatives to discuss their concerns, prior to the policy coming into effect.

In response to the roll out of the FFD Policy, the Amalgamated Transit Union ("ATU"), Local 113 launched a policy grievance. Specifically, the ATU is claiming that the TTC's FFD policy violates the collective agreement, the Ontario *Human Rights Code* and the *Canadian Charter of Rights and Freedoms* ("Charter"). Hearing dates began in early 2011 and are scheduled throughout 2011 into 2012.

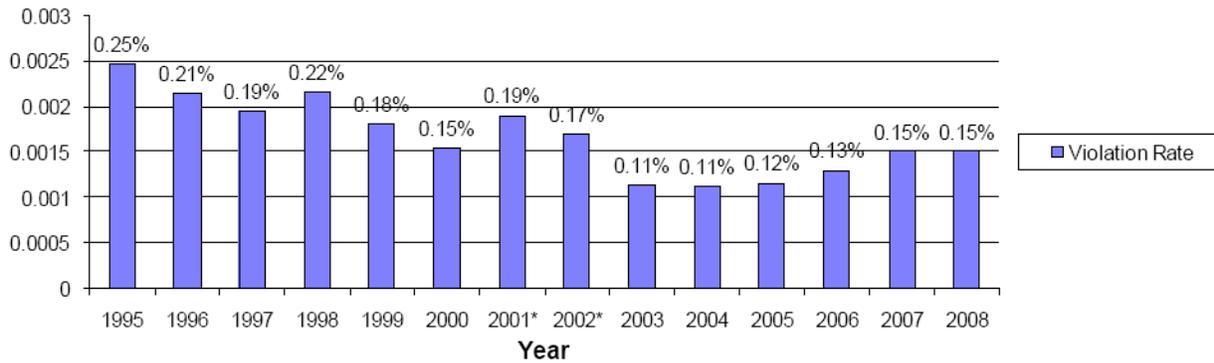
Detering Impact of Random Testing

The Federal Transit Administration ("FTA") in the United States requires employees working in safety sensitive positions across six employment categories to undergo alcohol

and drug testing in a variety of circumstances analogous to those where the TTC also requires it. The FTA also requires random alcohol and drug testing for these employees. The results of these random tests provide a good opportunity for us to review the correlation between random testing and deterrence.

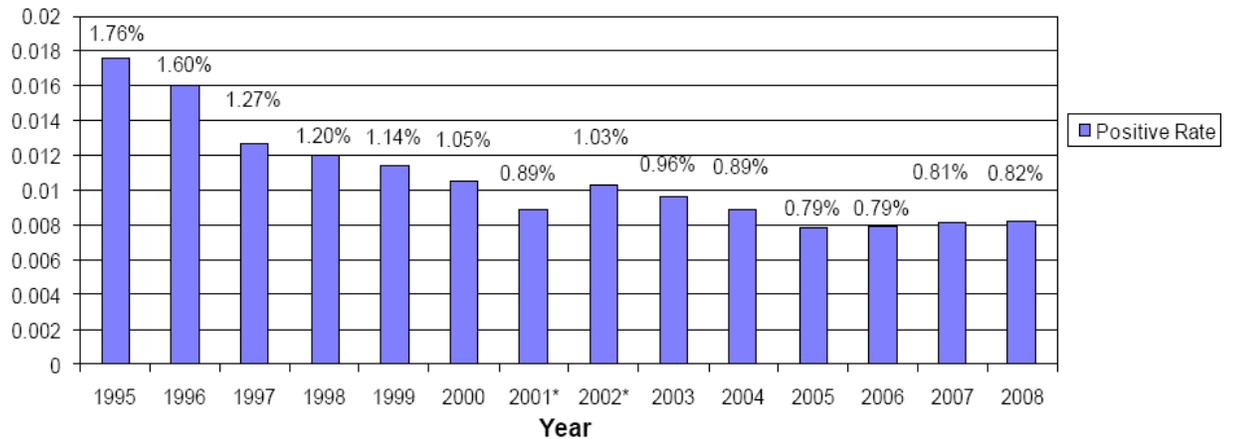
The following tables are taken from the FTA's most recent alcohol and drug testing statistical report. These show the decrease in positive tests for employees subjected to random testing for both drugs and alcohol, from 1995 (when it first became federally mandated for transportation workers) onwards.

Alcohol - Random Violation Rate



*denotes a stratified sample year

Drug - Random Positive Rate



*denotes a stratified sample year

As is clear from both tables, there has been a definite decrease in positive results for both random alcohol and drug results since introduced. While there has been a slight upward trend in recent years in the rate of positive results for alcohol, the positive results are nevertheless significantly down from 1995 and show a decline in positive results in the magnitude of almost 50%.

A study exploring the relationship between random alcohol testing and fatal crashes of drivers of large trucks in the U.S. was conducted in 2007. Overall, this study found a 24% correlation directly attributable to the introduction of obligatory random alcohol testing and a reduction in alcohol related fatal crashes, where large trucks were involved. Again, while this data is correlative, there is a clear relationship between the introduction of random testing and altered behaviour.

In Canada, companies with drivers who cross into the U.S. must also comply with U.S. testing requirements including random testing. Based on data provided by our third party provider "Driver Check" related to random drug tests of Canadian employees, the number of positive results decreased from 1.01% in 1999 to 0.42% in 2010. This again shows a correlative drop associated with random testing of more than 50%.

TTC staff strongly believe that the introduction of random alcohol and drug testing is an effective and necessary deterrent to protect employees, our customers and the public at large.

JUSTIFICATION

The Commission's approval to proceed with the implementation of random alcohol and drug testing for designated positions is being sought. TTC staff will work with experts and legal counsel to devise a process that aligns itself as closely as possible with existing case law as well as explore updated procedures. Once the research is conducted and a clear, efficient, and cost effective process is designed, and once an effective communication and training strategy has been devised, the TTC will implement changes accordingly.

October 19, 2011
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Attachments