
Can you Fire an Employee whose off duty DWI Charge Results in a Temporary Suspension of Driving Privileges?

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Should you Fire an Employee whose
off duty DWI Charge Results in a
Temporary Suspension of Driving
Privileges?

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Termination for DWI?

Joe Bob arrested and charged with DWI, claims innocence.

License confiscated , he has a temporary permit.

Joe Bob's job requires him to drive a dump truck and backhoe.

Non-driving positions are limited, Joe Bob has limited computer proficiency.

When

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Confiscation of License

Officer shall confiscate license and provide notice of suspension if driver is arrested for

- Driving while Intoxicated
- DWI with a Child Passenger
- Boating While Intoxicated
- Intoxication Assault
- Intoxication Manslaughter

And refuses to submit to the taking of a specimen OR specimen shows an alcohol concentration of 0.08 or more.

Temporary Driving Permit

Effective immediately

- Temporary Commercial Motor Vehicle Permit not effective until 24 hours after the time of arrest

Expires on the 41st day after the date of issuance.

- Allows time for Department to determine whether license should be suspended
- Determinations are final unless hearing is requested.

Suspension of Driving Privileges

Takes effect on the 40th day after receipt of notice of suspension from department

Period of Suspension is 90 days if no alcohol-related enforcement contact in last 10 years

Period of suspension is one year if one or more enforcement contacts in the last 10 years.

Suspension must be rescinded if person is acquitted.

What about that hearing?

Hearings conducted by SOAH upon request of driver.

- Automatic stay of suspension until ALJ decision
- Must be requested within 15 days.
- Must be held within 11 days after request
- One automatic continuance

SOAH hearing on suspension

ALJ will sustain if proved by a preponderance of the evidence that:

- Alcohol concentration of 0.08 while driving
- Reasonable suspicion to stop or probable cause to arrest existed

Can be appealed to County Court at Law

- Appeal stays suspension for not more than 90 days.

Termination for Suspension?

1. Should you?
2. Is driving required on-the-job?
3. Be mindful of timelines.
4. Check for hearing requests and appeals.

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