Handout for:
Presentation on Drug Testing in the Workplace: A Montana Focus

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Presented by:
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Although Ms. Janecek is currently on inactive status as an attorney while she finishes her childrearing sabbatical, Ms. Janecek invites participants to contact her at her personal email (Janecek_Sienko@yahoo.com) or by phone (406-438-5805) if they should have any questions.

Presentation Outline/References/Handout

I. Pre-Policy Assessment Checklist

   A. Identify your, the organization’s, supervisor’s and employees’ biases, beliefs, and experiences about the subject of the policy?

   B. Should the organization have such a policy? Is it required to have such a policy? If not required, then do the benefits outweigh the costs of having such a policy?

   C. Can the organization have such a policy?

   D. What should or must be included in the policy? How should or must the policy be implemented/carried out?

   E. Prepare for exceptions/issues that may arise/impact on other policies.

II. Identify your personal perceptions, biases, beliefs, and experiences about drugs, alcohol, medical marijuana and drug/alcohol testing?

   A. Self-Check Questions (sample):

      1. Do or did I drink alcohol or use drugs?

      2. How do I feel about the use of alcohol or drugs?
3. Do I know anyone who is an alcoholic or drug addict? Did that person have successful treatment?

4. Have I been the victim or impacted negatively by someone’s use of drugs or alcohol?

**B. Answer your self-check questions by replacing “your” with “the organization’s,” “the owner’s,” “the supervisor’s,” “the employees’.”**

**III. Should an employer drug/alcohol test its employees?**

**A. Is the employer required to drug/alcohol test its employees?**

1. Statutorily
2. Administrative Rules/License/Regulations
3. Contractually/Membership/Association

**B. Even if the employer is not required to drug/alcohol test its employees, should the employer still test?**

1. cost to implement & administer
2. cost of not implementing & administering

**IV. Can an employer drug/alcohol test its employees?**

**A. Federal:**

**B. Montana:**

1. **Employer:** *(MCA, 39-2-206(5))*
   a. one or more employees
   b. located in or doing business in Montana
   c. governing body of local government

2. **Employee:** *(MCA, 39-2-206(4)(a); 39-2-206(7))*
   a. performance, supervision, management of:
   b. hazardous work environment
   c. security position
   d. position affecting public safety
e. position affecting public health
f. position driving motor vehicle necessary for any part of work duties
g. position involving a fiduciary responsibility for employer

3. **Qualified Testing Program** (MCA, 39-2-206(11); 39-2-207; 39-2-208)

C. **Resources:**
1. The Department of Transportation’s (“DOT”) Office of Drug and Alcohol Policy and Compliance has a comprehensive website on federal drug/alcohol testing. [http://www.dot.gov/odapc](http://www.dot.gov/odapc)

2. A direct link to the interactive DOT site on whether an employer is subject to DOT testing regulations [http://www.dot.gov/odapc/am-i-covered](http://www.dot.gov/odapc/am-i-covered)


5. 49 CFR, Part 40 available at [http://www.ecfr.gov/cgi-bin/text-idx?SID=7412b8cc76d1996f59f28a51b4c52748&node=49:1.0.1.1.30&rgn=div5#49:1.0.1.1.30.1.18.1](http://www.ecfr.gov/cgi-bin/text-idx?SID=7412b8cc76d1996f59f28a51b4c52748&node=49:1.0.1.1.30&rgn=div5#49:1.0.1.1.30.1.18.1)

V. **How does an employer drug/alcohol test its employees under the “Montana Rules”?**

A. **Need a Qualified Testing Program**

1. **49 CFR, part 40**

2. **Written Policy**
   A. 60 days before terms implemented or changed
B. What must be included? (MCA, 39-2-207)
C. What might be included?

3. **When/how can an employer alcohol/drug test?** (MCA, 39-2-208)
   a. 49 CFR, part 40
   b. Condition of hire
   c. Random testing
   d. Follow-up tests
   e. Reason to suspect (49 CFR, parts 382.307, 382.603)
   f. Accident

4. **What happens if a drug/alcohol test is positive?**
   a. Medical review officer (MCA, 39-2-207(5))
   b. Right of rebuttal (MCA, 39-2-209)
   c. No adverse action if reasonable explanation/medical opinion (MCA, 39-2-210)
      i. See below for Medical Marijuana
   d. ALL results are CONFIDENTIAL (MCA, 39-2-211)

5. **Miscellaneous issues**
   a. Cross-check with other policies
   b. Subcontracts—indemnification/responsibility
   c. Wage & hour issues

B. **Resources:**

5. 49 CFR, Part 382 available at [http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=7be618c5eb56986bf8b5bd134450b9f3;r gn=div5;view=text;node=49%3A5.1.1.2.25;idno=49;cc=ecfr](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=7be618c5eb56986bf8b5bd134450b9f3;rgn=div5;view=text;node=49%3A5.1.1.2.25;idno=49;cc=ecfr)

VI. What are some potential issues that might arise when drug/alcohol testing employees?

A. Medical Marijuana

B. Americans with Disabilities Act (ADA)

C. Unemployment

D. Resources:
   3. ADA Q&A [http://www.ada.gov/q&aeng02.htm](http://www.ada.gov/q&aeng02.htm)