

## Manager Fact Sheet:

# Drug and Alcohol Testing for State Employees

April 6, 2016

### Overview

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This fact sheet provides information and guidance for state human resources professionals and agency managers when evaluating and implementing drug and alcohol testing within an agency or work unit.

### Restrictions for Employees Subject To Testing

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Employers in Montana must comply with the "Workforce Drug and Alcohol Testing Act," (39-2-205, et. seq., MCA). The Act only allows testing for employees when the employee is employed in a:

1. hazardous work environment;
2. security position; or
3. in a position:
  - a. affecting public safety or public health, or
  - b. in which driving a motor vehicle is necessary for any part of the employee's work duties, or
  - c. involving a fiduciary responsibility for an employer.

Since the State of Montana is the employer and in Montana drug and alcohol testing constitutes a search and seizure, these criteria should be followed carefully, as the testing will only be constitutional in these situations.

### Drug and Alcohol Testing Policy

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The testing must be conducted according to the terms of a written policy and procedures that the employer must adopt and make available to all employees who are subject to the drug and alcohol testing policy 60 days before testing is implemented. Drug and

alcohol testing must be negotiated in collective bargaining for union members.

### Qualified Testing Program

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The drug and alcohol testing must conform with a qualified testing program. The requirements of a qualified testing program are outlined in 39-2-207, MCA, and require the chain of custody of the sample and the procedural requirements to be at least as stringent as those required by 49 CFR, part 40.

### Types of Testing

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An employer may conduct the following testing for those employees employed in the positions specifically outlined in the Workforce Drug and Alcohol Testing Act:

1. any prospective employee as a condition of hire;
2. random testing (provided supervisors and managers are included in the random-selection process);
3. follow-up tests if an employee has a positive test;
4. reasonable suspicion; and
5. following a work-related accident.

### Employees' Rights

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An employer must provide a copy of the test results to the employee. If the employee requests, the employer must have the split sample tested at an independent laboratory of the employee's choice. The employee must be given the opportunity to explain the results of any test. No adverse action may be taken against an employee who presents a medical opinion indicating that the test results were not caused by illegal use of

controlled substances or by alcohol consumption. All test results and related information are confidential and may only be used in limited situations, according to 39-2-211, MCA.

### **Possible Vender**

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The State Procurement Bureau, Department of Administration, has entered into a non-exclusive contract with a vender providing drug and alcohol testing services. See <http://svc.mt.gov/gsd/apps/termcontractdefault.aspx>, Drug and Alcohol Testing Program. An agency may procure services under this contract or obtain service from another source as long as it complies with Title 18, MCA, and its delegation agreement. Each agency shall ensure its drug and alcohol testing program complies with state and federal law.

### **Legal Guidance**

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When considering and implementing a drug and alcohol testing program, an agency is strongly encouraged to seek legal counsel and guidance beginning with the initial evaluation stage and throughout implementation of a drug and alcohol testing program.

*Alternative accessible formats of this Fact Sheet will be provided on request. Persons who need an alternative format should contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., PO Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.*