

FACTS & MYTHS OF DRUG & ALCOHOL TESTING IN MONTANA

Presented at 22nd Annual ASSE/MSSC/AE Safety,
Leadership & HR Conference

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Presented by:

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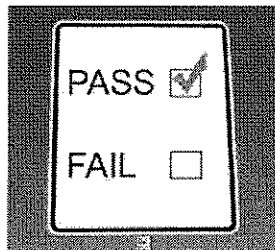
Today's Presenter:



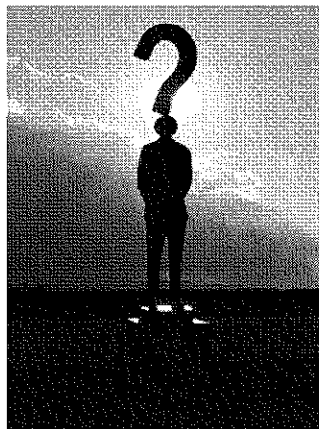
As a Human Resources Business Partner, Jackie Swiesz assists AE members with the full range of Human Resource needs. She brings fifteen years of human resource experience to the plate in both the private and non-profit sectors at businesses in Montana and Idaho. In her HR role, she has served as a key management person and partnered with business owners, boards of directors, and supervisors to provide leadership and collaboration from strategic planning to daily operations. She is experienced in a full range of HR functions as well as payroll and benefits, safety accreditation, and employee training. She is well acquainted with the diversity of small businesses in our area.

Today's topics

- Why should you drug & alcohol test?
- Who can be tested?
- When can you start testing?
- What types of testing you can perform?
- What should you include in a policy?



Why should we test?



National Survey on Drug Use and Health

- In 2015, an estimated 27.1 million Americans aged 12 or older were current illicit drug users, meaning they had used an illicit drug during the month prior to the survey. This estimate represents about 1 in 10 people aged 12 or older.

10%

Illicit drugs include hallucinogens, inhalants, methamphetamine, and the misuse of prescription pain relievers, tranquilizers, stimulants, and sedatives.

National Survey on Drug Use and Health

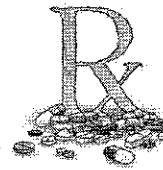
In 2015, approximately 20.8 million people in the US had a substance abuse disorder related to use of alcohol or illicit drugs.

- 15.7 million had an alcohol use disorder
- 7.7 million had an illicit drug use disorder

Drug Use Among American Workers

Misuse of prescription psychotherapeutic drugs is second only to marijuana as the nation's most prevalent illicit drug use issue.

- *In 2015, 18.9 million (7.1%) people aged 12 and over misused Rx psychotherapeutic drugs:*
 - ✓ 12.5 million (4.7%) misused pain relievers
 - ✓ 6.1 million (2.3%) misused tranquilizers
 - ✓ 5.3 million (2%) misused stimulants
 - ✓ 1.5 million (0.6%) misused sedatives



84.1% of those using Rx drugs in 2015 did not misuse them.

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Drug Use Among American Workers



- 68.9% of all adult illegal drug users are employed full or part time according to SAMSHA
- Studies show that when compared with non-substance users, substance using employees are more likely to:
 - *Change jobs frequently*
 - *Be late to or absent from work*
 - *Be less productive*
 - *Be involved in a workplace accident and potentially harm others*
 - *File a workers' compensation claim.*
- 1/3 of all employees are aware of illegal sale of drugs in the workplace, according to the TN DOL & Workforce Development.

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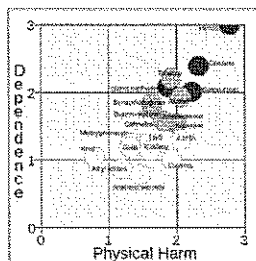
Negative Effects on Health

- Hangovers
- Weight Gain (or Loss)
- High Blood Pressure
- Depressed Immune System
- Withdrawal Sickness



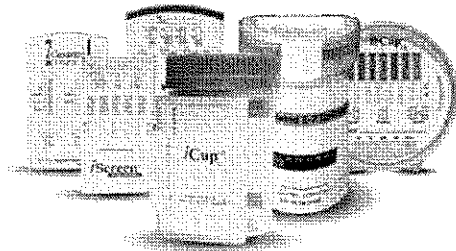
Negative Effects in Workplace

According to the American Council for Drug Education, substance abusers are:

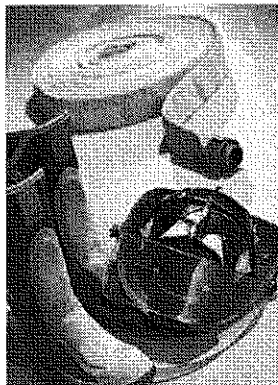


- 10 times more likely to miss work.
- 5 times more likely to file a workers' compensation claim.
- 3.6 times more likely to be involved in a work-related accident.
- 33 percent less productive than nonusers.

We've decided to test – now what?



Survey: Needs & Applicability

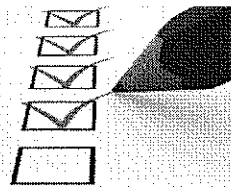


As an employer, do I have employees who are:

- *CDL Drivers?*
- *Work in Hazardous Environments?*
- *Involved in Public Safety?*
- *Involved in Fiduciary roles?*

Checklist:

1. Determine which employees are subject to testing under MT law
2. Determine type of testing to be conducted (pre-employment, random, etc.)
3. Select a lab to perform the actual testing
4. Determine if rehab/treatment are options
5. Adopt a qualified, written testing program



Qualified Testing Program

- Mont. Code Ann. §39-2-207
- Must have a separate written statement
- Must be available for review by all employees 60 days before implementation
- Must have testing procedures that conform with 49 CFR part 40



Montana Requirements

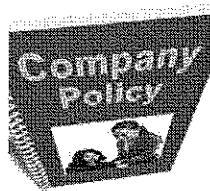
(Also Applies to Federal DOT)



- Must have a written procedure
- Must have a written policy that includes:
 - *Describe legal sanctions*
 - *Program for educating employees on health risks*
 - *Standard of conduct*
 - *EAP*
 - *Sanctions for policy violation*
 - *Identify testing program & drugs tested for*
 - *Describe hiring policy*
 - *Confidentiality*

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Other Considerations:

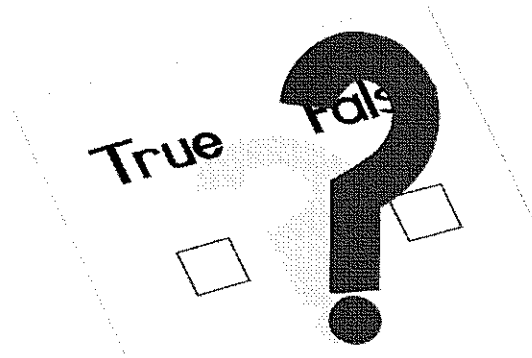


- Policy violation may require employee to participate in an appropriate drug & alcohol treatment program as a condition of continued employment
- Testing is at employer's expense
- Employee has the right of rebuttal
- Testing is restricted to alcohol and a 5-panel drug test

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Fact or Myth?

- Montana employers can have all of their employees tested.

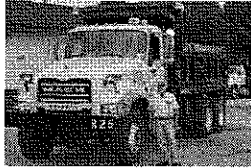


Who Can Be Tested

- Under Montana Workforce Drug & Alcohol Testing Act (**MCA §§ 39-2-205 thru 211**)
 - *An employee subject to testing means an individual engaged in the **performance, supervision, or management** of work in a:*
 - hazardous work environment
 - position affecting public safety
 - fiduciary position for the employer
 - *Does not allow for testing of independent contractors*

Employees Subject to Federal DOT Regulations

CFR 49 Part 382 (applies to CDL drivers):



- 26,001 gross vehicle weight
- Hazardous material (fuels, etc.)
- Vehicles carrying 16 or more passengers
- Companies must have written policy

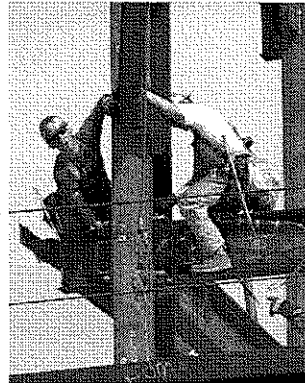
Fact or Myth?

Under Federal DOT, can an employee in a safety-sensitive position be removed from work with a BAC of 0.01 – 0.019?



Hazardous Work Environment

- Areas where testing is mandated by federal law
- Operation of or work in proximity to construction equipment, industrial machinery, or mining activities
- Involves handling or proximity to flammable materials, explosives, toxic chemicals, or other similar substances



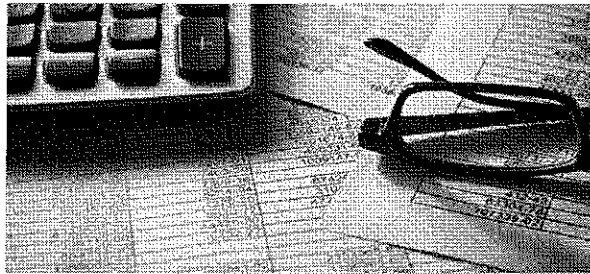
Public Safety



- Police officer; fireman and similar employees
- Potentially included but not well defined:
 - *Employee driving company equipment/ vehicles on public roadways*
 - *Employee actions that could adversely affect the public*

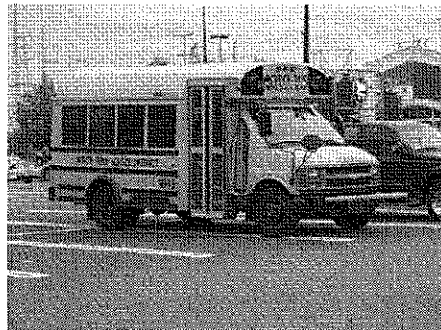
Fiduciary

- Could be any position where the employee receives money or property or performs duties in a position of trust
- Again, not clearly defined

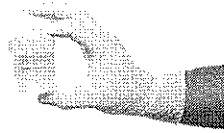


Fact or Myth?

- Some antihistamines can produce side effects that interfere with driving ability.



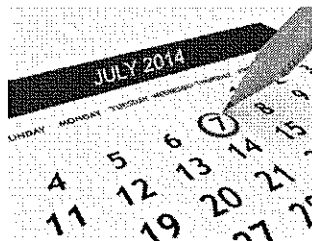
To Test or Not To Test....



What if my employees don't qualify under the Montana law to be tested?

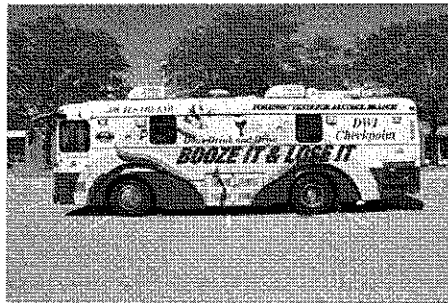
When Can We Start Testing?

- Employer must issue policy to employees and wait at least 60 days before testing is implemented



Quiz Question:

- Within what specific amount of time must reasonable suspicion testing for alcohol take place?



Types of Testing Allowed

- Pre-Employment (drug only)
 - *Post-offer, pre-employment*
- Random
 - *Baseline*
 - *Calendar period testing*
- Reasonable suspicion
 - *Supervisors must be trained according to 49 CFR, part 382.603*

And More....

Types of Testing - Continued

- **Post-accident**

- *Testing following an employee's acts or omissions that are the direct or proximate cause of a work-related accident causing death, personal injury, or property damage in excess of \$1,500.*

- **Return-to-duty**

- *Performed prior to employee return to duty following violation of alcohol/drug standards*

- **Follow-up**

- *Performed following rehabilitation*

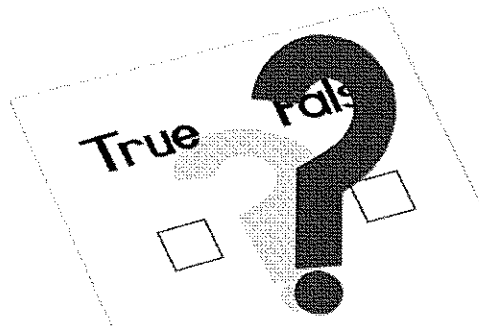
Reasonable Suspicion Testing

- What type of training must be provided to supervisors?
- How often must they receive training?



Fact or Myth?

- Health problems such as diabetes may mimic the symptoms of alcohol or drug use.



What Drugs Can You Test For?

Montana follows the Federal statutes and allows for testing for the following drugs:



- ✓ Marijuana (THC metabolite)
- ✓ Cocaine
- ✓ Amphetamines
- ✓ Opiates (including heroin)
- ✓ Phencyclidine (PCP)

Initial test analyte	Initial test cutoff concentration
Marijuana metabolites	50 ng/mL
Cocaine metabolites	150 ng/mL
Opiate metabolites Codeine/Morphine ²	2000 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL
Amphetamines ³ AMP/MAMP ⁴	500 ng/mL
MDMA ⁶	500 ng/mL



"You're fired, Jack. The lab results just came back, and you tested positive for Coke."

Who Does the Testing?

- Part of the written plan needs to designate the facility which the employer has contracted with to perform the testing.
- A Medical Review Officer (MRO) will review all test results and generate a report.
- There are various testing facilities to choose from, including Occupational Health divisions of hospitals

What Happens After Testing?

Removed from Safety-Sensitive Functions

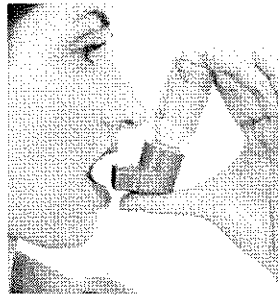
- *Evaluation from a Substance Abuse Professional (SAP)*
- *Treatment*
- *Passes return-to-duty test*
- *Subject to follow-up testing*
- *Consequences of company policy*

Alcohol test between 0.02 and 0.04

- *Removed for 24 hours, passes subsequent alcohol test at less than 0.02*

Fact or Myth?

- Drivers can take controlled substances with a letter of permission from their physician.



Policy Development

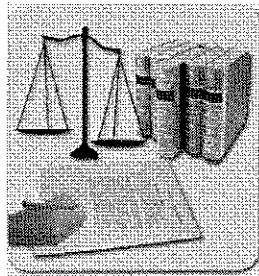
- Definitions
- Policy Coordinator
- Standard of Conduct
- Types of Testing
- What substances are being tested



THERE'S MORE....

Policy Development, Continued

- Testing Procedures
- Sanctions



And Even More....

More About Policy Contents...

- Medical Marijuana
- Criminal Sanctions



Policy Development, Final Pieces

- Rehabilitation
- Education



Resources

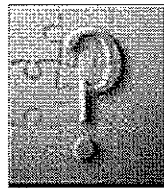
- Employer's Guide to Drug Testing in Montana:
<http://wsd.dli.mt.gov/employers/employer-guide-to-drug-testing>
- Other Web Sites:
 - National Institute on Drug Abuse:*
<http://www.drugabuse.gov/>
 - National Institute on Alcohol Abuse & Alcoholism:*
<http://www.niaaa.nih.gov/>

Associated Employers can help with:

- Drafting a qualified written plan that is compliant with State & Federal regulations
- Supervisory training
- Employee education



FINAL QUESTIONS?



THANK YOU FOR JOINING US TODAY!



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