

## Please Improve Montana Workplace Drug Testing Statute

Montana has a problem with injured workers. We need safer workplaces. Drug free workplace programs decrease injuries, save money for employers, and save lives. Let's give employers in Montana the ability to use drug testing to empower their drug free work place programs. A top executive of a major manufacturing business in my community said that drug testing was the most important safety program in the company. Their human injury and accident rate decreased dramatically after implementing a drug testing policy. At Northwest Healthcare we decreased the percent of employees injured per year from 14% in 1999 to 2% in 2007 and even less since then. We saved \$3,000,000 in workers' compensation reserves in the last two years alone. Drug testing is a key component of our comprehensive injury prevention program.

Drug testing is a powerful tool: a powerful deterrent for occasional and weekend users to stay sober, a powerful incentive for chronic users to quit, and a powerful way to monitor compliance with a treatment program.

Drug testing saves money, decreases injuries, increases productivity, and protects the public.

### Problems with our current statute:

- 1) Oral fluid testing can't be done because there is no technology to collect a split specimen
- 2) Hair and blood testing are not included
- 3) Many impairing drugs are not included
- 4) Return to duty testing is not included

### Purpose of the proposed changes:

- The purpose of the bill is to allow oral fluid testing. The current statute states that you can use oral fluids, but then confusing language in the "process" requires a split specimen. It is difficult to produce enough oral fluid to for a split specimen, so there are no containers designed to collect a split for oral fluid. With the new wording we can screen with oral fluid, then obtain a second specimen to send for split confirmation.
- This technique will save a lot of time and money for employers. In collecting urine if the donor can't pee he or she has to stay at the collection site up to 3 hours--at the expense of the employer. Typical charge for urine lab testing is \$30-40--point of care oral fluid devices cost \$3-\$10. Training for urine collectors takes several hours--oral fluid is less than an hour.
- Oral fluid testing is much easier for the donor. Would you rather pee in a cup or put a swab between your cheek and gum?
- Oral fluid testing makes it more difficult for the donor to adulterate or substitute the specimen and virtually impossible to dilute the specimen. In other words, donors can't cheat as easily.
- Oral fluid testing more accurately reflects current impairment, making it better for post accident and reasonable suspicion situations.
- Our current statute defines "controlled substance" by reference to 49 CFR Part 40, which does NOT define "controlled substance." By using the definition from Montana statute an employer may choose which impairing substances to test for. This is especially important in health care settings where the impairing drugs of choice may not be on the SAMHSA list.

## Drug Testing Myths:

- **Myth: Drug testing is invasive and demeaning.** Truth: Montana statute mandates that employers follow procedures to protect the privacy of the specimen donor. A urine donor goes into the bathroom alone. Oral fluid testing is even less invasive. A swab is placed between the gum and cheek.
- **Myth: Drug testing does not reflect current impairment.** Truth: For most drugs the detection periods are short, particularly with oral fluid testing. Marijuana metabolites may be detected for prolonged periods in urine. However, because marijuana's impairing effects are also so long lasting, the argument that the person is impaired by marijuana still has significant validity. To counter this concern we need the capability to test oral fluid or blood specimen.
- **Myth: Drug testing gives employers information about an employee's personal medical problems.** Truth: Montana statute requires that all non-negative test results be reported to a Medical Review Officer (MRO), a physician, who contacts the donor to ask for an explanation. If the donor has a medical condition and/or a legal prescription acceptable to the MRO, then the MRO will report the result to the employer as "negative." Montana statute specifically prohibits the MRO from releasing private medical information to the employer.
- **Myth: Drug testing is a violation of an employee's right to privacy.** Truth: An employer has a responsibility to provide a safe workplace and to protect employees from unsafe working conditions. An employer has a responsibility to protect the public from unsafe employee actions. A drug free workplace helps the employer meet those responsibilities. An employee does not have the right to be impaired at work.
- **Myth: Termination for positive drug test is unreasonable.** Truth: Montana statute requires an employer to have a rebuttal process. Montana statute mandates collection of a split specimen; the donor may request that the second specimen be tested by a different laboratory.