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# Montana Association of Counties

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## **DRUG & ALCOHOL USE IN THE WORKPLACE**

### **PURPOSE**

To give county elected officials general guidance on drug and alcohol use in the workplace, including testing for County employees for both Commercial Drivers' License (CDL) testing and all other (non- CDL) testing.

### **GENERAL RECOMMENDATION**

CDL testing is governed by federal regulations and strict compliance with those regulations (outlined below) is recommended. Non-CDL testing is governed by Montana law which is very complex and subject to many potential legal challenges. MACo recommends working with a contractor to develop a policy to implement this type of testing, which must comply MCA Section 39-2-206 through 211.

### **DISCLAIMER**

While this document represents MACo's general guidance and non-legal advice on these issues, please defer to your individual County Attorney for interpretation and advisement on the statutes, your policies, and your final decisions/policy adoption.

### **CDL TESTING**

- All vehicle drivers who are required to hold a CDL to perform their duties must follow the testing provisions in compliance with the Federal Motor Carrier Safety Regulations, Code of Federal Regulations (CFR) 49, Part 382.
- When must the employer test?
  - Pre-employment.
  - On a random basis.
  - After an accident that resulted in the employee being issued a citation for a moving vehicle violation or resulting in a fatality.
  - For reasonable cause based on observed behavior or appearance.
  - Before being allowed to return to a covered position after having tested positive for drug or alcohol abuse.
- What is prohibited?
  - Reporting for duty with an alcohol concentration of .02 or greater or within 4 hours of using alcohol, possession or use alcohol while on the job, or reporting for duty after having used any controlled substance, including marijuana, unless a physician has indicated that the controlled substance does not affect the driver's ability to safely operate a commercial motor vehicle.
- Wait, even marijuana? That's legal in Montana.
  - Correct, but the legalization of marijuana has not modified the application of the drug testing regulations in 49 CFR Parts 40 and 382. Therefore, the use of legal marijuana under Montana

law is not a valid medical explanation for an employee's positive drug test result, and Medical Review Officers will not verify a drug test as negative, even in Montana where it is legal.

- What if an employee tests positive?
  - Remove them from duty immediately. They cannot return until they are seen by and follow all recommendations from a licensed professional. They may be subject to discharge.

## **NON-CDL TESTING**

- An employer must have a qualified drug testing program in place that complies with MCA Section 39-2-206 through 211 to administer drug or alcohol testing for non-CDL testing of employees. MACo recommends working with a qualified contractor to develop this type of testing program.

## **FAQ's**

- Since marijuana is now legal, can my employees show up to work under the influence of it?
  - No. Similar to alcohol, which has been legal since 1933, your policy can prohibit an employee from reporting for duty under the influence of marijuana or using it while on duty.
- Does my policy already prohibit that?
  - Likely not. The MACo model policy prohibits the use of alcohol and controlled substances in the workplace. Once marijuana is legal (which it will be effective January 1, 2021) it is no longer a controlled substance. If you want to prohibit the use and possession of it in the workplace, you'll want to add marijuana to the list of prohibited items.
- Testing sounds complicated, but I don't want employees showing up to work under the influence of any drugs or alcohol. Is there anything I can do?
  - YES! Monitor performance and hold employees accountable if they aren't meeting expectations.
- Can employees use marijuana after they leave work for the day on county property?
  - No. The law prohibits the use of marijuana on public property, unless local government designates specific places to do so. It also specifically prohibits the use and possession of it in a health care facility and on the grounds of any correctional facility, or the smoking of it where smoking tobacco is prohibited.