



## **CUT AND PASTE POST** **DECEMBER, 2019**

### **SAMHSA Issues Oral Fluid Workplace Drug Testing Guidelines DOT to Follow Suit**

On October 25, 2019, the Substance Abuse and Mental Health Services Administration (SAMHSA) released new [Mandatory Guidelines for Federal Workplace Drug Testing Programs](#). These guidelines endorse the use of oral fluid testing (oral fluid is more than just saliva), and claim to allow an easier, less costly sample collection and better detection of recent drug use than urine testing. SAMHSA believes allowing oral fluid testing will save employers save time and money and will avoid the pervasive problem of urine test cheating.

The Guidelines apply only to federal employees and contractors, but agencies such as the DOT and the Nuclear Regulatory Commission are required to follow the guidelines when developing drug-testing programs for their regulated industries. According to the SHRM website, the Department of Transportation and Nuclear Regulatory Commission will likely issue their own proposed regulations aligned to the SAMHSA guidelines very soon.

The *Guidelines* go into effect January 1, 2020. Just like the urine drug testing rules, they establish standards and technical requirements for oral fluid collection devices, including initial and confirmatory oral fluid drug test cutoff concentrations and methods, and processes for review by a medical review officer.

**Professional Pointer:** The Montana Workforce Drug and Alcohol Testing rules (MCA 39-2-205 through 39-2-211) require non-DOT drug testing programs to “contain chain-of-custody and other procedural requirements that are at least as stringent as those contained in [49 CFR, part 40](#) [Procedures for Transportation Workplace Drug and Alcohol Testing Programs], and the testing methodology must be cleared by the United States food and drug administration.” Since the new *Guidelines* did not amend 49 CFR, part 40, Montana’s DOT and non-DOT drug testing programs should probably wait to adopt oral fluid drug testing until the federal Transportation Department completes a rulemaking process.

### **DHS to Dump E-Verify Data**

Some businesses have been using E-Verify to determine the employment eligibility of their employees since as far back as 1996. E-Verify is an internet-based system that uses information from an employee’s I-9 form and Employment Eligibility Verification to confirm the employee is authorized to work in the U.S. E-Verify confirms an employee’s information against millions of government records and provides results in as little as three to five seconds. Employers are required to record the E-Verify case number on, or attach a copy of the case details to, the corresponding [Form I-9, Employment Eligibility Verification](#).

E-Verify is a voluntary program for most employers, but mandatory for some, including:

- Federal contractors

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- Employers in the following states:
  - Arizona and Mississippi: Required for all employers
  - South Carolina: Encouraged for all employers
  - Colorado, Georgia, Missouri, Nebraska, Oklahoma, Rhode Island and Utah: Required for public contractors and state agencies
  - Idaho, Minnesota and North Carolina: Required for state agencies

As you know, employers must retain I-9-related information for 3 years after the date the employee first started to work for pay, or for 1 year after the employment ended, whichever is *later*.

On January 2, 2020, the U.S. Citizenship and Immigration Services (USCIS) will dispose of all E-Verify records that are more than 10 years old, which means all of those dated on or before December 31, 2009. If your company has been using E-verify for more than 10 years, has long term employees, and hasn't been recording the E-Verify case number and/or attaching the confirmation report to the I-9, you have until December 31, 2019 to "play catch up".

***Professional Pointers:***

1. If needed, download a "Historic Records Report" to retain information about E-Verify cases. Save this Report with your I-9 forms. For more information see the [fact sheet](#) and [instructions for downloading](#).
2. The USCIS says they will expunge data every January 1<sup>st</sup>, and Historic Records Reports are currently only available for 3 months each fall, so this becomes another task for your annual calendar.

## **2020 Economic Outlook Seminar: Finding New Workers: New Challenges/New Solutions**

The University of Montana's Bureau of Business and Economic Research (BBER) has announced its 2020 Economic Outlook Seminar schedule and speakers. The Seminar description is as follows:

*The days of running a help wanted ad in the newspaper and receiving a stack of applications is a distant memory in Montana – and it's not necessarily due to a strong economy and low unemployment. In today's knowledge-based, social media connected and information rich economy, the rules of engagement between candidates and companies have changed. The economic success of local communities and the entire state depends on making the best match between workers and workplaces. Montana has some advantages in attracting talent, but there are plenty of things we could do better.*

The seminar comes to Bozeman the morning of Wednesday, February 5, 2020 and includes lunch. For those who can't attend in person, a live webinar is also being offered on that date. According to the BBER website, this seminar has been approved for 4.25 Strategic credits for members of the "Montana Human Resources Group".

For more information on the Seminar, go to <http://www.economicoutlookseminar.com/>. I am confirming that these are actually Strategic Credits for *HRCI*, and that the credit hours are available to those who attend the live webinar (last year, they weren't.) I will send out an update when I know more. Until then....

