

CUT AND PASTE POST JANUARY, 2018

DOT Updates Workforce Drug and Alcohol Testing Rule

I thought it would be hard to come up with something to include in this *Cut N Paste* because nothing ever happens around Christmas in HR land. I was wrong!

On November 13, 2017, the U.S. Department of Transportation (DOT) published a [final rule](#) amending 49 CFR Part 40. 49 CFR Part 40 tells all parties who conduct federally mandated DOT drug and alcohol testing how to conduct these tests and what procedures to use.

Among other things, the new rule adds drug testing for four semi-synthetic opioids (i.e., hydrocodone, oxycodone, hydromorphone, oxymorphone). It also adds methylenedioxyamphetamine (MDA) as an initial test analyte and removes testing for methylenedioxyethylamphetaime (MDEA). The new rule was effective January 1, 2018.

Here are the DOT’s current testing and cutoff requirements (new tests in **red**):

Initial Test Analyte	Initial test cutoff	Confirmatory test Analyte	Confirmatory test cutoff concentration
Marijuana Metabolites (THCA) ²	50 ng/mL	THCA	15 ng/mL
Cocaine metabolite (Benzoyllecgonine)	150 ng/mL	Benzoyllecgonine	100 ng/mL
Codeine/Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL 2000 ng/mL
Hydrocodone/Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL 100 ng/mL
Oxycodone/Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL 100 ng/mL
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL
Amphetamine/Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL 250 ng/mL
MDMA/MDA	500 ng/mL	MDMA MDA	250 ng/mL 250 ng/mL

What the new rule means to covered employees is that they will now be tested for semi-synthetic opioids including OxyContin®, Percodan®, Percocet®, Vicodin®, Lortab®, Norco®, Dilaudid®, and Exalgo® in addition to the other tests already in place.

While 49 CFR Part 40 is relevant only to a select group of employers (you know who you are ☺), *any* Montana employer who has adopted a Qualified Testing Program under MCA §39-2-207 must have a program that “contains chain-of-custody and other procedural requirements that are at least as stringent as those contained in 49 CFR, part 40, and the testing methodology must be cleared by the United States food and drug administration.”

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Even though the Montana law may allow employers to identify for themselves the types of controlled substances they will test for (stay tuned ... I'm going to check Legislative history on this!), the trend is to test for the same substances, at the same cutoff levels, as the federal law requires. Therefore, *it is likely that any employer subject to the DOT rules, as well as any Montana employer who has adopted a qualified testing program for non-DOT employees, needs to update their drug testing programs to comply with 49 CFR part 40.*

There were some other changes to the rule. Go to the following links for more information:

- [Part 40 DOT - Summary of Changes](#)
- [Part 40 DOT - CCF Notice](#)
- [Part 40 DOT - Policies Notice](#)
- [Part 40 DOT - Employee Notice](#)



DOL Announces Proposal Expanding Tip Sharing

On December 4, 2017, the U.S. Department of Labor (DOL) announced a notice of proposed rulemaking (NPRM) regarding the tip regulations under the Fair Labor Standards Act (FLSA). Under the proposed rule, workplaces could permit tip sharing among more employees. The proposed rule would apply to employers that pay a full minimum wage, do not take a tip credit, and allow tip sharing through a tip pool with employees who do not traditionally receive direct tips, such as restaurant cooks and dish washers.

The NPRM was published in the Federal Register on December 5, 2017 and was available for public comment for 30 days. More will come as the DOL sorts through the public comments.

Immigration Update

USCIS adds interview requirement for certain applicants - On October 1, 2017, the U.S. Citizenship and Immigration Services (USCIS) began to phase in interviews for the following applicants whose benefit, if granted, would allow them to permanently reside in the United States:

- Adjustment of status applications based on employment (Form I-485, Application to Register Permanent Residence or Adjust Status).
- Refugee/asylee relative petitions (Form I-730, Refugee/Asylee Relative Petition) for beneficiaries who are in the United States and are petitioning to join a principal asylee/refugee applicant.

Previously, applicants in these categories did not require an in person interview with USCIS officers for their application for permanent residency to be considered.

H1-B Spouses May Lose Employment Eligibility - According to the SHRM Website, spouses of H-1B visa holders with H-4 visas will lose their work authorization under a regulatory change expected to be issued by the Trump administration early this year.

The proposed rule terminating employment authorization for tens of thousands of H-4 workers is scheduled to be announced in February.

Even though the rulemaking process has not yet begun, employers who rely on H1-B workers will want to keep an eye on this... if an H1-B worker's spouse is prohibited from working, it may be a disincentive for the H1-B worker to come to the U.S.