

Christopher Constant and George Martinez

Worksession | October 5, 2023

AO 2023-101 Drug Testing Policy Update

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**AO 2023-101
REPEAL AND REPLACE**

Submitted by: Chair Constant and Member
Martinez

Prepared by: Assembly Counsel

For reading: September 26, 2023

**ANCHORAGE, ALASKA
AO No. 2023-101**

1 | **AN ORDINANCE OF THE ANCHORAGE ASSEMBLY REPEALING AND**
2 | **REPLACING ANCHORAGE MUNICIPAL CODE CHAPTER 3.30, PART 19, *RULE***
3 | **19 – PERSONNEL RULES TO CONFORM THE SUBSTANCE MISUSE TESTING**
4 | **OF EMPLOYEES TO FEDERAL AND STATE REGULATIONS AND PROVIDE**
5 | **THE HUMAN RESOURCES DEPARTMENT AUTHORITY TO ESTABLISH**
6 | **POLICIES AND PROCEDURES FOR SUBSTANCE MISUSE TESTING AND, AS**
7 | **NECESSARY, TO PUBLISH INTERIM GUIDANCE TO EMPLOYEES AND**
8 | **SUPERVISORS.**
9 |

Why update AMC 3.30.190

Updating this policy is a long overdue change. It addresses concerns of fairness by modernizing the code.

The proposal removes unnecessary barriers to employment by narrowing testing to those required by federal and state policy, shifts to a healthcare approach of managing drug and alcohol issues in the workforce, addresses the concerns of Ombudsman Report (OM2023-0012), while also reflecting the current status of legalization of marijuana in the Municipality.

WHAT DOES IT DO THOUGH?

COMPLAINT

JUSTIFIED.

WHO GETS TESTED | Covered and Uncovered Employees

WHAT GETS TESTED | Urinalysis, oral fluids, blood (current draft)

WHERE THEY GET TESTED | At a professional lab under contract with Muni.

WHEN THEY GET TESTED | Pre-employment, random, for-cause, accidents

WHY THEY GET TESTED | Compliance with Federal and State laws and to ensure workforce safety

HOW THEY GET TESTED | Urinalysis, oral fluids, blood (current draft)

WHEREAS, the Municipality of Anchorage has a strong interest in the wellness of its workforce and recognizes the value of allowing employees to seek substance use disorder education and treatment interventions as a means of promoting employee wellness; and

WHEREAS, it is the policy of the Municipality of Anchorage to minimally infringe upon the private lives and decisions of our workforce through unnecessary intrusions into personal liberty and privacy;

PUBLIC HEARING | October 10, 2023

WHO GETS TESTED?

Employee means any person in the employ of the municipality whose activities are directed by the municipality. Within this definition:

1. *Covered Employee* means only those classes of employee:
 - a. Subject to drug testing as required by Titles 14 and 49 Code of Federal Regulations;
 - b. Subject to reporting and regulation under the Alaska Police Standards Council; and
 - c. Subject to any other mandatory Federal or State drug testing requirement.
2. *Non-covered employee* means all other classes of employee not explicitly defined as “covered.”

WHAT GETS TESTED?

Prohibited Drugs means substances listed Schedule I or Schedule II of the Controlled Substances Act 21 U.S.C. 801 et seq. and published at 21 CFR 1308.11 and 21 CFR 1308.12

Current draft:

Testing for the presence of marijuana shall be through collection of saliva, blood, or urine specimens. The tested employee shall have the right to choose the method of testing, however, absent an expressed preference, saliva shall be the default method.

(S)ubstitute Version In Development

WHERE EMPLOYEES GET TESTED?

Municipal Clerk's Office
Approved
Date: February 14, 2023

Date: February 14, 2023

1
2 **FROM: MAYOR**
3
4 **SUBJECT: AMENDMENT NO. 2 TO CONTRACT 4400001103 WITH BEACON**
5 **OCCUPATIONAL HEALTH AND SAFETY SERVICES, INC. TO**
6 **CONTINUE PROVIDING "AS NEEDED" PROFESSIONAL DRUG**
7 **AND ALCOHOL TESTING FOR THE MUNICIPALITY OF**
8 **ANCHORAGE (MOA), HUMAN RESOURCES LABOR**
9 **DEPARTMENT (HRLD) (\$50,000.00).**

From: Constant, Christopher
<christopher.constant@anchorageak.gov>
Sent: Monday, September 18, 2023 11:43 AM
To: Beacon DA Administrators <daadministrators@beaconhss.com>
Subject: RE: Beacon/THC Testing Questions

Let me just restate my understanding so you can confirm my assumptions:

1. Beacon can set custom cutoffs for urine and oral fluid tests. (i.e. Urinalysis at 200 ng/ml and Oral Fluids at 25 ng/ml)
2. Custom tests will take a few days to generate the first test but after that the tests will be available on short notice.
3. Saliva tests can be set to test solely for Delta 9 Tetrahydrocannabinol and specifically exclude any other metabolites.
4. Beacon does not perform blood tests.

From: Beacon DA Administrators <daadministrators@beaconhss.com>
Sent: Monday, September 18, 2023 11:50 AM
To: Constant, Christopher <christopher.constant@anchorageak.gov>; Beacon DA Administrators <daadministrators@beaconhss.com>
Subject: RE: Beacon/THC Testing Questions

[EXTERNAL EMAIL]

Good morning,

Correct to all 4 questions. Let me know if you would like to set up a time for a phone call on Thursday. I don't think we can get anyone from the lab to join but I will be there to help answer the questions you have.

Thank you and have a great day!

Katie Broderick
Drug & Alcohol Program Administrator

Beacon OHSS
701 E. Tudor RD.
Anchorage, AK 99503
Main: (907) 222-7812
DA Admin Team: (907) 222-7812 ext. 345
Direct: (907) 375-4377
kbroderick@beaconhss.com
www.beaconhss.com



Beacon Can Adjust Their Process

WHEN DO EMPLOYEES GET TESTED?

Testing. All employees shall be subject to testing under this subsection.

1. *Reasonable suspicion.* Reasonable suspicion testing shall be conducted when a supervisor determines there are reasonable and specific grounds to believe that the poor performance or unsafe acts of an employee are due to substance misuse.
2. *Post-accident.*
 - a. Following a work-related accident, each employee directly involved in or contributing to the accident shall be tested for alcohol and drugs when the accident involved:
 - i. The loss of human life;
 - ii. Bodily injury to any person who, as a result of the injury, immediately requires medical treatment away from the scene of the accident; or
 - iii. One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.
 - b. Work-related accidents involving motor vehicles and not resulting in the loss of human life will only require testing under subsection 3.30.193A.2.a if the employee receives a citation. All work-related accidents resulting loss of human life shall require testing regardless of whether a citation is issued.

B. *Testing specific to covered employees.* Only those employees classified as covered employees shall be subject to testing under the provisions of this subsection.

1. *Pre-employment.* Pre-employment drug and alcohol testing shall be conducted at the most cost-effective time in the selection process for covered employee positions.
 - a. A non-covered employee who transfers, is promoted, demoted, rehired, or is reinstated, to a covered employee position shall be required to complete a pre-employment drug test.
 - b. Failure to take and successfully pass the substance misuse test shall disqualify the applicant.
2. *Random.* Random testing shall only be applicable to those employees required by federal or state government regulations and will be administered in accordance with the applicable federal or state regulations.

WHAT HAPPENS WHEN AN EMPLOYEE TESTS POSITIVE?

Anchorage Municipal Code

3.30.092 Forms of discipline.

Progressive discipline shall be followed when practicable. When the severity of the inappropriate conduct warrants and it is in the best interest of the municipality, the director may permit any of the following forms of discipline to be imposed at any time so long as such discipline is supported by just cause:

- A. Oral reprimand.
- B. Written reprimand.
- C. Suspension without pay.
- D. Demotion.
- E. Dismissal.

(AO No. 79-195; AO No. 86-207(S-1))

US DOT Rule 49 CFR Part 40 Section 40.23

Subpart B - Employer Responsibilities

§ 40.23 What actions do employers take after receiving verified test results?

a) As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test.

(d) As an employer, when an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug and alcohol regulation, you must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process of Subpart O of this part.

DOT Rule 49 CFR Part 40 Section 40.307

Subpart O - Substance Abuse Professionals and the Return-to-Duty Process

6.5.5 Return-to-Duty Process and Testing (Under Direct Observation)

Before an employer allows a driver to return to duty to perform a safety-sensitive function after the driver has violated prohibitions of 49 CFR 382, Subpart B, that driver must first do the following:

- Be evaluated by a substance abuse professional (SAP).
- Participate in/complete the treatment program prescribed.
- Pass a drug and/or alcohol return-to-duty test with the following results:
 - **Alcohol** with a result indicating an alcohol concentration of less than 0.02; and/or
 - **Controlled Substances** with a result indicating a verified negative result for drug use.
- Have a documented follow-up testing schedule.

WHY DO EMPLOYEES GET TESTED?

Federal Contractors and Grantees



Many federal contractors and all federal grantees are required by law to establish and maintain a drug-free workplace policy.

If You Receive FTA Operating Funds, All Safety-Sensitive Functions are Covered

The drug and alcohol program requirements of Part 655 not only apply to direct recipients of Federal financial assistance under 49 U.S.C. 5307, 5309, or 5311, but also to any “contractor

of a recipient or subrecipient of Federal assistance under 49 U.S.C. 5307, 5309, 5311.” If an employee of a recipient of Chapter 53 funds performs a safety-sensitive function, the employee would be

subject to FTA drug and alcohol testing, regardless of whether they are paid with Federal or local funds, or whether contracts for these services are Federally or locally funded.



May 18, 2017
DPS PR# 17-012

Alaska Police Standards Council Addresses Possession, Distribution, and Cultivation of Marijuana by Officers

(Juneau, Alaska) - In February of 2015, following the legalization of recreational marijuana in Alaska, the Alaska Police Standards Council (APSC) examined the applicable state regulations prohibiting certified police, correction, probation/parole, and municipal corrections officers from using or consuming marijuana and determined by a unanimous vote that the regulations should and would remain unchanged.

WHAT ABOUT THE RESEARCH?

Literature Review for AO 2023-101 Drug Testing Policy Update

2023

Cannide, N., Landsman, V., Lee, H. *et al.* Workplace and non-workplace cannabis use and the risk of workplace injury: Findings from a longitudinal study of Canadian workers. *Can J Public Health* (2023).

<https://doi.org/10.17269/s41997-023-00795-0>

Di Ciano P, Brands B, Fares A, Wright M, Stoduto G, Byrne P, McGrath M, Hasan OSM, Le Foll B, Wickens CM (2023) The utility of THC cut-off levels in blood and saliva for detection of impaired driving. *Cannabis and Cannabinoid Research* 8:3, 408–413, DOI: [10.1089/can.2022.0187](https://doi.org/10.1089/can.2022.0187).

McCartney D, Suravey A, McGregor IS The “Next Day” effects of cannabis use: a systematic review, *Cannabis and Cannabinoid Research* 8:1, 92–114, (2023) DOI: [10.1089/can.2022.0185](https://doi.org/10.1089/can.2022.0185).

2022

Danielle McCartney, Thomas R. Arkell, Christopher Irwin, Richard C. Kevin, Iain S. McGregor, Are blood and oral fluid Δ^9 -tetrahydrocannabinol (THC) and metabolite concentrations related to impairment? A meta-regression analysis, *Neuroscience & Biobehavioral Reviews*, Volume 134, (2022), 104433, ISSN 0149-7634, <https://doi.org/10.1016/j.neubiorev.2021.11.004>.

M.B. Robertson, A. Li, Y. Yuan, A. Jiang, H. Gjerde, J.A. Staples, J.R. Brubacher. Correlation between oral fluid and blood THC concentration: A systematic review and discussion of policy implications, *Accident Analysis & Prevention*, Volume 173, (2022) <https://doi.org/10.1016/j.aap.2022.106694>.

Wurz, G.T., DeGregorio, M.W. Indeterminacy of cannabis impairment and Δ^9 -tetrahydrocannabinol (Δ^9 -THC) levels in blood and breath. *Sci Rep* 12, 8323 (2022). <https://doi.org/10.1038/s41598-022-11481-5>

I have conducted an extensive literature review and the research suggests:

- Per se levels have value, though limited
- Intoxication is difficult to test via biomarker
- Behavioral tests coupled with per se test are best practice
- Training is key to compliance
- Time since last use is best measure—bottle to throttle concept.

Glad to present list of studies.

WHAT'S NEXT

AO 2023-101

- Finalize substitute version including inputs from HR, Members, and updates as a result of literature review and interview with researchers.
- Public hearing and hopefully passage 10/10/2023
- Development of an educational component to ensure a smooth and successful implementation

Municipal Clerk's Office
Approved

ANCHORAGE, ALASKA
AO No. 2023-101

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8 SUPERVISORS.

9

10 **WHEREAS**, in 1975, the Alaska Supreme Court unanimously held that the Alaska
11 Constitution's exceptionally strong right to privacy protects an adult's ability to use
12 and possess a small amount of marijuana in the home for personal use; and that the
13 nation in marijuana decriminalization, and subsequent People's Choice State of
14 Alaska legalized the use of marijuana for medical purposes in 1998, and in 2014, ballot
15 measure 8 and then, in 2014, legalized it for recreational use through ballot
16 measure 2; with the colloquial message "alcohol"; and

17

18 **WHEREAS**, in accordance with the law, the Municipality of Anchorage
19 has licensed, taxed, and regulated the sale and use of marijuana, and has created
20 a substantial revenue stream for the Municipality;

21

22 **WHEREAS**, since its legalization the marijuana market in Anchorage has
23 consistently grown and created jobs annually;

24

25

**Improved
Recruitment
and Retention!**

THANK YOU.

We urge your support next Tuesday

Christopher Constant, Chair

District 1 | North Anchorage

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George Martinez

District 5 | East Anchorage

george.martinez@anchorageak.gov

www.muni.org/assembly

