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MEMORANDUM

DATE: March 30, 2016
TO: All State Agencies
FROM: Ana Andrews, Risk Manager
SUBJECT: Changes to screening test – Workers’ Compensation and Motor Vehicle Accidents

Effective January 1, 2016 Nevada Revised Statute (NRS) 284.4065 subsection 2, was amended to allow the appointing authority to request an employee to submit to a screening test for controlled substance when they have or are involved in a work-related accident or injury. The Nevada Administrative Code (NAC) Section 284.888 added subsection 4, which provides the definitions in regards to substantial damage to property as well as the definition of a work-related accident or injury.

As of April 1, 2016 all employees will be tested when reporting for treatment due to a work-related accident or injury. All agencies with identified State vehicles will be receiving new chain of custody forms from Risk Management for post-accident testing as screening tests for alcohol or a controlled substance, will now be done through the State’s vendor, Drug Free Workplaces.

Post-accident testing will not substantially change current workers’ compensation procedures, see the [Procedure Flowchart](#). The State’s first stop clinics will have the correct chain of custody forms for work-related accident testing or you may contact your agency’s human resources for a work-related accident testing chain of custody form. As of April 1, post-accident testing will be part of the protocol that the State’s first stop clinics follow when a State employee requests medical evaluation/treatment due to a work-related accident or injury.

If an employee is released by a first stop clinic provider to return to work, the employee should be allowed to return to work pending receipt of the test results. However, if you have reasonable suspicion that an employee is impaired by alcohol and/or drug(s) at the time of a work-related accident, follow reasonable suspicion testing procedures (see the

[State of Nevada Alcohol and Drug Program](#)). Additionally, inform your agency's human resources that a post-accident test was performed as soon as possible as they will typically receive the test results. If your employee provides a copy of the completed chain of custody form, please forward the form to your agency's human resources.

NRS 284.4065 Screening tests: General provisions.

1. Except as otherwise provided in subsection 2, an appointing authority may request an employee to submit to a screening test only if the appointing authority:

(a) Reasonably believes, based upon objective facts, that the employee is under the influence of alcohol or drugs which are impairing the employee's ability to perform the employee's duties safely and efficiently;

(b) Informs the employee of the specific facts supporting its belief pursuant to paragraph (a), and prepares a written record of those facts; and

(c) Informs the employee in writing:

(1) Of whether the test will be for alcohol or drugs, or both;

(2) That the results of the test are not admissible in any criminal proceeding against the employee;

and

(3) That the employee may refuse the test, but that the employee's refusal may result in the employee's dismissal or in other disciplinary action being taken against the employee.

2. An appointing authority may request an employee to submit to a screening test if the employee:

(a) Is a law enforcement officer and, during the performance of the employee's duties, the employee discharges a firearm, other than by accident;

(b) During the performance of the employee's duties, drives a motor vehicle in such a manner as to cause bodily injury to the employee or another person or substantial damage to property; or

(c) Has or is involved in a work-related accident or injury.

➔ For the purposes of this subsection, the Commission shall, by regulation, define the terms "substantial damage to property" and "work-related accident or injury."

3. An appointing authority may place an employee who submits to a screening test on administrative leave with pay until the appointing authority receives the results of the test.

4. An appointing authority shall:

(a) Within a reasonable time after an employee submits to a screening test to detect the general presence of a controlled substance or any other drug, allow the employee to obtain at the employee's expense an independent test of the employee's urine or blood from a laboratory of the employee's choice which is certified by the United States Department of Health and Human Services.

(b) Within a reasonable time after an employee submits to a screening test to detect the general presence of alcohol, allow the employee to obtain at the employee's expense an independent test of the employee's blood from a laboratory of the employee's choice.

(c) Provide the employee with the written results of the employee's screening test within 3 working days after it receives those results.

5. An employee is not subject to disciplinary action for testing positive in a screening test or refusing to submit to a screening test if the appointing authority fails to comply with the provisions of this section.

6. An appointing authority shall not use a screening test to harass an employee.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065, 284.155, 284.407)

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his or her duties safely and efficiently include, but are not limited to:

(a) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

(b) The odor of alcohol or a controlled substance on the breath of the employee;

(c) Observation of the employee consuming alcohol; or

(d) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source.

2. Except as otherwise provided in subsection 3, before requiring an employee to submit to a screening test, the supervisor of the employee must complete a form provided by the Division of Human Resource Management.

3. The provisions of subsection 2 do not apply if an appointing authority requests an employee to submit to a screening test pursuant to paragraph (b) of subsection 2 of NRS 284.4065.

4. For the purposes of subsection 2 of NRS 284.4065, as amended by section 8 of Senate Bill No. 62, chapter 225, Statutes of Nevada 2015, at page 1049:

(a) "Substantial damage to property" includes, but is not limited to:

(1) The operation of a motor vehicle in such a manner as to cause more than \$500 worth of property damage; or

(2) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

(b) "Work-related accident or injury" means an accident or injury that occurs in the course of employment or that involves an employee on the premises of the workplace.

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A by Personnel Comm'n by R066-09, 10-27-2009; R193-09, 4-20-2010; R010-11, 10-26-2011; R044-15, 1-1-2016)

For additional information regarding the change to the workers' compensation procedure, please contact Risk Management, Mandy Payette at (775) 687-3191. For questions regarding the amendments to statute or regulation or testing processes, please contact Carrie Hughes at (775) 684-0111 or cphughes@admin.nv.gov.