

## Drug testing not impacted by Crocker decision

Matthew T. Fagnani, C-SAPA, C-SI, President



One of the valued services WorkSafe, Inc. provides our customers is an ongoing review of state and federal regulations that may have an effect

on the successful implementation of your ongoing drug testing program. We recently had an independent review completed on the impact of State of Alaska v. Leo Richardson Crocker, Jr. This case essentially ruled that personal possession of small amounts of marijuana is lawful under Alaska law.

### Case review

In Crocker, the Court of Appeals simply reaffirmed *Ravin v. State*, 537 P.2d. 494 (Alaska 1975), which held that the privacy provision of the Alaska State Constitution protects an adult's right to possess a limited amount of marijuana in his home for personal use.

This court decision prevents law enforcement from searching a person's home for small amounts of marijuana. Bottom line, this decision **does not affect an employer's right to drug test. What it does is confuse employees to think that they can use marijuana and the Crocker court decision will protect them.**

### Proposition 2 would legalize marijuana

On November 2 voters will decide the fate of Ballot Measure 2, an initiative to

legalize marijuana. The ballot summary posted on the State of Alaska Elections website reads:

"This bill would remove civil and criminal penalties under state law for persons 21 years or older who grow, use, sell or give away marijuana or hemp products. State or local government could not require a permit or license for personal cultivation or distribution of marijuana, but could regulate marijuana like alcohol or tobacco. It removes all existing state restrictions on prescription of marijuana by a doctor for all patients, including children. It allows for laws limiting marijuana use in public and to protect public safety."

If this proposition passes, it could create confusion with employees - making them think that since private use of marijuana is legal, they can't be subjected to drug testing at work. In the worst case scenario, this could lead to court challenges of employer drug testing.

The initiative language does not prohibit drug testing. It clearly states that marijuana can be regulated like alcohol. It is now against company policy to be under the influence of alcohol. So employer policies that comply with Alaska Statute 23.10.600-699 will have the greatest ability to withstand a challenge.

Bottom line, it is always going to be the employer's responsibility to provide a

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## Professionals available when you need them

Steve Mihalik, C-SAPA, C-SI, General Manager

WorkSafe provides drug and alcohol testing services 24 hours a day, 7 days a week. We realize our customers needs for post-accident and reasonable cause testing. Just call WorkSafe and a representative will respond to ensure testing is conducted accurately and in a timely fashion.

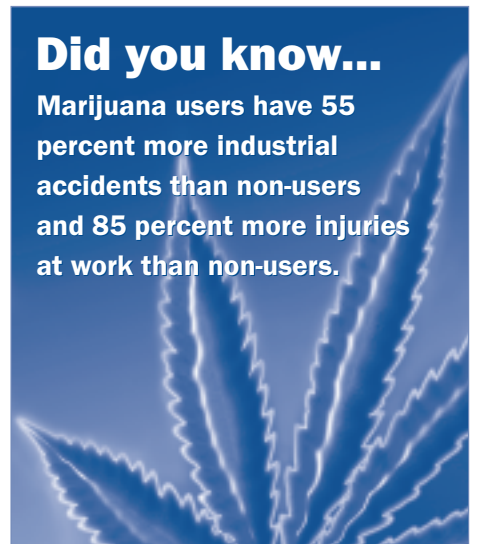
When the need arises for testing after normal business hours, simply call our regular phone number at (907) 563-TEST (8378). You will be directed to our after hours emergency number and our fully trained on-call personnel will respond to coordinate the collection.

We understand the need to comply with DOT regulations and company policy and the limited window of testing opportunity. That is why we are committed to providing 24 hour collection coverage.

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## Did you know...

**Marijuana users have 55 percent more industrial accidents than non-users and 85 percent more injuries at work than non-users.**



## His name says it all; he's key to our company!

Lavaughn Key is one of WorkSafe's main providers for our convenient on-site collection services. He is qualified to perform DOT urine specimen collections, breath alcohol testing and a variety of point-of-collection devices. Lavaughn is a valued member of the WorkSafe team.



## Fairbanks employers championing new program

Some Fairbanks employers are already seeing the rewards for championing a new experimental effort to treat chronic alcoholics in the work place.

According to the Governor's Advisory Board on Alcoholism and Drug Abuse, alcohol abuse alone costs the state's economy about \$453 million annually. Add other substance abuse costs and the total increases by an additional \$161 million. "This is a staggering blow to Alaska's economy, communities and families," said advisory board chair Eric Tomasino. "Year after year, substance abuse and chemical dependency drain our human and economic resources."

Last January a group of concerned citizens in Fairbanks comprised of public officials, business leaders, clergy, medical professionals and law enforcement came together to do something about the problem of chronic alcoholism in their community. Identifying 50 "frequent fliers" who repeatedly ended up in jail or emergency rooms, they worked as a group to enroll these folks in alcohol treatment programs. Often this meant turning to the courts to help force some individuals to seek help.

The state of Alaska has an involuntary commitment process that allows family, healthcare workers and treatment center directors to petition courts to commit

people to treatment if they are proven a danger to self, others or are incapacitated because of drug or alcohol use. Several other states have similar statutes.

A petition is filed and within 10 days a hearing is held to determine whether the person will enter the program voluntarily or contest the effort. If contested, another hearing is scheduled and the petitioner has an opportunity to present evidence to convince the judge that the person does belong in treatment.

If the judge is convinced, the petitioner can commit the person for up to 30 days. During the 30 days another petition can be filed, and if successful the person can be committed for treatment for periods as long as 180 days.

Carol Devilla, program coordinator said that by utilizing the public process or threatening to use the process, the group in Fairbanks was able to cut emergency room costs by 42 percent over a 12-month period. These costs translate as savings to the business owners and the community.

"Instead of putting people in jail or running them through ER, which is much more expensive, we are using treatment, the cheaper, much more effective alternative." she said. "We have also cut 30 percent in related healthcare costs at our Indian Health Service; this is just one year for 50 people."

Devilla added that only one of the 50 has failed to take any kind of treatment and some have managed to stay sober for the entire year.

"Drug testing..." continues from page 1 safe work environment and therefore a testing program. An employer's right to drug test is not likely to change just because this initiative passes.

Employers must weigh the risks associated with not having a consistent deterrent to using drugs with the possibility of accidents associated with drug use. Furthermore, in a state where employees can easily be confused, it is the company's responsibility to communicate with their employees and to reinforce their drug and alcohol policy.

If you have any questions, please contact Steve Mihalik or Matthew Fagnani at (907) 563-8378.

WorkSafe is pleased to provide this as information only and is not intended to be interpreted as legal advice.

\*Local and State laws do not affect federal testing requirements

**WorkSafe offers numerous training products for drug policy program administrators.**



"Professionals available..." continues from page 1  
Some additional services WorkSafe provides include:

- Department of Transportation (DOT) approved and non-regulated drug and alcohol testing
- 24-48 hour reporting of negative results
- Next day Medical Review Officer services
- Random selection and testing
- Multiple state-wide collection sites
- Lower-48 collection sites
- Drug Policy drafting
- Expert court testimony
- Drug awareness training
- Supervisor training
- New employee prior employment drug and alcohol background checks

If your company has the need for after hour collections or any of our other pro-grams please contact your WorkSafe representative or me. Thank you for giving WorkSafe the opportunity to help you meet your drug and alcohol testing needs.

# Good resume. Bad history.



## Behind every applicant there's a story.

**Now it's easier than ever to do a prior employment drug and alcohol background check.** With WorkSafe you save time and receive accurate responses so you *know* the person you're hiring.

Get the information you need to comply with DOT regulations to ensure you make an informed hiring decision. For fast, confidential and comprehensive prior employment drug and alcohol background checks, call WorkSafe today.



**WORKSAFE**  
OCCUPATIONAL HEALTH & SAFETY

Where Workplace  
Safety Starts

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## LEGAL CORNER

### Actual cases from real workplaces

#### Fired worker nets benefits due to delayed post-accident test

**Ruling:** In Pennsylvania a male employee who was terminated for failing a drug test two weeks after a work-related injury should not have his unemployment benefits withheld, the Commonwealth Court of Pennsylvania. (5/12/04)

**Summary:** The employee suffered a back injury after an on-the-job fall. Two weeks passed before the employee notified his employer. He

was then ordered to take a drug test by the employer. The day of the test was not a workday due to the injury.

The employee failed and was fired. The employer had a policy in place that prohibits illegal drugs and alcohol on the work premises and within physiological systems of employees during work hours. He filed for benefits, which were granted, with the department of labor. His employer argued that he was ineligible for benefits due to being fired for willful misconduct. On appeal a referee reversed the decision. On further appeal the Unemployment Compensation board

remanded the matter to the referee for further findings. Ultimately the court found that the employer failed to link drug usage to the employee's performance, and that the presence of an illegal drug in his system on a day he did not report to work did not affect his ability to perform his job.

**Bottom Line:** The passage of critical time between the work-related injury and the drug test hindered the relevance of the positive result. Make sure your policies on worksite injuries are clear, current and strictly enforced.





# WorkSafe to update web site.

WorkSafe is in the process of revamping our corporate web site. Our goal is to make it a user-friendly resource tool for clients. Please help us by answering a few questions and **faxing it back to us at 907.563.8380.**

**How often do you use our web site?** (Check one)

- Once a week
- Once a month
- Several times a year
- I don't use web sites.

**What resources would you use most?** (Check all that apply)

- Service and products list
- DOT forms and regulations
- Industry information and trends
- Contact information
- Other \_\_\_\_\_

**A DOT testing and general information Q&A page will be incorporated on the new site. Would this be a beneficial resource for you?**

- Yes
- No

**What additional features or changes would you like to see?**

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300 W. 36th Ave., Suite A Anchorage, AK 99503 (907) 563-8378

## WorkSafe Contacts

To contact WorkSafe during regular office hours, call 563-8378(TEST).  
To request an after hours drug or alcohol test, call 888-227-8642.

### President

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