Circular No. 87-9 Amendment November 12, 1987

U.S. DEPARTMENT OF LABOR	Distribution:	SUBJECT: CODE:446.2
EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprenticeship and Training Washington, D.C. 20210	A-544 All Field Techs. A-547 RD+SD	Testing of Apprentices for Substance Abuse
Symbols: TDT/MMW		ACTION: Due Date: N/A

PURPOSE: To amend Circular 87-9, dated July 30, 1987, by correcting the legal citation in the section under POLICY, 3rd paragraph, 5th line, to read as follows:

From: 29 CFR 30 (b)(4)(B)

To: 29 CFR 30.5 (b)(4)(B)

Circular No. 87-9 July 30, 1987

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprenticeship and Training Washington, D.C. 20210 Symbols: TDT:MRM	Distribution: A-544 All Field Techs. Includes RD+SD	SUBJECT: Testing of Apprentices for Substance Abuse CODE: 4462 ACTION: Due Date:

PURPOSE: To advise the staff of the policy of the Bureau of Apprenticeship and Training (BAT) on inclusion of substance abuse testing in program sponsors' apprenticeship standards.

BACKGROUND: Circular 85-33 dated September 25, 1986, provided background information and BAT policy regarding the use of urinalysis testing for drugs as a part of the selection process. An apprenticeship program sponsor has requested that their apprenticeship standards be revised to provide that registered apprentices are subject to being tested for the use of alcohol or drugs. It is our understanding that these tests would be done without prior notice and would probably not apply to all of the registered apprentices.

The Associate Solicitors for Employment and Training and Civil Rights were requested to review that request prior to establishing a BAT policy on the issue. The policy set forth in this Circular is based, in part, on that review.

POLICY: BAT staff should be guided by the following policies in responding to requests or inquiries from apprenticeship program sponsors relative to the inclusion of substance testing in their apprenticeship program standards:

- The BAT is taking a neutral position in the administration of tests for substance abuse in connection with the apprentice selection process. The policies and directions set forth in Circular 85-33 continue to be valid with respect to the selection procedures for apprentices and program sponsors should be advised accordingly.

- The BAT will follow the policy that program sponsors may not include a substance abuse testing standard in their apprenticeship program standards under the provisions of Title 29 CFR Parts 29 and 30 unless it complies with the sponsor's obligation under 29 CFR 30.5(b)(4)(B) to apply "occupationally essential health requirements" in the selection of apprentices.

RECEIVED
AUG -7 1987
U.S. Department of Labor
Bureau of Apprenticeship & Trng.
San Francisco, California
REGIONAL OFFICE

POLICY: BAT staff should be guided by the following policies in responding to requests or inquiries from apprenticeship program sponsors relative to the use of urinalysis testing for drugs as a part of the apprentice selection process:

- Apprenticeship sponsors who are either covered Government contractors or recipients of Federal financial assistance may not summarily exclude drug user applicants from their programs; rather, in employing the urinalysis test, sponsors should make individualized determinations as to each applicant's ability to perform the pertinent apprenticeship position.
- Program sponsors may be permitted to administer urinalysis tests for drugs if it is clearly shown that abstinence is job related, e.g., where the job is safety sensitive, and be prepared to validate any adverse impact that may result from the administration of the test.

Attachments

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprenticeship and Training Washington, D.C. 20213 Symbols: TDT/MRM	Distribution: A-539 All Tech. Hdqtrs. A-544 All Field Techs.	SUBJECT: CODE: 446.2 Urinalysis Testing of Apprenticeship Applicants for Drugs (NSOL No. 200 42331) ACTION: Due date:

PURPOSE: To advise the staff of the results of a legal review made by the Associate Solicitor for Civil Rights concerning Urinalysis Testing of Apprenticeship Applicants for Drugs.

BACKGROUND: An apprenticeship program sponsor advised one of BAT's regional directors that they wanted permission to add a urinalysis test for drugs to their physical examination in the selection of apprentices. This addition to the physical examination appeared to raise a question regarding compliance with Title 29 CFR Parts 29 and 30, and in particular Part 30, Section 30.5(4)(B), Qualification standards, with regard to occupationally essential health requirements. BAT initially considered the inclusion of such a test as a part of the physical examination to be permissible under Title 29 provisions stated above, provided the test was administered for all apprenticeship applicants and the program sponsor could demonstrate that it was an occupationally essential health requirement. The Associate Solicitor for Civil Rights, however, was requested to review that position for clarification prior to issuance.

LEGAL CONSIDERATIONS - Following is a summary of the legal review:

- A urinalysis test for drugs constitutes a selection procedure under the guidelines.

- The burden of the program sponsor to demonstrate that such a test is an "occupationally essential health requirement" carries with it the added responsibility that the sponsor be prepared to validate, under accepted Guidelines procedures, the relationship between the selection procedure and measures of successful job performance.

- It would be insufficient for the employer, in applying a drug test which results in an adverse impact, to merely demonstrate that there is a rational basis for doing so.

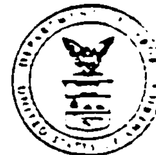
- The alternative selection methods under 29 CFR 30 provide that in the application of such standards, the apprenticeship sponsor must comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR Part 60.3. Under those Guidelines, sponsors must maintain records by race, sex, and ethnicity to determine whether that selection process has an "adverse impact" on any members of those groups.

- The use of the test to create a blanket exclusion of all users of illicit drugs from apprenticeship positions may give rise to a violation of the Rehabilitation Act of 1973.

RECEIVED
OCT 0? 1985
U.S. Department of Labor
Bureau of Apprenticeship & Trng.
San Francisco, California
REGIONAL OFFICE

U.S. Department of Labor

Office of the Solicitor
Washington, D.C. 20210



MAY 29 [illegible]

MEMORANDUM FOR: FRED E. ROMERO
Office of Strategic Planning
and Policy Development, ESA

FROM: JAMES D. HENRY
Associate Solicitor for
Civil Rights

SUBJECT: Legal Review of BAT Proposed Policy
Statement re: Urinalysis Testing
of Apprenticeship Applicants for Drugs
(NSOL No. 200402331)

This responds to your request for legal review of a draft proposed BAT policy statement.1/ The draft memorandum, responding to a program sponsor's request for a written statement that it is permissible to include a urinalysis test for drugs as part of its medical examination for the selection of apprentices, advises that such a test may properly be administered under 29 CFR Parts 29 and 30, provided that the test is given to all applicants and the program sponsor can demonstrate, pursuant to 29 CFR 30.5(b)(4)(B), that it is an "occupationally essential health requirement." As discussed more fully below, while the policy statement contains nothing contrary to BAT's regulations, we recommend that the statement be redrafted in order to inform apprenticeship sponsors of their obligations relating to the use of this test under the Uniform Guidelines on Employee Selection Procedures, and under the Rehabilitation Act of 1973.

The policy statement implicates the application of qualification standards under the alternative selection methods for apprentices under 29 CFR 30.5(b)(4)(B). This regulation, in pertinent part, provides that:

1/ Your memorandum, which was originally directed to the Division of Employment and Training Legal Services, was referred to us from that Division, since we have responsibility for providing legal services relating to 29 CFR Part 30.

> Apprentices shall be selected on the basis of objective and specific qualification standards. Examples of such standards [include] . . . occupationally essential health requirements. . . .

Significantly, the regulation further states that in the application of such standards, the apprenticeship sponsor must comply with the Uniform Guidelines on Employee Selection Procedures (the Guidelines), 41 CFR Part 60-3.

Under the Guidelines, employers must maintain records by race, sex and ethnicity in order to determine whether their total selection process (the combined effect of all selection procedures) has an "adverse impact" (see 41 CFR 60-3.4D) with respect to the employment of members of these groups. 41 CFR 60-3.4A and B; see also 41 CFR 60-3.15. (There is an analogous requirement for program sponsors under 29 CFR 30.8(a).) Where an employer's total selection process has been shown to have an adverse impact, each selection procedure must be examined for adverse impact; if the procedure has an adverse impact, it must be validated or its discriminatory effect eliminated. 41 CFR 60-3.4C, 3.5D and 3.6; Question and Answer 13, "Adoption of Questions and Answers to Clarify and Provide a Common Interpretation of the Uniform Guidelines on Employee Selection Procedures" (hereinafter Question and Answer), 44 F.R. 11996 (March 2, 1979).

A urinalysis test for drugs constitutes a selection procedure under the Guidelines.2/ Accordingly, the burden of the program sponsor to demonstrate that such a test is an "occupationally essential health requirement" carries with it the added responsibility that the sponsor be prepared to validate, under accepted Guidelines procedures, the relationship between the selection procedure and measures of successful job performance. See 41 CFR 60-3.5. Thus, it would be insufficient for the employer, in applying a drug test which results in an adverse impact, to merely demonstrate that there is a rational basis for doing so. See Question and Answer 37.

We note that the application of a urinalysis test for drugs when used, for instance, to create a blanket exclusion of all users of illicit drugs from apprenticeship

---

2/ The Guidelines define a "selection procedure" as "[a]ny measure, or combination of measures, or procedure used as a basis for any employment decision." 41 CFR 60-3.16Q. Such procedures include physical requirements. Id.

positions, may result in an adverse impact against minorities.3/ Accordingly, apprenticeship sponsors should administer drug tests only with respect to jobs where abstinence (or minimal levels of usage) is job-related, e.g., where the job is safety sensitive, and be prepared to validate any adverse impact that may result from the administration of the test.

Additionally, we note that such use of the test to create a blanket exclusion may give rise to a violation of the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq. Section 503 (29 U.S.C. §793) of that Act requires that Government contractors and subcontractors take affirmative action to employ and advance in employment qualified handicapped

---

3/ See New York City Transit Authority v. Beazer, 440 U.S. 568 (1979); Davis v. City of Dallas, 487 F. Supp. 389 (N.D. Tex. 1980). Although in Beazer the Court held that the Transit Authority's blanket exclusion from employment of regular current narcotics users did not give rise to a *prima facie* violation of Title VII of the Civil Rights Act of 1964, the holding specifically relied on the finding that the record's statistical showing of adverse impact against blacks and Hispanics was methodologically flawed. 440 U.S. at 585. Specifically, the Court found that while respondents showed that methadone users in the relevant labor pool were predominantly black and Hispanic, they produced no data pertaining to the racial composition of Transit Authority applicants and employees receiving methadone treatment. Moreover, the Court determined that, in any case, the no-drug-use policy was job-related. The Court stated that the "legitimate goals of safety and efficiency require the exclusion of all users of illegal narcotics, barbiturates and amphetamines, and a majority of methadone users." Id. at 587, n. 31.

In Davis the court rejected defendant's argument that a no-drug-use requirement for police officer applicants, which had a disparate impact on black applicants, was "job-related and essential to the operation of the police department." 487 F. Supp. 392. The court noted that "[i]t may intuitively seem that . . . absence of . . . drug usage [is] related to good police performance, but the court cannot take judicial notice that [the policy is] related to the hiring of quality law enforcement personnel. The relationship is no more obvious than that between high school education and performance as an industrial worker . . . ." Id.

individuals. See 41 CFR Part 60-741. Section 504 (29 U.S.C. §794) of the Act prohibits exclusion from participation in, denial of benefits, and discrimination against otherwise qualified handicapped individuals in any program or activity receiving Federal financial assistance or which is a federally conducted program or activity.4/ See 29 CFR Part 32. Individuals who are impaired or regarded as having an impairment because of their drug abuse are "handicapped individuals" within the meaning of the Act, and thus, will be protected thereunder if they are otherwise "qualified." 43 Op. Att'y. Gen. No. 12, p.2 (April 12, 1977); Davis v. Bucher, 451 F. Supp. 791 (E.D. Penn. 1978).

"Qualified handicapped individuals" are "handicapped individuals" (under Section 503) who, with reasonable accommodation, are capable of performing a particular job, 41 CFR 60-741.2, or (under Section 504) who meet the eligibility requirements of the program in issue in spite of their handicap, Southeastern Community College v. Davis, 441 U.S. 421 (1979).5/ Thus, "[i]f in any individual situation it can be shown that a particular addiction or prior drug abuse prevents successful performance of the job, the applicant need not be provided the employment opportunity in question." Davis v. Bucher, supra 451 F. Supp. at 797, n.4 (emphasis added).

4/ We have been advised by BAT staff that DOL does not currently extend financial assistance to apprenticeship sponsors. Consequently, because DOL has enforcement responsibility only in connection with its particular grantee programs or activities (see 29 CFR 32.2), DOL is not presently engaged in compliance activity under Section 504 with respect to apprenticeship sponsors. However, to the extent that such sponsors receive financial assistance from other Federal agencies, they are subject to compliance review under Section 504 by such agencies.

5/ The 1978 Amendments to the Rehabilitation Act specifically excluded from the definition of "handicapped individual" (with respect to Sections 503 and 504 as such Sections relate to employment) drug abusers "whose current use of drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current . . . drug abuse, would constitute a direct threat to property or the safety of others." 29 U.S.C. §706(7)(B).

However, employers may not use "employment criteria [to] categorically exclude persons on the basis of the handicap to which they belong, unless it could be shown that all or substantially all persons in the handicap category could not do the job . . . ." B. Schlei and P. Grossman, Employment Discrimination Law 282-83 (2d ed. 1983). The Section 503 implementing regulation on this issue, in pertinent part, provides:

> Whenever a contractor applies physical or mental job qualification requirements in the selection of applicants or employees for employment . . ., to the extent that qualification requirements tend to screen out qualified handicapped individuals, the requirements shall be related to the specific job or jobs for which the individual is being considered and shall be consistent with business necessity and the safe performance of the job. The contractor shall have the burden to demonstrate that it has complied with [these] requirements . . . .

41 CFR 60-741.6(2)(C).

Thus, apprenticeship sponsors who are either covered Government contractors or recipients of Federal financial assistance may not summarily exclude drug user applicants from their programs; rather, in employing the urinalysis test, sponsors should make individualized determinations as to each applicant's ability to perform the pertinent apprenticeship position. Bucher, supra; see also Stutts v. Freeman, 694 F.2d 666 (11th Cir. 1983); E.E. Black, Ltd. v. Marshall, 497 F. Supp. 1088, 1100 (D. Hawaii 1980).

What Not to Do

ie 12 Most Common Employer Mistakes in Addressing Drug Abuse

Given the costs of litigation when you as an employer go to court, even if you win... you lose.

With an eye on minimizing legal vulnerability, it is important that an employer addressing drug abuse in the workplace adopt a program that will not only be effective in deterring drug abuse, but also in deterring legal challenges.

What you do is important... and also what you don't do.

by Mark A. de Bernardo*

1 Don't enforce your company policy inconsistently.

To do so is an invitation to litigation. Like most areas of labor and employment law, employers have great latitude in what their policies on drug abuse are going to be. However, once that policy is adopted, an employer must adhere to it. This means taking the same action in response to a policy violation for senior or highly valued employees as for newly hired or very marginal employees. If you repeatedly treat similar violations of company policy differently, ultimately you will be sued and you will lose.

2 Don't act without the full support of top management.

You need a commitment from the very top of the company to stand by your policy and its consequences. Senior management must not only be informed, it must be involved. Without full and consistent support from the ompany's leaders, a company's program will be seriously rmined.

3 Don't implement a "fitness for duty" policy.

When an employer prohibits drug use that renders an employee "unfit for duty" or "under the influence," that employer is needlessly backing itself in a corner. Performance-related standards are subject to interpretation — and litigation — and therefore place a much higher burden of proof on the employer to demonstrate a *sufficient* level of employee impairment. Forget performance standards and such limiting language. Prohibit illicit drug use... period. You should not care if the drug use took place on break time in the company parking lot, before work outside the factory gates, or the night before at the employee's home. A confirmed "positive" drug test demonstrates the presence of illicit drugs and that in and of itself should be a violation of company policy sufficient to trigger adverse employment action. This standard (a flat prohibition of illicit drug use) is much clearer, easier to satisfy and effective... the legal burden is simple: that the testing procedures were reliable; not that this individual at that moment in that job in the judgment of that supervisor was unable to work at a satisfactory level of performance.

4 Don't report drug test results widely.

Only those with "a need to know" should be informed of the results of an employee's or job applicant's drug test. More widely disseminated test results may trigger tort actions against the employer for, among other claims, defamation, invasion of privacy, intentional infliction of emotional distress, and/or negligent infliction of emotional distress. Legal iderations aside, it simply is good employee relations to to minimize any unwarranted intrusion into employees' acy. Employers should stress to management and supervisors the importance of maintaining worker confidentiality.

5 Don't act on only one drug test result.

Employers should *always* perform a separate confirmation test on "positive" drug tests before taking any action, including denial of employment to job applicants. Typically, employers take a single urine sample, split it in half, test one-half of the split-specimen using a relatively inexpensive and relatively accurate (92-98% accurate) immunoassay test, and — when "positive" — test the second split-specimen with the more complex, reliable (virtually 100% accurate from a scientific standpoint) and expensive gas chromatography/mass spectrometry test. Confirmatory tests are vital for assuring accuracy, maintaining positive employee morale, and minimizing legal vulnerability.

6 Don't implement a verbal policy.

Your company policy should be written. Never take enforcement action based simply on spoken or "understood" rules... the legal consequences can be highly detrimental. In all cases, your company's policy should be clear, firm, in writing, and well-communicated to employees. It is critical that the policy include the consequences for employees' violation of the policy and, where applicable, the consequences for employees' refusal to be tested.

7 Don't use unaccredited laboratories.

You want your drug testing program to be fair, accurate, and effective. You also want it to stand up in court or in arbitrations. One way to accomplish both ends is to use top professionals to do your testing. Their safeguards and protocols withstand adversary scrutiny. Two valuable measures of laboratory reliability are accreditation by the National Institute on Drug Abuse and/or the College of American Pathologists. This is not an area to count pennies... the relatively small amount you save may cost you the credibility of your entire program.

8 Don't address drug abuse without a parallel program for alcohol abuse.

Alcohol remains the most commonly abused drug in America... and in American workplaces. It is clear that in many ways illicit drug abuse compromises the workplace more substantially (stealing, dealing, blackmail, violence, ties to organized crime) than alcohol abuse and, to a certain extent, drug abuse is harder to detect. Nonetheless, the virtually identical psychology of addiction, the comparable safety risks and decreased productivity, and the increasing incidence of poly-drug abuse (alcohol and illicit drugs) make alcohol a critical threat to employers and employees and warrants parallel company programs to address alcohol and drug problems. You do not have a drug-free workplace if you tolerate excessive alcohol use.

9 Don't concentrate on any one class of employees (especially protected classes).

Employers must be careful not to discriminate in the application of their policies. To concentrate testing,

searches, or other enforcement action on any one class of employees — even unintentionally — can create morale problems, charges of favoritism and discrimination, and legal actions — particuarly if one class of employees (at a particular work site or in a particular job classification) is disproportionately black or female or otherwise considered a "protected class" under our equal employment laws. The best enforcement policy is applied equally, and any general drug testing program should include *all* employees in its scope including top management. The broader the application, the stronger the legal footing for the employer to stand on.

10 Don't confront suspected drug users one-on-one.

Supervisors and managers should be cautioned never to take action alone against someone suspected of dealing or using drugs on the job, or "under the influence." First of all, to do so can be physically dangerous. Secondly, there is substantial legal value to having a reliable witness or witnesses present in the event of a subsequent legal challenge.

11 Don't send impaired employees home behind the steering wheel of a car.

Someone on the job who is suspected of being drunk or stoned or both should not be operating a 3,000-pound vehicle on the open roads. By the same token, to restrain the employee from leaving — taking him or her in custody — could subject the employer to claims of false imprisonment. What should an employer do? After other appropriate actions under the company policy (e.g., a drug test, conditional suspension), the employers should either call a cab for the employee or, more appropriately, have a supervisor or co-worker drive him or he. home.

12 Don't require employee waivers.

They probably are not worth the paper they are written on. Employee signatures on forms consenting to future drug tests and employer action based on the results of those tests have been poorly received by the courts. Generally, judges look upon such waivers as coerced — perhaps subtly or indirectly — but coerced nonetheless. Unless such a waiver is voluntary and knowing, it stands no chance of being upheld. Routinely, employee-plaintiffs will claim that they did not know or understand what they were signing or that they felt intimidated into doing so and it therefore was not volitional. You should give all employees a copy of the company's policy against drug abuse and *can* require them to read, sign, and date a form saying that they have read, do understand, and are in receipt of a copy of the company's policy. Paper is always valuable ammunition in litigation. However, this will not serve as a waiver of employee rights or as a barrier to legal action.

What Employers *Can* Do

- **Maintain effective employee communications.** This should involve both: (1) drug awareness (informing employees about the dangers of drug abuse, the magnitude of the problem, and what drugs, drug paraphernalia, and the symptoms of drug abuse look like), and (2) a full discussion of what the company is doing and why. Employers have to *sell* their drug abuse prevention programs to their employees. Employees are your natural allies on the drug issue; you should enlist their active support in your efforts.

- **Offer a responsive employee assistance program.** Rehabilitation of substance-abusing employees can be an effective, cost-effective, and humane response to their problems that will enhance morale and will benefit all concerned. Employee assistance programs are responsible and responsive, can encourage "self-identifiers," and can be an effective component of an overall drug abuse prevention program.

- **Ignore legal critics who overstate the downside risks of drug testing.** It is *your* workplace. It is your right to require that it be free of illicit drugs. Those opposing drug testing — or misinformed about its legal status — often would have employers believe that drug testing is a legal minefield. It is not. Thirteen of the 14 most important federal cases involving drug testing have been decided in favor of drug testing. You, as a private sector employer, have a right to require that employees refrain from illegal conduct; have a right to require that employees be drug-free; have a right to implement a "zero tolerance" policy. While there are ample procedural and substantive safeguards that should be maintained, employers should not be dissuaded from exercising their rights.

- **Implement a meaningful drug testing program.** "Meaningful" means one that cannot be easily beaten, that will be an effective deterrent, that will be set at sufficiently low thresholds, that will be fair and firm and even-handedly enforced, and that will provide the higher level of user accountability necessary to maintain a drug-free work force. It can be done. Drug testing works. However, the bottom line on drug testing is: do it right... or not at all.

*Mark A. de Bernardo is Executive Director of the Institute for a Drug-Free Workplace and the resident partner in the Washington, D.C. office of Littler, Mendelson, Fastiff & Tichy, the largest labor and employment law firm in the United States.

Copyright 1990

Littler, Mendelson, Fastiff & Tichy
1731 Pennsylvania Ave., N.W., Washington, D.C. 20006

"GIVE 'EM A BRAKE'
Continued from page 1

WHAT CAN THE AGC MEMBERS O TO HELP?

1. They can spread the word within their own companies to help promote "Give 'em a Brake", and to help protect themselves and their employees.

2. We are soliciting the AGC's support for the Program, and plan to meet with your Officers in the very near future to discuss the details. I would like to leave you with this thought:

"Give 'em a Brake - They're the folks who risk their lives to make our driving less hazardous and more enjoyable. Give EVERYONE A BRAKE. Stay alert. IT ONLY TAKES ONE CARELESS MOMENT ." □

Tom Bryant, ADOT State Engineer.

MEMBERSHIP CONTEST UPDATE

Bill Burns of J W J Contracting Co., Inc. is leading the efforts to recruit new Chapter Members.

Since the membership contest began Bill has gotten two new members.

If you would like information about the Chapter sent to any prospective memeber please contact Jill Andrews at the Chapter Office.

ADDRESS GIVEN

Ron Pulice recently addressed the National Symposium on Steel Bridge Construction in Washington, D.C. The symposium featured speakers who discussed new design technique, fabrication, detailing and erection principles. The meeting was designed to provide a hands-on national program addressing the specifics of steel bridge construction. It was co-sponsored by American Institute of Steel Construction, American Iron and Steel Institute, Federal Highway Administration, and American Association of State Highway and transportation. □

NLRB DECISION

The National Labor Relations Board (NLRB) has held that employers have to bargain with unions representing any of their employees before employers create drug or alcohol testing programs for the represented employees. In a second case, the NLRB has added, however, that employers do not have to bargain over drug testing programs for job applicants. Johnson-Bateman Co., 295 NLRB No. 26 (1989); Minneapolis Star Tribune, 295 NLRB No. 63 (1989). □

Pulice Construction Receives Award

The Arizona Chapter of the American Public Works Association has chosen Pulice Construction Company, Inc. as Contractor of the Year for 1988 in the category of projects over $2 million for their work on the Little Colorado River Bridge in Holbrook, Arizona. The firm was nominated for this award by the City of Holbrook and selected by the Award Committee on the basis of criteria related to safety, budget, schedule, innovative techniques, and sensitivity to public concerns.

The award-winning project is a four-lane bridge replacing a structure built in 1928. The old bridge, the first of its kind in Arizona, has been designated a "historical structure". The Arizona Department of Transportation intends to store it until a new location can be found.

Pulice Construction is a Arizona-based heavy construction firm of over 450 people with an annual contract volume in excess of $70 million. The firm's President, Wm. Ron Pulice, is currently President of the Arizona Chapter of the Associated General Contractors, as well as a member of the Board of Directors of the Phoenix Economic Growth Corporation.

American Public Works Association has 24,000 members in the United States and Canada representing officials and engineers at all levels of government, educators, journalists, public utility personnel and private consultants. The Arizona Chapter has 560 members and is one of the fastest-growing chapters in the United States and Canada. □

ARIZONA STATE OFFICE
JAN 2 [illegible]

AGC VIEWS and NEWS

EDITED BY
JILL ANDREWS

A PUBLICATION OF THE ARIZONA CHAPTER ASSOCIATED GENERAL CONTRACTORS

P.O. BOX 6878
PHOENIX, ARIZONA 85005

W. R. "Ron" PULICE
President

JAMES R. McDONALD
Executive Director

MEMBERS RANKED IN ARIZONA TRENDS TOP 100 ARIZONA PRIVATE COMPANIES

RANK	COMPANY	1988 REVENUES	EMPLOYEES
6	Sundt Corporation	$255 Million	2,000
16	Empire Southwest	$170 Million	760
46	Pulice Construction	$59 Million	400
56	Cummins Southwest, Inc.	$50 Million	318
70	J W J Contracting	$41 Million	350
89	Wheeler Construction	$29 Million	225
95	C.T.I.	$27 Million	353
99	Redburn Tire Company	$24 Million	144

*Source: September 1989 Issue of **Arizona Trends***

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

November 3, 1989

MEMORANDUM FOR ALL EMPLOYEES

FROM: THE SECRETARY

SUBJECT: General Notice of Drug Testing

On September 15, 1986, then-President Reagan signed Executive Order 12564 which established the goal of the United States Government to achieve a drug-free Federal workplace and mandated specific agency action to attain that goal. Specifically, each agency is to offer a helping hand to those who need it, while sending a clear message, by means including drug testing, that illegal drug use is incompatible with Federal service.

Pursuant to the Executive Order, the Department has developed a Drug-Free Workplace Plan aimed at the establishment and maintenance of a drug-free workplace while providing the maximum safeguards possible for employee rights and privacy. It includes policy and procedures for the identification of illegal drug use through drug testing, as well as drug-related employee education and assistance.

The DOL Drug-Free Workplace Plan authorizes drug testing under the following circumstances:

- unannounced random testing of employees who are in testing designated positions (TDPs): employees currently in TDPs will receive an individual notice, at least 30 days prior to commencement of testing, that his/her position has been identified for random testing;

- testing when there is a reasonable suspicion that any employee uses illegal drugs;

- testing as part of an examination regarding certain accidents or unsafe practices;

- unannounced testing as a follow-up to counseling or rehabilitation for illegal drug use, as determined by a positive drug test;

- testing of all individuals who are tentatively selected for employment or placement in TDPs; and

RECEIVED
DOL-OASAM/San Francisco
NOV 0 6 1989
AM
7,8,9,10,11,12,1,2,3,4,5,6 PM

- testing of employees who are not in TDPs who volunteer for unannounced drug testing.

Drug testing will begin no sooner than 60 days after the date of this memorandum. It will be conducted through urinalysis on a carefully controlled and monitored basis to assure the highest degree of respect for individual privacy. The Department will use independent professionally-trained specimen collection personnel and laboratories under contract to DOL. The laboratories are certified by the Department of Health and Human Services (DHHS) as meeting strict testing quality control requirements. Laboratory analysis of specimens involves a series of highly accurate and reliable tests.

When a confirmed positive drug test result is returned to DOL by the laboratory, the Department's Medical Review Officer will review that finding to determine if it is valid. Employees will be given the opportunity to discuss the test result with the Medical Review Officer and submit medical documentation that may support a legitimate use of a specific drug. If the Medical Review Officer determines that the positive finding is valid, it will then be considered a verified positive test result. That result may be disclosed only to the employee, the Employee Assistance Program Administrator, the appropriate management/government officials empowered to recommend or take administrative action, or pursuant to the order of a court of law or administrative tribunal in any adverse personnel action.

The DOL Employee Assistance Program (EAP) is an important part of the DOL Drug-Free Workplace Plan. Besides offering drug-related education and training to all levels of employees, it provides counseling and referrals to rehabilitation services to employees who self-refer for drug treatment and to those who are referred based on a finding of illegal drug use. Employees in the Washington metropolitan area may contact the EAP by calling 646-5100. Regional employees may contact the EAP by calling their EAP Coordinators. A listing of their telephone numbers is attached. All medical and rehabilitation records in the EAP are confidential "patient" records.

The DOL Drug-Free Workplace Plan, which was certified by DHHS on April 27, 1988, may be consulted for specific information on drug testing and drug-related education and assistance. In the National Office, it is available for review at your servicing personnel office. In the regions, it is available for review at the servicing personnel office and through your agency.

A drug-free workplace will benefit not only productivity but the personal well-being of employees. Let us work together at the Department of Labor towards that goal.

Attachment