



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Minutes - Draft

ERPS-Employee Relations & Public Safety Committee

Tuesday, November 16, 2021

2:15 PM

This meeting will be conducted via teleconference (Zoom). Simultaneous public access to the meeting will be available

(1) via live stream on DCTV's webpage,

(2) on DCTVChannel23.TV

Meeting Started At: 2:15PM

Attendees: Commissioners Davis Johnson, Patrick, Rader, Terry, Bradshaw, Cochran-Johnson

Present 3 - Chairperson Mereda Davis Johnson, Commissioner Robert Patrick, and Jeff Rader

I. MINUTES

2021-3344 Commission District(s): All
Minutes for the November 2, 2021 Employee Relations and Public Safety Committee Meeting
MOTION was made by Robert Patrick, seconded by Jeff Rader, that this agenda item be approved. The motion carried by the following vote:

Yes: 3 - Chairperson Davis Johnson, Commissioner Patrick, and Rader

II. STATUS UPDATE

County 401a Plan Updates

-discussion not heard in committee due to time constraints

-MDJ: we will bring this back on December 7th

Medical Examiner Mortality Update

-discussion not heard in committee due to time constraints
-MDJ: we will bring this back on December 7th

III. AGENDA ITEM

Previously Heard Items

[2021-3337](#)

Commission District(s): All Commission Districts

A Resolution to request that the CEO amend the administrative regulations of the County, to the extent permitted by law, to exclude marijuana testing from pre-employment substance detection testing for positions that are not safety-sensitive.

MOTION was made by Jeff Rader, seconded by Robert Patrick, that this agenda item be recommended for deferral to the Board of Commissioners, due back on 12/14/2021. The motion carried by the following vote:

Yes: 2 - Commissioner Patrick, and Rader

No: 1 - Chairperson Davis Johnson

-information provided by Dr. Stephen Dawkins

-Question JR: marijuana is persistent for a longer period of time due to its chemical makeup. Is there any way you can differentiate residual de minimis presence as opposed to intoxication

Dr. Dawkins: that is a great question, and deals around 3 independent issues. The first is metabolism. Any compound that we ingest your body is going to metabolize the same, whether it's Tylenol, Advil or marijuana. Each person has a unique metabolism relating to their body chemistry and makeup. Since they have different metabolisms, substances remain in their system for different amounts of time. Unfortunately, there is not a reliable way to apply a universal tool for all people to take into account metabolism regarding marijuana. The second component of metabolism is that someone who is a chronic user of a substance requires a higher level of that substance to achieve, whatever the effect might be; that is true of any drug or chemical. In terms of how quickly it's metabolized, a person who was a chronic user will always have a residual amount that remains in their system; an acute user might have a peak and they, depending on their body metabolism, the thing gets metabolized thereafter. There is not a universal standard that can be applied because everyone is a little bit different. Other chemicals a person may be using related to medications may also interact with those cannabinoids and affect the metabolism. Also keep in mind, that when we do testing for marijuana, there is a threshold above which it's reported as positive. There's a threshold that if it's present, but lower - then that drug screen is reported as negative; so it's possible that someone might be have used and still not be above the threshold that would make it record as positive. So that's just all about metabolism.

-Questions JR: could you describe the metabolism of alcohol vs the metabolism of marijuana?

Dr. Dawkins: Whenever alcohol is present, we report that as a positive result. In terms of the counties action based on that positive result, that's defined by the policy, but there are thresholds for that. So if a person has a breath alcohol test and it reaches for example .01, then we know that alcohol is present, but it doesn't reach the legal threshold to be considered impaired which is .08. So for marijuana, assuming a threshold like .08, if it is below that threshold, the test is negative. If it is above that threshold, the test is positive. The notion of impairment can be independent of the concentration measured. So the person who is a chronic alcoholic may have a breath alcohol higher than .08, but might be functional because their bodies are acclimated to that higher dose. The best way to evaluate impairment doesn't rely solely on that concentration measured; it typically is accompanied by some form of a psycho motor evaluation. So the person has to perform some type of a physical test, so you can measure whether or not they have any physical impairment or a cognitive exercise where you start at 100 and you subtract seven and you continue to do so.

-Question JR: if you test positive above a threshold for marijuana that means you are impaired?

Dr. Dawkins: not at all; the notion of evaluating impairment is best assessed using information, both from an objective test like a drug screen might provide, and some accompanying assessment that would measure their cognitive performance as well as their physical performance. We just have more data on the alcohol side for the threshold of .08; we just don't have that kind of data for marijuana.

-Question JR: so the same person who would use marijuana or alcohol, it is likely that the marijuana would be present in their system for a significantly longer period than would the alcohol - is that correct?

Dr. Dawkins: 2 factors; the science is that everyone's metabolism is a little different. Marijuana tends to stay in your system from about 7 to 10 days seven days, and that's the threshold for marijuana. Alcohol gets metabolized in about 36 to 48 hours, but it can also remain your system longer; it depends on each person's metabolism.

-Question JR: my question to HR, what are our thresholds for both substances, as well as what they end up doing with that information? Whether it is dispositive when it comes to qualification, or if there is any interpretation or evaluation of that?

-Question TT: could you speak about how your clients treat testing in states in which marijuana is legalized or decriminalized? Dr. Dawkins: every company has different policies depending on that company's position; for safety-sensitive positions that provide potential risk to the public, that person would be deemed not qualified if they are positive for marijuana - medical marijuana or not. We have clients who have non-safety sensitive positions for whom we might do a drug screen and report that result as positive, and then that company's policy governs what they do as a result. Our role is to report the result and then their policy picks up from there. Sometimes they ask us about the notion of impairment, and when that happens our recommendation is that we do a fitness for duty examination. That allows the examiner to gather more information to supplement just the test results.

-Question TT: If there is that call for additional screening, does that take place that day in real time?

Dr. Dawkins: for our clients, we have a two hour assessment

-Question TT: if there is a positive test for marijuana, you're saying that you would now go to the next level of testing, do you get the test results back right away or in the next day or two?

Dr. Dawkins: It depends on what the initial test is. It's possible to do an instant test for drugs of abuse, and it will let you know if there is the presence of THC or marijuana; if that is present then it might initiate doing some additional testing.

Frequently, if someone is felt to be impaired, they are presented for evaluation within 2 hours, do the cognitive testing, the psycho-motor testing, and collect the sample. If the samples are processed in a lab then we get it several days later, and once that result comes back you use it in concert with the other information to make a final determination.

-Question TT: what would be the efficacy of having an employment pre-screen for cannabis?

Dr. Dawkins: I think that's a policy decision for this group to make, but I can tell you that there are patterns of behavior that we see all the time. For example, the day after the Super Bowl, there are a lot more people who come back positive for all substances (alcohol, marijuana, methamphetamines, etc.). If one has to report back to work the following day, the question is what's residual in the system that may compromise my ability to safely work.

-Question TT: In your medical experience, what would be the risk to the person or society if a person showed symptoms of marijuana the day after a party or holiday?

Dr. Dawkins: that would be difficult to answer; part of the consideration is this - in the State of Georgia we know that if a person is injured on the job, and you have a positive drug screen that is a post-accident drug screen, there is a legal presumption for those people that they were impaired at the time of the accident. And the employer is not liable for any of the medical costs associated with the same. The State of Georgia, by law, states that if you do a post-accident drug screen and it's positive, then that person is considered impaired and the employer has no responsibility for their care.

-presentation from Jim Battigaglia

-Question MDJ: alcohol is legal but is still being tested in many other jurisdictions. Why do you believe that is so?

J Battigaglia: for candidates, in many of the cases the testing is for drugs and not alcohol - pre-employment

-JR: I'm most concerned about our responsibilities as it relates to the federal government and other grantors of resources to the County. Could you provide information about outside necessities for a drug-free workplace?

J Battigaglia: I cannot speak on that area of research specifically

-RP: as a former employee for the city of Norcross there is the perception of government employees that the public ensures that the public reputation of staff with the community. I'm not sure if this puts us in the right direction

-Question TT: I appreciate that perspective but I hope we keep an open mind. What I'm proposing would increase the reputation and professionalism in how we do things in our HR system. Do you have data on testing as it relates to computer performance testing to determine if people are fit for work?

J Battigaglia: I'm afraid I don't have that; most of the clients I work with are focused on urine analysis

-Question TT: you're aware that there are nearby jurisdictions that have changed employee policies?

J Battigaglia: that is correct; the State of New York has also made some issues saying you should not be testing for marijuana in the state since it is legalized there

-TT: in terms of our current testing, if a positive marijuana test is done pre-screening, does that cut them off from the job opportunity? Do we do testing across the board? If an existing employee is positive, are they fired immediately or can they enroll in an employee-assistance program?

-S Moody: regarding pre-employment screening, all employees are screened at the point of hiring for marijuana. In the event of a positive test result for marijuana, that would be a 2 year waiting period for that applicant to reapply for any position with the County. Regarding random drug testing for employees, our random drug tests are reserved for our safety sensitive classifications, so that makes up about 4,000 County employees. That information is sent to our department contacts on a weekly basis and those individuals are screened for marijuana in accordance to US DOT regulation. Even though the County is not required the county chooses to adopt that particular order for federal regulations with US DOT testing. As far as zero-tolerance departments, at the first instance of a positive drug test, those individuals would be recommended for dismissal or termination with a 2 year wait period. For the remaining departments, those employees are afforded an opportunity to go into a rehabilitation program; this is only for employees that have completed their probationary period with the County and are subject to a 40 hour suspension; after that suspension they must show proof of meeting with a substance abuse professional prior to returning back to work.

-TT: I'd like to understand the delineation of safety-sensitive positions within the County.

-Question TT: regarding the testing, and the 40 hour suspension, is that linked to some sort of performance evaluation? Would you give someone a suspension if they had a perfect attendance record, had no issues with disciplinary problems -there would be the outright zero tolerance?

S Moody: Prior to that, there there's also provision in the drug and alcohol policy that affords for employees to voluntarily admit themselves into a substance abuse program. The suspension is a disciplinary response to the presence of alcohol or drugs found on their random exam.

-Question TT: I would assume the purpose of these drug testings' is that our employees have no doubt of their integrity and

are performing. Within the 7-10 day period discussed earlier, one cannot definitively prove that someone was 'high on the job' with a urine analysis test; it appears that there is no additional testing following that positive test. I wonder if we are forcing good people out of departments due to antiquated testing practices.

S Moody: I will defer to our vendor Caduceus USA to report to us the drug test results of those candidates above the threshold deemed in our policy. Apart from that, my understanding is that the urine analysis is currently the most reliable form of testing supported by the Federal government. I understand that there are other discussions regarding other testing methods, but those items have not come forth at this time. It is possible that HR could go back and look at other options, such as hair sampling, that would give a broader time horizon.

-Question TT: there is no additional follow up testing once someone tests positive, even though there are other cognitive tests on the market?

MDJ: this item pertains to new hires, not current; let's stick with this agenda item.

S Moody: for the pre-screening exams, for alcohol there's a confirmation test built into that process. So the first reading, if it appears over the threshold for DeKalb, there is a waiting period, and then the applicant is afforded an opportunity to retest; if the second test is confirmed, to be over the threshold that's issued as a disqualification. On the other hand for a urine analysis, if there is a positive test result, the applicant is afforded the ability to do a 'squid specimen exam'. That takes the unused portion of the original specimen, and that is sent back to the laboratory for a second confirmation, done at the expense of the candidate.

-Question LCJ: on average how many random tests are done yearly? Within that category are all within safety-sensitive positions?

S Moody: there are over 160 classifications in the county that are safety sensitive positions. We have a requirement of 50% employee testing for drug testing, and 50% for alcohol. For random we can get you that data; for preemployment there were 42 failed screenings out of over 1000 for 2020

-Question JR: did we ever get the answer as to whether or not we are required to have a drug-free workplace and do this testing in order to receive federal grants or other programs?

V Ernestes: no sir we did not finish that research yet ; we have determined that in the WIFIA documents there is the standard statement of a drug free workplace. So far we have not determined whether there are in fact random drug screens and/or pre employment screens required with respect to the DOT contracts; we have not located any requirement, yet, but we would like to complete that review before you pass this item. I would ask for deferral to the next meeting

-MDJ: I concur with commissioner Patrick on this; it would open us up to litigation and increase workers' compensation claims, and could have an adverse effect on DeKalb's reputation. I will not be voting for this agenda item whether we defer it or vote today

-JR: I move for deferral to our next meeting; it is important for us to know that we will not put ourselves or grant compliance at risk if this is to come up again

-Second RP

Vote: yes 2-1 (JR & RP yes, MDJ no)

-Commissioner Terry requests Law, Dentons to research if local governments have lost federal funding as a result of a pre-screening drug policy

New Agenda Items:

2021-3323

Commission District(s): ALL

SS - Rogue Branded Fitness Equipment: for use by Fire Rescue Services (FR). Consists of the purchase of fitness equipment required to furnish several fire station gyms. Awarded to: Colter Ventures LLC dba Rogue Fitness. Amount Not To Exceed: \$250,230.22.

MOTION was made by Robert Patrick, seconded by Jeff Rader, that this agenda item be recommended for approval. to the Board of Commissioners, due back on 12/14/2021. The motion carried by the following vote:

Yes: 3 - Chairperson Davis Johnson, Commissioner Patrick, and Rader

-information provided by Chief Fullum

-Question JR: were we required to specify a particular compliment of equipment?

Chief Fullum: we were not required but when you are submitting for these grants, one that shows you have done the work is typically going to be successful. In preparation for the grant we selected this equipment and listed it in the grant application

-JR: if Purchasing could talk to me about this type of process to have further discussion

2021-3393

Commission District(s): All Commission Districts

2019 Urban Area Security Initiative (UASI) Grant, \$185,709.00

MOTION was made by Jeff Rader, seconded by Robert Patrick, that this agenda item be recommended for approval. to the Board of Commissioners, due back on 12/14/2021. The motion carried by the following vote:

Yes: 3 - Chairperson Davis Johnson, Commissioner Patrick, and Rader

-information provided by Chief Ramos

Meeting Ended At: 3:32PM

MOTION was made by Robert Patrick, seconded by Jeff Rader, that this agenda item be adjourned meeting. The motion carried by the following vote:

Yes: 3 - Chairperson Davis Johnson, Commissioner Patrick, and Rader

Barbara H. Sanders-Norwood CCC, CMC