

Oct-13-2008 11:57am From-ATLAS & HALL

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T-801 P.002/003 F-046

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October 13, 2008

Via Facsimile

Juan de Dios ("J.D.") Salinas, III  
Hidalgo County Judge  
100 E. Cano, 2<sup>nd</sup> Floor  
Edinburg, Texas 78539

Commissioner Pct. #1, Sylvia Handy  
1902 Joe Stevens  
Weslaco, Texas 78596

Commissioner Pct. # 2, Hector "Tito" Palacios  
301 E. State  
Pharr, Texas 78577

Commissioner Pct. # 3, Joe M. Flores  
P. O. Box 607  
Mission, Texas 78572

Commissioner Pct. #4, Oscar Garza  
1102 N. Doolittle  
Edinburg, Texas 78541

RE: Pre-Employment Screening

Dear Judge & Commissioners:

We are writing to inform you that we have learned of a Ninth Circuit Court of Appeals case that may affect the Hidalgo County job application process and substance abuse policy. In *Lanier v. City of Woodburn*, 518 F. 3d 1147, C.A.9 (Or.) 2008, the Court of Appeals found a city policy requiring a selected job candidate to pass a pre-employment drug test as a condition of the job offer to be unconstitutional. This ruling does not affect the validity of requiring drug testing for safety-sensitive positions.

Currently, the County's substance abuse policy states that drug testing may be required for "post-offer, pre-employment screening. . . ." [emphasis added]. See Hidalgo County Personnel Policy Section 9.52(a). Based on the above case, we recommend the County's policy be amended to reflect the outcome of the *Lanier* case by clarifying that post-offer or pre-employment screening may only be required for safety-sensitive positions.

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Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Very truly yours,

ATLAS & HALL, LLP

By:   
Stephen L. Crain

cc: Valorie C. Glass