

THE STERLING ADVANTAGE

# industry leader in web-based technology

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### Message from the CEO.....



Positioning our clients for success has been a core principle of mine since I founded the Sterling organization more than 34 years ago. Today, I'm proud that we're recognized nationally and globally as a preeminent provider of employment and background screening services. More than 6,000 companies use our products and services, and our clients range from top brands among the Fortune 500 to industry leading enterprises.

The *Sterling Sentinel* is our latest effort to give our clients an "edge". In fact, it's the collective "voice" of our customers that have "called" us to introduce this new resource. As you may be aware, Sterling employs a number of customer satisfaction measurement tools to guide internal efforts for continuous improvement. Such systematic outreach and focus have produced earlier innovations to keep our clients positioned for

continued success, such as our *Complimentary Webinars* and the *Jackson Lewis Help Line*. The *Sterling Sentinel* will offer important compliance-related news and information in each issue to help our clients stay ahead of the "ever-changing curve". I encourage you to incorporate this information into your daily routine, and to continue making use of our other value-add services.

On behalf of all at Sterling Infosystems, thank you for the opportunity to partner with you, and the opportunity to earn your business day-in and day-out through our ardent execution, unbeatable customer service, and leading edge technology.

### Complimentary Webinars.....

*Did you know that - as a Sterling customer - you can participate in complimentary online webinars offered throughout the year by our resident subject matter experts?*

Here's our schedule for the next two months:

- ▶ *The Fair Credit Reporting Act and the Background Check Process*, scheduled for:
  - January 29, 2010
  - February 26, 2010
- ▶ *DOT Substance Abuse Testing Audit Preparedness*, scheduled for January 8, 2010
- ▶ *Electronic Drug Testing*, scheduled for February 5, 2010

*Please click [here](#) to register.....*

### Jackson Lewis Help Line.....

*Did you know that - as a Sterling customer - you have complimentary access to our Jackson Lewis Help Line to assist you with employment and labor issues and legal questions?*

*Jackson Lewis* is the preeminent workplace law firm representing management in over 40 offices nationwide. The ability for our clients to have direct access to a legal specialist to help navigate employment and labor law matters is a key point of differentiation for all Sterling customers.

*Please click [here](#) to log in.....*

### In this issue.....

<i>Message from the CEO.....</i>	<i>1</i>
<i>Complimentary Webinars .....</i>	<i>1</i>
<i>Jackson Lewis Help Line .....</i>	<i>1</i>
<i>Hawaii Prohibits Discrimination Based On Credit History .....</i>	<i>2</i>
<i>Article 23-A – New York .....</i>	<i>2</i>
<i>Why Random Substance Abuse Testing Is So Important .....</i>	<i>2</i>
<i>Substance Abuse Testing Spotlight – North Carolina .....</i>	<i>3</i>
<i>Other Compliance-Based Products ..</i>	<i>3</i>
<i>Compliance Question Of The Month</i>	<i>3</i>

### Helpful Links.....

<i>Fair Credit Reporting Act (FCRA)</i>
<i>Equal Employment Opportunity Commission (EEOC)</i>
<i>Federal Trade Commission (FTC)</i>
<i>Department of Labor (DOL)</i>
<i>Department of Transportation (DOT)</i>
<i>Department of Health and Human Services (DHHS)</i>
<i>Substance Abuse and Mental Health Services Administration (SAMHSA)</i>
<i>National Institute on Drug Abuse (NIDA)</i>
<i>Office of National Drug Control Policy</i>
<i>Drug &amp; Alcohol Testing Industry Association (DATIA)</i>
<i>Substance Abuse Program Administrators Association (SAPAA)</i>

[www.sterlinginfosystems.com](http://www.sterlinginfosystems.com)

## Hawaii Prohibits Discrimination Based On Credit History.....

The Hawaii Fair Employment Practices Act was amended this past July to provide that it is an *unlawful practice* for an employer to refuse to hire, employ, bar, or discharge from employment, or otherwise discriminate against any individual because of credit history, unless the information directly relates to a bona fide occupational qualification under the Hawaii Fair Employment Practices Act.

This prohibition does not apply to employers who are permitted or required to do so under federal or state law, employers that are financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution, or to managerial or supervisory employees.

*To view the Hawaii Fair Employment Practices Act, please click [here](#)*

## Article 23-A – New York.....

Any organization that obtains a consumer report from a consumer reporting agency (such as Sterling Infosystems) that contains a criminal record is required to provide the individual with a copy of Article 23-A of the New York State Correctional Law *prior to the employer taking adverse action*. This requirement became effective February 1, 2009. Article 23-A specifies that employers must balance many factors before taking adverse action based on an individual's criminal background, unless a specific prohibition on hiring individuals with criminal records is applicable. Some of these factors, such as the rehabilitation of the individual, require a discussion with the individual prior to sending a pre-adverse action notice. Of course, if the individual failed to disclose his/her criminal record in response to a lawful inquiry on the employment application, or during a job interview regarding criminal records, such discussion is not required prior to issuing the pre-adverse action notice. Sterling recommends that all New York employers provide the individual with a copy of Article 23-A along with the consent and disclosure form.

Further, all New York employers are required to post Article 23-A in the workplace. This will further educate employees regarding the employer's obligation under Article 23-A prior to disqualifying an applicant from employment and/or terminating a current employee.

*To view Article 23-A, please click [here](#)*

## Why Random Substance Abuse Testing Is So Important.....

In the early morning hours of August 28, 1991, a speeding New York City subway train failed to slow at a switch, jumped the track, and crashed just north of the Union Square Station at 14th Street. Five people were killed and more than 200 were injured. The motorman later admitted that he had been drinking heavily before taking control of the train and had fallen asleep. Blood tests performed following the motorman's arrest showed an alcohol concentration level *twice the legal limit*. The accident closed several miles of track on the Lexington Avenue line for six days while workers raced around the clock to repair the damaged infrastructure and roadbed. Of 5 train cars that had derailed, all but one could not be salvaged and were scrapped. The following year, while the New York City Transit Authority (NYCTA) toiled to restore confidence in public ridership, the motorman was convicted on multiple counts of manslaughter.

Up to that time, NYCTA had been working with its labor unions to implement random testing procedures to deter substance abuse. However, following the "14th Street Accident", NYCTA's labor unions changed their stance and permitted random testing of their members. By year's end, random testing of train operators, bus operators, and other "safety-sensitive" employees had begun. Nearly 2,000 random tests were conducted in the first year and *more than 3% tested positive* for drugs and/or alcohol. All employees who tested positive were immediately removed from service and given the option to rehabilitate or face immediate termination. *Over the next decade, NYCTA would realize more than a 200% reduction in their positivity rate for random testing.*

### NOTICE

THIS IS A  
DRUG-FREE  
WORKPLACE!

Even prior to the "14th Street Accident", safety concerns associated with drug and alcohol abuse by American workers were growing nation-wide. A number of federal regulations came to pass in the years following President Reagan's 1986 Executive Order directing all federal agencies to establish a "drug-free workplace" (DFWP), and to test federal employees in "sensitive" positions. At the center of these regulations stood random testing, and many state-level regulations have also been enacted over the years to promote testing.

Today, it's estimated that *1 in 6 American adults is substance dependent and - even more startling - 3 out of 4 of such individuals are employed!* For this reason alone, random testing becomes a key component of a post-hire workplace program. *Why?* Because, more than any other testing purpose, random testing communicates the employer's zero-tolerance position and works to continuously deter abuse in the workplace. Covered employees know they are *always* subject to test - but not quite sure of when.

Today's DFWP programs also have the benefit of more than two decades of evolving experience. Best practices for random testing include employee selection for testing on at least a quarterly basis, and testing during all times that covered work is being performed. This, in fact, is a DOT specification. Further, employees selected for random testing should test only in the testing cycle for which each was selected (e.g., monthly, quarterly, etc.), and each should proceed *immediately* for testing after being notified to test. Employers must also ensure that testing *continuously* remains *unannounced* and *unpredictable* throughout the year.

Under DOT, each operating agency (FMCSA, FAA, FTA, FRA, PHMSA, and USCG) sets annual random testing thresholds in the industry it regulates, and covered employers are required to at least meet each threshold (*For DOT random testing rates, please click [here](#)*).

## Substance Abuse Testing Spotlight – North Carolina.....

Employers operating in North Carolina are not required to conduct substance abuse testing beyond that specified by federal regulations. However, if employers operating in North Carolina choose to test under their own authority, then state law must be followed.

Some key points regarding substance abuse testing in North Carolina:

- ▶ All positive screening results must be confirmed by a laboratory certified by DHHS (Department of Health & Human Services) or CAP (College of American Pathologists).
- ▶ Use of an instant testing device (point-of-collection) that can be sent to a certified laboratory for confirmation analysis is permitted for prospective employees.
- ▶ Employers must provide written notice to the donor within 30 days of receiving a positive result, and of the donor's rights/responsibilities to retest. The prospective or current employee must bear the costs for a retest.
- ▶ Employers must report all positive test results to the State Division of Motor Vehicles within 5 business days of learning of a positive test for a CDL-holding employee, who is then disqualified from operating a commercial motor vehicle until successfully completing the SAP Return-To-Duty process as specified under DOT guidelines.
- ▶ Any attempt to tamper with a drug screen is a crime - misdemeanor for first offense and felony thereafter.
- ▶ A written policy is required for workers compensation and unemployment purposes.

## Other Compliance-Based Products .....

- ▶ **Instructor-Led Training (Online and Onsite)**
    - Designated Employer Representative (DER)
    - Supervisory Substance Abuse Awareness (RST)
    - Employee Substance Abuse Awareness
  - ▶ **Substance Abuse Testing Policy Development/Review (DOT and Non-DOT)**
  - ▶ **Mock Substance Abuse Testing Program Auditing**
- Please click [here](#) to learn more.....*

## ? ? ? ? ? Compliance Question Of The Month ? ? ? ? ?

**Question:** In New York, are there any restrictions for a consumer reporting agency (such as Sterling Infosystems) in reporting criminal records?

**Answer:** Yes. A consumer reporting agency cannot report arrest records or violations. In addition, convictions that are over 7 years old cannot be reported unless the individual will earn \$25,000 or more.

*Please click [here](#) to submit a question. All will be responded to and one will be selected for posting in the next issue.*

There's absolutely no one better than our customers to help the Sterling Compliance Team prepare for the next bi-monthly publication of the ***Sterling Sentinel***.

Please email your thoughts and recommendations for future articles and content to:

[sterlingsentinel@sterlinginfosystems.com](mailto:sterlingsentinel@sterlinginfosystems.com)



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