

ARTICLE 13.
DRUG-FREE WORKPLACE PROGRAM.

Effective date. - The act which added this article became effective October 1, 1995.

§ 25-5-330. Legislative intent.

It is the intent of the Legislature to promote drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work related accidents resulting from substance abuse by employees. (Acts 1995, No. 95-535, p. 1082, § 1.)

§ 25-5-331. Definitions.

As used in this article, the following words and terms shall have meanings as follows:

(1) Alcohol. Ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) Chain of custody. The methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all of the materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results.

(3) Confirmation test or Confirmed test. A second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test shall be different in scientific principle from that of the initial test procedure. The confirmation method shall be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(4) Drug. Amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualone, opiates, barbituates, benzodiazepines, propoxyphene, or a metabolite of any of the substances.

(5) Employee. Any person who works for salary, wages, or other remuneration for an employer.

(6) Employee assistance program. A program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns. A minimum level of core services shall include consultation and training; professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up and monitoring; employee education; and quality assurance.

(7) Employer. A person or entity that is subject to the Alabama Workers' Compensation Law, except that this article shall not apply to individual self-insurers or members of group self-insurance funds.

(8) Initial test. A sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent procedure

or shall use a more accurate scientifically accepted method approved by the National Institute on Drug Abuse as more accurate technology becomes available in a cost-effective form.

(9) Job applicant. A person who has applied for a position with an employer and has been

offered employment conditioned upon successfully passing a substance abuse test and may have begun work pending the results of the substance abuse test.

(10) Nonprescription medication. A drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.

(11) Prescription medication. A drug or medication lawfully prescribed by a physician for an individual and taken in accordance with the prescription.

(12) Reasonable suspicion testing. Substance abuse testing based on a belief that an employee is using or has used drugs or alcohol in violation of the policy of the employer drawn from specific objective and articulate facts and reasonable inferences drawn from the facts in light of experience. Among other things, the facts and inferences may be based upon, but not limited to, the following:

a. Observable phenomena while at work such as direct observation of substance abuse or of the physical symptoms or manifestations or being impaired due to substance abuse.

b. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.

c. A report of substance abuse provided by a reliable and credible source.

d. Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer.

e. Information that an employee has caused or contributed to an accident while at work.

f. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the premises of the employer or while operating the employer's vehicle, machinery, or equipment.

(13) Rehabilitation program. An established program capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service. The service shall in all cases be provided by persons licensed or appropriately certified as health professionals to provide drug or alcohol rehabilitative services.

(14) Specimen. Tissue, blood, breath, urine, or other product of the human body capable of revealing the presence of drugs or their metabolites or of alcohol.

(15) Substance. Drugs or alcohol.

(16) Substance abuse test or Test. Any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites or of alcohol. (Acts 1995, No.-95-535, p. 1082, § 2.)

§25-5-332. Premium discount where drug-free workplace program implemented.

(a) If an employer implements a drug-free workplace program substantially in accordance with this article, the employer shall qualify for certification for a five percent premium discount under the employer's workers' compensation insurance policy.

(b) For each policy of workers' compensation insurance issued or renewed in the state on and after July 1, 1996, there shall be granted by the insurer a five percent reduction in the premium for the policy if the insured has been certified by the Department of Industrial Relations, Workers' Compensation Division, as having a drug-free workplace program which complies with the requirements of this article and has notified its insurer in writing of the certification.

(c)(1) The premium discount provided by this section shall be applied to an insured's policy

of workers' compensation insurance pro rata as of the date the insured receives certification by the Department of Industrial Relations, Workers' Compensation Division, and shall continue for a period not to exceed four years. Notwithstanding the foregoing, an insurer shall not be required to credit the actual amount of the premium discount to the account of the insured until the final premium audit under the policy. Certification of an insured shall be required for each of the four years in which the premium discount is granted. Thereafter, any premium discount pursuant to this article shall be determined from the experience rating plan of the insured, or in the case of an insured not rated upon experience, as provided in subdivision (2).

(2) With respect to an insured which is not rated upon experience, any premium discount given an insured pursuant to this article after the initial four-year period provided in subdivision (1) shall be determined by the State Insurance Commissioner based upon data received from the rating and statistical organization designated by the commissioner pursuant to this article.

(d) The workers' compensation insurance policy of an insured shall be subject to an additional premium for the purposes of reimbursement of a previously granted premium discount and to cancellation in accordance with the policy if it is determined by the Department of Industrial Relations, Workers' Compensation Division, that the insured misrepresented the compliance of its drug-free workplace program.

(e) Each insurer shall make an annual report to the rating and statistical organization designated by the State Insurance Commissioner pursuant to this article illustrating the total dollar amount of drug-free workplace premium credit. Standard earned premium figures reported pursuant to this subsection on the aggregate calls for experience shall reflect the effects of the credits. The net standard premium shall then be the basis of any premium adjustment. The drug-free workplace credits shall be reported under a unique classification code or unit statistical reports submitted to the rating and statistical organization designated by the State Insurance Commissioner.

(f) The State Insurance Commissioner may promulgate rules and regulations necessary for the implementation and enforcement of this article. (Acts 1995, No. 95-535, p. 1082, § 3.)

Code Commissioner's note. - In 1995 the Code Commissioner deleted "of this subsection" in subdivisions (1) and (2) of subsection (c) as surplusage.

§ 25-5-333. Elements of program.

(a) A drug-free workplace program shall contain all the following elements:

(1) A written policy statement as provided in Section 25-5-334.

(2) Substance abuse testing as provided in Section 25-5-335.

(3) Resources of employee assistance providers maintained in accordance with Section 25-5-336.

(4) Employee education as provided in Section 25-5-337(a).

(5) Supervisor training in accordance with Section 25-5-337(b).

(b) In addition to the requirements of subsection (a), a drug-free workplace program shall be implemented in compliance with the confidentiality standards provided in Section 25-5-339. (Acts 1995, No. 95-535, p. 1082, § 4.)

§ 25-5-334. Notice of testing; written policy statement.

(a) One time only, prior to testing, all employees and job applicants for employment shall be given a notice of testing. In addition, all employees shall be given a written policy statement from the employer which contains all of the following:

(1) A general statement of the employer's policy on employee substance abuse which shall identify:

a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis used to determine when the testing will be required.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result.

(2) A statement advising an employee or job applicant of the existence of this article.

(3) A general statement concerning confidentiality.

(4) The consequences of refusing to submit to a drug test.

(5) A statement advising an employee of the Employee Assistance Program, if the employer offers the program, or advising the employee of the employer's resource file of assistance programs and other persons, entities, or organizations designed, to assist employees with personal or behavioral problems.

(6) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the employer within five working days after written notification of the positive test result.

(7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act, if applicable to the employer.

(b) An employer not having a substance abuse testing program in effect on July 1, 1996, shall ensure that at least 60 days elapse between a general one-time notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place prior to July 1, 1996, shall not be required to provide a 60-day notice period.

(c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. A notice of the employer's substance abuse testing policy shall also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy shall be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations. All testing conducted by an employer shall be in conformity with the standards and procedures established in this article and all applicable rules adopted by the State Department of Industrial Relations pursuant to this article. Notwithstanding the foregoing, an employer shall not have a legal duty under this article to request an employee or job applicant to undergo testing. (Acts 1995, No. 95-535, p. 1082, § 5.)

§ 25-5-335. Types of tests; procedures for specimen collection and testing; laboratory; confirmation of tests.

(a) An employer is required to conduct the following types of tests in order to qualify for the workers' compensation insurance premium discounts provided under this article:

(1) An employer shall require job applicants to submit to a substance abuse test after extending an offer of employment. Limited testing of job applicants by an employer shall qualify under this article if the testing is conducted on the basis of reasonable classifications of job positions.

(2) An employer shall require an employee to submit to reasonable suspicion testing.

(3) An employer shall require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group.

(4) If the employee, in the course of employment, enters an employee assistance program or a rehabilitation program as the result of a positive test, the employer shall require the employee to submit to a substance abuse test as a follow-up to the program. Notwithstanding the foregoing, if an employee voluntarily entered the program, follow-up testing shall not be required. If follow-up testing is conducted, the frequency of the testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee.

(5) If the employee has caused or contributed to an on-the-job injury which resulted in a loss of work time, the employer shall require the employee to submit to a substance abuse test.

(b) Nothing in this article shall prohibit a private employer from conducting random testing or other lawful testing of employees.

(c) All specimen collection and testing under this article shall be performed in accordance with the following procedures:

(1) A specimen shall be collected with due regard to the privacy of the individual providing the specimen, and in a manner reasonably calculated to prevent substitution or contamination of the specimen.

(2) Specimen collection shall be documented, and the documentation procedures shall include all of the following:

a. Labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results.

b. An opportunity for the employee or job applicant to record any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The providing of information shall not preclude the administration of the test, but shall be taken into account in interpreting any positive confirmed results.

(3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner which reasonably precludes specimen contamination or adulteration.

(4) Each initial and confirmation test conducted under this article, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory as described in subsection (d).

(5) A specimen for a test may be taken or collected by any of the following persons:

a. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.

b. A qualified person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists, or the Alabama Department of Human Resources.

(6) Within five working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform the employee or job applicant in writing of the positive test result, the consequences of the results, and the options available to the employee or job applicant.

(7) The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(8) An initial test having a positive result shall be verified by a confirmation test.

(9) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested.

(10) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees.

(11) An employee or job applicant shall pay the cost of any additional tests not required by the employer.

(12) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer as provided in this article and retained by the employer for at least one year.

(d)(1) No laboratory may analyze initial or confirmation drug specimens unless:

a. The laboratory is approved by the National Institute on Drug Abuse or the College of American Pathologists.

b. The laboratory has written procedures to ensure the chain of custody.

c. The laboratory follows proper quality control procedures including, but not limited to:

1. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

2. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

3. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

4. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(2)a. A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state all of the following:

1. The name and address of the laboratory which performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial and confirmation tests and the minimum cutoff levels of the tests.

b. No report shall disclose the presence or absence of any drug other than specific drug and its metabolites listed pursuant to this article.

(3) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(e) If an initial drug test is negative, the employer may seek a confirmation test. Only those laboratories described in subsection (d) shall conduct confirmation drug tests.

(f) All positive initial tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse as the technology becomes available in a cost effective form. (Acts 1995, No. 95-535, p. 1082, § 6.)

§ 25-5-336. Employee assistance program or resource file of employee assistance providers.

(a) If an employer has an employee assistance program, the employer shall inform the employee of the benefits and services of the employee assistance program. In addition, the employer shall provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer shall maintain a resource file of providers of other employee assistance including drug and alcohol abuse programs, mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems and shall notify the employee of the availability of the resource file. In addition, the employer shall post in a conspicuous place a listing of providers or employee assistance in the area. (Acts 1995, No. 95-535, p. 1082, § 7.)

§ 25-5-337. Semiannual education program; supervisor training.

(a) An employer shall provide all employees with a semiannual education program on substance abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour should include, but is not limited to, the following information:

- (1) The explanation of the disease model of addiction for alcohol and drugs.
- (2) The effects and dangers of the commonly abused substances in the workplace.
- (3) The policies of the company and procedures regarding substance abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

(b) In addition to the education program provided in subsection (a), an employer shall provide all supervisory personnel with a minimum of two hours of supervisor training, which includes, but is not limited to, the following information:

- (1) How to recognize signs of employee substance abuse.
- (2) How to document and collaborate signs of employee substance abuse.
- (3) How to refer substance abusing employees to the proper treatment providers. (Acts 1995, No. 95-535, p. 1082, § 8.)

§ 25-5-338. Construction of article.

(a) No physician-patient relationship is created between an employee or job applicant and an employer, medical review officer, or any person performing or evaluating a drug test solely by the establishment, implementation, or administration of a drug-testing program.

(b) Nothing in this article shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug related offenses, and taking action based upon a violation of any of those rules.

(c) Nothing in this article shall be construed to operate retroactively, and nothing in this article shall abrogate the right of an employer under state or federal law to conduct drug tests, or implement

employee drug-testing programs. Notwithstanding the foregoing, only those programs that meet the criteria outlined in this article qualify for reduced workers' compensation insurance premiums under this article.

(d) Nothing in this article shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic or other unhealthy materials in the workplace or in the performance of job responsibilities. The screening or tests shall be limited to the specific materials expressly identified in the statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests.

(e) No cause of action shall arise in favor of any person based upon the failure of an employer to establish or conduct a program or policy for substance abuse testing. (Acts 1995, No. 95-535, p. 1082, § 9.)

Code Commissioner's note. - In 1995, "the Code Commissioner inserted "meet" for meeting" in the second sentence of subsection (c) for grammatical purposes.

§ 25-5-339. Confidentiality of information.

(a) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications, but may be used or received in evidence, obtained in discovery, or disclosed in any civil or administrative proceeding, except as provided in subsection (c).

(b) Employers, laboratories, medical review officers, employee assistance programs, drug or alcohol rehabilitation programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless the release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form shall contain at a minimum all of the following:

- (1) The name of the person who is authorized to obtain the information.
- (2) The purpose of the disclosure.
- (3) The precise information to be disclosed.
- (4) The duration of the consent.
- (5) The signature of the person authorizing release of the information.

(c) Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in the criminal proceeding.

(d) Nothing contained in this article shall be construed to prohibit the employer or laboratory conducting a test from having access to employee test information when consulting with legal counsel when the information is relevant to its defense in a civil or administrative matter. (Acts 1995, No. 95-535, p. 1082, § 10.)

§ 25-5-340. Department of Industrial Relations to perform administrative duties for certification of employers.

The Department of Industrial Relations, Workers' Compensation Division, shall promulgate by rule

or regulation procedures and forms for the certification of employers who establish and maintain a drug-free workplace which complies with this article. The department may charge a fee for the certification of a drug-free workplace program in an amount which shall approximate the administrative costs to the department of the certification. The certification fees shall be deposited in a revolving account to fund the administrative costs of certification and are hereby appropriated solely for that purpose. Certification of an employer shall be required for each year in which a premium discount is granted. (Acts 1995, No. 95-535, p. 1082, § 11.)