

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as “equals” in “unison” with politicians to write laws to govern your life. Big Business has “a VOICE and a VOTE,” according to newly exposed documents. **DO YOU?**

Workplace Drug Testing Act

Summary

This Act would explicitly allow the private sector to test any of its employees for drug use, provided certain accuracy and fairness safeguards and conditions are met. For example, the employer must pay for the tests; management must subject itself to tests; a written description of the testing policy must be distributed to every employee; sanitary and accuracy guidelines must be followed in the collection, labeling, storage, and transportation of samples; confidentiality must be maintained; and the testing laboratory must be state or federal certified. To the extent the program implemented by the private sector conforms to the conditions of this Act, the private sector gains protection from litigation arising out of a positive test result or action arising as a consequence of a positive test result.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act shall be known and may be cited as the Workplace Drug Testing Act.

Section 2. {Definitions.} As used in this Act:

- (A) "Alcohol" means ethyl alcohol or ethanol.
- (B) "Drugs" means any substance described in *[cite controlled substance act]*.
- (C) "Employer" means any person, firm, or corporation, including any public utility or transit district, which has one or more workers or operators employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.
- (D) "Employee" means any person in the service of an employer, as defined in Subsection (C) of this section.
- (E) "Prospective employee" means any person who has made application to an employer, whether written or oral, to become an employee.
- (F) "Sample" means urine, blood, breath, saliva, or hair.

Section 3. {Applicable conditions for a legal policy.} It is not unlawful for an employer to test employees or prospective employees for the presence of drugs or alcohol, in accordance with the provisions of this Act, as a condition of hiring or continued employment. However, employers and management in general must submit to the testing themselves on a periodic basis.

Section 4. {Collection of samples.} In order to test reliably for the presence of drugs or alcohol, an employer may require samples from employees and prospective employees, and may require presentation of reliable identification to the person collecting the samples. Collection of the sample shall be in conformance with the requirements of this Act. The employer may designate the type of sample to be used for this testing.

Section 5. {Test scheduling.}

- (A) Any drug or alcohol testing by an employer shall occur during or immediately after the regular work period. Such testing by the employer shall be deemed work time for the purposes of compensation and benefits for current employees.
- (B) An employer shall pay all costs of testing for drugs or alcohol required by the employer, including the cost of transportation if the testing of a current employee is conducted at a location other than the workplace.

Section 6. {Testing procedures.} All sample collection and testing of drugs and alcohol under this Act shall be performed in accordance with the following conditions:

- (A) The collection of samples shall be performed under reasonable and sanitary conditions.
- (B) Sample collections shall be documented, and said documentation procedures shall include:
 - (1) labeling of samples so as to reasonably preclude the probability of erroneous identification of test results; and
 - (2) an opportunity for the employee or prospective employee to provide notification of any information which may be considered relevant to the test, including identification of currently or recently used prescriptions or nonprescription drugs, or other relevant medical information.
- (C) Sample collection, storage, and transportation to the place of testing shall be performed so as to reasonably preclude the probability of sample contamination or adulteration.
- (D) Sample testing shall comply to scientifically accepted analytical methods and procedures. Testing shall be conducted at a laboratory approved or certified by either a state or federal agency. Testing shall include verification or confirmation of any positive test results by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any action by an employer.

Section 7. {Testing policy requirements.}

(A) Testing or re-testing for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy that has been distributed to every employee and is available for review by prospective employees.

(B) Within the terms of the written policy, an employer may require the collection and testing of samples for the following purposes:

- (1) investigation of possible individual employee impairment;
- (2) investigation of accidents in the workplace or incidents of workplace theft;
- (3) maintenance of safety for employees or the general public; or
- (4) maintenance of productivity, quality of products or services, or security of property or information.

(C) The collection and testing of samples shall be conducted in accordance with this Act and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee.

(D) The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this Act.

Section 8. {Disciplinary procedures.} Upon receipt of a verified or confirmed positive drug or alcohol test result which indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a sample, an employer may use that test or refusal as the basis for disciplinary or rehabilitative actions, which may include the following:

- (A) A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as condition of continued employment;
- (B) suspension of the employee with or without pay for a period of time;
- (C) termination of employment;
- (D) refusal to hire a prospective employee; or
- (E) other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement.

Section 9. {Employer protection from litigation.} No cause of action arises in favor of any person against an employer who has established a policy and initiated a testing program in accordance with this chapter for any of the following:

- (A) failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;
- (B) failure to test for, or if tested for, failure to detect, any specific drug or other substance, disease, infectious agent, virus, or other physical abnormality, problem, or defect of any kind; or
- (C) termination or suspension of any drug or testing program or policy.

Section 10. {Employer protection from litigation.}

(A) No cause of action arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this Act, unless the employer's action was based on a false test result.

(B) In any claim, including a claim under this Act, where it is alleged that an employer's action was based on a false test result:

- (1) there is a rebuttable presumption that the test result was valid if the employer complied with the provisions of this Act; and
- (2) the employer is not liable for monetary damages if his or her reliance on a false test result was reasonable and in good faith.

Section 11. {Employer protection from litigation.} No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this Act, unless:

- (A) the results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee;
- (B) the information disclosed was a false test result;
- (C) the false test result was disclosed with malice; and
- (D) all elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or common law, are satisfied.

Section 12. {Employer protection from litigation.} No cause of action arises in favor of any person based upon the failure of an employer to establish a program or policy of drug or alcohol testing.

Section 13. {Confidentiality of results.} All information, interviews, reports, statements, memoranda, or test results received by the employer through a drug or alcohol testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action taken by an employer under this Act.

Section 14. {Severability clause.}

Section 15. {Repealer clause.}

Section 16. {Effective date.}

Exposed

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