The Workplace Responsibility Act

Summary

The Workplace Responsibility Act requires that employees show that their drug and alcohol use did not cause a workplace accident, and that accidents caused by drug and alcohol use are not compensable by worker’s compensation. Currently, the burden is on employers to show that drug and alcohol use caused a workplace accident, which is a nearly impossible standard to prove.

Model Legislation

Section 1. {Short Title}

The Workplace Responsibility Act

Section 2. {Legislative Declarations}

The legislature finds and declares that:

A. Because it is estimated that drug and alcohol related injuries substantially drive the costs of worker’s compensation up;

B. Due to the fact that it is nearly impossible for employers to prove that drug and alcohol use substantially contributed to a workplace injury

Section 3. {Definitions}

A. For purposes of this section “Controlled substance” means any drug proscribed by Title__, Chapter___ that the employee engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

B. “Incapacitated” means that the employee is physically unable, because of a disability, to testify at the initial compensation hearing.

C. “Initial compensation hearing” means the first formal hearing in front of an administrative law in which the administrative law judge takes formal and recorded testimony.

D. “Refuses to cooperate” means that the employee unjustifiably engages in any act or omission that impedes the ability of the employer, the insurance carrier or the agents of the employer or insurance carrier to obtain an accurate result on a drug test or an alcohol impairment test.

E. "Proximate cause" means that the injury would not have occurred if the employee had not been under the influence of alcohol per se pursuant to section__ or under the influence of a controlled substance pursuant to 49 code of federal regulations part 40.

Section 4. {Scope}

A. Every employee coming within the provisions of this chapter who is injured, and the dependents of every such employee who is killed by accident arising out of and in the course of his employment, wherever the injury occurred, unless the injury was purposely self-inflicted, shall be entitled to receive and shall be paid such compensation for loss sustained on account of the injury or death, such medical, nurse and hospital services and medicines, and such amount of funeral expenses in the event of death, as are provided by this chapter.

B. Every employee who is covered by insurance in the state compensation fund and who is injured by accident arising out of and in the course of employment, and the dependents of every such employee who is killed, provided the injury was not purposely self-inflicted, shall be paid such compensation from the state compensation fund for loss sustained on account of the injury and shall receive such medical, nurse and hospital services and medicines, and such amount of funeral expenses in event of death, as provided by this chapter.
Section 5. {Non-Compensable Injuries/Death}

A. An employee's injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter if the impairment of the employee is due to the employee's use of alcohol or the unlawful use of any controlled substance and is proximate cause of the employee's personal injury or death. This subsection does not apply if the employer had actual knowledge of and permitted, or condoned, the employee's use of alcohol or the unlawful use of the controlled substance.

B. Notwithstanding subsection C of this section, if the employer has established a policy of drug testing or alcohol impairment testing in accordance with chapter __, article __ of this title, is maintaining that policy on an ongoing manner and, before the date of the employee’s injury, the employer files the written certification with the industrial commission as required by subsection D of this section, an employee’s injury or death shall not be considered a personal injury by accident arising out of and in the course of employment and is not compensable pursuant to this chapter, if the employee of such an employer fails to pass, refuses to cooperate with or refuses to take a drug test for the unlawful use of any controlled substance or fails to pass, refuses to cooperate with or refuses to take an alcohol impairment test that is administered by or at the request of the employer not more than twenty-four hours after the employer receives actual notice of the injury, unless the employee proves any of the following:

1. The employee’s use of alcohol or the employee's use of any unlawful substance proscribed by title __, chapter ___ was not the proximate cause of the employee’s injury or death.

2. The alcohol impairment test indicates that the employee’s alcohol concentration was lower than the alcohol concentration that would constitute a violation of and would not create a presumption that the employee was under the influence of intoxicating liquor pursuant to section __.

3. The drug test or alcohol impairment test used cutoff levels for the presence of alcohol, drugs or metabolites that were lower than the cutoff levels prescribed at the time of the testing for transportation workplace drug and alcohol testing programs under 49 code of federal regulations part 40.

C. Notwithstanding Subsection B, if an employee dies or becomes incapacitated prior to the initial compensation hearing, the injury shall be compensable pursuant to this chapter unless the employer proves that the employee’s use of alcohol or the employee’s use of a controlled substance was the proximate cause of the employee’s death or injury.

D. Subsection B of this section does not apply if the employer had actual knowledge of and permitted or condoned the employee’s use of alcohol or the employee’s unlawful use of any controlled substance.

E. An employer that establishes a policy of drug testing or alcohol impairment testing in accordance with chapter __, article __ of this title shall file a written certification to that effect with the industrial commission. On or before January 15 of each year, an employer that has previously established a policy of drug testing or alcohol impairment testing and is maintaining that policy shall both file a written certification to that effect with the industrial commission and provide notification to its employees in a manner consistent with section __ that the employer is maintaining that policy.

F. Nothing contained in this section shall be construed to enhance or expand the reporting requirements prescribed in section ___.

Section 6. {Severability}

Section 7. {Effective Date}