

EMPLOYMENT LAW SUMMARY

Alaska: Drug and Alcohol Testing Laws



Because You're Different

For most private employers in Alaska, there is no state law that requires or prohibits workplace testing for drugs or alcohol. However, employers that choose to implement workplace testing programs in the state may gain protection against lawsuits if they voluntarily comply with requirements under the Alaska drug testing law. Alaska employers that conduct workplace drug testing should also consider certain provisions under the state's legalized marijuana and disability laws. This Employment Law Summary provides a general overview of the state laws that may affect employers when they test employees or applicants for drugs or alcohol in Alaska.

LEGALIZED MARIJUANA AND DISABILITY LAWS

Under the Alaska Medical Uses of Marijuana Act, certain individuals, called "registered patients" may obtain the state's permission to use marijuana for medical purposes. In addition, Alaska's Regulation of Marijuana Act allows individuals age 21 or older to use marijuana for recreational purposes in the state. Neither of these laws require employers to accommodate marijuana use in their employees' workplaces. The recreational marijuana law also specifies that it does not affect employers' rights to have policies restricting the use of marijuana by employees. In general, this means that employers in Alaska are not prohibited from taking adverse employment actions against a job applicant or employee based solely on the fact that he or she tests positive for marijuana. However, employers should be aware that the state's medical marijuana law may prohibit them from taking adverse employment actions against an individual based solely on the fact that he or she is or has applied to be a registered patient under the medical marijuana law. While the law does not provide a specific cause of action against employers, it does state that a person may not be subject to "penalty in any manner" for applying to become a registered patient. Also, employers that take adverse actions against registered patients based on their off-duty marijuana use may face complaints or lawsuits under Alaska's Human Rights Law. Under this law, employers that conduct workplace testing must ensure that their testing programs do not result in unlawful discrimination based on physical or mental disability. Alaska courts have not specifically addressed whether the Human Rights Law requires employers to accommodate off-duty medical marijuana use by employees who are registered patients.

ALASKA DRUG TESTING LAW

Alaska's drug testing law does not require any employers to conduct workplace drug or alcohol testing. Instead, it establishes guidelines that employers in the state may follow to gain protection against certain lawsuits related to testing they conduct. Specifically, an employer that satisfies all of the law's requirements may not be sued for:

- Actions taken in good faith against an individual based on a positive drug test or alcohol impairment test;
- Failure to conduct a test or to test for a specific drug or other controlled substance;
- Failure to test for or detect a specific drug or other substance; a medical condition; or a mental, emotional, or psychological disorder or condition; or
- Termination or suspension of its drug or alcohol prevention or testing program.

These protections also apply to Alaska employers that are subject to and comply with any state or federal requirements to have a workplace testing program, even if the required program is not consistent with the Alaska drug testing law.

WRITTEN POLICY REQUIREMENTS

To comply with Alaska's drug testing law, an employer must not initiate any workplace testing program until at least 30 days after it has:

- Established a written drug and alcohol testing policy;
- Notified all of its employees of its intent to implement the policy; and
- Provided a copy of its written policy to each employee subject to testing (or made the written policy available in the same manner as it informs employees of other personnel practices, such as by including it in a personnel handbook or manual or posting it in a place accessible to employees).

The law requires an employer's written policy on drug and alcohol testing to include, at minimum:

- A statement of the employer's policy respecting drug and alcohol use by employees;
- A description of the employees or prospective employees who are subject to testing;
- The circumstances under which testing may be required;
- The substances for which testing may be required;
- A description of the testing methods and collection procedures to be used, including an employee's right to a confirmatory drug test to be reviewed by a licensed physician or doctor of osteopathy after an initial positive drug test result;
- The consequences of a refusal to participate in the testing;
- Any adverse personnel action that may be taken based on the testing procedure or results;
- The right of an employee to obtain written test results from the employer within five working days after he or she submits a written request for them, as long as the request is made within six months after the test date;
- The right of an employee to explain a positive test result to the employer in a confidential setting within 72 hours after he or she submits a written request for the opportunity, as long as the request is made within 10 working days after he or she was notified of the test result; and
- A statement of the employer's policy on confidentiality of test results.

PERMITTED TESTING PURPOSES AND REQUIREMENTS

Employers may require individuals to undergo testing for any job-related purpose consistent with business necessity and the terms of the employer's written policy. These purposes may include:

- Investigating, based on reasonable suspicion, whether an employee may be impaired or affected by drug or alcohol use that adversely affects job performance or the work environment;
- Investigating workplace accidents (as long as the testing is performed as soon as practicable after an accident and is only administered to employees whom the employer reasonably believes may have contributed to it);
- Maintaining safety (as long as the testing is performed on all or part of the workforce); and
- Maintaining productivity, the quality of products or services, or security of property or information.

In addition, an employer may require its employees to undergo testing on a random basis, as long as it uses a scientifically valid method of selection that ensures all covered employees have an equal chance of being chosen for testing. Employers that conduct testing to investigate whether an employee is impaired or affected by drug or alcohol use must designate at least one employee to be responsible for determining whether reasonable suspicion exists to require an employee to undergo testing. The designated employee must receive at least 60 minutes of training on alcohol misuse and at least 60 minutes of training on the use of controlled substances.

SAMPLE COLLECTION REQUIREMENTS

Employers may require individuals to submit only urine or breath samples for testing, either or both of which may be used. Employers may also require employees and applicants to present reliable identification to the person who collects samples from them.

Employers must ensure that all sample collection is performed:

- Under reasonable and sanitary conditions; and
- In a manner that guarantees an individual's privacy to the maximum extent consistent with reasonably ensuring that his or her sample is not contaminated, adulterated or misidentified.

In addition, any person who collects samples for an employer must:

- Allow each individual to be tested to provide medical information that may be relevant to the test, including identifying current or recently used prescription and nonprescription drugs; and
- Ensure that the collection, storage and transportation of each sample is reasonably designed to avoid the possibility of sample contamination, adulteration or misidentification.

TESTING REQUIREMENTS

Under the drug testing law, samples submitted by job applicants may be tested only for drugs. Samples submitted by employees may be tested for drugs or for alcohol impairment. For employee testing, employers must schedule all tests during, or immediately before or after, a regular work period, and the time used for testing must be treated as work time for compensation and benefits. If an employee is required to undergo testing outside his or her normal work site, the employer must also reimburse him or her for reasonable transportation costs. As long as testing complies with scientifically accepted analytical methods and procedures, employers may conduct tests either:

- On-site at their employees' workplaces by a certified test administrator, using products that have been approved by the Food and Drug Administration for employee testing; or
- At a laboratory approved or certified by the Substance Abuse and Mental Health Services Administration or the College of American Pathologists, American Association of Clinical Chemists.

Employers that conduct on-site drug or alcohol testing must designate a trained and certified test administrator to:

- Complete the required sample documentation;
- Ensure that all samples collected on-site are kept in sight of those who submit them;
- Allow individuals who submit samples to observe the testing procedure and results; and
- Prepare written records of on-site test results.

Regardless of where a test is performed, all positive drug test results must be subject to confirmation by a different analytical process than the one used in the initial drug screen. An employer may not rely on a positive drug test to justify an adverse employment action unless:

In addition, the physician or osteopath that reviews the results of a confirmatory test must:

- Contact the tested individual within 48 hours to offer an opportunity to discuss the confirmatory test result;
- Interpret and evaluate the positive results for legal use; and
- Report any result caused by prescription medication as negative.

ADVERSE EMPLOYMENT ACTIONS AND RESTRICTIONS

Employers may refuse to hire a job applicant or take any adverse employment actions against an employee based on his or her:

- Refusal to provide a testing sample; or
- Positive, confirmatory test result that indicates a violation of the employer's written policy.

However, an employer may be sued for adverse employment actions it takes based on the result of a drug or alcohol impairment test if:

- The action is based on a false positive test result; and
- The employer knew or clearly should have known that the result was in error and ignored the true test result because of reckless or malicious disregard for the truth or the willful intent to deceive or be deceived.

MORE INFORMATION

For more information on Alaska's drug and alcohol testing laws, contact Heffernan Insurance Brokers or visit the Alaska Division of Public Health website.

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice. © 2019-2021 Zywave, Inc. All rights reserved.