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2 An act relating to workers' compensation;
3 amending s. 440.09, F.S.; providing a standard
4 for rebutting a presumption that an employee's
5 injury was caused by intoxication or influence
6 of drugs; providing an effective date.

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8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Subsection (7) of section 440.09, Florida
11 Statutes, is amended to read:

12 440.09 Coverage.--

13 (7)(a) To ensure that the workplace is a drug-free
14 environment and to deter the use of drugs and alcohol at the
15 workplace, if the employer has reason to suspect that the
16 injury was occasioned primarily by the intoxication of the
17 employee or by the use of any drug, as defined in this
18 chapter, which affected the employee to the extent that the
19 employee's normal faculties were impaired, and the employer
20 has not implemented a drug-free workplace pursuant to ss.
21 440.101 and 440.102, the employer may require the employee to
22 submit to a test for the presence of any or all drugs or
23 alcohol in his or her system.

24 (b) If the employee has, at the time of the injury, a
25 blood alcohol level equal to or greater than the level
26 specified in s. 316.193, or if the employee has a positive
27 confirmation of a drug as defined in this act, it is presumed
28 that the injury was occasioned primarily by the intoxication
29 of, or by the influence of the drug upon, the employee. If the
30 employer has implemented a drug-free workplace, this
31 presumption may be rebutted only by evidence that there is no

1 reasonable hypothesis that the intoxication or drug influence
2 contributed to the injury.In the absence of a drug-free
3 workplace program, this presumption may be rebutted by clear
4 and convincing evidence that the intoxication or influence of
5 the drug did not contribute to the injury. Percent by weight
6 of alcohol in the blood must be based upon grams of alcohol
7 per 100 milliliters of blood. If the results are positive, the
8 testing facility must maintain the specimen for a minimum of
9 90 days. Blood serum may be used for testing purposes under
10 this chapter; however, if this test is used, the presumptions
11 under this section do not arise unless the blood alcohol level
12 is proved to be medically and scientifically equivalent to or
13 greater than the comparable blood alcohol level that would
14 have been obtained if the test were based on percent by weight
15 of alcohol in the blood. However, if, before the accident, the
16 employer had actual knowledge of and expressly acquiesced in
17 the employee's presence at the workplace while under the
18 influence of such alcohol or drug, the presumptions specified
19 in this subsection do not apply.

20 (c) If the injured worker refuses to submit to a drug
21 test, it shall be presumed in the absence of clear and
22 convincing evidence to the contrary that the injury was
23 occasioned primarily by the influence of drugs.

24 (d) The division shall provide by rule for the
25 authorization and regulation of drug-testing policies,
26 procedures, and methods. Testing of injured employees shall
27 not commence until such rules are adopted.

28 Section 2. This act shall take effect July 1, 1998 and
29 shall apply to any cause of action or petition for benefits
30 filed on or after that date.

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