

HB 771

2016

1 A bill to be entitled
2 An act relating to drug-free workplaces; amending s.
3 440.102, F.S.; revising definitions; revising the
4 contents of an employer policy statement with respect
5 to employee drug use; revising the frequency of
6 followup testing; revising specimen collection,
7 verification, and documentation procedures; revising
8 requirements for confirmation testing; revising
9 minimum requirements for laboratory reports of a drug
10 test result; providing an effective date.

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

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14 Section 1. Paragraphs (c), (e), and (q) of subsection (1),
15 paragraph (a) of subsection (3), paragraph (a) of subsection
16 (4), paragraphs (b) through (l) of subsection (5), subsection
17 (6), paragraph (a) of subsection (7), and paragraph (c) of
18 subsection (9) of section 440.102, Florida Statutes, are amended
19 to read:

20 440.102 Drug-free workplace program requirements.—The
21 following provisions apply to a drug-free workplace program
22 implemented pursuant to law or to rules adopted by the Agency
23 for Health Care Administration:

24 (1) DEFINITIONS.—Except where the context otherwise
25 requires, as used in this act:

26 (c) "Drug" means any form of alcohol, as defined in s.

27 322.01(2), including a distilled spirit, wine, a malt beverage,
 28 ~~or~~ an intoxicating preparation, or any controlled substance
 29 identified under Schedule I, Schedule II, Schedule III, Schedule
 30 IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s.
 31 812(c) liquor; an amphetamine; a cannabinoid; cocaine;
 32 phencyclidine (PCP); a hallucinogen; methaqualone; an opiate; a
 33 barbiturate; a benzodiazepine; a synthetic narcotic; a designer
 34 drug; or a metabolite of any of the substances listed in this
 35 paragraph. An employer may test an individual for any or all of
 36 such drugs.

37 (e) "Drug test" or "test" means any chemical, biological,
 38 or physical instrumental analysis administered, by a laboratory
 39 certified by the United States Department of Health and Human
 40 Services or licensed by the Agency for Health Care
 41 Administration, for the purpose of determining the presence or
 42 absence of a drug or its metabolites. In the case of testing for
 43 the presence of alcohol, the test shall be conducted in
 44 accordance with United States Department of Transportation
 45 alcohol testing procedures authorized under 49 C.F.R. part 40,
 46 subparts J through M.

47 (q) "Specimen" means tissue, hair, or a product of the
 48 human body capable of revealing the presence of drugs or their
 49 metabolites, as approved by the United States Food and Drug
 50 Administration, ~~or~~ the Agency for Health Care Administration,
 51 the United States Department of Health and Human Services, or
 52 the United States Department of Transportation.

53 (3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—
 54 (a) One time only, before ~~prior to~~ testing, an employer
 55 shall give all employees and job applicants for employment a
 56 written policy statement that ~~which~~ contains:
 57 1. A general statement of the employer's policy on
 58 employee drug use, which must identify:
 59 a. The types of drug testing an employee or job applicant
 60 may be required to submit to, including reasonable-suspicion
 61 drug testing or drug testing conducted on any other basis.
 62 b. The actions the employer may take against an employee
 63 or job applicant on the basis of a positive confirmed drug test
 64 result.
 65 2. A statement advising the employee or job applicant of
 66 the existence of this section.
 67 3. A general statement concerning confidentiality.
 68 4. Procedures for employees and job applicants to
 69 confidentially report to a medical review officer the use of
 70 prescription or nonprescription medications ~~to a medical review~~
 71 ~~officer both before and after being tested.~~
 72 5. A list of the most common medications, by brand name or
 73 common name, as applicable, as well as by chemical name, which
 74 may alter or affect a drug test. A list of such medications as
 75 developed by the Agency for Health Care Administration shall be
 76 available to employers through the department.
 77 6. The consequences of refusing to submit to a drug test.
 78 7. A representative sampling of names, addresses, and

79 telephone numbers of employee assistance programs and local drug
80 rehabilitation programs.

81 8. A statement that an employee or job applicant who
82 receives a positive confirmed test result may contest or explain
83 the result to the medical review officer within 5 working days
84 after receiving ~~written~~ notification of the test result; that if
85 an employee's or job applicant's explanation or challenge is
86 unsatisfactory to the medical review officer, the medical review
87 officer shall report a positive test result back to the
88 employer; and that a person may contest the drug test result
89 pursuant to law or to rules adopted by the Agency for Health
90 Care Administration.

91 9. A statement informing the employee or job applicant of
92 his or her responsibility to notify the laboratory of any
93 administrative or civil action brought pursuant to this section.

94 10. A list of all drugs for which the employer will test,
95 described by ~~brand name or~~ common name, as applicable, as well
96 as by chemical name.

97 11. A statement regarding any applicable collective
98 bargaining agreement or contract and the right to appeal to the
99 Public Employees Relations Commission or applicable court.

100 12. A statement notifying employees and job applicants of
101 their right to consult with a medical review officer for
102 technical information regarding prescription or nonprescription
103 medication.

104 (4) TYPES OF TESTING.—

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105 (a) An employer is required to conduct the following types
106 of drug tests:

107 1. Job applicant drug testing.—An employer must require
108 job applicants to submit to a drug test and may use a refusal to
109 submit to a drug test or a positive confirmed drug test as a
110 basis for refusing to hire a job applicant.

111 2. Reasonable-suspicion drug testing.—An employer must
112 require an employee to submit to reasonable-suspicion drug
113 testing.

114 3. Routine fitness-for-duty drug testing.—An employer must
115 require an employee to submit to a drug test if the test is
116 conducted as part of a routinely scheduled employee fitness-for-
117 duty medical examination that is part of the employer's
118 established policy or that is scheduled routinely for all
119 members of an employment classification or group.

120 4. Followup drug testing.—If the employee in the course of
121 employment enters an employee assistance program for drug-
122 related problems, or a drug rehabilitation program, the employer
123 must require the employee to submit to a drug test as a followup
124 to such program, unless the employee voluntarily entered the
125 program. In those cases, the employer has the option to not
126 require followup testing. If followup testing is required, it
127 must be conducted at least six times in the first year, and the
128 period for followup testing may be extended for up to 5 years
129 ~~once a year for a 2-year period~~ after completion of the program.
130 Advance notice of a followup testing date must not be given to

131 the employee to be tested.

132 (5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen
133 collection and testing for drugs under this section shall be
134 performed in accordance with the following procedures:

135 (b) Specimen collection must be documented, and the
136 documentation procedures shall include the:

137 ~~1.~~ labeling of specimen containers so as to reasonably
138 preclude the likelihood of erroneous identification of test
139 results. For saliva or breath alcohol testing, a specimen
140 container is not required if the specimen is not being
141 transported to a laboratory for analysis.

142 ~~2. A form for the employee or job applicant to provide any~~
143 ~~information he or she considers relevant to the test, including~~
144 ~~identification of currently or recently used prescription or~~
145 ~~nonprescription medication or other relevant medical~~
146 ~~information. The form must provide notice of the most common~~
147 ~~medications by brand name or common name, as applicable, as well~~
148 ~~as by chemical name, which may alter or affect a drug test. The~~
149 ~~providing of information shall not preclude the administration~~
150 ~~of the drug test, but shall be taken into account in~~
151 ~~interpreting any positive confirmed test result.~~

152 (c) Specimen collection, storage, and transportation to a
153 laboratory ~~the testing site~~ shall be performed in a manner that
154 reasonably precludes contamination or adulteration of specimens.

155 ~~(d) Each confirmation test conducted under this section,~~
156 ~~not including the taking or collecting of a specimen to be~~

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157 ~~tested, shall be conducted by a licensed or certified laboratory~~
158 ~~as described in subsection (9).~~

159 (d)~~(e)~~ A specimen for a drug test may be taken or
160 collected by any person who meets the qualification standards
161 for urine or oral fluid specimen collection as specified by the
162 United States Department of Health and Human Services or the
163 United States Department of Transportation. For alcohol testing,
164 a person must meet the United States Department of
165 Transportation standards for a screening test technician or a
166 breath alcohol technician. A hair specimen may be collected and
167 packaged by a person who has been trained and certified by a
168 drug testing laboratory. A person who directly supervises an
169 employee subject to testing may not serve as the specimen
170 collector for that employee unless there is no other qualified
171 specimen collector available. ~~of the following persons:~~

172 1. ~~A physician, a physician assistant, a registered~~
173 ~~professional nurse, a licensed practical nurse, or a nurse~~
174 ~~practitioner or a certified paramedic who is present at the~~
175 ~~scene of an accident for the purpose of rendering emergency~~
176 ~~medical service or treatment.~~

177 2. ~~A qualified person employed by a licensed or certified~~
178 ~~laboratory as described in subsection (9).~~

179 (e)~~(f)~~ A person who collects or takes a specimen for a
180 drug test shall collect an amount sufficient for two independent
181 drug tests, one to screen the specimen and one for confirmation
182 of the screening results, at a laboratory as determined by the

183 Agency for Health Care Administration.

184 ~~(f)(g)~~ Every specimen that produces a positive, confirmed
185 test result shall be preserved by the licensed or certified
186 laboratory that conducted the confirmation test for a period of
187 at least 1 year after the confirmation test was conducted. A
188 specimen may be retained after the 1-year period if there is an
189 ongoing administrative or legal challenge to the test result ~~210~~
190 ~~days after the result of the test was mailed or otherwise~~
191 ~~delivered to the medical review officer. However, if an employee~~
192 ~~or job applicant undertakes an administrative or legal challenge~~
193 ~~to the test result, the employee or job applicant shall notify~~
194 ~~the laboratory and the sample shall be retained by the~~
195 ~~laboratory until the case or administrative appeal is settled.~~
196 During the 5-day ~~180-day~~ period after written notification of a
197 positive test result, the employee or job applicant who has
198 provided the specimen shall be permitted by the employer to have
199 a portion of the specimen retested, at the employee's or job
200 applicant's expense, at another laboratory, licensed and
201 approved by the Agency for Health Care Administration, chosen by
202 the employee or job applicant. The second laboratory must test
203 the specimen at the limit of detection for the analyte confirmed
204 by the original ~~at equal or greater sensitivity for the drug in~~
205 ~~question as the first~~ laboratory. If the analyte is detected by
206 the second laboratory, the result shall be reported as
207 reconfirmed positive. The first laboratory that performed the
208 test for the employer is responsible for the transfer of the

209 portion of the specimen to be retested, and for the integrity of
210 the chain of custody during such transfer.

211 (g)~~(h)~~ Within 5 working days after receipt of a positive
212 verified~~confirmed~~ test result from the medical review officer,
213 an employer shall inform an employee or job applicant in writing
214 of such positive test result, the consequences of such results,
215 and the options available to the employee or job applicant. The
216 employer shall provide to the employee or job applicant, upon
217 request, a copy of the test results.

218 ~~(i) Within 5 working days after receiving notice of a~~
219 ~~positive confirmed test result, an employee or job applicant may~~
220 ~~submit information to the employer explaining or contesting the~~
221 ~~test result, and explaining why the result does not constitute a~~
222 ~~violation of the employer's policy.~~

223 (h)~~(j)~~ ~~The employee's or job applicant's explanation or~~
224 ~~challenge of the positive test result is unsatisfactory to the~~
225 ~~employer, a written explanation as to why the employee's or job~~
226 ~~applicant's explanation is unsatisfactory, along with the report~~
227 ~~of positive result, shall be provided by the employer to the~~
228 ~~employee or job applicant; and All such documentation of a~~
229 positive test shall be kept confidential by the employer
230 pursuant to subsection (8) and shall be retained by the employer
231 for at least 1 year.

232 (i)~~(k)~~ An employer may not discharge, discipline, refuse
233 to hire, discriminate against, or request or require
234 rehabilitation of an employee or job applicant on the sole basis

235 of a positive test result that has not been reviewed and
236 verified by a confirmation test and by a medical review officer,
237 except when a confirmed positive breath alcohol test was
238 conducted in accordance with United States Department of
239 Transportation alcohol testing procedures.

240 (j)(1) An employer that performs drug testing or specimen
241 collection shall use chain-of-custody procedures established by
242 the Agency for Health Care Administration, the United States
243 Department of Health and Human Services, or the United States
244 Department of Transportation to ensure proper recordkeeping,
245 handling, labeling, and identification of all specimens tested.

246 (6) CONFIRMATION TESTING.—

247 ~~(a) If an initial drug test is negative, the employer may~~
248 ~~in its sole discretion seek a confirmation test.~~

249 ~~(b) Only licensed or certified laboratories as described~~
250 ~~in subsection (9) may conduct confirmation drug tests.~~

251 (a)(e) All laboratory positive initial tests on a urine,
252 oral fluid, blood, or hair specimen shall be confirmed using gas
253 chromatography/mass spectrometry (GC/MS) or an equivalent or
254 more accurate scientifically accepted method approved by the
255 United States Department of Health and Human Services or the
256 United States Department of Transportation Agency for Health
257 Care Administration or the United States Food and Drug
258 Administration as such technology becomes available in a cost-
259 effective form.

260 (b)(d) If a ~~an initial~~ drug test of an employee or job

261 applicant is confirmed by the laboratory as positive, the
 262 employer's medical review officer shall provide technical
 263 assistance to the employer and to the employee or job applicant
 264 for the purpose of interpreting the test result to determine
 265 whether the result could have been caused by prescription or
 266 nonprescription medication taken by the employee or job
 267 applicant.

268 (c) For a breath alcohol test, an initial positive result
 269 shall be confirmed by a second breath specimen taken and tested
 270 using an evidential breath testing device listed on the
 271 conforming products list issued by the National Highway Traffic
 272 Safety Administration and conducted in accordance with United
 273 States Department of Transportation alcohol testing procedures
 274 authorized under 49 C.F.R. part 40, subparts J through M.

275 (7) EMPLOYER PROTECTION.—

276 (a) An employee or job applicant whose drug test result is
 277 confirmed or verified as positive in accordance with this
 278 section shall not, by virtue of the result alone, be deemed to
 279 have a "handicap" or "disability" as defined under federal,
 280 state, or local handicap and disability discrimination laws.

281 (9) DRUG-TESTING STANDARDS FOR LABORATORIES.—

282 (c) A laboratory shall disclose to the medical review
 283 officer a written positive confirmed test result report within 7
 284 working days after receipt of the sample. All laboratory reports
 285 of a drug test result must, at a minimum, state:

286 1. The name and address of the laboratory that performed

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287 the test and the positive identification of the person tested.

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

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

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

294 ~~5. Any correlation between medication reported by the
295 employee or job applicant pursuant to subparagraph (5)(b)2. and
296 a positive confirmed drug test result.~~

297

298 A report must not disclose the presence or absence of any drug
299 other than a specific drug and its metabolites listed pursuant
300 to this section.

301 Section 2. This act shall take effect July 1, 2016.