

The following Labor & Employment news may be of interest to you in your business and is provided as a bulletin for our clients and friends from the attorneys in the Hall Estill Labor & Employment practice group. Should you have any concerns, questions, or assistance relating to the topics in this update or any other matter, please contact any one of our attorneys.

The last Oklahoma legislative session made two important changes to the Oklahoma Standards for Workplace Drug and Alcohol Testing Act. As a result of these recent changes, employers who perform drug and alcohol testing and have a drug and alcohol testing policy should consider implementing changes to their current policies and practices.

First, the Oklahoma legislature adopted a comprehensive workers' compensation reform package, which, in part, amended the circumstances under which an employer may require an employee to submit to **post-accident testing**. The law previously required that an employer have a reasonable suspicion that the employee or another person sustained a work-related injury or the employer's property was damaged as a direct result of the employee's use of drugs or alcohol, including damage to equipment, in an amount reasonably estimated at the time of the accident to exceed \$500.00. The Oklahoma legislature has amended this language, making it easier for employers to conduct post-accident testing. The new law does not require that the employer have a reasonable suspicion that the injury or property damage was a direct result of the employee's use of drugs or alcohol – only that the employee or another person sustained a work-related injury or the employer's property was damaged in excess of \$500.00.

Consequently, based upon this change, companies with existing drug and alcohol testing programs and policies should seriously consider revising the provisions relating to Employee Accident Testing to read as follows:

Employee Accident Testing – the Company may require an employee to undergo drug or alcohol testing if the employee or another person has sustained a work-related injury or the employer's property has been damaged, including damage to equipment, in an amount reasonably estimated at the time of the accident to exceed Five Hundred Dollars (\$500.00). For purposes of workers' compensation or unemployment compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals shall be eligible for such compensation unless the employee proves by a preponderance of the evidence that the substances, alcohol, illegal drugs, or illegally used chemicals were not the proximate cause of the injury or accident.

Remember that Oklahoma law requires that employers provide employees with 30 days notice of any amendments to their drug and alcohol testing policy. Employers must also post a copy of the policy and any changes in a prominent employee access area, as well as give a copy of the policy and any changes to each employee.

Next, the Oklahoma legislature enrolled two bills that affect employers who use **on-site drug screening tests**. Due to the complex nature of these bills, employers who utilize on-site drug screening tests are advised to consult with their attorneys or drug testing service providers in order to determine whether the new enactments will affect current on-site testing procedures. Of course, the employment lawyers at Hall, Estill are always willing to assist employers desiring additional information on these amendments.

For more information about any Labor & Employment law topic,
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