

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SENATE BILL 1402

By: Barrington

4
5 AS INTRODUCED

6 An Act relating to labor; amending 40 O.S. 2001,
7 Section 554, as amended by Section 4, Chapter 1, 1st
8 Extraordinary Session, O.S.L. 2005 (40 O.S. Supp.
9 2007, Section 554), which relates to drug or alcohol
10 testing; modifying list of public entities which may
perform random or routine drug or alcohol testing in
specified circumstances; and providing an effective
date.

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12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 40 O.S. 2001, Section 554, as
14 amended by Section 4, Chapter 1, 1st Extraordinary Session, O.S.L.
15 2005 (40 O.S. Supp. 2007, Section 554), is amended to read as
16 follows:

17 Section 554. Employers who choose to conduct drug or alcohol
18 testing may only request or require an applicant or employee to
19 undergo testing under the following circumstances:

20 1. Applicant testing: A public or private employer may request
21 or require a job applicant, upon a conditional offer of employment,
22 to undergo drug or alcohol testing and may use a refusal to undergo
23 testing or a confirmed positive test result as a basis for refusal
24 to hire, provided that such testing does not violate the provisions

1 of the Americans with Disabilities Act of 1990, 42 U.S.C., Section
2 12101 et seq., and provided that such testing is required for all
3 applicants who have received a conditional offer of employment for a
4 particular employment classification;

5 2. Reasonable suspicion testing: A public or private employer
6 may request or require an employee to undergo drug or alcohol
7 testing if the employer has a reasonable suspicion that the employee
8 has violated the employer's written policy;

9 3. Post-accident testing: A public or private employer may
10 require an employee to undergo drug or alcohol testing if the
11 employee or another person has sustained a work-related injury or
12 the employer's property has been damaged, including damage to
13 equipment, in an amount reasonably estimated at the time of the
14 accident to exceed Five Hundred Dollars (\$500.00). For purposes of
15 workers' compensation or unemployment compensation, no employee who
16 tests positive for the presence of substances defined and consumed
17 pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes,
18 alcohol, illegal drugs, or illegally used chemicals shall be
19 eligible for such compensation unless the employee proves by a
20 preponderance of the evidence that the substances, alcohol, illegal
21 drugs, or illegally used chemicals were not the proximate cause of
22 the injury or accident;

23 4. Random testing: A public or private employer may request or
24 require an employee to undergo drug or alcohol testing on a random

1 selection basis, except that a public employer may require random
2 testing only of employees who:

- 3 a. are police or peace officers,
- 4 b. have drug interdiction responsibilities,
- 5 c. are authorized to carry firearms,
- 6 d. are engaged in activities which directly affect the
7 safety of others, or

8 e. work in direct contact with:

9 (1) inmates in the custody of the Department of
10 Corrections ~~or work in direct contact with,~~

11 (2) juvenile delinquents or children in need of
12 supervision in the custody of the Department of
13 Human Services, or

14 (3) juvenile delinquents, youthful offenders or
15 children in need of supervision in the custody of
16 the Office of Juvenile Affairs;

17 5. Scheduled, periodic testing: A public or private employer
18 may request or require an employee to undergo drug or alcohol
19 testing if the test is conducted as a routine part of a routinely
20 scheduled employee fitness-for-duty medical examination or is
21 scheduled routinely for all members of an employment classification
22 or group and which is part of the employer's written policy, except
23 that a public employer may require scheduled, periodic testing only
24 of employees who:

- 1 a. are police or peace officers,
2 b. have drug interdiction responsibilities,
3 c. are authorized to carry firearms,
4 d. are engaged in activities which directly affect the
5 safety of others, or
6 e. work in direct contact with:
7 (1) inmates in the custody of the Department of
8 Corrections ~~or work in direct contact with,~~
9 (2) juvenile delinquents or children in need of
10 supervision in the custody of the Department of
11 Human Services, or
12 (3) juvenile delinquents, youthful offenders or
13 children in need of supervision in the custody of
14 the Office of Juvenile Affairs; and

15 6. Post-rehabilitation testing: A public or private employer
16 may request or require an employee to undergo drug or alcohol
17 testing without prior notice for a period of up to two (2) years
18 commencing with the employee's return to work, following a confirmed
19 positive test or following participation in a drug or alcohol
20 dependency treatment program under an employee benefit plan or at
21 the request of the employer.

22 SECTION 2. This act shall become effective November 1, 2008.
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