

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 SENATE BILL 1209

By: Allen

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Employment Security
8 Commission; amending 40 O.S. 2011, Section 2-406.1,
9 which relates to denial of unemployment benefits for
10 certain misconduct; permitting only written drug and
11 alcohol test results with chain of custody record as
12 evidence; amending 40 O.S. 2011, Sections 557, 560
13 and 562, which relate to alternative testing methods,
14 disclosure of employer drug and alcohol test results
15 and disciplinary actions; modifying language;
16 requiring confirmation test for grounds to discharge
17 employee after positive alternative test results;
18 requiring written release for disclosure of certain
19 records; stating when chain of custody records begin
20 and end; requiring chain of custody record be kept
21 with test result; directing retention of certain
22 records for customary retention period; permitting
23 introduction of evidence of drug and alcohol test
24 results in certain proceedings; requiring employer to
submit certain proof of certain employee misconduct;
providing an effective date; and declaring an
emergency.

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

SECTION 1. AMENDATORY 40 O.S. 2011, Section 2-406.1, is
amended to read as follows:

Section 2-406.1. A. An employee discharged on the basis of a
refusal to undergo drug or alcohol testing or a confirmed positive

1 drug or alcohol test conducted in accordance with the provisions of
2 the Standards for Workplace Drug and Alcohol Testing Act shall be
3 considered to have been discharged for misconduct and shall be
4 disqualified for benefits pursuant to the provisions of Section 2-
5 406 of this title.

6 B. In any claim brought by the discharged employee for
7 compensation, a copy of the drug or alcohol test shall be accepted
8 as prima facie evidence of the administration and results of the
9 drug or alcohol test. Only written drug or alcohol test results
10 shall be acceptable for presentation as evidence with the chain of
11 custody of the sample properly documented.

12 SECTION 2. AMENDATORY 40 O.S. 2011, Section 557, is
13 amended to read as follows:

14 Section 557. A. The State Board of Health shall have the power
15 and duty to promulgate, prescribe, amend and repeal rules for the
16 licensure and regulation of testing facilities, which shall include,
17 but not be limited to, the following:

18 1. Qualifications of testing facilities which shall include the
19 requirement that facilities doing urine analysis tests be certified
20 for forensic urine drug testing pursuant to guidelines or
21 regulations of the federal Department of Health and Human Services
22 or be accredited for forensic urine drug testing by the College of
23 American Pathologists or other organizations recognized by the State
24 Board of Health;

1 2. Qualifications of testing facility personnel; and

2 3. Procedures for the testing facility to provide the necessary
3 documentation of testing procedures and test results to the employer
4 requesting testing services as may be required by a court or
5 administrative proceeding.

6 B. Nothing in the Standards for Workplace Drug and Alcohol
7 Testing Act shall be construed as prohibiting an employer from
8 adopting a policy which allows for testing for drugs or alcohol by
9 another method which is reasonably calculated to detect the presence
10 of drugs or alcohol, including, but not limited to, breathalyzer
11 testing, testing by use of a single-use test device, known as an on-
12 site or quick testing device, to collect, handle, store and ship a
13 sample collected for testing. Provided, however, a breathalyzer
14 test result or single-use test result shall not be grounds for
15 immediate termination of an employee absent a confirmation test, as
16 defined in Section 552 of this title, of the original sample tested.

17 SECTION 3. AMENDATORY 40 O.S. 2011, Section 560, is
18 amended to read as follows:

19 Section 560. A. Records of all drug and alcohol test results
20 and related information maintained by the employer shall be the
21 property of the employer and, upon the request of the applicant or
22 employee tested, shall be made available for inspection and copying
23 to the applicant or employee. ~~An~~ Except as provided in subsection B
24 of this section, an employer shall not release such records to any

1 person other than the applicant, employee or the employer's review
2 officer, unless the applicant or employee, in writing following
3 receipt of the test results, has expressly granted permission for
4 the employer to release ~~such~~ the records in order to comply with a
5 valid judicial or administrative order. A written record of the
6 chain of custody of the sample shall be ~~maintained from~~ started at
7 the time of the collection of the sample and continued until the
8 sample is no longer required. The written record of the chain of
9 custody shall be kept with or attached to the document of a positive
10 drug test of an individual and retained in the employer's permanent
11 records for the duration of the employer's customary records
12 retention period.

13 B. Records of all drug and alcohol test results may be
14 introduced as evidence by an employer or individual tested in a case
15 or proceedings before a court of record or administrative agency of
16 this state if the employer and the individual tested are both named
17 parties in the case or proceeding.

18 C. 1. A testing facility, or any agent, representative or
19 designee of the facility, or any review officer, shall not disclose
20 to any employer, based on the analysis of a sample collected from an
21 applicant or employee for the purpose of testing for the presence of
22 drugs or alcohol, any information relating to the general health,
23 pregnancy or other physical or mental condition of the applicant or
24 employee.

1 2. A testing facility shall release the results of the drug or
2 alcohol test, and any analysis and information related thereto, to
3 the individual tested upon request.

4 SECTION 4. AMENDATORY 40 O.S. 2011, Section 562, is
5 amended to read as follows:

6 Section 562. A. An employer's policy shall state the
7 disciplinary actions that may be taken upon a refusal to undergo a
8 drug or alcohol test or for a positive test for the presence of
9 drugs or alcohol.

10 B. An employer may take disciplinary action, up to and
11 including discharge, against an employee who refuses to undergo drug
12 or alcohol testing conducted in accordance with the provisions of
13 ~~Section 551 et seq. of this title~~ the Standards for Workplace Drug
14 and Alcohol Testing Act or who tests positive for the presence of
15 drugs or alcohol.

16 C. An employee discharged on the basis of a refusal to undergo
17 drug or alcohol testing or a positive drug or alcohol test shall be
18 considered to have been discharged for misconduct for purposes of
19 unemployment compensation benefits as provided for in Section ~~2-406A~~
20 2-406.1 of this title. In order to prove misconduct, the employer
21 ~~need only~~ must provide proof of a written testing policy and either
22 a refusal to take a drug or alcohol test or a positive test result.
23 In addition, if a positive test result is the basis for the
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1 discharge, the employer must submit a written record of the chain of
2 custody of the sample.

3 D. Notwithstanding any provision of law for confidentiality of
4 drug or alcohol testing results, nothing in the Standards for
5 Workplace Drug and Alcohol Testing Act shall preclude an employer,
6 contracting with another employer, from sharing drug or alcohol
7 testing results of any tested person who works pursuant to such
8 contractual agreement.

9 SECTION 5. This act shall become effective July 1, 2012.

10 SECTION 6. It being immediately necessary for the preservation
11 of the public peace, health and safety, an emergency is hereby
12 declared to exist, by reason whereof this act shall take effect and
13 be in full force from and after its passage and approval.

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