

FLORIDA

Workers' Compensation Law

Law applies to a Drug Free Workplace Program.

Statutory Summary: Medical and indemnity benefits are forfeited, and an employee may be discharged, if he or she tests positive for alcohol or a prohibited drug, or refuses a test, provided that the employer has in place a program in compliance with the Workers' Compensation Premium Reduction Act, below. FLA. STAT. ANN. 440.101 (West Supp. 2000)

If an employer does not have a state-certified testing program in place, an injured employee's confirmed positive test or refusal to test creates a rebuttable presumption that the injury was caused primarily by the impairment of the employee. FLA. STAT. ANN. 440.09 (West Supp. 2000).

VOLUNTARY Law Affecting Drug and Alcohol Testing:

Workers' Compensation Premium Reduction Act

Employer Benefit of Compliance The voluntary law provides a discount on workers' compensation premiums to employers who implement and maintain a certified drug-free workplace program (including drug and alcohol testing) in compliance with the Act, and also provide that a confirmed positive test conducted pursuant to the Act creates a rebuttable presumption that the employee should be disqualified from receiving benefits. Certification is required annually.

Types of Testing

Restrictions

<i>All</i>	If an employer conducts drug or alcohol testing of employees, all employee classifications must be included in the policy.
<i>Preemployment</i>	<i>Required.</i> A positive confirmed test or refusal to submit to a test is a valid basis for refusing to hire an applicant.
<i>Random</i>	Permitted, but not required.
<i>For-Cause</i> writing that employee	<i>Required</i> and defined broadly. The employer must detail in the circumstances which formed the basis of the determination reasonable suspicion existed. A copy must be given to the employee upon request.
<i>Periodic Announced</i> employer's	<i>Required</i> if the test is conducted as part of a routinely scheduled fitness-for-duty medical examination which is part of the established policy or is routinely required for all employees in a particular employment classification.

Post-Accident
contributed to

workplace

test

primarily

any

the test

provisions

Rehabilitation
drug-or-

Testing Procedures

Written Policy
days

Required if an employee is believed to have caused or the accident. If an employer has not adopted a drug-free program, an employer may ask an employee to submit to a drug test if it has reason to suspect that an industrial accident was occasioned by the intoxication of the employee or by the use of drug. If the test is positive, benefits will be denied so long as is conducted pursuant to the workers' compensation testing provided as part of the drug-free workplace program.

Required for up to two years as follow-up treatment based on alcohol-abuse problems or a positive test result.

Specific Requirements

A copy of the written policy must be provided to employees 60

prior to implementation. The policy must include:

- (1) a general policy statement regarding drug use
- (2) the types of testing and actions the employer may take based on
 - a confirmed positive test result
- (3) a statement regarding the existence of the Act
- (4) a confidentiality statement
- (5) a statement explaining the procedures for confidentially reporting
 - the use of prescription or nonprescription medications
- both
 - prior to and following a drug test
- (6) a list of drugs by common name that may alter or affect a drug test
- (7) a statement explaining the availability of any EAP or other means
 - of assistance, including names, addresses and phone numbers
- (8) procedures for employees to contest or explain a positive test result
- (9) the consequences of refusing to submit to a test
- (10) a statement informing the employee of his or her responsibility to
 - notify the laboratory of administrative or civil actions
- (11) a list of drugs for which the employer will test
- (12) a statement informing employees of their rights under any applicable collective bargaining agreements, and
- (13) a statement notifying employees and applicants of their rights to consult with the laboratory for technical information

In addition, a notice of testing must:
(1) accompany vacancy announcements
(2) be posted in a conspicuous location
(3) be provided upon request

Cost of Tests
required

An employer must pay the costs of all drug and alcohol tests of employees.

On-Site Testing

Prohibited.

Laboratory

employers,
any

Only laboratories licensed and approved by Florida's Agency for Health Care Administration may perform initial and confirmation tests. Laboratories must provide technical assistance to

employees, and job applicants for the purpose of interpreting

positive confirmed test results that could have been caused by prescription or nonprescription medications. Detailed laboratory proficiency requirements for hair testing are included in the

statute.

Appropriate Specimens

Urine, blood, hair, and other body specimens.

Collection

an

approved

a form

drug

Detailed

All samples must be collected by: (1) a physician, a physician's assistant, registered professional nurse, licensed practical nurse, nurse practitioner, or certified paramedic present at the scene of

accident; or (2) a laboratory-qualified person at a laboratory-

collection site. The employer must provide each employee with

to confidentially list information which may be relevant to the

test, including prescription or nonprescription medications.

chain-of-custody procedures are included in the statute.

Confirmatory Test

another

All positive initial drug tests must be confirmed by GC/MS, or

comparably reliable method.

Medical Review Officer

Required. All confirmed positive test results must be verified.

Results

positive

Within five working days of receiving notice of a confirmed

test result from the laboratory, the employer must inform the job applicant or employee in writing of the test result,

consequences, and

options available.

Opportunity to Re-Test

Within 180 days of receiving written notification of a positive test

or her

result, the job applicant or employee may request a re-test at his own expense.

Opportunity to Rebut
result,

explan-
the

Within five days of receiving notice of a confirmed positive test an employee must be given the opportunity to submit a written explanation contesting the test result. The employer must then notify employee within five days if the explanation was unsatisfactory.

Confidentiality
pro-

evidence,

competent
related

All information received by the employer as a result of its testing program is considered confidential, and may not be received in obtained in discovery, or disclosed in any civil or administrative proceeding. Information can be released without the employee's consent only if compelled by a hearing officer or a court of jurisdiction or deemed appropriate by a licensing board in a disciplinary proceeding.

Remedies

Civil Remedies--
Administrative

An employee or job applicant may contest a drug-test result.

Citations

FLA. ADMIN. CODE ANN. R. 38F-9.015 and r. 59A-24 (West 1993); FLA. STAT. ANN. 440.101 to .102 (West Supp. 2000).

Source: Guide to State and Federal Drug-Testing Laws, Tenth Edition. A publication of the Institute for a Drug-Free Workplace.