
SENATE BILL 5516

State of Washington

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By Senators Owen, Prentice, Deccio, Palmer, Sutherland, McDonald, Rinehart, Haugen, Sheldon, Heavey, Fraser, Franklin, Bauer, Roach and Rasmussen

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1 AN ACT Relating to providing for drug-free workplaces; adding a new
2 chapter to Title 49 RCW; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
5 promote drug-free workplaces in order that employers in this state be
6 afforded the opportunity to maximize their levels of productivity,
7 enhance their competitive positions in the marketplace, and reach their
8 desired levels of success without experiencing the costs, delays, and
9 tragedies associated with work-related accidents resulting from
10 substance abuse by employees.

11 NEW SECTION. **Sec. 2.** Unless the context clearly requires
12 otherwise, the definitions in this section apply throughout this
13 chapter.

14 (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or
15 spirits of wine, from whatever source or by whatever process produced.

16 (2) "Chain of custody" means the methodology of tracking specified
17 materials, specimens, or substances for the purpose of maintaining
18 control and accountability from initial collection to final disposition

1 for all such materials, specimens, or substances and providing for
2 accountability at each stage in handling, testing, and storing
3 materials, specimens, or substances and reporting test results.

4 (3) "Collection site" means a place where individuals present
5 themselves for the purpose of providing a urine or breath specimen to
6 be analyzed for the presence of drugs or alcohol.

7 (4) "Collector" means the person who instructs and assists
8 individuals at a collection site and who receives and makes the initial
9 examination of the specimen provided by those individuals.

10 (5) "Confirmation test," "confirmed test," or "confirmed substance
11 abuse test" means a second analytical procedure used to identify the
12 presence of a specific drug or metabolic in a specimen. The
13 confirmation test must be different in scientific principle from that
14 of the initial test procedure. This confirmation method must be
15 capable of providing requisite specificity, sensitivity, and
16 quantitative accuracy.

17 (6) "Department" means the department of labor and industries.

18 (7) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine
19 (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines,
20 propoxyphene, or a metabolite of any such substances. An employer may
21 test an individual for any or all of these. This program will test for
22 marijuana, cocaine, amphetamines, opiates, and phencyclidine.

23 (8) "Employee" means a person who works for salary, wages, or other
24 remuneration for an employer.

25 (9) "Employee assistance program" means a program designed to
26 assist in the identification and resolution of job performance problems
27 associated with employees impaired by personal concerns. A minimum
28 level of core services must include: Consultation, professional,
29 confidential, appropriate, and timely problem assessment services;
30 short-term problem resolution; referrals for appropriate diagnosis,
31 treatment, and assistance; follow-up and monitoring; employee
32 education; supervisory training; and quality assurance.

33 (10) "Employer" means a person or entity that is subject to the
34 provisions of this chapter but does not include the state or any
35 department, agency, or instrumentality of the state; any county; any
36 county or independent school system; any municipal corporation; or any
37 employer which is self-insured for the purposes of this chapter.

38 (11) "Initial test" means a sensitive, rapid, and reliable
39 procedure to identify negative and presumptive positive specimens. An

1 initial test must use an immunoassay procedure or an equivalent
2 procedure or must use a more accurate scientifically accepted method
3 approved by the national institute on drug abuse as more accurate
4 technology becomes available in a cost-effective form.

5 (12) "Job applicant" means a person who has applied for a position
6 with an employer and has been offered employment conditioned upon
7 successfully passing a substance abuse test and may have begun work
8 pending the results of the substance abuse test.

9 (13) "Last-chance agreement" means a notice to an employee who is
10 referred to the employee assistance program due to a verified positive
11 alcohol or drug test or for violating an alcohol or drug-related
12 company rule that states the terms and conditions of continued
13 employment with which the employee must comply. Failure to comply with
14 all the terms of this agreement normally will result in termination of
15 employment.

16 (14) "Medical review officer" means a licensed physician trained in
17 the field of alcohol and other drug testing who provides medical
18 assessment of positive test results, requests reanalysis if necessary,
19 and makes a determination whether or not alcohol or other drug abuse
20 has occurred.

21 (15) "Nonprescription medication" means a drug or medication
22 authorized under federal or state law for general distribution and use
23 without a prescription in the treatment of human disease, ailments, or
24 injuries.

25 (16) "Prescription medication" means a drug or medication lawfully
26 prescribed by a physician for an individual and taken in accordance
27 with the prescription.

28 (17) "Rehabilitation program" means an established program capable
29 of providing expert identification, assessment, and resolution of
30 employee drug or alcohol abuse in a confidential and timely service.
31 This service shall in all cases be provided by persons licensed or
32 appropriately certified as health professionals to provide drug or
33 alcohol rehabilitative services. All treatment services must contain
34 a two-year continuing care component.

35 (18) "Specimen" means tissue, blood, breath, urine, or other
36 product of the human body capable of revealing the presence of drugs or
37 their metabolites or of alcohol.

38 (19) "Substance" means drugs or alcohol.

1 (20) "Substance abuse test" or "test" means a chemical, biological,
2 or physical instrumental analysis administered for the purpose of
3 determining the presence or absence of a drug or its metabolites or of
4 alcohol.

5 (21) "Threshold detection level" means the level at which the
6 presence of a drug or alcohol can be reasonably expected to be detected
7 by an initial and confirmatory test performed by a laboratory meeting
8 the standards specified in this chapter. The threshold detection level
9 indicates the level at which a valid conclusion can be drawn that the
10 drug or alcohol is present in the employee's specimen.

11 (22) "Verified positive test result" means a confirmed positive
12 test result by the drug testing laboratory that has been reviewed and
13 verified by a medical review officer in accordance with medical review
14 officer guidelines promulgated by the United States department of
15 health and human services.

16 NEW SECTION. **Sec. 3.** If an employer implements a drug-free
17 workplace program substantially in accordance with section 4 of this
18 act, the employer shall qualify for certification for a five percent
19 premium discount under the employer's workers' compensation insurance
20 policy as provided under chapter 51.16 RCW.

21 NEW SECTION. **Sec. 4.** (1) A drug-free workplace program must
22 contain the following elements:

- 23 (a) Written policy statement as provided in section 5 of this act;
- 24 (b) Substance abuse testing as provided in section 6 of this act;
- 25 (c) An employee assistance program as provided in accordance with
26 section 7 of this act;
- 27 (d) Employee education as provided in section 9 of this act; and
- 28 (e) Supervisor training in accordance with section 10 of this act.

29 (2) In addition to the requirements of subsection (1) of this
30 section, a drug-free workplace program must be implemented in
31 compliance with the confidentiality standards provided in section 12 of
32 this act.

33 NEW SECTION. **Sec. 5.** (1) An alcohol and drug-free workplace
34 program must contain a written substance abuse policy statement in
35 order to qualify for the premium discount provided under section 3 of
36 this act. The policy must:

1 (a) Notify employees that the use or being under the influence of
2 alcohol during working hours is prohibited;

3 (b) Notify employees that the use, purchase, possession, or
4 transfer of illegal drugs or having illegal drugs in their system is
5 prohibited;

6 (c) Identify the types of testing an employee or job applicant may
7 be required to submit to or other basis used to determine when such a
8 test will be required;

9 (d) Identify the actions the employer may take against an employee
10 or job applicant on the basis of a verified positive test result;

11 (e) Contain a statement advising an employee or job applicant of
12 the existence of this chapter;

13 (f) Contain a general statement concerning confidentiality;

14 (g) Identify the consequences of refusing to submit to a drug test;

15 (h) Contain a statement advising an employee of the employee
16 assistance program, if the employer offers the program, or advising the
17 employee of the employer's resource file of assistance programs and
18 other persons, entities, or organizations designed to assist employees
19 with personal or behavioral problems;

20 (i) Contain a statement that an employee or job applicant who
21 receives a positive confirmed test result may contest or explain the
22 result to the employer within five working days after written
23 notification of the positive test result; and

24 (j) Contain a statement informing an employee of the provisions of
25 the federal drug-free workplace act or chapter 23 of Title 45, the
26 drug-free public work force act of 1990, if applicable to the employer.

27 (2) An employer not having a substance abuse testing program in
28 effect on July 1, 1995, shall ensure that at least sixty days elapse
29 between a general one-time notice to all employees that a substance
30 abuse testing program is being implemented and the beginning of the
31 actual testing. An employer having a substance abuse testing program
32 in place before July 1, 1995, is not required to provide a sixty-day
33 notice period.

34 (3) An employer shall include notice of substance abuse testing on
35 vacancy announcements for those positions for which testing is
36 required. A notice of the employer's substance abuse testing policy
37 must also be posted in an appropriate and conspicuous location on the
38 employer's premises, and copies of the policy must be made available
39 for inspection by the employees or job applicants of the employer

1 during regular business hours in the employer's personnel office or
2 other suitable locations.

3 NEW SECTION. **Sec. 6.** (1) Substance abuse testing must be in
4 conformity with the standards and procedures established in this
5 chapter and all applicable rules adopted by the department under this
6 chapter. This chapter does not establish a legal duty for employers to
7 conduct alcohol or drug tests of employees or job applications.
8 However, if an employee fails to maintain an alcohol and drug-free
9 workplace program in accordance with the standards, procedures, and
10 rules established in or under this chapter, the employer shall not
11 qualify for the worker's compensation premium discount provided under
12 section 3 of this act.

13 (2) An employer shall:

14 (a) Require job applicants to submit to a substance abuse test
15 after extending an offer of employment and may use a refusal to submit
16 or a verified positive test as a basis for not hiring the job
17 applicant;

18 (b) Require an employee to submit to a substance abuse test if the
19 employee has caused or contributed to an accident or injury which
20 resulted in a loss of work time. A first-time verified test result
21 cannot be used as a basis to terminate an employee's employment.
22 However, an employee may be terminated for independent reasons, such as
23 a violation of a safety rule or regulation;

24 (c) If the employee in the course of employment is referred to the
25 employee assistance program by the employer as a result of a positive
26 drug test or an alcohol or drug-related incident in violation of
27 company rules, require the employee to submit to substance abuse
28 testing as a follow-up to the program. However, if an employee
29 voluntarily entered the employee assistance program, follow-up testing
30 is not required. If follow-up testing is conducted, the frequency of
31 the testing shall be at least four times a year for a two-year period
32 after completion of the employee assistance program and advance notice
33 of the testing date may not be given. A positive follow-up test result
34 shall normally be used as a basis for termination of employment. If
35 the employee assistance program determines that the employee does not
36 require treatment services, the employee is still required to
37 participate in follow-up testing.

1 (3) This section does not prohibit a private employer from
2 conducting lawful reasonable suspicion or random testing of employees.

3 (4) Specimen collection and substance abuse testing under this
4 section must be performed in accordance with regulations and procedures
5 approved by the United States department of health and human services
6 and the United States department of transportation regulations for
7 alcohol testing.

8 (a) A specimen must be collected with due regard to the privacy of
9 the individual providing the specimen and in a manner reasonably
10 calculated to prevent substitution or contamination of the specimen.

11 (b) Specimen collection must be documented. The documentation
12 procedures must include:

13 (i) Labeling of specimen containers so as to reasonably preclude
14 the likelihood of erroneous identification of test results; and

15 (ii) An opportunity for the employee or job applicant to record
16 information the employee or applicant considers relevant to the test,
17 including identification of currently or recently used prescription or
18 nonprescription medication or other relevant medical information. The
19 providing of information does not preclude the administration of the
20 test, but must be taken into account in interpreting positive confirmed
21 results by the medical review officer.

22 (c) Specimen collection, storage, and transportation to the testing
23 site must be performed in a manner that reasonably precludes specimen
24 contamination or adulteration.

25 (d) An initial and confirmation test conducted under this section,
26 not including the taking or collecting of a specimen to be tested, must
27 be conducted by a laboratory as described in subsection (5) of this
28 section.

29 (e) A specimen for a test may be taken or collected by any of the
30 following persons:

31 (i) A physician, a physician's assistant, a registered professional
32 nurse, a licensed practical nurse, a nurse practitioner, or a certified
33 paramedic who is present at the scene of an accident for the purpose of
34 rendering emergency medical service or treatment;

35 (ii) A qualified person certified or employed by a laboratory
36 certified by the substance abuse and mental health administration, the
37 college of American pathologists, or the department; or

38 (iii) A qualified person certified or employed by a collection
39 company using collection procedures adopted by the United States

1 department of health and human services and the United States
2 department of transportation for alcohol collection.

3 (f) Within five working days after receipt of a positive confirmed
4 test result from the laboratory, an employer shall inform an employee
5 or job applicant in writing of the positive test result, the
6 consequences of the result, and the options available to the employee
7 or job applicant.

8 (g) The employer shall provide to the employee or job applicant,
9 upon request, a copy of the test results.

10 (h) An initial test having a positive result must be verified by a
11 confirmation test.

12 (i) An employer who performs drug testing or specimen collection
13 shall use chain of custody procedures to ensure proper recordkeeping,
14 handling, labeling, and identification of all specimens to be tested.

15 (j) An employer shall pay the cost of all drug tests, initial and
16 confirmation, that the employer requires of employees.

17 (k) An employee or job applicant shall pay the cost of additional
18 tests not required by the employer.

19 (5)(a) A laboratory may not analyze initial or confirmation drug
20 specimens unless:

21 (i) The laboratory is approved by the substance abuse and mental
22 health administration or the college of American pathologists;

23 (ii) The laboratory has written procedures to ensure the chain of
24 custody; and

25 (iii) The laboratory follows proper quality control procedures
26 including, but not limited to:

27 (A) The use of internal quality controls including the use of
28 samples of known concentrations that are used to check the performance
29 and calibration of testing equipment, and periodic use of blind samples
30 for overall accuracy;

31 (B) An internal review and certification process for test results,
32 conducted by a person qualified to perform that function in the testing
33 laboratory;

34 (C) Security measures implemented by the testing laboratory to
35 preclude adulteration of specimens and test results; and

36 (D) Other necessary and proper actions taken to ensure reliable and
37 accurate drug test results.

38 (b) A laboratory shall disclose to the employer a written test
39 result report within seven working days after receipt of the sample.

1 A laboratory report of a substance abuse test result must, at a
2 minimum, state:

3 (i) The name and address of the laboratory that performed the test
4 and the positive identification of the person tested;

5 (ii) Positive results on confirmation tests only, or negative
6 results, as applicable;

7 (iii) A list of the drugs for which the drug analyses were
8 conducted; and

9 (iv) The type of tests conducted for both initial and confirmation
10 tests and the minimum cut-off levels of the tests.

11 A report may not disclose the presence or absence of a drug other
12 than a specific drug and its metabolites listed under this chapter.

13 (c) A laboratory shall provide technical assistance through the use
14 of a medical review officer to the employer, employee, or job applicant
15 for the purpose of interpreting a positive confirmed test result that
16 could have been caused by prescription or nonprescription medication
17 taken by the employee or job applicant. The medical review officer
18 shall interpret and evaluate the laboratory's positive test result and
19 eliminates test results that could have been caused by prescription
20 medication or other medically documented sources in accordance with the
21 United States department of health and human services medical review
22 officer manual.

23 (6) A positive initial test must be confirmed using the gas
24 chromatography/mass spectrometry (GC/MC) method or an equivalent or
25 more accurate scientifically accepted methods approved by the substance
26 abuse and mental health administration as the technology becomes
27 available in a cost-effective form.

28 NEW SECTION. Sec. 7. (1) The employee assistance program required
29 under this chapter shall provide the employer with a system for dealing
30 with employees whose job performances are declining due to unresolved
31 problems, including alcohol or other drug-related problems, marital
32 problems, or legal or financial problems.

33 (2) To ensure appropriate assessment and referral to treatment:

34 (a) The employer must notify the employees of the benefits and
35 services of the employee assistance program;

36 (b) The employer shall publish notice of the employee assistance
37 program in conspicuous places and explore alternative routine and
38 reinforcing means of publicizing the services; and

1 (c) The employer shall provide the employee with notice of the
2 policies and procedures regarding access to and utilization of the
3 employee assistance program.

4 NEW SECTION. Sec. 8. (1)(a) Rehabilitation of employees suffering
5 from either or both alcohol or drug addiction shall be the primary
6 focus of an employee assistance program.

7 (b) The employer may not use a first-time verified positive test as
8 the basis for termination of an employee. First-time verified positive
9 test results may be used to offer employees the opportunity to keep
10 their jobs through the use of a last-chance agreement. The last-chance
11 agreements shall require an employee to:

12 (i) Submit to an employee assistance program evaluation for
13 chemical dependency;

14 (ii) Comply with any treatment recommendations;

15 (iii) Be subject to follow-up testing for two years;

16 (iv) Meet the same standards of performance and conducts that are
17 set for other employees; and

18 (v) Authorize the company to receive all relevant information
19 regarding their progress in treatment, if applicable.

20 (2) When substance abuse treatment is necessary, employees must use
21 treatment services certified by the department, which include a
22 continuing care component lasting for two years.

23 (a) The employee assistance program shall monitor the employee's
24 progress while in treatment.

25 (b) The employer shall monitor job performance and conduct follow-
26 up testing.

27 (3) An employer may terminate an employee for the following
28 reasons:

29 (a) Refusal to submit to a substance abuse test;

30 (b) Failure to comply with the conditions of a last-chance
31 agreement;

32 (c) A second verified positive test result; or

33 (d) Violations of company rules pertaining to alcohol and drugs.

34 NEW SECTION. Sec. 9. An employer shall provide all employees with
35 an annual education program on substance abuse, in general, and its
36 effects on the workplace, specifically. An education program for a

1 minimum of one hour should include but is not limited to the following
2 information:

3 (1) The explanation of the disease model of addiction for alcohol
4 and drugs;

5 (2) The effects and dangers of the commonly abused substances in
6 the workplace; and

7 (3) The company's policies and procedures regarding substance abuse
8 in the workplace and how employees who wish to obtain substance abuse
9 treatment can do so.

10 NEW SECTION. **Sec. 10.** In addition to the education program
11 provided in section 9 of this act, an employer shall provide all
12 supervisory personnel with a minimum of two hours of supervisor
13 training, that should include but is not limited to the following
14 information:

15 (1) How to recognize signs of employee substance abuse;

16 (2) How to document and collaborate signs of employee substance
17 abuse; and

18 (3) How to refer substance-abusing employees to the proper
19 treatment providers.

20 NEW SECTION. **Sec. 11.** (1) A physician-patient relationship is not
21 created between an employee or job applicant and an employer, medical
22 review officer, or person performing or evaluating a drug test solely
23 by the establishment, implementation, or administration of a testing
24 program.

25 (2) This chapter may not be construed to prevent an employer from
26 establishing reasonable work rules related to employee possession, use,
27 sale, or solicitation of drugs, including convictions for drug-related
28 offenses, and taking action based upon a violation of any of those
29 rules.

30 (3) This chapter may not be construed to operate retroactively.
31 This chapter does not abrogate the right of an employer under state or
32 federal law to conduct tests or implement employee testing programs.
33 However, only those programs that meet the criteria outlined in this
34 chapter qualify for reduced workers' compensation insurance premiums.

35 (4) This chapter may not be construed to prohibit an employer from
36 conducting medical screening or other tests required, permitted, or not
37 disallowed by a statute or rule for the purpose of monitoring exposure

1 of employees to toxic or other unhealthy materials in the workplace or
2 in the performance of job responsibilities. The screening or tests
3 must be limited to the specific material expressly identified in the
4 statute or rule, unless prior written consent of the employee is
5 obtained for other tests.

6 (5) A cause of action may not arise in favor of a person based upon
7 the failure of an employer to establish or conduct a program or policy
8 for substance abuse testing.

9 NEW SECTION. **Sec. 12.** (1) Information, interviews, reports,
10 statements, memoranda, and test results, written or otherwise, received
11 by the employer through a substance abuse testing program are
12 confidential communications, but may be used or received in evidence,
13 obtained in discovery, or disclosed in a civil or administrative
14 proceeding, except as provided in subsection (4) of this section.

15 (2) An employer, laboratory, medical review officer, employee
16 assistance program, drug or alcohol rehabilitation program, and their
17 agents who receive or have access to information concerning test
18 results shall keep the information confidential. Release of the
19 information under another circumstance must be solely under a written
20 consent form signed voluntarily by the person tested, unless the
21 release is compelled by an agency of the state or a court of competent
22 jurisdiction or unless deemed appropriate by a professional or
23 occupational licensing board in a related disciplinary proceeding. The
24 consent form must contain at a minimum:

25 (a) The name of the person who is authorized to obtain the
26 information;

27 (b) The purpose of the disclosure;

28 (c) The precise information to be disclosed;

29 (d) The duration of the consent; and

30 (e) The signature of the person authorizing release of the
31 information.

32 (3) Information on test results may not be released or used in a
33 criminal proceeding against the employee or job applicant. Information
34 released contrary to this subsection is inadmissible as evidence in a
35 criminal proceeding.

36 (4) This chapter may not be construed to prohibit the employer or
37 laboratory conducting a test from having access to employee test

1 information when consulting with legal counsel when the information is
2 relevant to its defense in a civil or administrative matter.

3 NEW SECTION. **Sec. 13.** The department shall adopt by rule
4 procedures and forms for the certification of employers who establish
5 and maintain a drug-free workplace that complies with this chapter.
6 The department shall adopt by rule procedures for the decertification
7 of employers formally certified for the discount provided under this
8 chapter. The department may charge a fee for the certification of a
9 drug-free workplace program in an amount that must approximate its
10 administrative costs related to the certification. Certification of an
11 employer is required for each year in which a premium discount is
12 granted. The department may adopt rules necessary for the
13 implementation of this chapter.

14 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act shall
15 constitute a new chapter in Title 49 RCW.

16 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and shall take
19 effect immediately.

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