
SENATE BILL 5707

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By Senators Morton, Bauer, Stevens, Rossi, Johnson, Hale, Honeyford, Zarelli, Sellar, Hochstatter, Winsley and Oke

Read first time 02/03/1999. Referred to Committee on Labor & Workforce Development.

1 AN ACT Relating to unemployment benefits and claims; and adding new
2 sections to chapter 50.20 RCW.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout sections 2 and 3 of this act unless the context clearly
6 requires otherwise.

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

9 (2) "Alcohol test" means a chemical, biological, or physical
10 instrumental analysis administered for the purpose of determining the
11 presence or absence of alcohol within an individual's body systems.

12 (3) "Chain of custody" means the methodology of tracking specimens
13 for the purpose of maintaining control and accountability from initial
14 collection to final disposition for all specimens and providing for
15 accountability at each stage in handling, testing, and storing
16 specimens and reporting test results.

17 (4) "Confirmation test" or "confirmed test" means a second
18 analytical procedure used to identify the presence of a specific drug
19 or metabolic in a specimen. Drug tests must be confirmed as specified

1 in section 3(4) of this act. Alcohol tests must be confirmed by a
2 second breath test or as specified for drug tests.

3 (5) "Department" means the department of social and health
4 services.

5 (6) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine
6 (PCP), methadone, methaqualone, opiates, barbiturates, benzodiazepines,
7 propoxyphene, or a metabolite of any such substances.

8 (7) "Drug test" means a chemical, biological, or physical
9 instrumental analysis administered on a specimen sample for the purpose
10 of determining the presence or absence of a drug or its metabolites
11 within the sample.

12 (8) "Employee" means a person who is employed for salary, wages, or
13 other remuneration by an employer.

14 (9) "Employer" means an employer subject to Title 51 RCW but does
15 not include the state or any department, agency, or instrumentality of
16 the state; any county; any city; any school district or educational
17 service district; or any municipal corporation.

18 (10) "Initial test" means a sensitive, rapid, and reliable
19 procedure to identify negative and presumptive positive specimens. An
20 initial drug test must use an immunoassay procedure or an equivalent
21 procedure or must use a more accurate scientifically accepted method
22 approved by the national institute on drug abuse as more accurate
23 technology becomes available in a cost-effective form.

24 (11) "Job applicant" means a person who has applied for employment
25 with an employer and has been offered employment conditioned upon
26 successfully passing a drug test and may have begun work pending the
27 results of the drug test.

28 (12) "Medical review officer" means a licensed physician trained in
29 the field of drug testing who provides medical assessment of positive
30 test results, requests reanalysis if necessary, and makes a
31 determination whether or not drug misuse has occurred.

32 (13) "Nonprescription medication" means a drug or medication
33 authorized under federal or state law for general distribution and use
34 without a prescription in the treatment of human disease, ailments, or
35 injuries.

36 (14) "Prescription medication" means a drug or medication lawfully
37 prescribed by a physician, or other health care provider licensed to
38 prescribe medication, for an individual and taken in accordance with
39 the prescription.

1 (15) "Specimen" means breath or urine. "Specimen" may include
2 other products of the human body capable of revealing the presence of
3 drugs or their metabolites or of alcohol, if approved by the United
4 States department of health and human services and permitted by rules
5 adopted under RCW 49.82.130.

6 (16) "Substance" means drugs or alcohol.

7 (17) "Substance abuse test" or "test" means a chemical, biological,
8 or physical instrumental analysis administered on a specimen sample for
9 the purpose of determining the presence or absence of a drug or its
10 metabolites or of alcohol within the sample.

11 (18) "Threshold detection level" means the level at which the
12 presence of a drug or alcohol can be reasonably expected to be detected
13 by an initial and confirmation test performed by a laboratory meeting
14 the standards specified in this chapter. The threshold detection level
15 indicates the level at which a valid conclusion can be drawn that the
16 drug or alcohol is present in the employee's specimen.

17 (19) "Verified positive test result" means a confirmed positive
18 test result obtained by a laboratory meeting the standards specified in
19 this chapter that has been reviewed and verified by a medical review
20 officer in accordance with medical review officer guidelines
21 promulgated by the United States department of health and human
22 services.

23 NEW SECTION. **Sec. 2.** If an otherwise eligible individual submits
24 to a preemployment drug test and the outcome is a verified positive
25 test result, that individual is no longer eligible for benefits for
26 five calendar weeks and until he or she has obtained bona fide work and
27 earned wages equal to five times his or her weekly benefit amount.

28 NEW SECTION. **Sec. 3.** (1) This section does not prohibit an
29 employer from conducting other drug or alcohol testing, such as upon
30 reasonable suspicion or a random basis.

31 (2) Specimen collection and substance abuse testing under this
32 section must be performed in accordance with regulations and procedures
33 approved by the United States department of health and human services
34 and the United States department of transportation regulations for
35 alcohol and drug testing and must include testing for marijuana,
36 cocaine, amphetamines, opiates, and phencyclidine. Employers may test
37 for any drug listed in section 1(7) of this act.

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

4 (b) Specimen collection and analysis must be documented. The
5 documentation procedures must include:

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

8 (ii) An opportunity for the job applicant to provide to a medical
9 review officer information the applicant considers relevant to the drug
10 test, including identification of currently or recently used
11 prescription or nonprescription medication or other relevant medical
12 information.

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

16 (d) An initial and confirmation test conducted under this section,
17 not including the taking or collecting of a specimen to be tested, must
18 be conducted by a laboratory as described in subsection (3) of this
19 section.

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

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

26 (ii) A qualified person certified or employed by a laboratory
27 certified by the substance abuse and mental health administration or
28 the college of American pathologists; or

29 (iii) A qualified person certified or employed by a collection
30 company using collection procedures adopted by the United States
31 department of health and human services and the United States
32 department of transportation for alcohol collection.

33 (f) Within five working days after receipt of a verified positive
34 test result from the laboratory, an employer shall inform a job
35 applicant in writing of the positive test result, the consequences of
36 the result, and the options available to the job applicant.

37 (g) The employer shall provide to the job applicant, upon request,
38 a copy of the test results.

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

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

6 (j) An employer shall pay the cost of all drug or alcohol tests,
7 initial and confirmation, that the employer requires of employees.

8 (k) A job applicant shall pay the cost of additional tests not
9 required by the employer.

10 (3)(a) A laboratory may not analyze initial or confirmation drug
11 specimens unless:

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

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

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

18 (A) The use of internal quality controls including the use of
19 samples of known concentrations that are used to check the performance
20 and calibration of testing equipment, and periodic use of blind samples
21 for overall accuracy;

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

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

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

29 (b) A laboratory shall disclose to the employer a written test
30 result report within seven working days after receipt of the sample.
31 A laboratory report of a substance abuse test result must, at a
32 minimum, state:

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

35 (ii) Positive results on confirmation tests only, or negative
36 results, as applicable;

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

1 (iv) The type of tests conducted for both initial and confirmation
2 tests and the threshold detection levels of the tests.

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

5 (c) A laboratory shall provide technical assistance through the use
6 of a medical review officer to the employer or job applicant for the
7 purpose of interpreting a positive confirmed drug test result that
8 could have been caused by prescription or nonprescription medication
9 taken by the job applicant. The medical review officer shall interpret
10 and evaluate the laboratory's positive drug test result and eliminate
11 test results that could have been caused by prescription medication or
12 other medically documented sources in accordance with the United States
13 department of health and human services medical review officer manual.

14 (4) A positive initial drug test must be confirmed using the gas
15 chromatography/mass spectrometry method or an equivalent or more
16 accurate scientifically accepted method approved by the substance abuse
17 and mental health administration as the technology becomes available in
18 a cost-effective form.

19 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act are each
20 added to chapter 50.20 RCW.

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