

# Model Drug-Free Private Sector Workplace Act



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# Model Drug-Free Private Sector Workplace Act Policy Statement

This legislation seeks to institute a standard for effective, comprehensive private sector alcohol and other drug-free workplace programs. These workplace programs are intended to identify and reduce alcohol and other drug use affecting the workplace, to assist employees with the treatment of their drug problems, and to lower the economic costs of alcohol and other drug problems to businesses.

Just as schools offer an appropriate platform for intervention with children and youths with alcohol and other drug problems, the workplace is an appropriate platform for intervention with adults. Two-thirds of adult drug users are employed. Adults also have little opportunity elsewhere to become educated about alcohol and other drug abuse problems and to be directed to any needed assistance.

Employers have two important reasons for wanting to establish alcohol and other drug-free workplace programs. First and foremost, employers are concerned about the health, safety, and well-being of their employees. Second, alcohol and other drug abuse costs businesses billions of dollars each year in increased medical claims, medical disability costs, decreased productivity, injuries, theft, and absenteeism.

This legislation establishes comprehensive private sector alcohol and other drug-free workplace programs. In the past, some employers have considered drug testing in and of itself to be a complete workplace substance abuse program. However, the existence of a substance abuse testing program by itself will only serve to identify alcohol and other drug abusers. Testing does nothing to educate, treat, or rehabilitate alcohol and other drug abusing employees.

The Commission believes that a truly comprehensive drug-free workplace program must include all of the following elements:

- (1) A detailed written policy statement. This statement must express the employer's policy on alcohol and other drug abuse, explaining any substance abuse testing to which employees must submit, and providing information about the employer's employee assistance program or rehabilitation resources for employees seeking assistance for alcohol and other drug problems.
- (2) Employee assistance programs or rehabilitation resources. Employers must make employee assistance programs or rehabilitation resources available to their employees. The provision of such services have shown tremendous cost benefit to employers and do much to restore alcohol and other drug abusing employees to good health and well-being.

(3) Employee education programs. Employers must provide employees with annual education programs on alcohol and other drug abuse, including explanations of the disease of addiction for alcohol and other drugs, information on the company's policies and procedures regarding alcohol and other drug abuse, and information on how employees who wish to obtain alcohol or other drug treatment can do so.

(4) Supervisor training provisions. Employers must also provide supervisors with annual training regarding alcohol and other drug abuse. This training is designed to help supervisors identify substance abusing employees, confront them about their problems, and refer them to appropriate employee assistance or treatment resources.

(5) Substance abuse testing. Employers must implement substance abuse testing as part of any comprehensive drug-free workplace program. Pre-employment, reasonable suspicion, medical fitness, and post-accident testing would be required by a comprehensive drug-free workplace program in compliance with this Act. Random drug testing is neither prohibited nor mandated by this Act.

The testing required by this Act would be conducted by laboratories certified by the U.S. Department of Health and Human Service's National Laboratory Certification Program or the College of American Pathologists, which provide the highest level of employee protections and safeguards with regards to specimen collection, chain-of-custody, and testing procedures.

(6) Confidentiality provisions. Strict confidentiality provisions must be enacted in the workplace to protect employee records and information regarding alcohol and other drug abuse problems.

To encourage private sector employers to establish such comprehensive private sector drug-free workplace programs, this legislation offers protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test. The Commission believes that the implementation of a comprehensive drug-free workplace program will reduce the amount of legal action taken against employers by establishing stringent employee protections, testing standards and safeguards, employee resources, confidentiality provisions, and thorough procedures. The implementation of all of the protections, standards, and safeguards required by this [Act] should eliminate the cause of much of the legal action currently involving employee alcohol and other drug abuse and workplace substance abuse testing.

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# Highlights of the Model Drug-Free Private Sector Workplace Act

## ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes that alcohol and other drug abuse adversely affects employee health and well-being, jeopardizes employee safety, and reduces the economic potential of employees and their companies.
- Recognizes the role of employee assistance programs (EAPs) and rehabilitation resources in the workplace, linking the identification of employee substance abuse problems with the employer's workplace program to assess and refer those employees to treatment and rehabilitation.
- Recognizes that regular and continuing substance abuse education alerts employees to the dangers of alcohol and other drug abuse and enables them to understand and access the employer's workplace substance program services.
- Recognizes that supervisor training is an integral component of any workplace substance abuse program because it prepares supervisors for potential substance abuse problems among employees and provides the skills to refer those employees to appropriate assistance services.
- Recognizes that effective, comprehensive private sector workplace programs must include each of the following components: written policy statements, employee assistance programs or rehabilitation resources, employee education, supervisor training, substance abuse testing, laboratory standards, and employee confidentiality provisions.

## SPECIFIC RECOMMENDATIONS

- Provides a legal right of employers to test employers or prospective employees for the presence of alcohol or other drugs.

- Provides protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test, provided that the employers have a comprehensive workplace program.
- Requires a comprehensive drug-free workplace program to include each of the following components: written policy statements, employee assistance programs or rehabilitation resources, employee education, supervisor training, substance abuse testing, laboratory standards, and employee confidentiality provisions.
- Provides specific components of any written policy statement on substance abuse, including a general statement on the employer's substance abuse policy, a statement identifying the types of testing to which an employee or job applicant may be required to submit, a statement identifying the actions the employer may take against an employee or job applicant on the basis of a confirmed positive test result, and other information relevant to the employer's substance abuse program.
- Provides for employee assistance programs or rehabilitation resources and establishes employee notification requirements to facilitate access to such services.
- Provides annual employee education programs that educate employees on alcohol and other drug abuse, its effects on the workplace, and the employer's policies and procedures regarding alcohol and other drug abuse in the workplace and how employees may access rehabilitation resources.
- Provides annual supervisor substance abuse training that enables supervisors to recognize, document, and corroborate employee alcohol and other drug abuse and to refer alcohol and other drug abusing employ-

- ees to the proper treatment providers. Also provides supervisors with information concerning the benefits of referring employees to treatment programs and explains employee health insurance or HMO coverage for alcohol and other drug problems.
- Provides that employers conduct the following types of substance abuse testing in order to qualify as a private sector drug-free workplace and to qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a substance abuse test:
    - pre-employment testing;
    - reasonable suspicion testing;
    - regularly scheduled physical or fitness-for-duty testing;
    - probationary testing due to a positive substance abuse test or mandatory referral to an EAP program; and
    - post-accident testing.
  - Provides that all specimen collection, storage, transportation, and testing procedures be performed in accordance with regulations approved by the U.S. Department of Health and Human Services, the College of American Pathologists, and/or the U.S. Department of Transportation regulations for alcohol testing.
  - Provides that laboratories analyzing initial or confirmation specimens be approved by the U.S. Department of Health and Human Services' National Laboratory Certification Program or the College of American Pathologists, and must conform to regulations that insure the proper handling, reliability, and scientific accuracy of test results.
  - Provides procedures for disclosing to the employer a written test result report within seven working days after receipt of the sample.
  - Provides that all information, interviews, reports, statements, memoranda, and test results received by the employer through a substance abuse testing program are confidential communications as they pertain to the employee only and establishes strict confidentiality standards and procedures regarding those communications.
  - Provides that employers may use a confirmed positive substance abuse test result or a refusal to submit to a substance abuse test as a valid basis for rehabilitative and/or disciplinary action that may include:
    - a requirement that the employee enroll in an employee assistance program or a rehabilitation, treatment, or counseling program;
    - suspension of the employee, with or without pay, for a designated period of time;
    - termination of employment;
    - refusal to hire a prospective employee; and/or
    - other action in conformance with the employer's written policy and procedures.
  - Provides that no cause of action be established for any person against any employer who has established a drug-free workplace policy and initiated a testing program in accordance with this Act for actions in good faith based on the results of a "positive" confirmed substance abuse test, failure to conduct testing, or termination or suspension of any substance abuse prevention or testing program or policy.
  - Provides that no cause of action be established for a person against any employer who has established a drug-free workplace program in accordance with this Act, unless the employer's action was based on a confirmed "false positive" test result, and the employer knew or clearly should have known that the result was in error, and ignored the true test result because of reckless, malicious, or negligent disregard for the truth and/or the willful intent to deceive or be deceived.
  - Provides limits to defamation causes of action.

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# Model Drug-Free Private Sector Workplace Act

## **Section 1. Short Title.**

The provisions of this [Act] shall be known and may be cited as the “Model Drug-Free Private Sector Workplace Act.”

## **Section 2. Legislative Findings.**

(a) Alcohol and other drug abuse adversely affects employee health and well-being on and off the job.

(b) A healthy and productive work force, safe working conditions free from the effects of alcohol and other drugs, and maintenance of the quality of products produced and services rendered, are important to employees, employers, and the general public in this state.

(c) The abuse of alcohol and other drugs creates a variety of workplace health and safety problems, including increased injuries on the job, increased absenteeism, increased financial burden on health and benefit programs, increased workplace theft, decreased employee morale, decreased productivity, and a decline in the quality of products and services.

(d) Surveys by the American Management Association indicate that firms combining drug testing with other workplace education and counseling programs have reported lower test-positive rates than companies that employed drug testing only.

(e) Employee assistance programs (EAPs) and rehabilitation resources in the workplace link the identification of substance abuse with the employer’s program to assess the extent of the problem and to direct the employee to treatment and rehabilitation. EAPs also reintegrate rehabilitated employees back into the workplace and monitor compliance of the employer’s substance abuse program. Cost-benefit analyses of EAPs have found a 4:1 return or higher on investment in the programs due to lower health care and workers’ compensation utilization costs and higher worker productivity.

(f) Regular and continuing substance abuse education alerts employees to the dangers of alcohol and other drug abuse and enables them to understand and abide by a workplace substance abuse program. Such education also provides employees with information needed to access treatment and rehabilitation services.

(g) Supervisor substance abuse training is an integral component of any workplace substance abuse program because it instructs supervisors to recognize problems associated with alcohol and other drug abuse, properly confront an employee about possible problems, and refer the employee to appropriate assistance.

(h) In balancing the interests of employers, employees, and the welfare of the general public, the state legislature finds that fair and equitable substance abuse programs, including employee assistance programs or rehabilitation resources, employee and supervisor education, substance abuse testing, laboratory standards, and confidentiality provisions, in accordance with this [Act], are in the best interest of all parties.

## **Section 3. Purpose.**

The purpose of this [Act] is to offer guidance on the development of effective, comprehensive private sector drug-free workplace programs that seek to reduce workplace alcohol and other drug use and to assist employees with the treatment and rehabilitation of their alcohol and other drug problems. Under this [Act], private sector employers shall qualify for protection from litigation regarding certain legal claims for acting in good faith against an employee confirmed to abuse alcohol or other drugs in violation of the employer’s written policy, provided that the employer’s private sector drug-free workplace includes all of the following protections, standards, employee resources, and procedures, as established by this [Act]:

- (a) Written policy statement on substance abuse;
- (b) Employee assistance programs or rehabilitation resources;
- (c) Employee education and supervisor training;
- (d) Substance abuse testing and procedures;
- (e) Confidentiality of certain information; and
- (f) Other matters relative to the foregoing.

#### **Section 4. Definitions.**

As used in this [Act]:

- (a) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) "Chain of custody" means the methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results.
- (c) "Confirmation test," "confirmed test," or "confirmed substance abuse test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.
- (d) "Drug" or "drugs" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), opiates, barbiturates, benzodiazepines, methadone, methaqualene, propoxyphene, or a metabolite of any such substances. An employer may test an individual for any or all of these.
- (e) "Employee" means any person who works for salary, wages, or other remuneration for an employer, including those working part-time or as leased employees.
- (f) "Employee Assistance Program" (EAP) means a program designed to assist in the identification and resolution of job performance problems associated with employees impaired by personal concerns. A minimum level of core services must include consulta-

tion and training; professional, confidential, appropriate, and timely problem assessment services; short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up and monitoring; employee education; and quality assurance.

(g) "Employer" means a person or entity that is subject to the provisions of this [Act].

(h) "Initial test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent procedure or shall use a more accurate scientifically accepted method approved by the federal Department of Health & Human Services National Laboratory Certification Program or the College of American Pathologists as such more accurate technology becomes available in a cost-effective form.

(i) "Job applicant" means a person who has applied for a position and been offered employment subject to passing a substance abuse test. A job applicant may have begun work pending the results of the substance abuse test.

(j) "Manufacture," "sale," "distribution," "solicitation," "possession with intent to sell or distribute," and "use" shall have the same meaning as those terms are used in [state controlled substance law].

(k) "Medical review officer" means a licensed physician trained in the field of alcohol and other drug testing who provides medical assessment of positive test results, requests re-analysis if necessary, and makes a determination whether or not alcohol or other drug use has occurred.

(l) "Nonprescription medication" means a drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.

(m) "Prescription medication" means a drug or medication lawfully prescribed by a physician for an individual and taken by the individual only in accordance with such prescription.

(n) "Reasonable suspicion testing" means substance abuse testing based on evidence that an employee is using or has used alcohol or other drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn

from those facts in light of experience. Among other things, such facts and inferences may be based upon, but not limited to, the following:

- (1) Observable phenomena while at work such as direct observation of alcohol or other drug use or abuse or of the physical symptoms or manifestations of being impaired due to alcohol or other drug use;
  - (2) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;
  - (3) A report of alcohol or other drug use provided by a reliable and credible source;
  - (4) Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer;
  - (5) Evidence that an employee has caused or contributed to an accident while at work; or
  - (6) Evidence that an employee has manufactured, sold, distributed, solicited, possessed, used, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.
- (o) "Rehabilitation program" means an established program capable of providing expert identification, assessment, and resolution of employee alcohol and other drug abuse in a confidential and timely manner. This service shall in all cases be provided by persons licensed by the [single state authority on alcohol and other drugs] or appropriately certified as health professionals to provide alcohol and other drug rehabilitative services.
- (p) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.
- (q) "Specimen" means urine, blood, breath, hair, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites. Such tests must meet the [state department of health] standards for scientific and technical accuracy and afford the opportunity for strict forensic chain of custody procedures.
- (r) "Substance" means alcohol or other drugs.
- (s) "Substance abuse test" or "test" means any chemical, biological, or physical instrumental analysis

administered for the purpose of determining the presence or absence of alcohol and other drugs or their metabolites.

(t) "Threshold detection level" means the level at which the presence of alcohol or other drugs can be reasonably expected to be detected by an initial and confirmatory test performed by a laboratory meeting the standards specified in this [Act]. The threshold detection level indicates the level at which a valid conclusion can be drawn that the alcohol or other drugs are present in the employee's specimen.

COMMENT

**In subsection (d), states should add or subtract drugs as appropriate. Laboratories participating in the federal Department of Health and Human Services' National Laboratory Certification Program test for the first five drugs listed in the definition. Many employers also desire to test for barbiturates, benzodiazepines, and alcohol, among others. This definition is constructed to accommodate those employers that wish to test more broadly.**

**In subsections (c) and (h), "confirmation tests" and "initial tests," require testing procedures that have been approved by the federal Department of Health and Human Services' National Laboratory Certification Program, or the College of American Pathologists. It is the sense of the Commission that the National Laboratory Certification Program and the College of American Pathologists offer the highest accepted scientific methodology and protections in this area. Currently, these programs utilize urinalysis testing for drugs of abuse. But states may consider alternative testing procedures to the National Laboratory Certification Program, or the College of American Pathologists, including testing for alcohol and other drugs by scientific methodology associated with hair, saliva, blood, breath, urine, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites, as long as the [state department of health] or the [single state authority for alcohol and other drugs] is satisfied that the scientific methodology equals or exceeds the quality and protection established by the National Laboratory Certification Program's or the College of American Pathologists' certification and testing procedures involving urine.**

**By including products of the human body other than urine, the definition for "specimen" in subsection (q) is constructed to reflect such use of alternative scientific methodology.**

In subsection (e), “employee” includes full- and part-time workers. This definition does not include sub-contracted employees, leaving such inclusion to the discretion of employers.

### ***Section 5. Applicable Conditions for a Legal Policy.***

It is lawful for an employer to test employees or prospective employees for the presence of alcohol or other drugs, in accordance with the provisions of this [Act], as a condition of continued employment or hiring. However, in order to qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a substance abuse test, employers must implement and maintain a comprehensive drug-free workplace program and adhere to the procedural safeguards that demand accuracy and fairness as included in subsequent sections of this [Act].

#### COMMENT

The ultimate goal of this legislation is to reduce alcohol and other drug abuse and their attendant harms in the workplace through the prevention or identification, referral, and treatment of such problems. It is not the intent of this [Act] to interfere with the work relationship between employers and employees. By establishing a rigorous standard for comprehensive private sector drug-free workplace programs and attempting to reduce non-meritorious lawsuits that might otherwise arise in the absence of such rigorous employee assistance, education, testing, and confidentiality standards, the Commission hopes to keep the focus of drug-free workplaces on reducing alcohol and other drug abuse and their attendant harms in the workplace. The Commission strongly encourages employers and employees to recognize the potential benefits of an alcohol- and drug-free workplace during the development and implementation of a rigorous, comprehensive drug-free workplace program and to work together towards achieving that goal.

### ***Section 6. Drug-Free Workplace Elements.***

(a) A comprehensive drug-free workplace program must contain the following elements:

- (1) Written policy statement as provided in Section 7.
- (2) Employee assistance programs or rehabilitation resources, in accordance with Section 8.

- (3) Employee education as provided in Section 9.
  - (4) Supervisor training in accordance with Section 10.
  - (5) Substance abuse testing as provided in Section 11.
- (b) In addition to the requirements of subsection (a) of this section, a comprehensive drug-free workplace program must be implemented in compliance with the confidentiality standards provided in Section 12.

#### COMMENT

**A drug-free workplace program must consist of a written policy statement on substance abuse, employee assistance programs or rehabilitation resources, annual employee and supervisor education about substance abuse, substance abuse testing provisions and procedures, and proper confidentiality safeguards.**

Each element is an integral component of any comprehensive substance abuse program. Written policy statements notify employees of the employer's position on substance abuse and explain all aspects of the employer's substance abuse program. Employee assistance programs and rehabilitation resources enable a drug-using employee to be assessed, referred to proper treatment programs, and rehabilitated in order that they may become fully functioning. Substance abuse education programs in the workplace insure that employees and supervisors are aware of the problems of substance abuse and that supervisors are well-trained to help an employee receive assistance should a substance abuse problem exist. Testing is useful both as a deterrent to drug use and as a means to identify drug abusing employees who often are in denial about their substance abuse problems. Accurate and fair drug testing procedures are needed to insure that employees are not subject to flawed test results and to protect against improper use of tests by their employers. Confidentiality safeguards protect the rights and records of employees and prevent their abuse by employers.

The absence of one or more of these elements would result in an inadequate substance abuse program, and thus, shall render an employer ineligible for the protection from litigation provided for in Section 5.

### ***Section 7. Written Policy Statement.***

A drug-free workplace must provide a written policy statement on substance abuse, including testing, in order to qualify for the provisions of Section 5.

(a) At least one time, prior to testing, and each year thereafter, all employees and job applicants for employment must be given a notice of testing. In addition, all employees must be given a written policy statement from the employer that contains:

(1) A general statement of the employer's policy on substance abuse, including testing, that shall:

(A) Notify employees that the unlawful manufacture, sale, distribution, possession, or use of alcohol or other drugs is prohibited in the person's workplace;

(B) Identify the types of testing to which an employee or job applicant may be required to submit, including the basis used to determine when such testing will be required; and

(C) Identify the actions the employer may take against an employee or job applicant on the basis of a positive confirmed test result;

(2) A statement advising an employee or job applicant of the existence of this [Act];

(3) A general statement concerning confidentiality;

(4) A statement advising the employee of the consequences of a refusal to submit to a substance abuse test;

(5) A statement advising an employee of the employee assistance program, external employee assistance program, or the employer's resource file of employee assistance programs and other persons, entities, or organizations designed to assist employees with personal or behavioral problems;

(6) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the employer within seven working days after written notification of the positive test result; and

(7) A statement informing an employee of the provisions of the federal Drug-Free Workplace Act or the [state drug-free workplace act], if applicable to the employer.

(b) An employer not having a substance abuse testing program shall ensure that at least 60 calendar days elapse between a general notice to all employees that a substance abuse testing program is being implemented and the beginning of the actual testing. An employer having a substance abuse testing program in place

prior to the enactment of this legislation, shall not be required to provide a 60 day notice period.

(c) An employer shall include notice of substance abuse testing on vacancy announcements for those positions for which testing is required. Notices of the employer's substance abuse testing policy must also be posted in appropriate and conspicuous locations on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations.

COMMENT

**The written policy statement insures that an employer has notified all employees of exactly what the employer's position on substance abuse entails. This written policy statement must provide employees with all the information they must know about the employer's substance abuse program, including information about the employer's general policy on substance abuse, employee assistance programs and rehabilitation resources, employee alcohol and other drug education, drug testing, confidentiality provisions, and a description of the range of the employer's responses to positive indications that the employee is using alcohol and other drugs.**

***Section 8. Employee Assistance Programs or Rehabilitation Resources.***

In order for an employer's workplace to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5, the following must be met:

[ Option 1: (a) To insure appropriate evaluation and referral to treatment for employees, any employer with 50 or more employees must have an employee assistance program, or must contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(1) The employer shall notify the employee of the benefits and services of the employee assistance program, or of the external employee assistance providers.

(2) An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services.

(3) The employer must provide the employee with notice of the policies and procedures regarding access to and use of the program.

(4) If an employer contracts with external employee assistance providers, the employer shall post in a conspicuous place a listing of these external employee assistance providers and explore alternative routine and reinforcing means of publicizing such services.

(b) To insure appropriate evaluation and referral to treatment for employees, any employer with less than 50 employees must:

(1) Have an employee assistance program;

(2) Contract with external employee assistance providers and develop resource and referral agreements with alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems; or

(3) Maintain a resource file of complete and up-to-date information on employee assistance program service providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems.

(c) Pursuant to subsection (b):

(1) An employer must provide employees with notice of the policies and procedures regarding access to and utilization of any programs and services offered.

(2) An employer shall post notice of any employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services.

(3) If an employer contracts with external employee assistance providers, the employer shall post in conspicuous places a listing of these external employee assistance providers and explore alternative routine and reinforcing means of publicizing such services.

(4) If an employer provides a resource file, the employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. ]

[ Option 2: (a) If an employer has an employee assistance program, the employer must inform the employee of the benefits and services of the employee assistance program. An employer shall post notice of the employee assistance program in conspicuous places and explore alternative routine and reinforcing means of publicizing such services. In addition, the employer must provide the employee with notice of the policies and procedures regarding access to and utilization of the program.

(b) If an employer does not have an employee assistance program, the employer must maintain a resource file of employee assistance service providers, alcohol and other drug abuse programs licensed by the [single state authority on alcohol and other drugs], mental health providers, and other persons, entities, or organizations available to assist employees with personal or behavioral problems. The employer shall provide all employees information about the existence of the resource file and a summary of the information contained within the resource file. The summary should contain, but need not be limited to, all information necessary to access the services listed in the resource file. In addition, the employer shall post in conspicuous places a listing of multiple employee assistance providers in the area.

COMMENT

**Employee assistance programs or rehabilitation resources should be made available to all employees as part of any comprehensive drug-free workplace program. EAPs bridge the gap between the workplace and outside resources, including treatment programs that can help assist an employee and his or her family with a substance abuse problem. EAPs also offer counseling, problem resolution, and employee education services, and assist employees with identifying and resolving job performance problems. Cost-benefit analyses of EAPs have found a 4:1 return or higher on investment in the programs due to lower health care and workers' compensation utilization costs and higher worker productivity.**

The Commission strongly recommends that employers allow those employees who test positive to be given an opportunity to seek assistance and rehabilitation through an EAP and other treatment resources. Generally, it is more cost-effective to treat an employee than to terminate him or her, given recruitment, training, and other cost considerations. Also, employment termination does little to address the actual problem of alcohol and other drug abuse. Such positive substance abuse tests and the threat of termination of employment often are the impetus needed to convince an addict or alcoholic to seek help.

The Commission strongly recommends that all employers provide employee assistance programs, whether internal or external, to their employees and encourages employers to use EAPs to link substance abuse testing to employee treatment and rehabilitation programs. Legislators or employers who are concerned with the costs of an employee assistance program or alcohol and other drug treatment should examine the [Model Addiction Cost Reduction Act] in Volume IV, Treatment, and the employee assistance program allowance tax credit offered in [Model Employee Assistance Professionals Act] in this volume.

However, should this recommendation not prove feasible, this section offers state legislatures two options. Option 1 mandates that all employers with 50 or more employees must have an EAP, or must contract with an external EAP provider, and must inform its employees of those available services. Should the employer have less than 50 employees, the employer must either have an EAP, must contract with an external EAP, or must maintain a resource file of other assistance providers. The Commission endorses Option 1.

Option 2 mandates that an employer having an EAP must inform its employees of those services. If an employer does not have an EAP, it must maintain a resource file of other employee assistance providers so that employees are given some avenue of assistance for their substance abuse problems.

For both options, employers must develop ways to publicize the availability of employee assistance programs and/or rehabilitation resources. Notice of the existence of such programs and the ways in which employees may access them should be posted in conspicuous locations. Also, employers should develop innovative routine and reinforcing means of notifying and encouraging employees to use such resources. Describing such programs and processes in paycheck envelopes or in the employee benefits handbook are two examples.

An employer must implement one of the two options adopted by the legislature in order to qualify for the provisions of Section 5.

### ***Section 9. Employee Education.***

An employer must provide all employees with an education program on alcohol and other drug abuse prior to instituting a private sector drug-free workplace program under this [Act]. Also, an employer must provide all employees with an annual education program on alcohol and other drug abuse, in general, and its effects on the workplace, specifically. An education program for a minimum of one hour should include, but is not limited to the following information:

- (a) The explanation of the disease of addiction for alcohol and other drugs;
- (b) The effects and dangers of the commonly abused substances in the workplace; and
- (c) The company's policies and procedures regarding alcohol and other drug use or abuse in the workplace and how employees who wish to obtain substance abuse treatment can do so.

#### COMMENT

In order to qualify for the provisions of Section 5, an employer must provide all employees with annual education programs on alcohol and other drug abuse. An employer must also provide such a program before it institutes a drug-free workplace program in accordance with this [Act].

This education program should be provided by an employer's employee assistance professional, certified addiction counselor, labor relations attorney, or other individuals or programs with expertise in the areas of alcohol and other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate educational programs for employees. In addition, employers are encouraged to fully explain and discuss with employees all policies, rules, procedures, and rights associated with the development, implementation, and maintenance of a drug-free workplace program.

**Section 10. Supervisor Substance Abuse Training.**

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5, and in addition to the education program provided in Section 9, an employer must provide all supervisory personnel a minimum of two hours of training prior to the institution of a drug-free workplace program under this [Act], and each year thereafter, which should include, but is not limited to, the following:

- (a) Recognition of evidence of employee alcohol and other drug abuse;
- (b) Documentation and corroboration of employee alcohol and other drug abuse;
- (c) Referral of alcohol and other drug abusing employees to the proper treatment providers;
- (d) Recognition of the benefits of referring alcohol and other drug abusing employees to treatment programs, in terms of employee health and safety and company savings; and
- (e) Explanation of any employee health insurance or HMO coverage for alcohol and other drug problems.

## COMMENT

**An integral part of any drug-free workplace program is annual alcohol and other drug abuse training for all supervisors. This training must be provided in addition to the annual employee alcohol and other drug education programs. Supervisors need instruction in the recognition of alcohol and other drug abuse, documentation and corroboration of employee substance abuse, and referral to appropriate EAPs or outside treatment providers. They also need to know how to help employees understand and access available assistance for any alcohol or other drug problems.**

**This training can be provided by the employer's employee assistance professional, certified addiction counselors, labor relations attorneys, or other individuals or programs with expertise in the area of alcohol and other drug abuse. Employers are encouraged to consult with their [single state authority on alcohol and other drugs], the [state department of education], the [state department of health], the [state department of labor], and other reliable sources of alcohol and other drug information in order to develop accurate educational programs for supervisors.**

**Section 11. Substance Abuse Testing.**

In order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5:

(a) All testing conducted by an employer shall be in conformity with the standards and procedures established in this [Act] and all applicable rules adopted pursuant thereto. This [Act] does not establish a legal duty for employers to conduct drug tests of employees or job applicants. However, if an employer fails to maintain a drug-free workplace program in accordance with the standards, procedures, and rules established in or pursuant to this [Act], the employer shall not qualify for protection from litigation regarding certain legal claims for acting in good faith on the results of a confirmed substance abuse test, as provided in Section 5.

(b) An employer is required to conduct the following types of tests in order to qualify as a private sector drug-free workplace and to qualify for the provisions of Section 5:

- (1) An employer must require job applicants to submit to a substance abuse test after extending an offer of employment and may use a refusal to submit or a positive confirmed test as a basis for not hiring the job applicant;
- (2) An employer must require an employee to submit to reasonable suspicion testing;
- (3) An employer must require an employee to submit to a substance abuse test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group;
- (4) If the employee in the course of employment enters an employee assistance program or rehabilitation program as the result of a positive test or if the employee has been mandatorily referred to an EAP as a result of a positive test, the employer must require the employee to submit to a substance abuse test as a follow-up to such program. However, if an employee voluntarily entered the program, follow-up testing is not required. If follow-up testing is conducted, the frequency of such testing shall be at least once a year for a two-year period after completion of the program and advance notice of the testing date shall not be given to the employee; and

(5) If the employee has caused or contributed to an accident during the course of employment, the employer must conduct post-accident testing.

(c) Nothing in this section shall prohibit a private employer from conducting random testing or other lawful testing of employees.

(d) All specimen collection and testing under this section shall be performed in accordance with the following procedures:

(1) A specimen shall be collected in accordance with the specimen collection procedures described in regulations approved by the Department of Health & Human Services, the College of American Pathologists, and/or United States Department of Transportation regulations for alcohol testing;

(2) A specimen shall be collected with due regard to the privacy of the individual providing the specimen, and in a manner reasonably calculated to prevent substitution or contamination of the specimen;

(3) Specimen collection, storage, and transportation to the testing site shall be performed in a manner that will reasonably preclude specimen contamination or adulteration;

(4) An employee or prospective employee shall have an opportunity to provide notification of any information that may be considered as relevant to the test, including identification of currently or recently used prescriptions or non-prescription drugs, or other relevant medical information. This may be accomplished by providing procedures for review by a qualified medical professional in the case of a sample that tests “positive” in a confirmatory test;

(5) Each initial and confirmation test conducted under this section, not including the taking or collecting of a specimen to be tested, shall be conducted by a laboratory certified by the federal Department of Health and Human Service’s National Laboratory Certification Program or the College of American Pathologists as described in subsection (e) of this section, and/or, for alcohol, handled in accordance with United States Department of Transportation regulations relating to alcohol testing;

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

(A) A physician, a physician’s assistant, a registered professional nurse, a licensed practical

nurse, a nurse practitioner, or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment;

(B) A qualified person certified or employed by a laboratory certified by the federal Department of Health & Human Service’s National Laboratory Certification Program; or

(C) A qualified person certified or employed by a specimen collection company.

(7) Within seven working days after receipt of a positive confirmed test result from the laboratory, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant;

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

(9) An initial test having a positive result must be verified by a confirmation test, or it shall be certified as a negative result;

(10) An employer who performs drug testing or specimen collection shall use chain of custody procedures to ensure proper record keeping, handling, labeling, and identification of all specimens to be tested;

(11) An employer shall pay the cost of all initial and confirmation substance abuse tests that the employer requires of job applicants or employees;

(12) An employee or job applicant shall pay the cost of any additional tests that he or she requests; and

(13) If testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances that formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee and the original documentation shall be kept confidential by the employer pursuant to Section 12 and retained by the employer for at least one year, or maintained throughout the duration of any legal proceedings resulting from the testing.

(e) No laboratory may analyze initial or confirmation drug specimens unless:

(1) The laboratory is approved by the National Lab-

oratory Certification Program or the College of American Pathologists;

(2) The laboratory has written procedures to ensure the chain of custody; and

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

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

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

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

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

(f) A laboratory shall disclose to the employer a written test result report within seven working days after receipt of the sample. All laboratory reports of a substance abuse test result shall, at a minimum, state:

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

(2) Positive results on confirmation tests only, or negative results, as applicable;

(3) A list of the drugs for which the drug analyses were conducted; and

(4) The type of tests conducted for both initial and confirmation tests and the minimum cut-off levels of the tests. No report shall disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this [Act];

(g) Laboratories shall provide technical assistance to the employer, employee, or job applicant for the purpose of interpreting any positive confirmed test results which could have been caused by prescription or non-prescription medication taken by the employee or job applicant;

(h) All positive initial tests shall be confirmed using the gas chromatography/mass spectrometry (GC/MC) method or an equivalent or more accurate and scientific

ally accepted method approved by the National Laboratory Certification Program or the College of American Pathologists as such technology becomes available in a cost-effective form.

COMMENT

**Substance abuse testing in and of itself is not a comprehensive drug-free workplace program, nor will it singularly end alcohol and other drug abuse in the workplace. It is, however, an important tool to help employers and employees achieve a drug-free workplace.**

**National Labor Relations Board rulings have made drug testing a mandatory subject of bargaining, where private sector employees are represented by a union. Recognizing this, the Commission cannot nor does it seek to preempt federal law or any collective bargaining agreements pursuant to federal law. What the Commission hopes to achieve with this legislation is to establish a model state law that defines a rigorous drug testing procedure that clearly articulates all necessary employee protections, including specimen collection, chain-of-custody, and laboratory procedures.**

**(a) This [Act] does not establish a legal duty for employers to conduct drug testing. Employers that choose not to conduct drug testing in their workplaces are not subject to the provisions of this [Act]. However, employers that wish to qualify for the provisions of Section 5 and the rest of this [Act] must implement a drug testing program. While recognizing the contentious nature of the drug testing issue, it is the sense of the Commission that drug testing is an important element of any drug-free workplace program. Substance abuse testing often serves to deter employee drug use. In addition, treatment proponents often point out that substance abuse testing helps to identify employees who are in denial about their substance abuse problem and who otherwise would continue their substance abuse patterns if not confronted with the seriousness of their problem.**

**(b) The Commission recommends that employers conduct substance abuse testing in the following contexts: pre-employment, reasonable suspicion, regularly scheduled fitness-for-duty medical examinations, alcohol and other drug treatment follow-up, and post-accident. These forms of substance abuse testing must be implemented in order for an employer to qualify for the provisions of Section 5.**

**(c) The Commission does not preclude an employer's use of random drug testing. The goal in doing so is to**

provide employers and employees flexibility in creating their drug-free workplace programs. The U.S. Supreme Court has called random drug testing an effective deterrent to substance abuse in the workplace. Also, some employee representatives view random testing, implemented properly, as an equitable form of substance abuse testing, as it removes employer discretion as to who will be subject to any particular test. The use of random drug testing is not required in order for an employer to qualify for the provisions of Section 5.

(d) and (e) By defining “drugs” broadly, the Commission allows latitude for states to add or subtract drugs for which to be tested as it deems appropriate. Laboratories participating in the federal Department of Health and Human Services’ National Laboratory Certification Program test for the first five drugs listed in the definition. Many employers also desire to test for barbiturates, benzodiazepines, and alcohol, among others. This definition is constructed to accommodate those employers that wish to test more broadly.

Insofar as alcohol is concerned, the U.S. Department of Transportation has developed rigorous standards for the use of evidentiary breathalyzer testing for alcohol use or intoxication. States should follow as closely as possible to the Department of Transportation rules and regulations concerning alcohol testing. However, the Commission recommends that any positive breathalyzer test must be confirmed by a blood alcohol content test.

Initial tests and confirmation tests require testing procedures that have been approved by the federal Department of Health and Human Services’ National Laboratory Certification Program or the College of American Pathologists. It is the sense of the Commission that the National Laboratory Certification Program and the College of American Pathologists offer the highest accepted scientific methodology in this area. Currently, these programs utilize urinalysis testing for drugs of abuse. But states may consider alternative testing procedures to the National Laboratory Certification Program or the College of American Pathologists, including testing for alcohol and other drugs by scientific methodology associated with hair, saliva, blood, breath, urine, tissue, or other such sample of the human body capable of revealing the presence of alcohol or other drugs or their metabolites, as long as the state [Department of Health] or the [single state authority on alcohol and other drugs] is satisfied that the scientific methodology equals or exceeds the quality and protection established by the National Laboratory Certification Program’s or the Col-

lege of American Pathologists’ certification and testing procedures involving urine. If a state chooses to adopt such alternative testing procedures, the legislation should be adjusted accordingly.

By including products of the human body other than urine, specimen, as defined by this [Act], will encompass such future use of alternative scientific methodology.

Should the state determine that such alternative testing procedures equal or exceed the quality and protection established by the National Laboratory Certification Program or the College of American Pathologists, alternative language should be included in this section to allow for appropriate specimen collection and for testing to be conducted by laboratories deemed to be of equal scientific competence as those certified by the National Laboratory Certification Program or the College of American Pathologists. For example, some states currently allow agencies such as the state [department of health] to develop reliable and effective licensing procedures for drug testing laboratories. Those states may choose to rely on laboratories that meet the licensing standards established by such state agencies. In these instances, alternative language should also allow tests and specimens to be handled by the employees of such laboratories.

(h) All positive initial substance abuse test results must be confirmed by a confirmation test using gas chromatography/mass spectrometry methods or an equivalent or more accurate and scientifically accepted method become available. No adverse action shall be taken against an employee, except in the interest of health and safety, until a positive initial substance abuse test result has been confirmed by a confirmation test.

### ***Section 12. Confidentiality.***

(a) All information, interviews, reports, statements, memoranda, and test results, written or otherwise, received by the employer through a substance abuse testing program are confidential communications as they pertain to the employee only and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this [Act].

(b) Employers, laboratories, medical review officers, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under

any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the person tested, unless such release is compelled by an agency of the state or a court of competent jurisdiction or unless deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) The name of the person who is authorized to obtain the information;
- (2) The purpose of the disclosure;
- (3) The precise information to be disclosed;
- (4) The duration of the consent; and
- (5) The signature of the person authorizing release of the information.

(c) Nothing in this [Act] shall be construed to call for actions that may violate federal or state confidentiality statutes for employee assistance professionals and alcohol and other drug abuse counseling or treatment providers.

(d) Information on test results shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this subsection shall be inadmissible as evidence in any such criminal proceeding.

(e) Nothing contained in this [Act] shall be construed to prohibit the employer, agent of the employer, or laboratory conducting a test from having access to employee test information when consulting with legal counsel in connection with actions related to this [Act] or when the information is relevant to its defense in a civil or administrative matter.

### ***Section 13. Rehabilitative and/or Disciplinary Procedures.***

Upon receipt of a confirmed "positive" substance abuse test result that indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that confirmed test result or test refusal as a valid basis for rehabilitative and/or disciplinary actions, which may include, among other actions, the following:

- (a) A requirement that the employee enroll in an employee assistance program, or an employer-provided or -approved rehabilitation, treatment, and/or

counseling program licensed by the [single state authority on alcohol and other drugs] as discussed in Section 8. These may include additional substance abuse testing, participation in which may be a condition of continued employment, and the costs of which may or may not be covered by the employer's health plan or policies;

- (b) Suspension of the employee, with or without pay, for a designated period of time;
- (c) Termination of employment;
- (d) Refusal to hire a prospective employee; and/or
- (e) Other action in conformance with the employer's written policy and procedures, including any applicable collective bargaining agreement provisions.

#### COMMENT

**All positive initial substance abuse test results must be confirmed by a confirmation test using gas chromatography/mass spectrometry methods or an equivalent or more accurate and scientifically accepted method if one becomes available. Upon receipt of a positive confirmed substance abuse test result that indicates a violation of the employer's written policy, or upon the refusal of an employee or prospective employee to provide a testing sample, an employer may use that confirmed test result or test refusal as a valid basis for rehabilitative and/or disciplinary actions.**

**The Commission strongly recommends that employers allow those employees who test positive to be given an opportunity to seek assistance and rehabilitation through an EAP and other treatment resources, rather than solely taking disciplinary action. Disciplinary action and treatment often go hand in hand. There is ample evidence that disciplinary action can reinforce positive treatment outcomes.**

### ***Section 14. Authority of Employer.***

(a) Nothing in this [Act] shall be construed to prevent an employer from establishing reasonable work rules relating to employee manufacture, sale, distribution, possession, or use of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(b) Nothing in this [Act] shall be construed to prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of mon-

itoring exposure of employees to lead, asbestos, or other toxic or unhealthy materials in the workplace or in the performance of job responsibilities. Such screening or tests shall be limited to any rule or regulation issued pursuant thereto, unless prior written consent of the employee is obtained for other tests.

### **Section 15. Employer Protection from Litigation.**

No cause of action is or shall be established for any person against an employer who has established a substance abuse program in accordance with this [Act], for any of the following:

- (a) Actions in good faith based on the results of a “positive” confirmed substance abuse test;
- (b) Failure to test for alcohol and other drugs, or failure to test for a specific drug or other controlled substance;
- (c) Failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition, or any mental, emotional, or psychological disorder or condition; or
- (d) Termination or suspension of any substance abuse prevention or testing program or policy.

#### COMMENT

**Again, the goal of this legislation is to reduce alcohol and other drug abuse and their attendant harms in the workplace. It is not the intent of this [Act] to interfere with the work relationships between employers and employees. By establishing a rigorous standard for comprehensive private sector drug-free workplace programs and by attempting to reduce legal action that might otherwise arise in the absence of such rigorous testing, employee assistance and rehabilitation, education, training, and confidentiality standards, the Commission hopes to keep the focus of drug-free workplaces on reducing alcohol and other drug abuse and their attendant harms in the workplace. The Commission strongly encourages employers and employees to recognize the potential benefits of a drug-free workplace during the development and implementation of a rigorous, comprehensive drug-free workplace program and to work together towards achieving the goal of this legislation.**

### **Section 16. Causes of Action Based on Test Results.**

(a) No cause of action is or shall be established for any person against an employer who has established a substance abuse program in accordance with this [Act], unless the employer’s action was based on a confirmed “false positive” test result, and the employer knew or clearly should have known that the result was in error, and ignored the true test result because of reckless, malicious, or negligent disregard for the truth and/or the willful intent to deceive or be deceived.

(b) In any claim, including a claim under this [Act], where it is alleged that an employer’s action was based on a confirmed “false positive” test result:

- (1) There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of this [Act], and;
- (2) The employer is not liable for monetary damages above and beyond any lost wages, benefits, and direct economic harm suffered by the employee if the employer’s reliance on a “false positive” test result was reasonable and in good faith.

(c) There is no liability for any action taken related to a “false negative” substance abuse test.

### **Section 17. Limits to Defamation Causes of Action.**

No cause of action for defamation of character, libel, slander, or damage to reputation is or shall be established for any person against an employer who has established a substance abuse program in accordance with this [Act], unless:

- (a) The results of that test were disclosed to a person other than the employer, an authorized employee, agent, or representative of the employer, the tested employee, or the tested prospective employee, or the authorized agent or representative of the employee;
- (b) The information disclosed was a “false positive” test result;
- (c) The “false positive” test result was disclosed with negligence or by intentional conduct;
- (d) All elements of an action for defamation of character, libel, slander, or damage to reputation as established by [cite relevant state libel, slander, and damage to reputation sections from state code, where applicable] or common law, are satisfied.

**Section 18. Absence of a Cause of Action.**

No cause of action arises in favor of any person against an employer based upon the failure of the employer to establish a substance abuse program in accordance with this [Act].

## COMMENT

**No cause of action shall arise against an employer simply because the employer declined to implement a drug testing program.**

**Section 19. Absence of Physician-Patient Privilege.**

No physician-patient relationship is created between an employee or job applicant and an employer, medical review officer, or substance abuse testing laboratory performing or evaluating a substance abuse test solely by the establishment, implementation, or administration of a substance abuse testing program.

**Section 20. Collective Bargaining.**

Nothing in this [Act] shall be construed to infringe on, contradict, preempt, or otherwise conflict with the valid provisions of any existing collective bargaining agreement, or to otherwise abridge or infringe on the rights and responsibilities of all parties in the collective bargaining process to negotiate to agreement on any collective bargaining agreement provision. Such contract provisions are fully valid and enforceable, notwithstanding the provisions of this [Act].

**Section 21. Retroactivity of Act.**

Nothing in this [Act] shall be construed to operate retroactively, and nothing in this [Act] shall abrogate the right of an employer under state law to conduct substance abuse tests, or implement employee substance abuse testing programs, prior to enactment of this legislation, provided, however, only those programs that meet the criteria outlined in this [Act] qualify for the provisions of Section 5.

**Section 22. Repeal of Laws in Conflict with This Act.**

All laws and parts of laws in conflict with this [Act] are repealed.

**Section 23. Severability.**

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

**Section 24. Effective Date.**

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].