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An Act To Amend the Employment Practices Law Regarding Substance Abuse Testing

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 26 MRSA §682, sub-§7, as amended by PL 2001, c. 556, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

7. Substance abuse test. "Substance abuse test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances of abuse. The term does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.

A. "Screening test" means an initial substance abuse test performed through the use of immunoassay technology or a federally recognized substance abuse test, or a test technology of similar or greater accuracy and reliability approved by the Department of Health and Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of substances of abuse.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests.

B. "Confirmation test" means a 2nd substance abuse test that is used to verify the presence of a substance of abuse indicated by an initial positive screening test result and is a federally recognized substance abuse test or is performed through the use of liquid or gas chromatography-mass spectrometry that is used to verify the presence of a substance of abuse indicated by an initial positive screening test result.

~~(1) The Department of Health and Human Services may recommend to the joint standing committee of the Legislature having jurisdiction over labor matters that other testing technologies be authorized for use in confirmation tests if the department finds those technologies to be of equal or greater accuracy and reliability than gas chromatography-mass spectrometry.~~

C. "Federally recognized substance abuse test" means any substance abuse test recognized by the federal Food and Drug Administration as accurate and reliable through the administration's clearance or approval process.

Sec. 2. 26 MRSA §683, sub-§2, ¶G, as amended by PL 1999, c. 199, §1 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

G. The cutoff levels for both screening and confirmation tests at which the presence of a substance of abuse in a sample is considered a positive test result.

(1) Cutoff levels for confirmation tests for marijuana may not be lower than 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples.

(2) The Department of Health and Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances of abuse, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the Department of Health and Human Services establish a cutoff level for any substance of abuse for which the department has not established a cutoff level.

(3) Notwithstanding subparagraphs (1) and (2), if the Department of Health and Human Services does not have established cutoff levels or procedures for any specific federally recognized substance abuse test, the minimum cutoff levels and procedures that apply are those set forth in the Federal Register, Volume 69, No. 71, sections 3.4 to 3.7 on pages 19697 and 19698;

Sec. 3. 26 MRSA §686, sub-§1, ¶C is enacted to read:

C. The department shall allow for the use of any federally recognized substance abuse test.

Effective September 12, 2009