

ALABAMA DEPARTMENT OF WORKFORCE
WORKERS' COMPENSATION
ADMINISTRATIVE CODE

CHAPTER 480-5-6
DRUG-FREE WORKPLACE PROGRAM

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480-5-6-.01 Definitions.

When used in these rules, the following words and phrases shall have the following meanings:

(1) **Alcohol:** Limits - less than 0.04 safety sensitive function, less than 0.08 non-safety sensitive function. Refusal: considered in excess of the permissible limits.

(2) **Confirmation Test:** Usually gas chromatography/mass spectrometry technique to confirm a specimen which initially tested positive. Confirmation is performed under the supervision of the laboratory's certifying Ph.D. in one of the natural sciences.

(3) **Illegal Drugs:** A controlled substance that is not medically authorized or prescribed for the employee being tested. Drugs that are considered an illegal substance.

(4) **Legal Drugs:** Prescribed and non-prescribed (over the counter) substances but whose use may be prohibited during the performance of duties by the employer's policies.

(5) **Medical Review Officer (MRO):** A licensed physician (medical doctor or doctor of osteopathy), certified by either the American College of Occupational and Environmental Medicine or The American Association of Medical Review Officers to include a minimum of twelve hours of continuing medical education annually, responsible for receiving laboratory results generated by an employer's drug testing program. The MRO shall be an agent of the employer.

(6) **Prohibited Substance:** Alcohol consumption during or prior to working (in accordance with permissible limits and company policy). Drugs that are considered an illegal substance. A

controlled substance that is not medically authorized or prescribed for the employee being tested. Legally prescribed controlled substances whose use is prohibited during the performance of duties by the employer's policies.

(7) **Verified Drug and Alcohol Test:** A test may be verified as negative in light of a confirmed positive test by a qualified MRO if the medical history and medications support the findings. This is performed on a case by case basis. A physical examination is sometimes required for confirmation. This may be performed by the MRO or other physician as required.

Author: Workers' Compensation Division

Statutory Authority: Code of Ala. 1975, §§25-5-330 through 25-5-340.

History: New Rule: Filed March 8, 1996; effective April 12, 1996.

480-5-6-.02

Drug-Free Workplace Certification.

(1) Employers desiring a Drug-Free Workplace certification pursuant to Alabama Act 95-535 shall submit their request in writing on forms as approved by the Director, to the Department of Industrial Relations, Workers' Compensation Division, Drug-Free Workplace Certification Program.

(a) In addition to the request, the employer may be required to submit the following documentation at the request of the Department:

1. The employer's written policy;
2. A statement identifying each substance abuse test that shall be conducted;
3. A statement describing the employer's Employee Assistance Program, if provided. If an Employee Assistance Program is not provided, a listing of providers of other employee assistance shall be forwarded;
4. A description of the employee education program and a statement verifying the frequency and duration of each educational session;
5. A description of the supervisor's education program and a statement verifying the frequency and duration of each educational session;

6. A statement describing the Drug-Free Workplace Program's confidentially standards and a copy of any related forms; and

7. Copies of any posters or forms utilized in the Drug-Free Workplace Program.

(2) The Department shall use the "Drug-Free Workplace Application," or as subsequently revised, to determine if an employer will be certified.

(3) Employers shall maintain compliance with the criteria for a certified drug-free workplace during the entire year that certification is granted.

(a) The Workers' Compensation Division upon receipt of any allegations or complaints that an employer has not maintained a drug-free workplace, shall investigate the facts and determine on a case-by-case basis whether to revoke a certification.

(b) The Workers' Compensation Division has the authority to revoke certification if it finds that an employer has not substantially complied with the certification requirements.

(4) Before denying or revoking a Drug-Free Workplace Certificate, the Department shall provide the applying employer or certificate holder with the opportunity to file an administrative appeal.

(a) Any person or entity, aggrieved by any action, decision, or order made pursuant to these Rules, may appeal or seek informal redress pursuant to the Department of Industrial Relations Administrative Code, Rules 480-1-1-.05, 480-1-1-.06 and other applicable Rule and law.

(5) The fee for a Drug-Free Workplace certificate is \$25.00, payable to the Department of Industrial Relations.

Author: Workers' Compensation Division

Statutory Authority: Code of Ala. 1975, §§25-5-330 through 25-5-340.

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480-5-6-.03 Substance Abuse Testing.

(1) The specimen collected for substance abuse testing may be tissue, blood, urine, breath, or other product of the human body that is capable of revealing the presence of drugs or their metabolites or of alcohol. However, the collection of any specimen constitutes a search under the Fourth Amendment because it implicates significant privacy concerns. Therefore, to balance the degrees of intrusion on the individual's privacy interest against

the promotion of the employer's legitimate interests, the preferred specimen is:

- (a) Urine for drug testing, and
- (b) Breath for alcohol testing.

2) The methodology and procedures for alcohol testing shall conform to the Department of Transportation (DOT) 49 Code of Federal Regulation Part 40, Procedures For Transportation Workplace Drug Testing Programs, Subpart A - General and Subpart C - Alcohol Testing. Except for those employees who must comply with DOT standards, an employee shall be determined to be under the influence of alcohol if the employee's normal faculties are impaired due to the consumption of alcohol or the employee has an alcohol level of .08 or higher, except for safety sensitive functions the alcohol level may be .04 or higher.

Author: Workers' Compensation Division

Statutory Authority: Code of Ala. 1975, §§25-5-330 through 25-5-340.

History: New Rule: Filed July 19, 1996; effective August 23, 1996.

480-5-6-.04 Medical Review Officer.

(1) Qualifications and Responsibilities:

(a) The MRO shall not be an employee of the laboratory conducting the drug test unless the laboratory establishes a clear separation of functions to prevent any appearance of a conflict of interest.

(b) The role of the MRO is to review and interpret confirmed positive test results obtained through the employer's testing program. The MRO shall examiner alternative medical explanations for any positive test result. This action may include conducting a medical interview and review of the positive test result. This action may include conducting a medical interview and review of the individual's medical history, or review of any other relevant biomedical factors. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with Code of Ala. 1975, §§25-5-330 through 25-5-340.

(2) Reporting and Review of Results:

(a) Positive Result - An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an employee/applicant as having used drugs in violation of employer policies. This review shall be performed

by the Medical Review Officer (MRO) prior to the transmission of the results to employer administrative officials. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face.

1. Prior to making a final decision to verify a positive test result for an individual, the MRO shall give the individual an opportunity to discuss the test results with him or her.

2. Following verification of a positive test result, the MRO shall, as provided in the employer's policy, refer the case to the employer's employee assistance or rehabilitation program, if applicable, to the management official empowered to recommend or take administrative action (or the officials' designated agent), or both.

3. The MRO shall notify each employee who has a confirmed positive test that the employee has 72 hours in which to request a reanalysis of the original specimen, if the single sample method of collection was used, or request a test of the split specimen, if the split sample method of collection was used, if the test is verified as positive.

Only the MRO may authorize such a reanalysis. IF the reanalysis of the single sample or analysis of the split sample fails to reconfirm the presence of the drug or drug metabolite, or if the split specimen is unavailable, inadequate for testing or untestable, the MRO shall cancel the test and report the cancellation to the employer.

4. If an employee has not contacted the MRO within 72 hours, the employee may present to the MRO information documenting that serious illness, injury, inability to contact the MRO, lack of actual notice of the verified positive test, or other circumstances unavoidably prevented the employee from timely contacting the MRO. If the MRO concludes that there is a legitimate explanation for the employee's failure to contact the MRO within 72 hours, the MRO shall direct that the reanalysis of the primary specimen or analysis of the split specimen, as applicable, be performed.

(b) Negative Result - The duties of the MRO with respect to negative results are purely administrative.

(3) Blind Performance Test Procedures:

- (a) Each employer or MRO shall use blind testing quality control procedures as provided in this rule.

(b) Each employer or MRO shall submit three blind performance test specimens for each 100 employee specimens it submits, up to a maximum of 100 blind performance test specimens submitted per quarter.

Author: Workers' Compensation Division

Statutory Authority: Code of Ala. 1975, §§25-5-330 through 25-5-340.

History: New Rule: Filed July 19, 1996; effective August 23, 1996.