

Senate Amendment 3349

Amendment Text

PAG LIN

1 1 Amend [House File 299](#), as amended, passed, and
1 2 reprinted by the House, as follows:
1 3 #1. Page 2, by striking lines 5 through 9 and
1 4 inserting the following: "drug or alcohol testing
1 5 based upon evidence that an employee is using or has
1 6 used alcohol or other drugs in violation of the
1 7 employer's written policy drawn from specific
1 8 objective and articulable facts and reasonable
1 9 inferences drawn from those facts in light of
1 10 experience. For purposes of this paragraph, facts and
1 11 inferences may be based upon, but not limited to, any
1 12 of the following:
1 13 (1) Observable phenomena while at work such as
1 14 direct observation of alcohol or other drug use or
1 15 abuse or of the physical symptoms or manifestations of
1 16 being impaired due to alcohol or other drug use.
1 17 (2) Abnormal conduct or erratic behavior while at
1 18 work or a significant deterioration in work
1 19 performance.
1 20 (3) A report of alcohol or other drug use provided
1 21 by a reliable and credible source.
1 22 (4) Evidence that an individual has tampered with
1 23 any drug or alcohol test during the individual's
1 24 employment with the current employer.
1 25 (5) Evidence that an employee has caused an
1 26 accident while at work.
1 27 (6) Evidence that an employee has manufactured,
1 28 sold, distributed, solicited, possessed, used, or
1 29 transferred drugs while working or while on the
1 30 employer's premises or while operating the employer's
1 31 vehicle, machinery, or equipment."
1 32 #2. Page 2, by striking lines 22 through 24 and
1 33 inserting the following: "without individualized
1 34 suspicion. The selection of employees to be tested
1 35 shall be done by an entity independent from the
1 36 employer and shall be made by a scientifically valid
1 37 method, such as a random number table or a computer-
1 38 based random number generator that is matched with
1 39 employees' social security numbers, payroll
1 40 identification numbers, or other comparable
1 41 identifying numbers in which each member of the
1 42 employee".
1 43 #3. By striking page 3, line 33, through page 4,
1 44 line 13, and inserting the following:
1 45 "b. Sample collection for testing of current
1 46 employees shall be performed so that the specimen is
1 47 split into two components at the time of collection in
1 48 the presence of the individual from whom the sample or
1 49 specimen is collected. The second portion of the
1 50 specimen or sample shall be of sufficient quantity to
2 1 permit a second, independent confirmatory test as
2 2 provided in paragraph "i". If the specimen is urine,
2 3 the sample shall be split such that the primary sample
2 4 contains at least thirty milliliters and the secondary
2 5 sample contains at least fifteen milliliters. Both
2 6 portions of the sample shall be forwarded to the
2 7 laboratory conducting the initial confirmatory

2 8 testing. In addition to any requirements for storage
2 9 of the initial sample that may be imposed upon the
2 10 laboratory as a condition for certification of
2 11 approval, the laboratory shall store the second
2 12 portion of any sample until receipt of a confirmed
2 13 negative test result or for a period of at least
2 14 forty-five calendar days following the completion of
2 15 the initial confirmatory testing, if the first portion
2 16 yielded a confirmed positive test result."

2 17 #4. By striking page 4, line 35, through page 5,
2 18 line 2, and inserting the following: "administration
2 19 or approved under rules adopted by".

2 20 #5. Page 5, by inserting after line 24 the
2 21 following:

2 22 "i. (1) If a confirmed positive drug or alcohol
2 23 test for a current employee is reported to the
2 24 employer by the medical review officer, the employer
2 25 shall notify the employee in writing of the results of
2 26 the test, the employee's right to request and obtain a
2 27 confirmatory test of the second sample collected
2 28 pursuant to paragraph "b" at an approved laboratory of
2 29 the employee's choice, and the fee payable by the
2 30 employee to the employer for reimbursement of expenses
2 31 concerning the test. The fee charged an employee
2 32 shall be an amount that represents the costs
2 33 associated with conducting the second confirmatory
2 34 test, which shall be consistent with the employer's
2 35 cost for conducting the initial confirmatory test on
2 36 an employee's sample. If the employee requests a
2 37 second confirmatory test, identifies an approved
2 38 laboratory to conduct the test, and pays the employer
2 39 the fee for the test within five days from the date
2 40 the employee receives written notice of the right to
2 41 request a test, a second confirmatory test shall be
2 42 conducted at the laboratory chosen by the employee.
2 43 The results of the second confirmatory test shall be
2 44 reported to the medical review officer who reviewed
2 45 the initial confirmatory test results and the medical
2 46 review officer shall review the results and issue a
2 47 report to the employer on whether the results of the
2 48 second confirmatory test confirmed the initial
2 49 confirmatory test as to the presence of a specific
2 50 drug or alcohol. If the results of the second test do
3 1 not confirm the results of the initial confirmatory
3 2 test, the initial confirmatory test shall not be
3 3 considered a confirmed positive drug or alcohol test
3 4 for purposes of taking disciplinary action pursuant to
3 5 subsection 9.

3 6 (2) If a confirmed positive drug or alcohol test
3 7 for a prospective employee is reported to the employer
3 8 by the medical review officer, the employer shall
3 9 notify the prospective employee in writing of the
3 10 results of the test, of the name and address of the
3 11 medical review officer who made the report, and of the
3 12 prospective employee's right to request records under
3 13 subsection 12."

3 14 #6. By striking page 5, line 35, through page 6,
3 15 line 7, and inserting the following: "alcohol
3 16 testing."

3 17 #7. Page 8, by inserting after line 2 the
3 18 following:

3 19 "f. In order to conduct drug or alcohol testing
3 20 under this section, an employer shall require
3 21 supervisory personnel of the employer involved with
3 22 drug or alcohol testing under this section to attend a
3 23 minimum of two hours of initial training and to
3 24 attend, on an annual basis thereafter, a minimum of

3 25 one hour of subsequent training. The training shall
3 26 include, but is not limited to, information concerning
3 27 the recognition of evidence of employee alcohol and
3 28 other drug abuse, the documentation and corroboration
3 29 of employee alcohol and other drug abuse, and the
3 30 referral of employees who abuse alcohol or other drugs
3 31 to the employee assistance program or to the resource
3 32 file of employee assistance services providers."

3 33 #8. Page 8, line 3, by inserting after the word
3 34 "PROCEDURES." the following:

3 35 "a."

3 36 #9. Page 8, line 11, by striking the word "a." and
3 37 inserting the following: "(1)".

3 38 #10. Page 8, line 18, by striking the word "b."
3 39 and inserting the following: "(2)".

3 40 #11. Page 8, line 20, by striking the word "c."
3 41 and inserting the following: "(3)".

3 42 #12. Page 8, line 21, by striking the word "d."
3 43 and inserting the following: "(4)".

3 44 #13. Page 8, line 22, by striking the word "e."
3 45 and inserting the following: "(5)".

3 46 #14. Page 8, by inserting after line 24 the
3 47 following:

3 48 "b. Following a drug or alcohol test, but prior to
3 49 receipt of the final results of the drug or alcohol
3 50 test, an employer may suspend a current employee, with
4 1 or without pay, pending the outcome of the test. An
4 2 employee who has been suspended shall be reinstated by
4 3 the employer, with back pay if applicable, if the
4 4 result of the test is not a confirmed positive drug or
4 5 alcohol test which indicates a violation of the
4 6 employer's written policy."

4 7 #15. Page 10, line 15, by inserting after the word
4 8 "except" the following: "as provided by this section
4 9 or".

4 10 #16. Page 10, line 18, by inserting after the word
4 11 "employee" the following: ", or a prospective
4 12 employee,".

4 13 #17. Page 10, line 25, by inserting after the word
4 14 "officer." the following: "However, a prospective
4 15 employee shall be entitled to records under this
4 16 paragraph only if the prospective employee requests
4 17 the records within fifteen calendar days from the date
4 18 the employer provided the prospective employee written
4 19 notice of the results of a drug or alcohol test as
4 20 provided in subsection 6, paragraph "i", subparagraph
4 21 (2)."

4 22 #18. By renumbering, relettering, or redesignating
4 23 and correcting internal references as necessary.

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4 27 COMMITTEE ON [JUDICIARY](#)

4 28 ANDY McKEAN, Chairperson

4 29 [HF 299.7](#)13 77

4 30 ec/sc/28