

Senate File 2173

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1 3 AN ACT
1 4 CONCERNING PRIVATE SECTOR EMPLOYEE DRUG TESTING RELATING TO
1 5 AUTHORIZED TESTING SUBSTANCES, CONFIRMED POSITIVE TEST
1 6 RESULTS, AND TESTING PROCEDURES, AND PROVIDING AN EFFECTIVE
1 7 DATE.
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1 9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 11 Section 1. Section 730.5, subsection 1, Code 2003, is
1 12 amended by adding the following new paragraph after paragraph
1 13 a:
1 14 NEW PARAGRAPH. aa. "Confirmed positive test result"
1 15 means, except for alcohol testing conducted pursuant to
1 16 subsection 7, paragraph "f", subparagraph (2), the results of
1 17 a blood, urine, or oral fluid test in which the level of
1 18 controlled substances or metabolites in the specimen analyzed
1 19 meets or exceeds nationally accepted standards for determining
1 20 detectable levels of controlled substances as adopted by the
1 21 federal substance abuse and health services administration.
1 22 If nationally accepted standards for oral fluid tests have not
1 23 been adopted by the federal substance abuse and health
1 24 services administration, the standards for determining
1 25 detectable levels of controlled substances for purposes of
1 26 determining a confirmed positive test result shall be the same
1 27 standard that has been established by the federal food and
1 28 drug administration for the measuring instrument used to
1 29 perform the oral fluid test.
1 30 Sec. 2. Section 730.5, subsection 1, paragraph j, Code
1 31 2003, is amended to read as follows:
1 32 j. "Sample" means such sample from the human body capable
1 33 of revealing the presence of alcohol or other drugs, or their
1 34 metabolites, which shall include only urine, saliva, breath,
1 35 and blood. However, sample does not mean blood except as
2 1 authorized pursuant to subsection 7, paragraph "l".
2 2 Sec. 3. Section 730.5, subsection 7, paragraph a, Code
2 3 2003, is amended to read as follows:
2 4 a. The collection of samples shall be performed under
2 5 sanitary conditions and with regard for the privacy of the
2 6 individual from whom the specimen is being obtained and in a
2 7 manner reasonably calculated to preclude contamination or
2 8 substitution of the specimen. If the sample collected is
2 9 urine, procedures shall be established to provide for
2 10 individual privacy in the collection of the sample unless
2 11 there is a reasonable suspicion that a particular individual
2 12 subject to testing may alter or substitute the urine specimen
2 13 to be provided, or has previously altered or substituted a
2 14 urine specimen provided pursuant to a drug or alcohol test.
2 15 For purposes of this paragraph, "individual privacy" means a
2 16 location at the collection site where urination can occur in
2 17 private, which has been secured by visual inspection to ensure
2 18 that other persons are not present, which provides that
2 19 undetected access to the location is not possible during
2 20 urination, and which provides for the ability to effectively
2 21 restrict access to the location during the time the specimen
2 22 is provided. If an individual is providing a urine sample and
2 23 collection of the urine sample is directly monitored or
2 24 observed by another individual, the individual who is directly
2 25 monitoring or observing the collection shall be of the same
2 26 gender as the individual from whom the urine sample is being
2 27 collected.
2 28 Sec. 4. Section 730.5, subsection 7, paragraph b, Code
2 29 2003, is amended to read as follows:
2 30 b. ~~Sample collection~~ Collection of a urine sample for
2 31 testing of current employees, ~~except for the collection of a~~
2 32 ~~sample for alcohol testing conducted pursuant to paragraph~~
2 33 ~~"f", subparagraph (2), shall be performed so that the specimen~~
2 34 is split into two components at the time of collection in the
2 35 presence of the individual from whom the sample or specimen is
3 1 collected. The second portion of the specimen or sample shall
3 2 be of sufficient quantity to permit a second, independent
3 3 confirmatory test as provided in paragraph "i". ~~If the~~
3 4 ~~specimen is urine, the~~ The sample shall be split such that the
3 5 primary sample contains at least thirty milliliters and the

3 6 secondary sample contains at least fifteen milliliters. Both
3 7 portions of the sample shall be forwarded to the laboratory
3 8 conducting the initial confirmatory testing. In addition to
3 9 any requirements for storage of the initial sample that may be
3 10 imposed upon the laboratory as a condition for certification
3 11 or approval, the laboratory shall store the second portion of
3 12 any sample until receipt of a confirmed negative test result
3 13 or for a period of at least forty-five calendar days following
3 14 the completion of the initial confirmatory testing, if the
3 15 first portion yielded a confirmed positive test result.

3 16 Sec. 5. Section 730.5, subsection 7, paragraph f,
3 17 unnumbered paragraph 1, Code 2003, is amended to read as
3 18 follows:

3 19 Drug or alcohol testing shall include confirmation of any
3 20 initial positive test results. An employer may take adverse
3 21 employment action, including refusal to hire a prospective
3 22 employee, based on a confirmed positive ~~drug or alcohol~~ test
3 23 result for drugs or alcohol.

3 24 Sec. 6. Section 730.5, subsection 7, paragraph f, Code
3 25 2003, is amended by adding the following new subparagraph:

3 26 NEW SUBPARAGRAPH. (3) Notwithstanding any provision of
3 27 this section to the contrary, collection of an oral fluid
3 28 sample for testing shall be performed in the presence of the
3 29 individual from whom the sample or specimen is collected. The
3 30 specimen or sample shall be of sufficient quantity to permit a
3 31 second, independent, confirmatory test as provided in
3 32 paragraph "i". In addition to any requirement for storage of
3 33 the initial sample that may be imposed upon the laboratory as
3 34 a condition for certification or approval, the laboratory
3 35 shall store the unused portion of any sample until receipt of
4 1 a confirmed negative test result or for a period of at least
4 2 forty-five calendar days following the completion of the
4 3 initial confirmatory testing, if the portion yielded a
4 4 confirmed positive test result.

4 5 Sec. 7. Section 730.5, subsection 7, paragraph i, Code
4 6 2003, is amended to read as follows:

4 7 i. (1) If a confirmed positive ~~drug or alcohol~~ test
4 8 result for drugs or alcohol for a current employee is reported
4 9 to the employer by the medical review officer, the employer
4 10 shall notify the employee in writing by certified mail, return
4 11 receipt requested, of the results of the test, the employee's
4 12 right to request and obtain a confirmatory test of the second
4 13 sample collected pursuant to paragraph "b" at an approved
4 14 laboratory of the employee's choice, and the fee payable by
4 15 the employee to the employer for reimbursement of expenses
4 16 concerning the test. The fee charged an employee shall be an
4 17 amount that represents the costs associated with conducting
4 18 the second confirmatory test, which shall be consistent with
4 19 the employer's cost for conducting the initial confirmatory
4 20 test on an employee's sample. If the employee, in person or
4 21 by certified mail, return receipt requested, requests a second
4 22 confirmatory test, identifies an approved laboratory to
4 23 conduct the test, and pays the employer the fee for the test
4 24 within seven days from the date the employer mails by
4 25 certified mail, return receipt requested, the written notice
4 26 to the employee of the employee's right to request a test, a
4 27 second confirmatory test shall be conducted at the laboratory
4 28 chosen by the employee. The results of the second
4 29 confirmatory test shall be reported to the medical review
4 30 officer who reviewed the initial confirmatory test results and
4 31 the medical review officer shall review the results and issue
4 32 a report to the employer on whether the results of the second
4 33 confirmatory test confirmed the initial confirmatory test as
4 34 to the presence of a specific drug or alcohol. If the results
4 35 of the second test do not confirm the results of the initial
5 1 confirmatory test, the employer shall reimburse the employee
5 2 for the fee paid by the employee for the second test and the
5 3 initial confirmatory test shall not be considered a confirmed
5 4 positive ~~drug or alcohol~~ test result for drugs or alcohol for
5 5 purposes of taking disciplinary action pursuant to subsection
5 6 10.

5 7 (2) If a confirmed positive ~~drug or alcohol~~ test result
5 8 for drugs or alcohol for a prospective employee is reported to
5 9 the employer by the medical review officer, the employer shall
5 10 notify the prospective employee in writing of the results of
5 11 the test, of the name and address of the medical review
5 12 officer who made the report, and of the prospective employee's
5 13 right to request records under subsection 13.

5 14 Sec. 8. Section 730.5, subsection 9, paragraph b, Code
5 15 2003, is amended to read as follows:

5 16 b. The employer's written policy shall provide uniform

5 17 requirements for what disciplinary or rehabilitative actions
5 18 an employer shall take against an employee or prospective
5 19 employee upon receipt of a confirmed positive ~~drug or alcohol~~
5 20 test result for drugs or alcohol or upon the refusal of the
5 21 employee or prospective employee to provide a testing sample.
5 22 The policy shall provide that any action taken against an
5 23 employee or prospective employee shall be based only on the
5 24 results of the drug or alcohol test. The written policy shall
5 25 also provide that if rehabilitation is required pursuant to
5 26 paragraph "g", the employer shall not take adverse employment
5 27 action against the employee so long as the employee complies
5 28 with the requirements of rehabilitation and successfully
5 29 completes rehabilitation.

5 30 Sec. 9. Section 730.5, subsection 10, paragraph a,
5 31 unnumbered paragraph 1, Code 2003, is amended to read as
5 32 follows:

5 33 Upon receipt of a confirmed positive ~~drug or alcohol~~ test
5 34 result for drugs or alcohol which indicates a violation of the
5 35 employer's written policy, or upon the refusal of an employee
6 1 or prospective employee to provide a testing sample, an
6 2 employer may use that test result or test refusal as a valid
6 3 basis for disciplinary or rehabilitative actions pursuant to
6 4 the requirements of the employer's written policy and the
6 5 requirements of this section, which may include, among other
6 6 actions, the following:

6 7 Sec. 10. Section 730.5, subsection 10, paragraph b, Code
6 8 2003, is amended to read as follows:

6 9 b. Following a drug or alcohol test, but prior to receipt
6 10 of the final results of the drug or alcohol test, an employer
6 11 may suspend a current employee, with or without pay, pending
6 12 the outcome of the test. An employee who has been suspended
6 13 shall be reinstated by the employer, with back pay, and
6 14 interest on such amount at eighteen percent per annum
6 15 compounded annually, if applicable, if the result of the test
6 16 is not a confirmed positive ~~drug or alcohol~~ test result for
6 17 drugs or alcohol which indicates a violation of the employer's
6 18 written policy.

6 19 Sec. 11. EFFECTIVE DATE. This Act, being deemed of
6 20 immediate importance, takes effect upon enactment.

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6 25 JEFFREY M. LAMBERTI
6 26 President of the Senate

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6 30 CHRISTOPHER C. RANTS
6 31 Speaker of the House

6 32 I hereby certify that this bill originated in the Senate and
6 33 is known as Senate File 2173, Eightieth General Assembly.

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7 2 _____
7 3 MICHAEL E. MARSHALL
7 4 Secretary of the Senate

7 4 Approved _____, 2004

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7 8 THOMAS J. VILSACK
7 9 Governor