

TITLE 40 OF THE OKLAHOMA STATUTES
CHAPTER 15. STANDARDS FOR WORKPLACE DRUG AND ALCOHOL TESTING ACT

§40-551. Short title.

Sections 551 through 563 of this title shall be known and may be cited as the "Standards for Workplace Drug and Alcohol Testing Act".
Added by Laws 1993, SB 143, c. 355, § 1, emerg. eff. June 10, 1993;
Amended by Laws 2011, HB 2033, c. 180, § 1, eff. November 1, 2011

§40-552 Definitions.

As used in the Standards for Workplace Drug and Alcohol Testing Act:

1. "Alcohol" means ethyl alcohol or ethanol;
2. "Applicant" means a person who has applied for a position with an employer and received a conditional offer of employment;
3. "Board" means the State Board of Health;
4. "Confirmation test" means a drug or alcohol test on a sample to substantiate the results of a prior drug or alcohol test on the same sample and which uses different chemical principles and is of equal or greater accuracy than the prior drug or alcohol test. Where a breathalyzer test is utilized, a confirmation test means a second sample test that confirms the prior result. Where a single-use test is utilized, a confirmation test means a second test confirmed by a testing facility;
5. "Department" means the State Department of Health;
6. "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein;
7. "Drug or alcohol test" means a chemical test administered for the purpose of determining the presence or absence of a drug or its metabolites or alcohol in a person's bodily tissue, fluids or products. Adulteration of a specimen or of a drug or alcohol test shall be considered as a refusal to test;
8. "Employee" means any person who supplies labor for remuneration to his or her employer in this state and shall not include an independent contractor, subcontractor or employees of an independent contractor; provided, however, an independent contractor, subcontractor, or employees of an independent contractor, may be subject to a workplace drug or alcohol testing policy under the terms of the contractual agreement when the drug or alcohol testing policy applies to other workers at the job site or workers who are in the same or similar classification or group;
9. "Employer" means any person, firm, corporation, partnership, association, nonprofit organization or public employer, which has one or more employees within this state, or which has offered or may offer employment to one or more individuals in this state;
10. "Public employer" means the State of Oklahoma or any political subdivision thereof, including any department, agency, board, commission, institution, authority, public trust, municipality, county, district or instrumentalities thereof;

11. "Review officer" means a person, qualified by the State Board of Health, who is responsible for receiving results from a testing facility which have been generated by an employer's drug or alcohol testing program, and who has knowledge and training to interpret and evaluate an individual's test results together with the individual's medical history and any other relevant information;

12. "Sample" means tissue, fluid or product of the human body chemically capable of revealing the presence of drugs or alcohol in the human body; and

13. "Testing facility" means a facility which provides laboratory services to test samples for the presence of drugs or alcohol.

Added by Laws 1993, SB 143, c. 355, § 2, emerg. eff. June 10, 1993; Amended by Laws 2000, HB 1289, c. 335, § 1, emerg. eff. June 6, 2000; Amended by Laws 2005, HB 1502, c. 190, § 5, eff. September 1, 2005; Amended by Laws 2005, SB 374, c. 134, § 1, eff. November 1, 2005; Amended by Laws 2011, HB 2033, c. 180, § 2, eff. November 1, 2011; Amended by Laws 2012, HB 2204, c. 196, § 17, emerg. eff. May 8, 2012.

§40-553. Construction of act.

A. The Standards for Workplace Drug and Alcohol Testing Act shall not be construed as requiring or encouraging employers to conduct drug or alcohol testing.

B. Except as provided in subsection C of this section, employers who choose to conduct drug or alcohol testing of job applicants or persons employed in this state shall be governed by the provisions of this act and the rules promulgated pursuant thereto.

C. Drug or alcohol testing required by and conducted pursuant to federal law or regulation shall be exempt from the provisions of the Standards for Workplace Drug and Alcohol Testing Act and the rules promulgated pursuant thereto.

D. This act shall not be construed as preventing the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this act.

Added by Laws 1993, c. 355, § 3, emerg. eff. June 10, 1993.

§40-554. Drug or alcohol testing by employers - Restrictions.

Employers may conduct drug and alcohol testing in accordance with the Standards for Workplace Drug and Alcohol Testing Act. Employers who choose to conduct drug or alcohol testing may only request or require an applicant or employee to undergo testing under any of the following circumstances:

1. Applicant and transfer/reassignment testing: A public or private employer may request or require an applicant to undergo drug or alcohol testing and may use a refusal to undergo testing or a positive test result as a basis for refusal to hire. A public or private employer may also request or require an employee who transfers to a different position or job, or who is reassigned to a different position or job, to undergo drug or alcohol testing;

2. For-cause testing: A public or private employer may request or require an employee to undergo drug or alcohol testing at any time it

reasonably believes that the employee may be under the influence of drugs or alcohol, including, but not limited to, the following circumstances:

- a. drugs or alcohol on or about the employee's person or in the employee's vicinity,
- b. conduct on the employee's part that suggests impairment or influence of drugs or alcohol,
- c. a report of drug or alcohol use while at work or on duty,
- d. information that an employee has tampered with drug or alcohol testing at any time,
- e. negative performance patterns, or
- f. excessive or unexplained absenteeism or tardiness;

3. Post-accident testing: A public or private employer may require an employee to undergo drug or alcohol testing if the employee or another person has sustained an injury while at work or property has been damaged while at work, including damage to equipment. For purposes of workers' compensation, no employee who tests positive for the presence of substances defined and consumed pursuant to Section 465.20 of Title 63 of the Oklahoma Statutes, alcohol, illegal drugs, or illegally used chemicals, or refuses to take a drug or alcohol test required by the employer, shall be eligible for such compensation;

4. Random testing: A public or private employer may request or require an employee or all members of an employment classification or group to undergo drug or alcohol testing at random and may limit its random testing programs to particular employment classifications or groups, except that a public employer may require random testing only of employees who:

- a. are police or peace officers,
- b. have drug interdiction responsibilities,
- c. are authorized to carry firearms,
- d. are engaged in activities which directly affect the safety of others,
- e. are working for a public hospital including any hospital owned or operated by a municipality, county, or public trust, or
- f. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services;

5. Scheduled, fitness-for-duty, return from leave and other periodic testing: A public or private employer may request or require an employee to undergo drug or alcohol testing if the test is conducted as a routine part of a routinely scheduled employee fitness-for-duty medical examination, or is requested or required by the employer in connection with an employee's return to duty from leave of absence, or which is scheduled routinely as part of the employer's written policy, except that a public employer may require scheduled, periodic testing only of employees who:

- a. are police or peace officers,
- b. have drug interdiction responsibilities,
- c. are authorized to carry firearms,
- d. are engaged in activities which directly affect the safety of others,

- e. are working for a public hospital including any hospital owned or operated by a municipality, county, or public trust, or
- f. work in direct contact with inmates in the custody of the Department of Corrections or work in direct contact with juvenile delinquents or children in need of supervision in the custody of the Department of Human Services; and

6. Post-rehabilitation testing: A public or private employer may request or require an employee to undergo drug or alcohol testing for a period of up to two (2) years commencing with the employee's return to work, following a positive test or following participation in a drug or alcohol dependency treatment program.

Added by Laws 1993, SB 143, c. 355, § 4, emerg. eff. June 10, 1993; Amended by Laws 2001, 1st Extr. Sess., HB 1003, c. 3, § 1, emerg. eff. October 23, 2001; Amended by Laws 2005, 1st Extr. Sess., SB 1, c. 1, § 4, emerg. eff. July 1, 2005; Amended by Laws 2008, HB 1531, c. 132, § 11, eff. November 11, 2008; Amended by Laws 2011, HB 2033, c. 180, § 3, eff. November 1, 2011; Amended by Laws 2012, HB 2204, c. 196, § 18, emerg. eff. May 8, 2012.

§40-555. Written policy required - Notice of policy changes - Distribution.

A. Any employer that requests or requires an applicant or employee to undergo drug or alcohol testing shall first adopt a written policy setting forth the specifics of its drug or alcohol testing program, which may include, but is not limited to, the following information:

1. A statement of the employer's policy respecting drug or alcohol use by employees;
2. Which applicants and employees are subject to testing;
3. Circumstances under which testing may be requested or required;
4. Substances which may be tested. It shall be sufficient for an employer to state in the written policy that the substances tested shall be for drugs and alcohol;
5. Testing methods and collection procedures to be used;
6. Consequences of refusing to undergo testing;
7. Potential adverse personnel action which may be taken as a result of a positive test result;
8. The ability of an applicant and employee to explain, in confidence, the test results;
9. The ability of an applicant and employee to obtain copies of all information and records related to that individual's testing;
10. Confidentiality requirements; and
11. The available appeal procedures.

B. An employer who implements a drug or alcohol testing policy or changes its policy, shall provide at least ten (10) days' notice to its employees and shall provide a copy of its policy to each applicant upon his or her acceptance of employment by:

1. Hand-delivery of a paper copy of the policy or changes to the policy;
2. Mailing a paper copy of the policy or changes to the policy through the U.S. Postal Service or a parcel delivery service to the last address given by the employee or applicant;

3. Electronically transmitting a copy of the policy through an e-mail or by posting on the employer's website or intranet site; or

4. Posting a copy in a prominent employee access area.

Added by Laws 1993, SB 143, c. 355, § 5, emerg. eff. June 10, 1993; Amended by Laws 2007, SB 1028, c. 78, § 2, eff. November 1, 2007; Amended by Laws 2008, SB 1531, c. 132, § 12, eff. November 11, 2008.

§40-556. Time of employer testing - Payment of costs.

Any drug or alcohol testing by an employer shall be deemed work time for purposes of compensation and benefits for current employees.

An employer shall pay all costs of testing for drugs or alcohol required by the employer. Provided, however, if an employee or applicant requests a confirmation test of a sample within twenty-four (24) hours of receiving notice of a positive test in order to challenge the results of a positive test, the employee or applicant shall pay all costs of the confirmation test, unless the confirmation test reverses the findings of the challenged positive test. In such case, the employer shall reimburse the individual for the costs of the confirmation test.

Added by Laws 1993, c. 355, § 6, emerg. eff. June 10, 1993; Amended by Laws 2011, HB 2033, c. 180, § 5, eff. November 1, 2011.

§40-557. Testing standards and procedures - Implementation and enforcement - Rules.

A. The State Board of Health shall have the power and duty to promulgate, prescribe, amend and repeal rules for the licensure and regulation of testing facilities, which shall include, but not be limited to, the following:

1. Qualifications of testing facilities which shall include the requirement that facilities doing urine analysis tests be certified for forensic urine drug testing pursuant to guidelines or regulations of the federal Department of Health and Human Services or be accredited for forensic urine drug testing by the College of American Pathologists or other organizations recognized by the State Board of Health;

2. Qualifications of testing facility personnel; and

3. Procedures for the testing facility to provide the necessary documentation of testing procedures and test results to the employer requesting testing services as may be required by a court or administrative proceeding.

B. Nothing in the Standards for Workplace Drug and Alcohol Testing Act shall be construed as prohibiting an employer from adopting a policy which allows for testing for drugs or alcohol by another method which is reasonably calculated to detect the presence of drugs or alcohol, including, but not limited to, breathalyzer testing, testing by use of a single-use test device, known as an on-site or quick testing device, to collect, handle, store and ship a sample collected for testing.

Added by Laws 1993, c. 355, § 7, emerg. eff. June 10, 1993. Amended by Laws 2006, c. 277, § 3, eff. Nov. 1, 2006; Amended by Laws 2011, HB

2033, c. 180, § 6, eff. November 1, 2011; Amended by Laws 2012, HB 2204, c. 196, § 19, emerg. eff. May 8, 2012.

§40-558. Licensing of testing facilities - Fees - Administrative fines.

A. On and after July 1, 1994, no testing facility shall provide laboratory services to an employer to test for the presence or absence of drugs or alcohol unless it meets the qualifications established for testing facilities pursuant to Section 7 of this act and is licensed by the State Department of Health to perform such tests. The State Board of Health shall promulgate rules relating to the issuance of such license, including rules governing license revocation, suspension and nonrenewal.

B. The fees for licensure of testing facilities by the State Department of Health shall be set by the State Board of Health and shall not be more than One Hundred Fifty Dollars (\$150.00) annually.

C. Any testing facility providing laboratory services to an employer to test for the evidence of drugs or alcohol which is not licensed by the State Department of Health pursuant to this section shall be subject to an administrative fine of not more than Five Hundred Dollars (\$500.00) for each offense. Each test performed by the unlicensed testing facility in violation of this section shall constitute a separate offense.

Added by Laws 1993, c. 355, § 8, emerg. eff. June 10, 1993.

§40-559. Sample collection and testing - Conditions.

All sample collection and testing for drugs and alcohol pursuant to the provisions of this act shall be conducted in accordance with the following conditions:

1. Samples shall be collected and tested only by individuals deemed qualified by the State Board of Health and may be collected on the premises of the employer;

2. Only samples deemed appropriate by the State Board of Health for drug and alcohol testing shall be collected;

3. The collection of samples shall be performed under reasonable and sanitary conditions;

4. A sample shall be collected in sufficient quantity for splitting into two separate specimens, pursuant to rules of the State Board of Health, to provide for any subsequent independent analysis in the event of challenge of the test results of the main specimen;

5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the instances of urinalysis, no employer or representative, agent or designee of the employer shall directly observe an applicant or employee in the process of producing a urine sample; provided, however, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;

6. Sample collection shall be documented, and the documentation procedures shall include:

- a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
- b. an opportunity for the applicant or employee to provide notification of any information which the applicant or employee considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;

7. Sample collection, storage, and transportation to the testing facility shall be performed so as reasonably to preclude the probability of sample contamination or adulteration;

8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by Board rule, at the cutoff levels as determined by Board rule, before the result of any test may be used as a basis for refusal to hire a job applicant or any action by an employer pursuant to Section 12 of this act; and

9. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

Added by Laws 1993, c. 355, § 9, emerg. eff. June 10, 1993.

§40-560. Confidentiality of testing results and records - Disclosure of general health information prohibited.

A. Records of all drug and alcohol test results and related information maintained by the employer shall be the property of the employer and, upon the request of the applicant or employee tested, shall be made available for inspection and copying to the applicant or employee. Except as provided in subsection B of this section, an employer shall not release such records to any person other than the applicant, employee or the review officer.

B. Records of all drug and alcohol test results and related information maintained by the employer may be released by the employer for any of the following purposes:

1. As admissible evidence by an employer or the individual tested in a case or proceeding before a court of record or administrative agency if either the employer or the individual tested are named parties in the case or proceeding;

2. In order to comply with a valid judicial or administrative order; or

3. To an employer's employees, agents and representatives who need access to such records in the administration of the Standards For Workplace Drug and Alcohol Testing Act.

C. A testing facility, or any agent, representative or designee of the facility, or any review officer, shall not disclose to any employer, based on the analysis of a sample collected from an applicant or employee for the purpose of testing for the presence of drugs or alcohol, any information relating to the general health, pregnancy or other physical or mental condition of the applicant or employee.

A testing facility shall release the results of the drug or alcohol test, and any analysis and information related thereto, to the individual tested upon request.

Added by Laws 1993, c. 355, § 10, emerg. eff. June 10, 1993; Amended by Laws 2011, HB 2033, c. 180, § 7, eff. November 1, 2011; Amended by Laws 2012, HB 2204, c. 196, § 20, emerg. eff. May 8, 2012.

§40-561. Repealed by Laws 2011, HB 2033, c. 180, § 10, eff. November 1, 2011

Added by Laws 1993, c. 355, § 11, emerg. eff. June 10, 1993; Repealed by Laws 2011, HB 2033, c. 180, § 10, eff. November 1, 2011

§40-562. Disciplinary actions permitted.

A. An employer's policy shall state the disciplinary actions that may be taken upon a refusal to undergo a drug or alcohol test or for a positive test for the presence of drugs or alcohol.

B. An employer may take disciplinary action, up to and including discharge, against an employee who refuses to undergo drug or alcohol testing conducted in accordance with the provisions of Section 551 et seq. of this title or who tests positive for the presence of drugs or alcohol.

C. Notwithstanding any provision of law for confidentiality of drug or alcohol testing results, nothing in the Standards for Workplace Drug and Alcohol Testing Act shall preclude an employer, contracting with another employer, from sharing drug or alcohol testing results of any tested person who works pursuant to such contractual agreement.

Added by Laws 1993, c. 355, § 12, emerg. eff. June 10, 1993; Amended by Laws 2011, HB 2033, c. 180, § 8, eff. November 1, 2011; Amended by Laws 2012, HB 2204, c. 196, § 21, emerg. eff. May 8, 2012.

§40-563. Willful violation of act - Civil actions - Remedies.

A. Any person aggrieved by a willful violation of the Standards for Workplace Drug and Alcohol Testing Act may institute a civil action in a court of competent jurisdiction within one (1) year of the alleged willful violation or be barred from obtaining the relief provided for in subsection B of this section. A willful violation of the Standards for Workplace Drug and Alcohol Testing Act requires proof by the preponderance of the evidence that the employer had a specific intent to violate the act.

B. A prevailing party may be awarded lost wages to which the person would have been entitled and an additional equal amount as liquidated damages. Interim earnings or amounts earnable with reasonable diligence by the aggrieved person shall operate to reduce the lost wages otherwise allowable. Reasonable costs and attorney fees may be awarded to the prevailing party, whether plaintiff or defendant.

Added by Laws 1993, c. 355, § 13, emerg. eff. June 10, 1993; Amended by Laws 2011, HB 2033, c. 180, § 9, eff. November 1, 2011.

§40-564. Repealed by Laws 2011, HB 2033, c. 180, § 10, eff. November 1, 2011

Added by Laws 1993, c. 355, § 14, emerg. eff. June 10, 1993; Repealed by Laws 2011, HB 2033, c. 180, § 10, eff. November 1, 2011.

§40-565. Repealed by Laws 2011, HB 2033, c. 180, § 10, eff. November 1, 2011

Added by Laws 1993, c. 355, § 15, emerg. eff. June 10, 1993; Repealed by Laws 2011, HB 2033, c. 180, § 10, eff. November 1, 2011.