

Employer LINC™

LEGAL INFORMATION, NEWS AND COMMENTARY FOR EMPLOYERS

EMPLOYMENT LAW UPDATE 05.18.2011

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Sweeping changes to Oklahoma employer drug testing law

Oklahoma has long been considered an employee-friendly state on the issue of drug and alcohol testing by employers. As Oklahoma employers know all too well, the Oklahoma Standards for Workplace Drug and Alcohol Testing Act places significant restrictions on an employer's ability to conduct testing and creates several hyper-technical and procedural obstacles for employers to navigate. The unfortunate result has been frequent litigation by disgruntled former employees, often with the employee being reinstated despite testing positive for drugs or alcohol.

Objections by employers to this state of the law have finally won out. On May 9, 2011, Oklahoma Governor Mary Fallin signed into law a set of sweeping changes designed to improve the Act and to provide employers more flexibility in eliminating undesirable employees. McAfee & Taft's Labor & Employment attorneys, led by Sam Fulkerson, played a significant role in assisting The State Chamber of Oklahoma in proposing, drafting and championing these changes.

Highlights of the new law, which becomes effective November 1, 2011, include the following:

- Testing of independent contractors and employees of independent contractors is now expressly permitted, provided the contractual agreement allows for such testing and other workers at the job site are similarly subject to testing
- Less stringent policy requirements and substantially less technicality in testing policies
- No list of substances needed
- Less notice required – Employers only need to give employees 10 days advance notice before implementing new or changed policies
- The Act's "reasonable suspicion" standard has been replaced by a "reasonable belief" standard
- The workers' compensation and unemployment prohibitions for individuals testing positive have been strengthened
- Reduction of the statute of limitations to one year

- Elimination of the employer-sponsored EAP requirement
- Provision for the award of attorneys fees to a successful defendant
- Repeal of criminal provisions

Oklahoma employers who wish to conduct drug and alcohol testing between now and November 1, 2011, must continue to adhere to the provisions of the current statute. However, employers should seriously consider creating revised drug and alcohol testing policies to be ready to take full advantage of the greatly-simplified Act at that time. Employers who choose not to revise those policies may face the argument that the employer is contractually obligated to continue following the onerous technical requirements of the current Act. As always, the attorneys at McAfee & Taft stand ready to assist you.

To learn more about the newly amended Oklahoma Standards for Workplace Drug and Alcohol Testing Act, as well as other workplace-related legislation which made its way through the Oklahoma Legislature this year, please make plans to join us for a complimentary EmployerLINC webinar on Thursday, June 9, 2011, titled **“For Better or Worse: Oklahoma Legislature Lays Down New Laws for Employers.”** Visit <http://events.employerlinc.com> for more information and to register.



McAfee & Taft
EmployerLINC™
LEGAL INFORMATION, NEWS AND COMMENTARY FOR EMPLOYERS
WEBINAR

FOR BETTER OR WORSE
OKLAHOMA LEGISLATURE LAYS DOWN NEW LAWS FOR EMPLOYERS

JUNE 9TH @ NOON EVENTS.EMPLOYERLINC.COM

This employment law update has been provided for information of clients and friends of McAfee & Taft. It does not provide legal advice, and it is not intended to create a lawyer-client relationship. Readers should not act upon the information in this newsletter without seeking professional counsel.

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