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Oklahoma Revamps Drug Testing Law to Favor Employers

Beginning November 1, 2011, Oklahoma employers can take advantage of the sweeping revisions recently made to the Oklahoma Standards for Workplace Drug and Alcohol Testing Act (“ODTA”). Currently, the ODTA places numerous and detailed restrictions on an employer’s ability to test employees and allows employees to collect damages for technical violations of the ODTA. The revised ODTA will eliminate many of these problems. For instance,

- Under the old law, one way an employer could test an employee was under a “reasonable suspicion” standard. The new law allows an employer to test an employee if the Company has a “reasonable belief” that the employee is under the influence. For example, an employer may have reasonable belief based on an employee’s “negative performance pattern” or “excessive or unexplained absenteeism or tardiness.”
- Under the old law, an employer could test an employee involved in an accident resulting in property or equipment damage only where the damage exceeded \$500. The new law allows post-accident testing regardless of the dollar value of the damage.
- Under the old law, an employer was required to provide an employee assistance program. The new law eliminates this requirement.
- Under the old law, an employer was required to post the testing policy in the workplace. The new law allows an employer to provide notice of the policy through several different means and does not require posting.
- Under the old law, an employer was required to provide 30 days notice to employees when implementing a new testing policy or making changes to an existing testing policy. The new law requires only a 10 day notice period.
- The new law reduces the statute of limitations for actions brought under the ODTA to 1 year.
- The new law limits an employee’s damages under the ODTA to lost wages and an additional equal amount as liquidated damages.
- The new law specifically states that an employer who prevails in an ODTA lawsuit may be awarded attorney fees and costs.
- The new law eliminates criminal penalties for violation of the ODTA.

To take advantage of these new employer friendly provisions, employers must implement drug or alcohol policies that comply with the new law effective November 1, 2011. Further, an employer with a policy based on the former ODTA should revise the policy by the deadline in order to ensure compliance with the new ODTA.

If you have any questions or would like assistance in drafting or amending your drug or alcohol testing policy, please contact us.

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