

TITLE 72
WORKER'S COMPENSATION AND RELATED LAWS -- INDUSTRIAL COMMISSION

CHAPTER 17
IDAHO EMPLOYER ALCOHOL AND DRUG-FREE WORKPLACE ACT

72-1701. PURPOSE AND INTENT OF ACT. (1) The purpose of this act is to promote alcohol and drug-free workplaces and otherwise support employers in their efforts to eliminate substance abuse in the workplace, and thereby enhance workplace safety and increase productivity. This act establishes voluntary drug and alcohol testing guidelines for employers that, when complied with, will find an employee who tests positive for drugs or alcohol at fault, and will constitute misconduct under the employment security law as provided in section 72-1366, Idaho Code, thus resulting in the denial of unemployment benefits.

(2) It is the further purpose of this act to promote alcohol and drug-free workplaces in order that employers in this state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace and reach their desired levels of success without experiencing the cost delays and tragedies associated with work-related accidents resulting from substance abuse by employees.

[72-1701, added 1997, ch. 126, sec. 1, p. 375; am. 1998, ch. 1, sec. 105, p. 97; am. 1999, ch. 142, sec. 1, p. 406; am. 2003, ch. 233, sec. 2, p. 593.]

72-1702. TESTING FOR DRUGS AND/OR ALCOHOL. (1) It is lawful for a private employer to test employees or prospective employees for the presence of drugs or alcohol as a condition of hiring or continued employment, provided the testing requirements and procedures are in compliance with 42 U.S.C. section 12101.

(2) Nothing herein prohibits an employer from using the results of a drug or alcohol test conducted by a third party including, but not limited to, law enforcement agencies, hospitals, etc., as the basis for determining whether an employee has committed misconduct.

(3) This act does not change the at-will status of any employee.

[72-1702, added 1997, ch. 126, sec. 1, p. 375; am. 2003, ch. 233, sec. 3, p. 593.]

72-1703. COST OF TESTING OF CURRENT EMPLOYEES. (1) Any drug or alcohol testing by an employer of current employees shall be deemed work time for purposes of compensation.

(2) All costs of drug and alcohol testing for current employees conducted under the provisions of this act, unless otherwise specified in section 72-1706(2), Idaho Code, shall be paid by the employer.

[72-1703, added 1997, ch. 126, sec. 1, p. 376; am. 2003, ch. 233, sec. 4, p. 594.]

72-1704. REQUIREMENTS FOR SAMPLE COLLECTION AND TESTING. All sample collection and testing for drugs and alcohol under this act shall be performed in accordance with the following conditions:

(1) The collection of samples shall be performed under reasonable and sanitary conditions;

(2) The employer or employer's agent who is responsible for collecting the sample will be instructed as to the proper methods of collection;

(3) Samples shall be collected and tested with due regard to the privacy of the individual being tested and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;

(4) Sample collection shall be documented and the documentation procedures shall include:

(a) Labeling of samples so as reasonably to preclude the possibility of misidentification of the person tested in relation to the test result provided; and

(b) Handling of samples in accordance with reasonable chain-of-custody and confidentiality procedures;

(5) Sample collection, storage and transportation to the place of testing shall be performed so as reasonably to preclude the possibility of sample contamination and/or adulteration;

(6) Sample testing shall conform to scientifically accepted analytical methods and procedures;

(7) Drug testing shall include a confirmatory test before the result of any test can be used as a basis for action by an employer under sections 72-1707 and 72-1708, Idaho Code. A confirmatory test refers to the mandatory second or additional test of the same sample that is conducted by a laboratory utilizing a chromatographic technique such as gas chromatography-mass spectrometry or another comparable reliable analytical method;

(8) Positive alcohol tests resulting from the use of an initial screen saliva test, must include a confirmatory test that utilizes a different testing methodology meant to demonstrate a higher degree of reliability;

(9) Positive alcohol tests resulting from the use of a breath test must include a confirmatory breath test conducted no earlier than fifteen (15) minutes after the initial test; or the use of any other confirmatory test meant to demonstrate a higher degree of reliability.

[72-1704, added 1997, ch. 126, sec. 1, p. 376; am. 2003, ch. 233, sec. 5, p. 594.]

72-1705. EMPLOYER'S WRITTEN TESTING POLICY -- PURPOSES AND REQUIREMENTS FOR COLLECTION AND TESTING. (1) An employer must have a written policy on drug and/or alcohol testing that is consistent with the requirements of this act, including a statement that violation of the policy may result in termination due to misconduct.

(2) An employer will receive the full benefits of this act, even if its drug and alcohol testing policy does not conform to all of the statutory provisions, if it follows a drug or alcohol testing policy that was negotiated with its employees' collective bargaining representative or that is consistent with the terms of the collective bargaining agreement.

(3) Testing for the presence of drugs or alcohol by an employer shall be carried out within the terms of a written policy that has been communicated to affected employees, and is available for review by prospective employees.

(4) The employer must list the types of tests an employee may be subject to in their written policy, which may include, but are not limited to, the following:

(a) Baseline;

(b) Preemployment;

(c) Post-accident;

- (d) Random;
- (e) Return to duty;
- (f) Follow-up;
- (g) Reasonable suspicion.

[72-1705, added 1997, ch. 126, sec. 1, p. 377; am. 2003, ch. 233, sec. 6, p. 595.]

72-1706. RIGHT OF EMPLOYEE OR PROSPECTIVE EMPLOYEE TO EXPLAIN POSITIVE TEST RESULT AND REQUEST FOR RETEST. (1) Any employee or prospective employee who tests positive for drugs or alcohol must be given written notice of that test result, including the type of substance involved, by the employer. The employee must be given an opportunity to discuss and explain the positive test result with a medical review officer or other qualified person.

(2) Any employee or prospective employee who has a positive test result may request that the same sample be retested by a mutually agreed upon laboratory. A request for retest must be done within seven (7) working days from the date of the first confirmed positive test notification and may be paid for by the employee or prospective employee requesting the test. If the retest results in a negative test outcome, the employer will reimburse the cost of the retest, compensate the employee for his time if suspended without pay, or if terminated solely because of the positive test, the employee shall be reinstated with back pay.

[72-1706, added 1997, ch. 126, sec. 1, p. 377; am. 2003, ch. 233, sec. 7, p. 595.]

72-1707. DISCHARGE FOR WORK-RELATED MISCONDUCT -- FAILURE OR REFUSAL OF TESTING. An employer establishes that an employee was discharged for work-related misconduct, as provided in section 72-1366, Idaho Code, upon a showing that the employer has complied with the requirements of this chapter and that the discharge was based on:

- (1) A confirmed positive drug test or a positive alcohol test, as indicated by a test result of not less than .02 blood alcohol content (BAC), but greater than the level specified in the employer's substance abuse policy;
- (2) The employee's refusal to provide a sample for testing; or
- (3) The employee's alteration or attempt to alter a test sample by adding a foreign substance for the purpose of making the sample more difficult to analyze; or
- (4) The employee's submission of a sample that is not his or her own.

[72-1707, added 1997, ch. 126, sec. 1, p. 377; am. 1998, ch. 1, sec. 106, p. 98; am. 2003, ch. 233, sec. 8, p. 596.]

72-1708. EMPLOYER'S DISCIPLINARY OR REHABILITATIVE ACTIONS BASED ON TESTING -- CLAIMANT INELIGIBLE FOR BENEFITS. (1) Unless otherwise prohibited, upon receipt of a confirmed positive drug or alcohol test result or other proof which indicates a violation of an employer's written policy, or upon the refusal of an employee to provide a test sample, or upon an employee's alteration of or attempt to alter a test sample, an employer may use that test result or the employee's conduct as the basis for disciplinary or refusal-to-hire action that will result in a claimant's ineligibility to receive benefits under the provisions of section 72-1366(4), (5), (6) or (7), Idaho Code. Actions by the employer may include, but are not limited to, the following:

(a) A requirement that the employee enroll in an employer-approved rehabilitation, treatment, or counseling program, which may include additional drug or alcohol testing, as a condition of continued employment;

(b) Suspension of the employee with or without pay for a period of time;

(c) Termination of the employee;

(d) Other disciplinary measures in conformance with the employer's usual procedures, including any collective bargaining agreement.

(2) Action taken pursuant to this section shall not create any cause of action against the employer.

[72-1708, added 1997, ch. 126, sec. 1, p. 378; am. 1998, ch. 1, sec. 107, p. 98; am. 2003, ch. 233, sec. 9, p. 596.]

72-1709. FAILURE OF CLAIMANT TO ACCEPT SUITABLE WORK. If a claimant for unemployment benefits does not accept otherwise suitable work, as contemplated in section 72-1366(4), (6) or (7), Idaho Code, because he is required to take a preemployment drug or alcohol test, the claimant has failed to accept suitable work, unless the claimant is required to pay for costs associated with a negative drug or alcohol test result.

[72-1709, added 1997, ch. 126, sec. 1, p. 378; am. 1998, ch. 1, sec. 108, p. 98.]

72-1710. LIMITATIONS OF EMPLOYER LIABILITY. (1) No cause of action arises in favor of any person based upon the absence of an employer established program or policy of drug or alcohol testing in accordance with this chapter.

(2) No cause or action arises in favor of any person against an employer for any of the following:

(a) Failure to test for drugs or alcohol, or failure to test for a specific drug or other substance;

(b) Failure to test for, or if tested, a failure to detect, any specific drug or other physical abnormality, problem or defect of any kind; or

(c) Termination or suspension of any drug or alcohol testing program or policy.

[72-1710, added 1997, ch. 126, sec. 1, p. 378; am. 2003, ch. 233, sec. 10, p. 597.]

72-1711. FALSE TEST RESULT -- PRESUMPTION AND LIMITATION OF DAMAGES IN CLAIM AGAINST EMPLOYER. (1) No cause of action arises in favor of any person against an employer who has established a program of drug and alcohol testing in accordance with this chapter, and who has taken any action based on its established substance abuse and/or disciplinary policies, unless the employer's action was based on a false test result, and the employer knew or clearly should have known that the result was in error.

(2) In any claim where it is alleged that an employer's action was based on a false test result:

(a) There is a rebuttable presumption that the test result was valid if the employer complied with the provisions of section 72-1704, Idaho Code;

(b) The employer is not liable for monetary damages if his reliance on a false test result was reasonable and in good faith; and

(c) There is no employer liability for any action taken related to a "false negative" drug or alcohol test.

[72-1711, added 1997, ch. 126, sec. 1, p. 379; am. 2003, ch. 233, sec. 11, p. 597.]

72-1712. CONFIDENTIALITY OF INFORMATION. (1) All information, interviews, reports, statements, memoranda or test results, written or otherwise, received through a substance abuse testing program shall be kept confidential, and are intended to be used only for an employer's internal business use; or in a proceeding related to any action taken by or against an employer under section 72-1707, 72-1708 or 72-1711, Idaho Code, or other dispute between the employer and the employee or applicant; or as required to be disclosed by the United States department of transportation law or regulation or other federal law; or as required by service of legal process.

(2) The information described in subsection (1) of this section shall be the property of the employer.

(3) An employer, laboratory, medical review officer, employee assistance program, drug or alcohol rehabilitation program and their agents, who receive or have access to information concerning test results shall keep the information confidential, except as provided in subsection (4) of this section.

(4) Nothing in this chapter prohibits an employer from using information concerning an employee or job applicant's substance abuse test results in a lawful manner with respect to that employee or applicant as provided in chapter 2, title 44, Idaho Code.

[72-1712, added 1997, ch. 126, sec. 1, p. 379; am. 2003, ch. 233, sec. 12, p. 597.]

72-1713. EMPLOYEE NOT "DISABLED." An employee or prospective employee whose drug or alcohol test results are verified or confirmed as positive in accordance with the provisions of this act shall not, by virtue of those results alone, be defined as a person with a "disability" for purposes of chapter 59, title 67, Idaho Code.

[72-1713, added 1997, ch. 126, sec. 1, p. 379.]

72-1714. NO PHYSICIAN-PATIENT RELATIONSHIP CREATED. A physician-patient relationship is not created between an employee or prospective employee, and the employer or any person performing a drug or alcohol test, solely by the establishment of a drug or alcohol testing program in the workplace.

[72-1714, added 1997, ch. 126, sec. 1, p. 380; am. 2003, ch. 233, sec. 13, p. 598.]

72-1715. PUBLIC ENTITIES MAY CONDUCT PROGRAMS. The state of Idaho and any political subdivision thereof may conduct drug and alcohol testing of employees under the provisions of this chapter and as otherwise constitutionally permitted.

[72-1715, added 1997, ch. 126, sec. 1, p. 380; am. 2003, ch. 233, sec. 14, p. 598.]

72-1716. IMPLEMENTATION OF ALCOHOL AND DRUG-FREE WORKPLACE PROGRAM -- QUALIFICATION OF EMPLOYER PREMIUM REDUCTION. (1) For each policy of worker's compensation insurance issued or renewed in the state on or after July 1, 1999, a reduction in the premium for the policy may be granted if the insurer determines the insured has established and maintains an alcohol and

drug-free workplace program that complies with the requirements of sections 72-1701 through 72-1715, Idaho Code.

(2) The state of Idaho or any political subdivision thereof that conducts drug and alcohol testing of all those employees and prospective employees for whom such testing is not constitutionally prohibited shall qualify for, and may be granted, the employer premium reduction set forth in subsection (1) of this section.

[72-1716, added 1999, ch. 142, sec. 2, p. 407; am. 2003, ch. 233, sec. 15, p. 598.]

72-1717. STATE CONSTRUCTION CONTRACTS. (1) In order to be eligible for the award of any state contract for the construction or improvement of any public property or publicly owned buildings, contractors shall meet the following requirements:

(a) Provide a drug-free workplace program that complies with the provisions of this chapter and as otherwise constitutionally permitted for employees, including temporary employees, and maintain such program throughout the duration of the contract;

(b) Subcontract work under state construction contracts only to those subcontractors meeting the requirements of subsection (1) (a) of this section.

(2) Any contractor submitting a bid for a state construction contract, required to comply with the provisions of this section, shall submit an affidavit along with its bid on the project verifying its compliance with the provisions of this section.

[72-1717, added 2004, ch. 224, sec. 1, p. 666.]