

By: Legler

H.B. No. 1136

A BILL TO BE ENTITLED

AN ACT

1
2 relating to disqualification for the receipt of unemployment
3 compensation benefits for violation of an employer drug testing
4 policy.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter C, Chapter 207, Labor Code, is
7 amended by adding Section 207.0445 to read as follows:

8 Sec. 207.0445. VIOLATION OF EMPLOYER DRUG TESTING POLICY.

9 (a) In this section, "substance abuse" means the abuse of:

10 (1) a controlled substance or controlled substance
11 analogue, as defined by Section 481.002, Health and Safety Code;

12 (2) a dangerous drug, as defined by Section 483.001,
13 Health and Safety Code; or

14 (3) any other similar substance, the use of which is
15 regulated under state law.

16 (b) An individual is disqualified for benefits if the
17 commission determines that the individual was discharged from the
18 individual's last work for violation of the employer's written drug
19 testing policy.

20 (c) A disqualification for benefits under this section
21 continues until the individual has returned to employment and:

22 (1) worked for six weeks; or

23 (2) earned wages equal to six times the individual's
24 benefit amount.

1 (d) The commission may not disqualify an individual based on
2 a violation of the employer's written drug testing policy if, on the
3 basis of evidence presented by the individual, the commission
4 determines that:

5 (1) the employer was not in compliance with the
6 requirements of this section;

7 (2) at the time of the violation for which the
8 individual was discharged, the individual was participating in a
9 treatment program for substance abuse and since that time has been
10 continuously participating in, or has successfully completed, the
11 treatment program;

12 (3) the use of the substance by the individual was
13 prescribed by a physician as medically necessary for the
14 individual; or

15 (4) the test used to document the individual's alleged
16 substance abuse was not conducted as required by this section.

17 (e) An employer may require an employee to undergo drug
18 testing only if the employer's written policy requires testing:

19 (1) on a random basis for all employees;

20 (2) based on a reasonable suspicion of substance
21 abuse; or

22 (3) as part of an accident investigation.

23 (f) For a disqualification to be made under this section,
24 the employer must have in effect a uniform written drug testing
25 policy relating to employee substance abuse that complies with the
26 requirements of this section. The employer must provide a copy of
27 the policy to each employee. The employer shall post a written copy

1 of the policy or a notice that describes the policy at appropriate
2 locations at each place of business.

3 (g) Before requiring an employee to submit to drug testing,
4 the employer must provide the employee with a form, prescribed by
5 the employer, on which the employee shall acknowledge that the
6 employee has received a copy of the employer's drug testing policy.
7 The form must be designed in a manner that allows the employee to
8 indicate any over-the-counter or prescription medications that the
9 employee has taken recently or any other information relevant to
10 the reliability of a test result.

11 (h) To support a disqualification under this section, an
12 employer must prove, by a preponderance of the evidence, that the
13 employee refused to submit to drug testing that meets the
14 requirements of this section or the employee has violated the
15 employer's written drug testing policy. As regards a violation of
16 the policy, only the results of drug testing performed in
17 accordance with the employer's written drug testing policy are
18 admissible as evidence.

19 (i) An employee required by an employer to submit to drug
20 testing under this section is entitled to refuse to undergo the
21 testing but may be subject to discipline by the employer as a
22 consequence of the refusal. If an employee may be disciplined,
23 including discharged, for refusing to submit to drug testing, the
24 employer must explain the consequences of refusal to the affected
25 employee in writing before the time of the refusal.

26 (j) At a minimum, an employer's written drug testing policy
27 must state:

1 (1) the circumstances under which testing may be
2 required;

3 (2) the right of an employee to refuse to undergo the
4 testing and the consequences of refusal; and

5 (3) any disciplinary or other adverse personnel
6 action, including termination of employment, that may be taken by
7 the employer based on a positive test result.

8 SECTION 2. The change in law made by this Act applies only
9 to a claim for unemployment compensation benefits that is filed
10 with the Texas Workforce Commission on or after that date. A claim
11 filed before that date is governed by the law in effect on the date
12 the claim was filed, and the former law is continued in effect for
13 that purpose.

14 SECTION 3. This Act takes effect September 1, 2009.