Article - Health - General

§17–214.

(a) (1) In this section the following words have the meanings indicated.

(2) "Alcohol or controlled dangerous substance testing" means a procedure used to determine whether or not a specimen contains a controlled dangerous substance or alcohol.

(3) "Certification" means the approval granted by the Department for a laboratory to engage in job–related alcohol or controlled dangerous substance testing.

(4) "Controlled dangerous substance" has the meaning stated in § 5–101 of the Criminal Law Article.

(5) "Job applicant" means an individual who:

(i) Has applied for a position with an employer; and

(ii) Is not currently employed by the employer.

(6) "Job–related" means any alcohol or controlled dangerous substance testing used by an employer for a legitimate business purpose.

(7) "Laboratory" means a facility or other entity that conducts job–related alcohol or controlled dangerous substance testing.

(8) "Medical review officer" means a licensed physician with knowledge of drug abuse disorders and drug and alcohol testing.

(9) "Preliminary screening procedure" means a controlled dangerous substance test that uses a single–use test device that:

(i) Is easily portable and can be administered at a work site or other appropriate collection site;

(ii) Meets the requirements of the federal Food and Drug Administration for commercial distribution; and

(iii) Meets generally accepted cutoff levels such as those in the federal Substance Abuse and Mental Health Services Administration Guidelines for drug–free workplace testing programs.

(10) "Single–use test device" means the reagent–containing unit of a test system that:

(i) Is in the form of a sealed container or cartridge that has a validity check, a nonresealable closure, or an evidentiary tape that ensures detection of any tampering;

(ii) Is self–contained and individually packaged;

(iii) Is discarded after each test; and

(iv) Does not allow any test component or constituent of a test system to interact between tests.

(11) "Specimen" means:

(i) Blood derived from the human body;

(ii) Urine derived from the human body;

(iii) Hair derived from the human body as provided in subsection (b)(3) of this section; or

(iv) Saliva derived from the human body.

(b) (1) Except as provided in paragraph (2) of this subsection, an employer who requires any person to be tested for job–related reasons for the use or abuse of any controlled dangerous substance or alcohol shall:

(i) Have the specimen tested by a laboratory that:

1. Holds a permit under this subtitle; or

2. Is located outside of the State and is certified or otherwise approved under subsection (f) of this section; and

(ii) At the time of testing, at the person's request, inform the person of the name and address of the laboratory that will test the specimen.

(2) (i) 1. Except as provided in subsubparagraph 2 of this subparagraph, an employer may use a preliminary screening procedure to test a job applicant for the use or abuse of any controlled dangerous substance.

2. Subsubparagraph 1 of this subparagraph does not apply to an employer that has entered into a collective bargaining agreement that prohibits the employer from using a preliminary screening procedure to test a job applicant for the use or abuse of any controlled dangerous substances.

(ii) If the result of a preliminary screening procedure is positive, the employer shall submit the specimen for testing by a laboratory as required under paragraph (1) of this subsection.

(iii) Following voluntary disclosure and documentation by an applicant of the taking of a legally prescribed medication, an employer may hire the applicant pending confirmation of a positive test result by the medical laboratory and review by the employer's medical review officer.

(iv) An employer may not use a preliminary screening procedure to test an individual who is not applying for a job with that employer.

(v) An employer may designate a medical laboratory licensed to perform job–related testing for controlled dangerous substances to also perform preliminary screening procedures on job applicants for the employer.

(3) (i) An employer who requires any person to be tested for job–related reasons for the use or abuse of any controlled dangerous substance may use hair derived from the human body as a specimen in accordance with this paragraph.

(ii) An employer may use hair derived from the human body only for pre–employment purposes.

(iii) If an employer uses hair derived from the human body as a specimen, the employer may not:

1. Use a specimen that is longer than one and one–half inches measured from the human body; or

2. Use the specimen for any purpose other than testing for controlled dangerous substances.

(c) (1) An employer who requires any employee, contractor, or other person to be tested for job–related reasons for the use or abuse of any controlled dangerous substance or alcohol and who receives notice from the laboratory under subsection (b) of this section that an employee, contractor, or other person has tested positive for the use or abuse of any controlled dangerous substance or alcohol shall, after confirmation of the test result, provide the employee, contractor, or other person with:

(i) A copy of the laboratory test indicating the test results;

(ii) A copy of the employer's written policy on the use or abuse of controlled dangerous substances or alcohol by employees, contractors, or other persons;

(iii) If applicable, written notice of the employer's intent to take disciplinary action, terminate employment, or change the conditions of continued employment; and

(iv) A statement or copy of the provisions set forth in subsection (e) of this section permitting an employee to request independent testing of the same sample for verification of the test result.

(2) The information required to be provided to the employee, contractor, or other person under paragraph (1) of this subsection shall be delivered to the employee, contractor, or other person:

(i) Either in person or by certified mail; and

(ii) Within 30 days from the date the test was performed.

(d) An employer that uses a preliminary screening procedure to test specimens for the use or abuse of a controlled dangerous substance under this section shall:

(1) In using a single–use test device, collect, handle, store, and ship each specimen in a manner that:

(i) Maintains the specimen donor's identity and confidentiality and the physical integrity of the specimen; and

(ii) Precludes contamination of the specimen; and

(2) Maintain a written record of the chain of custody of each specimen from the time that the specimen is collected until the time that the specimen is no longer needed for retesting.

(e) (1) A person who is required to submit to job–related testing, under subsection (b) or (c) of this section, may request independent testing of the same specimen for verification of the test results by a laboratory that:

(i) Holds a permit under this subtitle; or

(ii) If located outside of the State, is certified or otherwise approved under subsection (f) of this section.

(2) The person shall pay the cost of an independent test conducted under this subsection.

(f) (1) The Maryland Department of Health:

(i) Shall adopt regulations governing the certification of laboratories that conduct job–related alcohol or controlled dangerous substance testing; and

(ii) May adopt regulations governing the oversight of preliminary screening procedures administered by employers.

(2) In addition to any other laboratory standards, the regulations shall:

(i) Require that the laboratory comply with the guidelines for laboratory accreditation, if any, as set forth by the College of American Pathologists, the Centers for Medicare and Medicaid Services, or any other government agency or program designated to certify or approve a laboratory that is acceptable to the Secretary;

(ii) Require that a laboratory performing confirmation tests for controlled dangerous substances or alcohol be inspected and accredited in forensic drug analysis by the College of American Pathologists, the Centers for Medicare and Medicaid Services, or any other government agency or program designated to inspect and accredit a laboratory that is acceptable to the Secretary;

(iii) Require that, if the laboratory performs job–related drug testing, the laboratory be a participant in a program of proficiency testing of drug screening conducted by an organization acceptable to the Secretary;

(iv) Require that the laboratory comply with standards regarding cutoff levels for positive testing that are established by the United States Department of Health and Human Services or established by the Secretary as mandatory guidelines for workplace drug testing programs; and

(v) Include procedures for inspection.

(g) This section does not apply to:

(1) Alcohol or controlled dangerous substance testing of a person under arrest or held by a law enforcement or correctional agency;

(2) Alcohol testing procedures conducted by a law enforcement or correctional agency on breath testing equipment certified by the toxicologist in the Department of State Police Forensic Sciences Division; or

(3) Controlled dangerous substance testing by a laboratory facility of a law enforcement or correctional agency that maintains laboratory testing standards comparable to the standards in this section.

(h) This section applies to job–related alcohol and controlled dangerous substance testing of any person, including preemployment applicants, employees, and contractors.

(i) (1) Except as provided in paragraphs (2) and (3) of this subsection, in the course of obtaining information for, or as a result of, conducting job–related alcohol or controlled dangerous substance testing for an employer under this section, a laboratory, a physician, including a physician retained by the employer, or any other person may not reveal to the employer information regarding:

(i) The use of a nonprescription drug, excluding alcohol, that is not prohibited under the laws of the State; or

(ii) The use of a medically prescribed drug, unless the person being tested is unable to establish that the drug was medically prescribed under the laws of the State.

(2) The prohibitions against disclosure of information under paragraph (1) of this subsection do not apply to the extent that they prevent a person from complying with the applicable provisions of the federal Commercial Motor Vehicle Safety Act of 1986 and the federal Motor Carrier Safety Regulations.

(3) The prohibitions against disclosure of information under paragraph (1) of this subsection do not apply if, prior to the administration of a preliminary screening for controlled dangerous substances, the test operator notifies the applicant that if the preliminary test is positive, the applicant may voluntarily disclose and provide documentation to the operator that the applicant is taking a legally prescribed medication.

(j) (1) An employer using preliminary screening procedures to test job applicants under this section shall have a medical review officer review a positive test result after laboratory confirmation of the positive test result.

(2) The employer may contract for the services of an outside medical review officer if the employer does not have a medical review officer on staff.

(k) (1) An employer using preliminary screening procedures shall establish a program to train individuals to collect specimens and perform controlled dangerous substance tests in the workplace.

(2) The employer may designate an employee or any other individual to be trained, including any individual employed by a medical laboratory designated under subsection (b)(2)(v) of this section who will perform preliminary screening procedures for the employer.

(3) A trainee shall receive appropriate and practical instruction, which includes:

(i) A reading of the test manufacturer's package insert sheet;

(ii) Observing the test manufacturer's training video or receiving training from the test manufacturer;

(iii) Completing the test manufacturer's self–administered test; and

(iv) The actual performance of tests and the actual interpretation of the results.

(4) (i) The employer shall:

1. Keep a record of the training received by each trainee; and

2. Establish a procedure for training each trainee as having received the minimum training required to properly perform the test.

(ii) After the trainee has demonstrated competency in performing the test, the employer shall maintain documentation that indicates that the trainee has been trained under this section.

(l) The provisions of a collective bargaining agreement that concern drug testing override and preempt the provisions of this section that authorize an employer to use a preliminary screening procedure to test a job applicant.