

CHAPTER 270
FORMERLY
HOUSE BILL NO. 190
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO DRUG TESTING OF EMPLOYEES OF THE DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 90, Title 29 of the Delaware Code adding a new §9020 thereto as follows:

“§9020. Drug Testing Required.

(a) The Department is authorized and required to conduct drug testing as set forth in this section of any employee or prospective employee accepting a safety, security sensitive or child care position, as determined by policy and regulations adopted by the Department. The following drug testing shall be required:

(1) Pre-employment testing. - - The Department shall not hire or employ any person without first obtaining the results of such person’s mandatory drug screening as specified in subsection (b) of this section.

(2) Random testing. - - All safety, security sensitive and child care employees shall be subject to random testing for illegal use of the drugs specified in subsection (b) of this section.

(3) Reasonable suspicion testing. - - The Department, acting through its supervisory personnel, may also conduct a drug test based on a reasonable suspicion that a safety, security sensitive or child care employee is impaired by an illegal drug.

(b) Any person offered employment with the Department as a safety, security sensitive or child care employee shall be required to submit to mandatory drug screening pursuant to this section and the regulations promulgated by the Department. Such regulations shall require drug testing for the following controlled substances:

(1) Marijuana/cannabis;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine (“PCP”);

(5) Amphetamines;

(6) Any other controlled prescription drugs specified by the Department in the regulations promulgated pursuant to this section.

(c) Conditional Offer. Notwithstanding the provisions of this section, the Department may make a conditional offer of employment to an applicant who has submitted to the required drug screening. No person made a conditional offer of employment shall receive an official starting date until the results of their pre-employment drug screen have been received. Any applicant made a conditional offer of employment shall be informed that the results of his or her drug screen have been requested.

(d) The Department shall adopt policies and procedures for imposing sanctions, which may include referral to the State’s Employee Assistance Program, suspension or termination, upon any safety, security sensitive or child care employee who willfully refuses to submit to random or reasonable suspicion testing or whose drug screen indicates that such person has illegally used or consumed a drug or drugs. No employee shall be sanctioned when such person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.”.

Section 2. The Department shall promulgate regulations to implement the provisions of this Act.

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved May 21, 2010