

LAWS OF DELAWARE  
VOLUME 83  
CHAPTER 278  
151st GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 204

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO DRUG TESTING BY 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 § 9020, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline 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~~ sensitive, or child care position, as determined by policy and regulations adopted by the Department. ~~The following drug testing shall be required: The following apply to drug testing by the Department:~~

(1) *Preemployment testing.* — The Department shall ~~not hire or employ any person without first obtaining the results of such person's mandatory drug screening as~~ test an applicant for employment as a safety, security sensitive, or child care employee for the use of a drug specified in subsection (b) of this section.

(2) *Random testing.* — All A safety, security ~~sensitive and~~ sensitive, or child care employees shall be employee is subject to random testing for illegal use of ~~the drugs~~ a drug specified in subsection (b) of this section.

(3) *Reasonable suspicion testing.* — The ~~Department, acting through its supervisory personnel,~~ Department may also conduct a drug test based on a reasonable suspicion that a safety, security ~~sensitive~~ sensitive, or child care employee is impaired by ~~an illegal drug,~~ a drug specified in subsection (b) of this section.

(b)(1) ~~Any person~~ An individual employed by, or applicant offered employment with ~~with~~ the Department as a safety, security ~~sensitive~~ sensitive, or child care ~~employee shall be required to~~ employee shall submit to ~~mandatory drug screening pursuant to~~ drug testing required under subsection (a) of this section and ~~the regulations promulgated~~ adopted by the Department.

(2) ~~Such regulations shall~~ The Department may adopt regulations to implement and enforce this section. The Department shall adopt regulations that require drug testing for the following ~~controlled substances:~~ drugs:

(1) ~~Marijuana/cannabis;~~ a. Marijuana or cannabis.

(2) ~~Cocaine;~~ b. Cocaine.

(3) ~~Opiates;~~ c. Opiates.

(4) ~~Phencyclidine ("PCP");~~ d. Phencyclidine ("PCP").

(5) ~~Amphetamines;~~ e. Amphetamines.

(6) ~~f.~~ Any other controlled ~~substances or~~ controlled prescription drugs specified by the Department in the regulations ~~promulgated pursuant to~~ adopted under 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 preemployment drug screen have been received. Any applicant made a conditional offer of employment shall be informed that the results of that applicant's drug screen have been requested.~~ Conditional hire. — Notwithstanding subsection (a)(1) of this section, the Department may hire an applicant on a conditional basis before receiving the results of the drug test required under subsection (a)(1) of this section if the Department receives evidence confirming the applicant submitted to the required drug test. The final employment of an applicant conditionally hired under this subsection is contingent on the Department's receipt of satisfactory results of the required drug test.

(d)(1) 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~~ sanctions on a safety, security ~~sensitive~~ sensitive, or child care employee who wilfully refuses to submit to random or reasonable suspicion testing or whose drug screen ~~test~~ test indicates that ~~such person~~ the employee has illegally used or consumed a ~~drug or drugs.~~ drug specified in subsection (b) of this section.

(2) The sanctions imposed under paragraph (d)(1) of this section may include referral to the State's Employee Assistance Program, suspension, or termination.

~~(3) No employee shall be sanctioned when such person~~ An employee may not be sanctioned when the employee 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.~~ the drug.

Approved February 7, 2022