

181.951 AUTHORIZED DRUG AND ALCOHOL TESTING.

Subdivision 1. **Limitations on testing.** (a) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing except as authorized in this section.

(b) An employer may not request or require an employee or job applicant to undergo drug or alcohol testing unless the testing is done pursuant to a written drug and alcohol testing policy that contains the minimum information required in section 181.952; and, is conducted by a testing laboratory which participates in one of the programs listed in section 181.953, subdivision 1.

(c) An employer may not request or require an employee or job applicant to undergo drug and alcohol testing on an arbitrary and capricious basis.

Subd. 2. **Job applicant testing.** An employer may request or require a job applicant to undergo drug and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If the job offer is withdrawn, as provided in section 181.953, subdivision 11, the employer shall inform the job applicant of the reason for its action.

Subd. 3. **Routine physical examination testing.** An employer may request or require an employee to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks' written notice that a drug or alcohol test may be requested or required as part of the physical examination.

Subd. 4. **Random testing.** An employer may request or require employees to undergo cannabis testing or drug and alcohol testing on a random selection basis only if (1) they are employed in safety-sensitive positions, or (2) they are employed as professional athletes if the professional athlete is subject to a collective bargaining agreement permitting random testing but only to the extent consistent with the collective bargaining agreement.

Subd. 5. **Reasonable suspicion testing.** An employer may request or require an employee to undergo cannabis testing and drug and alcohol testing if the employer has a reasonable suspicion that the employee:

(1) is under the influence of drugs or alcohol;

(2) has violated the employer's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol, cannabis flower, cannabis products, lower-potency hemp edibles, or hemp-derived consumer products while the employee is working or while the employee is on the employer's premises or operating the employer's vehicle, machinery, or equipment, provided the work rules are in writing and contained in the employer's written cannabis testing or drug and alcohol testing policy;

(3) has sustained a personal injury, as that term is defined in section 176.011, subdivision 16, or has caused another employee to sustain a personal injury; or

(4) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

Subd. 6. **Treatment program testing.** An employer may request or require an employee to undergo cannabis testing and drug and alcohol testing if the employee has been referred by the employer for substance use disorder treatment or evaluation or is participating in a substance use disorder treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo cannabis

testing and drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed substance use disorder treatment program.

Subd. 7. **No legal duty to test.** Employers do not have a legal duty to request or require an employee or job applicant to undergo drug or alcohol testing as authorized in this section.

Subd. 8. **Limitations on cannabis testing.** (a) An employer must not request or require a job applicant to undergo cannabis testing solely for the purpose of determining the presence or absence of cannabis as a condition of employment unless otherwise required by state or federal law.

(b) Unless otherwise required by state or federal law, an employer must not refuse to hire a job applicant solely because the job applicant submits to a cannabis test or a drug and alcohol test authorized by this section and the results of the test indicate the presence of cannabis.

(c) An employer must not request or require an employee or job applicant to undergo cannabis testing on an arbitrary or capricious basis.

(d) Cannabis testing authorized under paragraph (d) must comply with the safeguards for testing employees provided in sections 181.953 and 181.954.

Subd. 9. **Cannabis testing exceptions.** For the following positions, cannabis and its metabolites are considered a drug and subject to the drug and alcohol testing provisions in sections 181.950 to 181.957:

(1) a safety-sensitive position, as defined in section 181.950, subdivision 13;

(2) a peace officer position, as defined in section 626.84, subdivision 1;

(3) a firefighter position, as defined in section 299N.01, subdivision 3;

(4) a position requiring face-to-face care, training, education, supervision, counseling, consultation, or medical assistance to:

(i) children;

(ii) vulnerable adults, as defined in section 626.5572, subdivision 21; or

(iii) patients who receive health care services from a provider for the treatment, examination, or emergency care of a medical, psychiatric, or mental condition;

(5) a position requiring a commercial driver's license or requiring an employee to operate a motor vehicle for which state or federal law requires drug or alcohol testing of a job applicant or an employee;

(6) a position of employment funded by a federal grant; or

(7) any other position for which state or federal law requires testing of a job applicant or an employee for cannabis.

History: 1987 c 388 s 2; 1988 c 536 s 1; 1991 c 60 s 5; 2005 c 133 s 1; 2022 c 98 art 4 s 51; 2023 c 63 art 6 s 33-37