

O.C.G.A. § 34-9-411

Official Code of Georgia Annotated
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*** Current through the 2024 Regular and Extraordinary Session of the General Assembly***

TITLE 34. LABOR AND INDUSTRIAL RELATIONS
CHAPTER 9. WORKERS' COMPENSATION
ARTICLE 11. DRUG-FREE WORKPLACE PROGRAMS

O.C.G.A. § 34-9-411

§ 34-9-411. Definitions

As used in this article, the term:

(1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

(2) "Chain of custody" means the methodology of tracking specified materials, specimens, or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials, specimens, or substances and providing for accountability at each stage in handling, testing, and storing materials, specimens, or substances and reporting test results.

(3) "Confirmation test," "confirmed test," or "confirmed substance abuse test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen. The confirmation test must be different in scientific principle from that of the initial test procedure. This confirmation method must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(4) "Drug" means amphetamines, cannabinoids, cocaine, phencyclidine (PCP), methadone, methaqualene, opiates, barbiturates, benzodiazepines, propoxyphene, or a metabolite of any such substances. An employer may test an individual for any or all of these.

(5) "Employee" means any person who works for salary, wages, or other remuneration for an employer.

(6)(A) "Employee Assistance Program" means a worksite focused program designed to assist:

(i) Employer work organizations in addressing employee productivity issues; and

(ii) Employee clients in the identification and resolution of job performance problems associated with employees impaired by personal concerns, including, but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress, or other personal issues that may affect job performance.

(B) A minimum level of core services must include consultation and training and assistance

to work organization leadership in policy development, organizational development, and critical incident management; professional, confidential, appropriate, and timely problem assessment services; constructive intervention and short-term problem resolution; referrals for appropriate diagnosis, treatment, and assistance; follow-up, monitoring, and case management with providers and insurers; employee education and supervisory training; and quality assurance.

(C) An optimum level of core services must include, in addition to the minimum level core services, the designation of an individual who shall be responsible to administer the employer's Employee Assistance Program and to certify that the employer work organization's drug-free workplace program contains all elements of the drug-free workplace program required by Code Section 34-9-413 and that such program satisfies the annual certification requirements of Code Section 34-9-421; provided, however, that such individual shall have training and experience with Employee Assistance Programs in accordance with rules and regulations prescribed by the State Board of Workers' Compensation.

(7) "Employer" means a person or entity that is subject to the provisions of this chapter but shall not include the state or any department, agency, or instrumentality of the state; any county; any county or independent school system; any municipal corporation; or any employer which is self-insured for the purposes of this chapter.

(7.1) "Employer member of a group self-insurance fund" means any employer who is a member of a fund certified pursuant to Code Section 34-9-153.

(8) "Initial test" means a sensitive, rapid, and reliable procedure to identify negative and presumptive positive specimens. All initial tests shall use an immunoassay procedure or an equivalent procedure or shall use a more accurate scientifically accepted method approved by the National Institute on Drug Abuse as such more accurate technology becomes available in a cost-effective form.

(9) "Job applicant" means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a substance abuse test and may have begun work pending the results of the substance abuse test.

(10) "Nonprescription medication" means a drug or medication authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human disease, ailments, or injuries.

(11) "Prescription medication" means a drug or medication lawfully prescribed by a physician for an individual and taken in accordance with such prescription.

(12) "Reasonable suspicion testing" means substance abuse testing based on a belief that an employee is using or has used drugs or alcohol in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon, but not limited to, the following:

(A) Observable phenomena while at work such as direct observation of substance abuse or of the physical symptoms or manifestations of being impaired due to substance abuse;

(B) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

(C) A report of substance abuse provided by a reliable and credible source;

(D) Evidence that an individual has tampered with any substance abuse test during his or her employment with the current employer;

(E) Information that an employee has caused or contributed to an accident while at work;
or

(F) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

(13) "Rehabilitation program" means an established program capable of providing expert identification, assessment, and resolution of employee drug or alcohol abuse in a confidential and timely service. This service shall in all cases be provided by persons licensed or appropriately certified as health professionals to provide drug or alcohol rehabilitative services.

(13.1) "Self-insured employer" means any employer certified pursuant to Code Section 34-9-127.

(14) "Specimen" means tissue, blood, breath, urine, or other product of the human body capable of revealing the presence of drugs or their metabolites or of alcohol.

(15) "Substance" means drugs or alcohol.

(16) "Substance abuse test" or "test" means any chemical, biological, or physical instrumental analysis administered for the purpose of determining the presence or absence of a drug or its metabolites or of alcohol.

(17) "Threshold detection level" means the level at which the presence of a drug or alcohol can be reasonably expected to be detected by an initial and confirmatory test performed by a laboratory meeting the standards specified in this article. The threshold detection level indicates the level at which a valid conclusion can be drawn that the drug or alcohol is present in the employee's specimen.

HISTORY: Code 1981, § 34-9-411, enacted by Ga. L. 1993, p. 1512, § 2; Ga. L. 1998, p. 1501, § 8; Ga. L. 2001, p. 800, § 1.