

§681. Purpose; applicability

1. Purpose. This subchapter is intended to:

A. Protect the privacy rights of individual employees in the State from undue invasion by employers through the use of substance use tests while allowing the use of tests when the employer has a compelling reason to administer a test; [PL 2017, c. 407, Pt. A, §105 (AMD).]

B. Ensure that, when substance use tests are used, proper test procedures are employed to protect the privacy rights of employees and applicants and to achieve reliable and accurate results; [PL 2017, c. 407, Pt. A, §105 (AMD).]

C. Ensure that an employee with substance use disorder receives an opportunity for rehabilitation and treatment of the disease and returns to work as quickly as possible; and [PL 2017, c. 407, Pt. A, §105 (AMD).]

D. Eliminate drug use in the workplace. [PL 1989, c. 832, §1 (NEW).]
[PL 2017, c. 407, Pt. A, §105 (AMD).]

2. Employer discretion. This subchapter does not require or encourage employers to conduct substance use testing of employees or applicants. An employer who chooses to conduct such testing is limited by this subchapter, but may establish policies that are supplemental to and not inconsistent with this subchapter.

[PL 2017, c. 407, Pt. A, §105 (AMD).]

3. Collective bargaining agreements. This subchapter does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this subchapter.

A labor organization with a collective bargaining agreement effective in the State may conduct a program of substance use testing of its members. The program may include testing of new members and periodic testing of all members. It may not include random testing of members. The program may be voluntary. The results may not be used to preclude referral to a job where testing is not required or to otherwise discipline a member. Sample collection and testing must be done in accordance with this subchapter. Approval of the Department of Labor is not required.

[PL 2017, c. 407, Pt. A, §105 (AMD).]

4. Home rule authority preempted. A municipality may not enact any ordinance under its home rule authority regulating an employer's use of substance use tests.

[PL 2017, c. 407, Pt. A, §105 (AMD).]

5. Contracts for work out of State. All employment contracts subject to the laws of this State must include an agreement that this subchapter will apply to any employer who hires employees to work outside the State.

[PL 2017, c. 407, Pt. A, §105 (AMD).]

6. Medical examinations. This subchapter does not prevent an employer from requiring or performing medical examinations of employees or applicants or from conducting medical screenings to monitor exposure to toxic or other harmful substances in the workplace, as long as these examinations are not used to avoid the restrictions of this subchapter. An examination under this subsection may not include the use of any substance use test except in compliance with this subchapter.

[PL 2017, c. 407, Pt. A, §105 (AMD).]

7. Other discipline unaffected. This subchapter does not prevent an employer from establishing rules related to the possession or use of substances by employees, including convictions for substance-related offenses, and taking action based upon a violation of any of those rules, except when a substance use test is required, requested or suggested by the employer or used as the basis for any disciplinary action.

[PL 2017, c. 407, Pt. A, §105 (AMD).]

8. Nuclear power plants; federal law. The following limitations apply to the application of this subchapter.

A. This subchapter does not apply to nuclear electrical generating facilities and their employees, including independent contractors and employees of independent contractors who are working at nuclear electrical generating facilities. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF); PL 1989, c. 832, §2 (RPR).]

B. [PL 2011, c. 196, §1 (RP).]

C. This subchapter does not apply to any employer subject to a federally mandated substance use testing program, including, but not limited to, testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V, and its employees, including independent contractors and employees of independent contractors who are working for or at the facilities of an employer who is subject to such a federally mandated substance use testing program. [PL 2017, c. 407, Pt. A, §105 (AMD).]

[PL 2017, c. 407, Pt. A, §105 (AMD).]

9. Board of Licensure of Railroad Personnel; testing restricted.

[PL 1993, c. 428, §3 (RP).]

SECTION HISTORY

PL 1989, c. 536, §§1,2 (NEW). PL 1989, c. 604, §§2,3 (AMD). PL 1989, c. 832, §§1-3 (AMD). PL 1993, c. 428, §3 (AMD). PL 1995, c. 324, §§1,2 (AMD). PL 2011, c. 196, §1 (AMD). PL 2017, c. 407, Pt. A, §105 (AMD).

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