


I MINA' TRENTA NA LIHESLATURAN GUÅHAN
2009 (FIRST) Regular Session

Bill No. 12 (LS)

Introduced by:

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**AN ACT TO ADD A NEW CHAPTER 10 TO 22GCA
RELATIVE TO PRIVATE EMPLOYER WORKPLACE DRUG
TESTING.**

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Chapter 10 is *added* to 22GCA to read:

“Chapter 10

Workplace Drug Testing Act

§10100. Legislative Purpose. This Chapter will explicitly allow the private sector to test any of its employees for drug use, provided certain accuracy and fairness safeguards and conditions are met. For example, the employer must pay for the tests; management must subject itself to tests; a written description of the testing policy must be distributed to every employee; sanitary and accuracy guidelines must be followed in the collection, labeling, storage, and transportation of samples; confidentiality must be maintained; and the testing laboratory must be Government of Guam or federal certified. To the extent the program implemented by the private sector conforms to the conditions of this Chapter, the private sector gains protection from litigation arising out of a positive test result or action arising as a consequence of a positive test result.

1 **§10101. Title.** This Chapter shall be known and may be cited as the *Workplace*
2 *Drug Testing Act.*

3
4 **§10102. Definitions.** As used in this Chapter:

5
6 (A) "Alcohol" means ethyl alcohol or ethanol.

7
8 (B) "Drugs" means any substance described in Chapter 63 of 9GCA (Guam
9 Controlled Substance Act).

10
11 (C) "Employer" means any person, firm, or corporation, including any
12 public utility or transit district, which has one or more workers or operators
13 employed in the same business, or in or about the same establishment, under
14 any contract of hire, express or implied, oral or written.

15
16 (D) "Employee" means any person in the service of an employer, as defined
17 in Subsection (C) of this section.

18
19 (E) "Prospective employee" means any person who has made application to
20 an employer, whether written or oral, to become an employee.

21
22 (F) "Sample" means urine, blood, breath, saliva, or hair.

23
24 **Section 3. Applicable conditions for a legal policy.** It is not unlawful for an
25 employer to test employees or prospective employees for the presence of drugs or
26 alcohol, in accordance with the provisions of this Chapter, as a condition of hiring

1 or continued employment. However, employers and management in general must
2 submit to the testing themselves on a periodic basis.

3
4 **§10104. Collection of samples.** In order to test reliably for the presence of drugs
5 or alcohol, an employer may require samples from employees and prospective
6 employees, and may require presentation of reliable identification to the person
7 collecting the samples. Collection of the sample shall be in conformance with the
8 requirements of this Chapter. The employer may designate the type of sample to
9 be used for this testing.

10
11 **§10105. Test scheduling.**

12
13 (A) Any drug or alcohol testing by an employer shall occur during or
14 immediately after the regular work period. Such testing by the employer
15 shall be deemed work time for the purposes of compensation and benefits
16 for current employees.

17
18 (B) An employer shall pay all costs of testing for drugs or alcohol required
19 by the employer, including the cost of transportation if the testing of a
20 current employee is conducted at a location other than the workplace.

21
22 **§10106. Testing procedures.** All sample collection and testing of drugs and
23 alcohol under this Chapter shall be performed in accordance with the following
24 conditions:

1 (A) The collection of samples shall be performed under reasonable and
2 sanitary conditions.

3
4 (B) Sample collections shall be documented, and said documentation
5 procedures shall include:

6
7 (1) labeling of samples so as to reasonably preclude the probability of
8 erroneous identification of test results; and

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10 (2) an opportunity for the employee or prospective employee to
11 provide notification of any information which may be considered
12 relevant to the test, including identification of currently or recently
13 used prescriptions or nonprescription drugs, or other relevant medical
14 information.

15
16 (C) Sample collection, storage, and transportation to the place of testing
17 shall be performed so as to reasonably preclude the probability of sample
18 contamination or adulteration.

19
20 (D) Sample testing shall comply to scientifically accepted analytical
21 methods and procedures. Testing shall be conducted at a laboratory
22 approved or certified by either a Government of Guam or a federal agency.
23 Testing shall include verification or confirmation of any positive test results
24 by gas chromatography, gas chromatography-mass spectroscopy, or other
25 comparably reliable analytical method, before the result of any test may be
26 used as a basis for any action by an employer.

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2 **§10107. Testing policy requirements.**
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4 (A) Testing or re-testing for the presence of drugs or alcohol by an employer
5 shall be carried out within the terms of a written policy that has been
6 distributed to every employee and is available for review by prospective
7 employees.
8

9 (B) Within the terms of the written policy, an employer may require the
10 collection and testing of samples for the following purposes:
11

12 (1) investigation of possible individual employee impairment;
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14 (2) investigation of accidents in the workplace or incidents of
15 workplace theft;
16

17 (3) maintenance of safety for employees or the general public; or
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19 (4) maintenance of productivity, quality of products or services, or
20 security of property or information.
21

22 (C) The collection and testing of samples shall be conducted in accordance
23 with this Chapter and need not be limited to circumstances where there are
24 indications of individual, job-related impairment of an employee or
25 prospective employee.
26

1 (D) The employer's use and disposition of all drug or alcohol test results are
2 subject to the limitations of this Chapter.
3

4 **§10108. Disciplinary procedures.** Upon receipt of a verified or confirmed
5 positive drug or alcohol test result which indicates a violation of the employer's
6 written policy, or upon the refusal of an employee or prospective employee to
7 provide a sample, an employer may use that test or refusal as the basis for
8 disciplinary or rehabilitative actions, which may include the following:
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10 (A) A requirement that the employee enroll in an employer-approved
11 rehabilitation, treatment, or counseling program, which may include
12 additional drug or alcohol testing, as condition of continued employment;
13

14 (B) suspension of the employee with or without pay for a period of time;
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16 (C) termination of employment;
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18 (D) refusal to hire a prospective employee; or
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20 (E) other disciplinary measures in conformance with the employer's usual
21 procedures, including any collective bargaining agreement.
22

23 **§10109. Employer protection from litigation.** No cause of action arises in favor
24 of any person against an employer who has established a policy and initiated a
25 testing program in accordance with this chapter for any of the following:
26

1 (A) failure to test for drugs or alcohol, or failure to test for a specific drug or
2 other substance;

3
4 (B) failure to test for, or if tested for, failure to detect, any specific drug or
5 other substance, disease, infectious agent, virus, or other physical
6 abnormality, problem, or defect of any kind; or

7
8 (C) termination or suspension of any drug or testing program or policy.
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10 **§10110. Employer protection from litigation; False Test Results.**
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12 (A) No cause of action arises in favor of any person against an employer
13 who has established a program of drug or alcohol testing in accordance with
14 this Chapter, unless the employer's action was based on a false test result.
15

16 (B) In any claim, including a claim under this Chapter, where it is alleged
17 that an employer's action was based on a false test result:

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19 (1) there is a rebuttable presumption that the test result was valid if
20 the employer complied with the provisions of this Chapter; and

21
22 (2) the employer is not liable for monetary damages if his or her
23 reliance on a false test result was reasonable and in good faith.
24

25 **§10111. Employer protection from litigation; Exceptions.** No cause of action
26 for defamation of character, libel, slander, or damage to reputation arises in favor

1 of any person against an employer who has established a program of drug or
2 alcohol testing in accordance with this Chapter, unless:

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4 (A) the results of that test were disclosed to any person other than the
5 employer, an authorized employee or agent of the employer, the tested
6 employee, or the tested prospective employee;

7
8 (B) the information disclosed was a false test result;

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10 (C) the false test result was disclosed with malice; and

11
12 (D) all elements of an action for defamation of character, libel, slander, or
13 damage to reputation as established by Public Law or common law, are
14 satisfied.

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16 **§10112. Employer protection from litigation for *not* establishing a program or**
17 **policy of drug or alcohol testing.** No cause of action arises in favor of any person
18 based upon the failure of an employer to establish a program or policy of drug or
19 alcohol testing.

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21 **§10113. Confidentiality of results.** All information, interviews, reports,
22 statements, memoranda, or test results received by the employer through a drug or
23 alcohol testing program are confidential communications and may not be used or
24 received in evidence, obtained in discovery, or disclosed in any public or private
25 proceeding, except in a proceeding related to an action taken by an employer
26 under this Chapter.

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§10114. Severability. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Article which can be given effect without the invalid provision or application, and to that end the provisions of this Chapter are declared to be severable.”