EFFECTS OF DRUG AND ALCOHOL MISUSE ON WORKER'S COMPENSATION BENEFITS IN LOUISIANA

The following is a reprint of Louisiana Law:

SUBPART D. DEFENSES

§1081. Defenses

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(1) No compensation shall be allowed for an injury caused:

(a) by the injured employee's willful intention to injure himself or to injure another, or

(b) by the injured employee's intoxication at the time of the injury, unless the employee's intoxication resulted from activities which were in pursuit of the employer's interests or in which the employer procured the intoxicating beverage or substance and encouraged its use during the employee's work hours, or

(c) to the initial physical aggressor in an unprovoked physical altercation, unless excessive force was used in retaliation against the initial aggressor.

(2) In determining whether or not an employer shall be exempt from and relieved of paying compensation because of injury sustained by an employee for any cause or reason set forth in this Subsection, the burden of proof shall be upon the employer.

(3) For purposes of proving intoxication, the employer may avail himself of the following presumptions:

(a) If there was, at the time of the accident, 0.05 percent or less by weight of alcohol in the employee's blood, it shall be presumed that the employee was not intoxicated.

(b) If there was, at the time of the accident, in excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the employee's blood, such fact shall not give rise to any presumption that the employee was or was not intoxicated, but such fact may be considered with other competent evidence in determining whether the employee was intoxicated.

(c) If there was, at the time of the accident, 0.08 percent or more by weight of alcohol in the employee's blood, it shall be presumed that the employee was intoxicated.

(4) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

(5) If there was, at the time of the accident, evidence of either on or off the job use of a nonprescribed controlled substance as defined in 21 U.S.C. 812, Schedules I, II, III, IV, and V, it shall be presumed that the employee was intoxicated.

(6) The foregoing provisions of this Section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the employee was under the influence of alcoholic beverages or any illegal or controlled substance.

(7)(a) For purposes of this Section, the employer has the right to administer drug and alcohol testing or demand that the employee submit himself to drug and alcohol testing immediately after the alleged job accident.

(b) If the employee refuses to submit himself to drug and alcohol testing immediately after the alleged job accident, then it shall be presumed that the employee was intoxicated at the time of the accident.

(8) In order to support a finding of intoxication due to drug use, and a presumption of causation due to such intoxication, the employer must prove the employee's use of the controlled substance only by a preponderance of the evidence. In meeting this burden, the results of employer-administered tests shall be considered admissible evidence when those tests are the result of the testing for drug usage done by the employer pursuant to a written and promulgated substance abuse rule or policy established by the employer.

(9) All sample collection and testing for drugs under this Chapter shall be performed in accordance with rules and regulations adopted by the director which ensure the following:

(a) The collection of samples shall be performed under reasonably sanitary conditions.

(b) Samples shall be collected and tested with due regard to the privacy of the individual being tested, and in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples.

(c) Sample collection shall be documented, and the documentation procedures shall include:

(i) Labeling of samples so as reasonably to preclude the probability of erroneous identification of test result; and

(ii) An opportunity for the employee to provide notification of any information which he considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant medical information.

(d) Sample collection, storage, and transportation to the place of testing shall be performed so as reasonably to preclude the probability of sample contamination or adulteration; and

(e) Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include verification or confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or other comparably reliable analytical method, before the result of any test may be used as a basis for any disqualification pursuant to this Section. Test results which do not exclude the possibility of passive inhalation of marijuana may not be used as a basis for disqualification under this Chapter. However, test results which indicate that the concentration of total urinary cannabinoids as determined by immunoassay equals or exceeds fifty nanograms/ml shall exclude the possibility of passive inhalation.

(10) All information, interviews, reports, statements, memoranda, or test results received by the employer through its drug testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in a proceeding related to an action

under R.S. 23:1021 et seq. or R.S. 23:1601(10) in a claim for unemployment compensation proceeding, hearing, or civil litigation when drug use by the tested employee is relevant.

(11) No cause of action for defamation of character, libel, slander, or damage to reputation arises in favor of any person against an employer who has established a program of drug or alcohol testing in accordance with this Chapter and rules and regulations adopted pursuant thereto, unless:

(a) The results of that test were disclosed to any person other than the employer, an authorized employee or agent of the employer, the tested employee, or the tested prospective employee or appropriate governmental agency or court.

(b) The information disclosed was based on a false test result; and

(c) All elements of an action for defamation of character, libel, slander, or damage to reputation as established by statute or jurisprudence, are satisfied.

(12) Notwithstanding any language to the contrary, once the employer has met the burden of proving intoxication at the time of the accident, it shall be presumed that the accident was caused by the intoxication. The burden of proof then is placed upon the employee to prove that the intoxication was not a contributing cause of the accident in order to defeat the intoxication defense of the employer.

(13) In the event a health care provider delivers emergency care to an injured worker later presumed or found to be intoxicated under this Section, the employer shall be responsible for the reasonable medical care provided the worker until such time as he is stabilized and ready for discharge from the acute care facility, at which time the employer's responsibility shall end for medical and compensation benefits.

Acts 1983, 1st Ex. Sess., No. 1, §1, eff. July 1, 1983; Acts 1989, No. 454, §3, eff. Jan. 1, 1990; Acts 1990, No. 958, §1; Acts 2001, No. 781, §2, eff. Sept. 30, 2003; Acts 2001, No. 1014, §§1 and 2, eff. June 27, 2001.

NOTE: Section 6 of Acts 2001, No. 781 provides that the provisions of the Act shall become null and of no effect if and when Section 351 of P.L. 106-346 regarding the withholding of federal highway funds for failure to enact a 0.08 percent blood alcohol level is repealed or invalidated for any reason.