



Disqualifying Employees From Unemployment Compensation Benefits For Failing Drug Test

SOUTH CAROLINA NOW REQUIRES SPECIAL PROOF

Insights

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Employers are now required to prove that employee drug tests comply with specific drug testing procedures before the Employment Security Commission (ESC) will disqualify a terminated employee from receiving unemployment benefits. Under a 2005 amendment to South Carolina Code Section 41-35-120(2), an insured employee may be disqualified from receiving unemployment benefits if the employee tests positive for drug use and is subsequently terminated. But in order to disqualify an employee, you must provide a policy to your employees expressly prohibiting drug use and stating that confirmed drug use can result in an employee's termination.

All information, interviews, reports, and drug test results you receive through the drug testing program may subsequently be used as evidence in both administrative and judicial unemployment proceedings. One exception is voluntary admissions of drug use. Under the law, if an employee voluntarily admits to drug use, and pursuant to the employer's policy such an admission may protect an employee from immediate termination, then the employee's admission may not be introduced at an unemployment proceeding.

To illustrate the stringent standard now set by the new law, at a recent ESC proceeding, a human resources manager testified the employer's drug policies met the required state standards. The hearing officer found that testimony insufficient and ruled that employers must submit verification of the following:

1. The sample was collected and labeled by a licensed health care professional or another individual authorized to collect and label test samples by federal or state law, including law enforcement personnel;
2. The test was performed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologists or the State Law Enforcement Division; and
3. Any initial positive test was confirmed on the specimen using the gas chromatography/mass spectrometry method, or an equivalent or more accurate scientifically accepted methods approved by the National Institute on Drug Abuse.

Not only must you ensure your employees that drug tests are performed by a company which meets the standards above, but you must provide evidentiary proof of the compliance at ESC unemployment proceedings.

For more information about this law, or to make sure that your drug testing policies comply with South Carolina law, contact any attorney in our Columbia office at 803.255.0000.

The information provided in this Labor Alert is informational only, and not intended to serve as legal advice for any specific factual situation.