

## Iowa Amends Tough Drug Testing Law to Lower Standard for Positive Alcohol Tests

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Beginning July 1, 2018, private employers in Iowa may take action based on an employee's alcohol test result of .02 grams of alcohol per two hundred ten liters of breath. The lower standard was enacted under a 2018 amendment to the Iowa drug testing law (Iowa Code Section 730.5). Prior to the amendment, employers could not take action for alcohol test results below .04 Blood Alcohol Concentration (BAC).

In addition, the law was amended effective July 1, 2017, to permit hair follicle testing only for pre-employment drug testing purposes. Prior to the passage of this amendment, Iowa allowed only private sector testing for drugs through urine, blood, and oral fluid.

Iowa's 30-year-old drug testing statute is considered one of the most difficult laws in the country for employer compliance. It contains specific and detailed drug testing procedures and safeguards that, if not carefully followed, limits employers' ability to legally discipline or fire an employee based upon a drug or alcohol test. The Iowa law includes provisions on permissible types of tests, written notice requirements, rehabilitation for positive alcohol test results, split-specimen testing, and mandatory supervisor training, among other things. Available remedies under the statute include reinstatement, back pay, and equitable relief such as attorneys' fees.

Employers easily can violate the technical aspects of the law. For example, in 2012, the Iowa Court of Appeals held that an employer violated the statute when it provided an employee with a hand-delivered notice of her positive test results instead of sending it by certified mail, as required by the statute. *See Skipton v. S&J Tube, Inc.*, 822 N.W.2d 122 (Iowa Ct. App. 2012). The notice also omitted the cost of a confirmatory re-test.

### Lawsuits on the Rise

Since October 2017, at least five new lawsuits have been filed alleging violations of the Iowa drug testing law.

Some of these lawsuits have alleged claims for wrongful discharge in violation of public policy, based on the alleged violation of the drug testing statute. This is significant because the Iowa Supreme Court has held that punitive damages may be awarded in wrongful discharge cases. *See Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751 (Iowa 2009). At least some courts have been receptive to this argument in the drug testing context. In a case before the Iowa District Court for Delaware County, the employer conceded violating the drug testing statute but argued that the drug testing statute was the exclusive remedy. The court disagreed and granted summary judgment to the plaintiff on her wrongful discharge claim. *See Ferguson v. Sanders, et al.*, No. LACV008271 (Jan. 17, 2018). A jury later awarded the plaintiff \$57,606 in damages, including \$12,000 in pain and suffering.

### Next Steps

Employers that conduct drug testing in Iowa should ensure their policy complies with the amended law. They also should consider consulting with counsel before taking adverse employment actions based on drug or alcohol test results.

Jackson Lewis attorneys are available to answer inquiries regarding the Iowa statute and assist employers in achieving compliance with its requirements.

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