

## EMPLOYER UPDATE > MAY 2005

# Amendment to Drug and Alcohol Testing Act Eliminates Use of On-Site Employer-Administered “Pre-Screening” Tests

On May 2, 2005, Governor Henry signed into law Senate Bill 374, an Act to amend Oklahoma’s “Standards for Workplace Drug and Alcohol Testing Act,” 40 Okla. Stat. § 551 et seq. This new law amends Section 552 of existing Oklahoma workplace drug testing law by modifying the law’s definition of “testing facility.” Prior to enactment, Oklahoma law defined a “testing facility” as:

[A]ny person, including any laboratory, hospital, clinic or facility, either off or on the premises of the employer, which provides the laboratory services to test for the presence of drugs or alcohol in the human body. *The administration of on-site drug and screening tests to applicants or employees to screen out negative test results are not laboratory services under this paragraph, provided the on-site tests used are cleared by the Federal Food and Drug Administration for commercial marketing, and all positive results of such tests are confirmed by a testing facility in accordance with the Standards for Workplace Drug and Alcohol Testing Act.*

### 40 Okla. Stat. § 552(15).

#### Senate Bill 374 strikes the second sentence (italicized) contained in the definition of “testing facility.”

The amended law is intended to preclude employers from purchasing and performing their own on-site drug and alcohol testing of applicants or employees. Although in the past employers have lawfully performed such testing by using FDA-approved tests, we now advise clients that wish to conduct pre-employment screening tests to use a testing facility approved by the Oklahoma Department of Health.<sup>1</sup>

<sup>1</sup>Section 559, Conditions to Conduct Sample Collection and Testing, states:

All sample collection and testing for drugs and alcohol pursuant to the provisions of this act shall be conducted in accordance with the following conditions:

1. Samples shall be collected and tested only by individuals deemed qualified by the State Board of Health and may be collected on the premises of the employer;

2. Only samples deemed appropriate by the State Board of Health for drug and alcohol testing shall be collected;
3. The collection of samples shall be performed under reasonable and sanitary conditions;
4. A sample shall be collected in sufficient quantity for splitting into two separate specimens, pursuant to rules of the State Board of Health, to provide for any subsequent independent analysis in the event of challenge of the test results of the main specimen;
5. Samples shall be collected and tested with due regard to the privacy of the individual being tested. In the instances of urinalysis, no employer or representative, agent or designee of the employer shall directly observe an applicant or employee in the process of producing a urine sample; provided, however, collection shall be in a manner reasonably calculated to prevent substitutions or interference with the collection or testing of reliable samples;
6. Sample collection shall be documented, and the documentation procedures shall include:
  - a. labeling of samples so as reasonably to preclude the probability of erroneous identification of test results, and
  - b. an opportunity for the applicant or employee to provide notification of any information which the applicant or employee considers relevant to the test, including identification of currently or recently used prescription or nonprescription drugs, or other relevant information;
7. Sample collection, storage, and transportation to the testing facility shall be performed so as reasonably to preclude the probability of sample contamination or adulteration;
8. Sample testing shall conform to scientifically accepted analytical methods and procedures. Testing shall include confirmation of any positive test result by gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy as approved by Board rule, at the cutoff levels as determined by Board rule, before the result of any test may be used as a basis for refusal to hire a job applicant or any action by an employer pursuant to Section 12 of this act; and
9. A written record of the chain of custody of the sample shall be maintained from the time of the collection of the sample until the sample is no longer required.

*If you have any questions or concerns about any issues related to workplace drug and alcohol testing, please contact us.*

## MCAFFEE & TAFT LABOR & EMPLOYMENT ATTORNEYS

### ABBEY J. BAKER

abbey.baker@mcafeetaft.com  
(405) 552-2293

### BRANDON L. BUCHANAN

brandon.buchanan@mcafeetaft.com  
(405) 552-2307

### TODD COURT

todd.court@mcafeetaft.com  
(405) 552-2330

### BRADLEY K. DONNELL

brad.donnell@mcafeetaft.com  
(405) 552-2308

### SAM R. FULKERSON

sam.fulkerson@mcafeetaft.com  
(405) 552-2369

### SHAWN E. HARRELL

shawn.harrell@mcafeetaft.com  
(405) 552-2205

### MICHAEL F. LAUDERDALE

michael.lauderdale@mcafeetaft.com  
(405) 552-2257

### BEAU PATTERSON

beau.patterson@mcafeetaft.com  
(405) 552-2276

### TONY G. PUCKETT

tony.puckett@mcafeetaft.com  
(405) 552-2251

### NATALIE K. RAMSEY

natalie.ramsey@mcafeetaft.com  
(405) 552-2325

### PAUL A. ROSS

paul.ross@mcafeetaft.com  
(405) 552-2383

### RONALD T. SHINN, JR.

ron.shinn@mcafeetaft.com  
(405) 552-2323

### W. BLAKE SONNE, JR.

blake.sonne@mcafeetaft.com  
(405) 552-2374

### MARK D. SPENCER

mark.spencer@mcafeetaft.com  
(405) 552-2368

### PETER T. VAN DYKE

peter.vandyke@mcafeetaft.com  
(405) 552-2211

### JAMES R. WEBB

jim.webb@mcafeetaft.com  
(405) 552-2246

### NATHAN L. WHATLEY

nathan.whatley@mcafeetaft.com  
(405) 552-2365

### AMY D. WHITE

amy.white@mcafeetaft.com  
(405) 552-2337

### ELIZABETH SCOTT WOOD

elizabeth.wood@mcafeetaft.com  
(405) 552-2270