

Senate Bill 186

By: Senators Golden of the 8th, Polak of the 42nd, Jackson of the 50th, Lee of the 29th and Hecht of the 34th

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 11 of Chapter 9 of Title 34 of the Official Code of Georgia Annotated,
2 relating to drug-free workplace programs, so as to recognize on-site testing at the employer's
3 worksite as qualified testing; to reduce the number of hours of employee and supervisor
4 training required after the first year of certification; to change the definition of a certain term;
5 to change the provisions relating to the insurance premium discount; to change the provisions
6 relating to the elements of a drug-free workplace program; to change the provisions relating
7 to conduct of testing, types of tests, and procedures; to change the provisions relating to
8 Employee Assistance Programs; to change the provisions relating to an employer's program
9 on substance abuse; to change the provisions relating to supervisor training on substance
10 abuse; to provide for related matters; to repeal conflicting laws; and for other purposes.

11 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

12 **SECTION 1.**

13 Article 11 of Chapter 9 of Title 34 of the Official Code of Georgia Annotated, relating to
14 drug-free workplace programs, is amended by striking in its entirety paragraph (6) of Code
15 Section 34-9-411, relating to definitions applicable to said article, and inserting in lieu
16 thereof a new paragraph (6) to read as follows:

17 "(6)(A) 'Employee Assistance Program' means a worksite focused program designed
18 to assist:

19 (i) Employer work organizations in addressing employee productivity issues; and
20 (ii) Employee clients in the identification and resolution of job performance problems
21 associated with employees impaired by personal concerns, including, but not limited
22 to, health, marital, family, financial, alcohol, drug, legal, emotional, stress or other
23 personal issues that may affect job performance.

24 (B) A minimum level of core services must include consultation and training and
25 assistance to work organization leadership in policy development, organizational
26 development, and critical incident management; professional, confidential, appropriate,

1 and timely problem assessment services; constructive intervention and short-term
 2 problem resolution; referrals for appropriate diagnosis, treatment, and assistance;
 3 follow-up, and monitoring, and case management with providers and insurers;
 4 employee education and supervisory training; and quality assurance.

5 (C) An optimum level of core services must include, in addition to the minimum level
 6 core services, the designation of an individual who shall be responsible to administer
 7 the employer's Employee Assistance Program and to certify that the employer work
 8 organization's drug-free workplace program contains all elements of the drug-free
 9 workplace program required by Code Section 34-9-413 and that such program satisfies
 10 the annual certification requirements of Code Section 34-9-421; provided, however,
 11 that such individual shall have training and experience with Employee Assistance
 12 Programs in accordance with rules and regulations prescribed by the State Board of
 13 Workers' Compensation."

14 SECTION 2.

15 Said article is further amended by striking in its entirety Code Section 34-9-412, relating to
 16 the insurance premium discount, and inserting in lieu thereof a new Code Section 34-9-412
 17 to read as follows:

18 "34-9-412.

19 If an employer work organization implements a drug-free workplace program substantially
 20 in accordance with subsections (a) and (b) of Code Section 34-9-413, the employer work
 21 organization shall qualify for certification for a premium discount under such employer's
 22 workers' compensation insurance policy as provided in Code Section 33-9-40.2."

23 SECTION 3.

24 Said article is further amended by adding at the end of Code Section 34-9-413, relating to
 25 elements of a drug-free workplace program, a new subsection (c) to read as follows:

26 "(c) A drug-free workplace program may offer and include the optimum level core services
 27 as described in subparagraph (C) of paragraph (6) of Code Section 34-9-11."

28 SECTION 4.

29 Said article is further amended by striking in its entirety subsection (b) of Code Section
 30 34-9-415, relating to conduct of testing, types of test, and procedures, and inserting in lieu
 31 thereof a new subsection (b) to read as follows:

32 "(b) An employer is required to conduct the following types of tests in order to qualify for
 33 the workers' compensation insurance premium discounts provided under Code Section
 34 34-9-12 and Code Section 33-9-40.2.

1 (1) An employer must require job applicants to submit to a substance abuse test after
 2 extending an offer of employment. Testing at the employer worksite with on-site testing
 3 kits that satisfy testing criteria in this article shall be deemed suitable and acceptable
 4 postoffer testing. Limited testing of job applicants by an employer shall qualify under
 5 this paragraph if such testing is conducted on the basis of reasonable classifications of job
 6 positions;

7 (2) An employer must require an employee to submit to reasonable suspicion testing;

8 (3) An employer must require an employee to submit to a substance abuse test if the test
 9 is conducted as part of a routinely scheduled employee fitness-for-duty medical
 10 examination that is part of the employer's established policy or that is scheduled routinely
 11 for all members of an employment classification or group;

12 (4) If the employee in the course of employment enters an Employee Assistance Program
 13 or a rehabilitation program as the result of a positive test, the employer must require the
 14 employee to submit to a substance abuse test as a follow-up to such program. However,
 15 if an employee voluntarily entered the program, follow-up testing is not required. If
 16 follow-up testing is conducted, the frequency of such testing shall be at least once a year
 17 for a two-year period after completion of the program and advance notice of the testing
 18 date shall not be given to the employee; and

19 (5) If the employee has caused or contributed to an on the job injury which resulted in
 20 a loss of worktime, the employer must require the employee to submit to a substance
 21 abuse test."

22 SECTION 5.

23 Said article is further amended by striking in their entirety paragraphs (8) and (9) of
 24 subsection (d) of Code Section 34-9-415, relating to conduct of testing, types of tests, and
 25 procedures, and inserting in lieu thereof new paragraphs (8) and (9) to read as follows:

26 "(8) An initial test having a positive result must be ~~verified~~ confirmed by a confirmation
 27 test conducted in a laboratory in accordance with the requirements of this article;

28 (9) An employer who performs drug testing or specimen collection shall use chain of
 29 custody procedures to ensure proper record keeping, handling, labeling, and identification
 30 of all specimens to be tested. This requirement shall apply to all specimens, including
 31 specimens collected using on-site testing kits;".

32 SECTION 6.

33 Said article is further amended by striking in its entirety subsection (b) of Code Section
 34 34-9-416, relating to Employee Assistance Programs, and inserting in lieu thereof a new
 35 subsection (b) to read as follows:

1 "(b) If an employer does not have an Employee Assistance Program, the employer must
 2 maintain a resource file of providers of other employee assistance including drug and
 3 alcohol abuse programs, mental health providers, and other persons, entities, or
 4 organizations available to assist employees with personal or behavioral problems and must
 5 notify the employee in writing of the availability of this resource file. In addition, the
 6 employer shall post in a conspicuous place a current listing of providers of employee
 7 assistance in the area. Such listing of available providers shall be reviewed and updated by
 8 the employer during the month of July of each year at which time the employer shall, when
 9 necessary, correct and revise information on all providers listed. Employers shall take
 10 reasonable care to identify appropriate providers and supply accurate telephone and address
 11 information on the posted listing of providers at all times."

12 SECTION 7.

13 Said article is further amended by striking in its entirety Code Section 34-9-417, relating to
 14 employer's education program on substance abuse, and inserting in lieu thereof a new Code
 15 Section 34-9-417 to read as follows:

16 "34-9-417.

17 (a) During the initial year of certification as provided in Code Section 34-9-412.1, an An
 18 employer must provide all employees with a semiannual education program on substance
 19 abuse, in general, and its effects on the workplace, specifically. During the initial year, the
 20 first hour of the An education program for a minimum of one hour should must include but
 21 is not limited to the following information:

- 22 (1) The explanation of the disease model of addiction for alcohol and drugs;
- 23 (2) The effects and dangers of the commonly abused substances in the workplace; and
- 24 (3) The company's policies and procedures regarding substance abuse in the workplace
 25 and how employees who wish to obtain substance abuse treatment can do so.

26 (b) During the second and any consecutive subsequent years of certification, an employer
 27 must provide all employees with an annual education program."

28 SECTION 8.

29 Said article is further amended by striking in its entirety Code Section 34-9-418, relating to
 30 supervisor training on substance abuse, and inserting in lieu thereof a new Code Section
 31 34-9-418 to read as follows:

32 "34-9-418.

33 (a) During the initial year of certification as provided in Code Section 34-9-412.1 and in
 34 in addition to the education program provided in Code Section 34-9-417, an employer must

1 provide all supervisory personnel with a minimum of two hours of supervisor training,
2 which ~~should~~ must include but is not limited to the following information:

3 (1) How to recognize signs of employee substance abuse;

4 (2) How to document and ~~collaborate~~ corroborate signs of employee substance abuse;
5 and

6 (3) How to refer substance abusing employees to the proper treatment providers.

7 (b) During the second and any consecutive subsequent years of certification, an employer
8 must provide all supervisory personnel with a minimum of one hour of such supervisory
9 training."

10 **SECTION 9.**

11 All laws and parts of laws in conflict with this Act are repealed.