WEST VIRGINIA CODE: §21-1D-2

§21-1D-2. Definitions.

(a) The term "alcohol test" means a procedure conducted to determine if an individual is under the influence of alcohol.

(b) The term "construction", as used in this article, means any construction, reconstruction, improvement, enlargement, painting, decorating or repair of any public improvement let to contract the value of which contract is over $100,000. The term "construction" does not include temporary or emergency repairs.

(c) The term "contractor" means any employer working on a public improvement without regard to whether they are serving as the prime or subcontractor to another.

(d) The term "drug test" means a procedure using at least a nine-panel drug screen in urine specimens that are collected from individuals for the purpose of scientifically analyzing the specimens to determine if the individual ingested, was injected or otherwise exposed to a drug of abuse.

(e) The term "drug of abuse" means any substance listed under subsection (h) of this section and any other substance the employer chooses to test for.

(f) The term "employee" means a laborer, mechanic or other worker. For the purposes of this article, employee does not include those persons as are employed or hired directly by a public authority on a regular or temporary basis engaged exclusively in making temporary or emergency repairs. Furthermore, employee does not include those persons employed by a contractor who does not work in public improvement construction.

(g) The term "medical review officer" means a physician who holds a certificate authorizing them to practice medicine and surgery or osteopathic medicine and surgery, has knowledge of substance abuse disorders, has the appropriate medical training to interpret and evaluate positive drug and alcohol test results together with a person's medical history and other relevant biomedical information, has successfully completed qualification training as outlined in the Code of Federal Regulations at 49 C. F. R. Part 40 §121 (c) and has passed an exam administered by a nationally recognized medical review officer certification board or subspecialty board for medical practitioners in the field of medical review of federally mandated drug testing.

(h) The term "nine-panel drug screen" means a drug-testing program that tests for marijuana, cocaine, opiates including hydromorphone, oxycodone, hydrocodone, phencyclidine, amphetamines, barbiturates, benzodiazepines, methadone and propoxyphene at the substance screening and confirmation limits where provided under federally mandated drug and alcohol testing programs or otherwise accepted as the industry

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standard.

(i) The term "preemployment drug test" means a drug test taken within the preceding twelve months from employment or seven days after hire.

(j) The term "public authority", as used in this article, means any officer, board or commission or other agency of the State of West Virginia, its counties or municipalities or any political subdivision thereof, authorized by law to enter into a contract for the construction of a public improvement, including any institution supported, in whole or in part, by public funds of the State of West Virginia and this article applies to expenditures of these institutions made, in whole or in part, from public funds.

(k) The term "public improvement", as used in this article, includes all buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures upon which construction may be let to contract by the State of West Virginia, its counties or municipalities or any political subdivision thereof.

(l) The term "random drug testing" means a procedure in which employees who perform safety-sensitive tasks are selected to undergo a drug test by a statistically valid random selection method without prearrangement or planning.

(m) The term "reasonable cause" means a belief based on facts and inferences based primarily upon, but not limited to: (1) Observable phenomena, such as direct observation of use, possession or distribution of alcohol or a drug of abuse, or of the physical symptoms of being under the influence of alcohol or a drug of abuse, such as, but not limited to, slurred speech, dilated pupils, odor of an alcoholic beverage or a drug of abuse, changes in affect or dynamic mood swings; (2) a pattern of abnormal conduct, erratic or aberrant behavior or deteriorating work performance such as frequent absenteeism, excessive tardiness or recurrent accidents, that appears to be related to the use of alcohol or a drug of abuse and does not appear to be attributable to other factors; (3) the identification of an employee as the focus of a criminal investigation into unauthorized possession, use or trafficking of a drug of abuse; (4) a report of use of alcohol or a drug of abuse provided by a reliable and credible source; and (5) repeated or flagrant violations of the safety or work rules of the employee's employer, that are determined by the employee's supervisor to pose a substantial risk of physical injury or property damage and that appears to be related to the use of alcohol or a drug of abuse and that does not appear attributable to other factors.

(n) The term "safety-sensitive duty" means any task or duty fraught with such risks of injury to the employee or others that even a momentary lapse of attention or judgment, or both, can lead to serious bodily harm or death.

(o) The term "under the influence of alcohol" means a concentration of eight hundredths of one percent or more by weight of alcohol in an individual's blood or a concentration of eight hundredths of one gram or more by weight of alcohol per two hundred ten liters of an individual's breath.

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