WEST VIRGINIA CODE: §21-3E-16

§21-3E-16. Employer testing; notice; termination; forfeiture.

If an employer implements a drug-free workplace program in accordance with this article, which includes notice, education, and procedural requirements for testing for drugs and alcohol pursuant to this law, the employer may require the employee to submit to a test for the presence of drugs or alcohol. If an employee is terminated because alcohol or a drug is found to be present in the employee's system at a level proscribed by the employer's policy, the employee, if injured at the time of the intoxication, forfeits indemnity benefits under the Workers' Compensation Laws. However, the employer's drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that if an injured employee refuses to submit to a test for drugs or alcohol that employee forfeits eligibility for indemnity benefits under the Workers' Compensation Laws. Employers who do not notify their employees of this condition of employment waive their right to assert that eligibility for benefits is entirely forfeited.

Nothing in this section may be construed or determined to affect §23-4-2(a) of this code and the provisions of said section shall be the sole manner in which intoxication may be proven to establish such intoxication as the proximate cause of an injury for purposes of said chapter.

WV Legislature