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West Virginia Mining Employers Must Report Positive Drug and Alcohol Test Results, And Refusals to Test

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West Virginia Governor Earl Ray Tomblin signed into law March 28, 2014 an amendment to the West Virginia Code requiring mandatory employer reporting to the West Virginia Office of Miners' Health, Safety and Training ("OMHST") whenever an applicant or employee, working in a safety-sensitive mining position, tests positive on a drug or alcohol test or refuses to test (including adulteration and substitution of test specimens).

The law, which took effect immediately, requires employers who employ or accept applications from "certified persons" who work in mines (persons qualified under the provisions of West Virginia Miners' Health, Safety and Training law to perform such duties) to notify the director of OMHST within seven days, on a form supplied by the director of the OMHST, of any of the following:

- (1) a positive drug or alcohol test of a certified person, whether it be a pre-employment test, random test, reasonable suspicion test or post-accident test;
- (2) the refusal of a certified person to submit a sample;
- (3) a certified person possessing a substituted sample or an adulterated sample; or,
- (4) a certified person submitting a substituted sample or an adulterated sample.

Prior to the amendment mining employers were required only to provide notice to OMHST if they terminated an employee for one of the violations noted above.

An employer providing notice to OMHST for any of the above violations must also immediately and temporarily suspend all certificates held by the certified person at issue pending a hearing before an OMHST board of appeals. Employers must include, when providing notice to OMHST, a copy of the laboratory test results showing the substances tested for and the results of the tests. The law applies to both union and non-union employees. Notice to OMHST concerning a certified person subject to a collective bargaining agreement may not result in the immediate temporary suspension, suspension or revocation of any certificate held by the certified person, until and unless the arbitration is concluded and the discharge is upheld.

The law already required that mining employers conduct random substance abuse testing and a pre-employment ten panel urine test that, at a minimum, tests for amphetamines, cannabinoids/THC, cocaine, opiates, phencyclidine (PCP), benzodiazepines, propoxyphene, methadone, barbiturates, and, synthetic narcotics. All such pre-employment urine tests must collect split samples, collected by providers who are certified as complying with standards and procedures set forth in 49 C.F.R. Part 40 (U. S. Department of Transportation Regulations). The law also requires that employers review their substance abuse screening program with all persons required to be tested at the time of employment, upon a change in the program and annually thereafter.

West Virginia mining employers should review and revise their drug testing policies to ensure compliance with the amended law.