

1 AN ACT relating to employment and substance use disorder treatment.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 222 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) For the purposes of this section:

6 (a) "Employee" means a person who has failed a drug screen related to
7 employment; and

8 (b) "Employer" means an employer who elects to employ a person who has
9 failed a drug screen related to employment.

10 (2) The Cabinet for Health and Family Services shall, in conjunction with the Office
11 of Drug Control Policy, promulgate any administrative regulations necessary to
12 implement an employer-facilitated substance use disorder treatment program for
13 employees who have failed an employment-related drug screen. The
14 administrative regulations, at a minimum, shall include provisions:

15 (a) Enumerating elements necessary in an employer's drug policy if the
16 employer elects to participate in an employer-facilitated substance use
17 disorder treatment program;

18 (b) Mandating an initial clinical assessment of the employee by a qualified
19 health professional and creation of a written treatment plan;

20 (c) Containing referral information for clinical assessments of employees,
21 education, and treatment options;

22 (d) Requiring the employee provide its employer with proof of the employee's
23 active participation in a licensed drug education and substance use disorder
24 treatment program and demonstrated successful compliance with the
25 recommendations of the initial clinical assessment; and

26 (e) Establishing follow-up drug testing for the employee.

27 (3) The Cabinet for Health and Family Services in conjunction with the Office of

1 **Drug Control Policy shall:**

2 **(a) Promote voluntary participation for all employers regardless of the number**
3 **of employees; and**

4 **(b) Develop and deliver resources and training for employers including the**
5 **following information:**

6 **1. The definition of substance use disorder as defined in the current**
7 **edition of the American Psychiatric Association's Diagnostic and**
8 **Statistical Manual of Mental Disorders;**

9 **2. Signs and symptoms of a substance use disorder;**

10 **3. A list of licensed treatment options for substance use disorder;**

11 **4. Information about acceptable use of treatment records covered by the**
12 **federal Health Insurance Portability and Accountability Act;**

13 **5. Information about substance use disorder treatment, return to use,**
14 **and supportive work environments for treatment and recovery; and**

15 **6. A list of qualified health professionals that an employer may use to**
16 **provide onsite drug abuse prevention education and substance use**
17 **disorder treatment services for employees.**

18 **(4) To participate in a treatment program the employee shall:**

19 **(a) Provide the employer with a signed consent authorizing the employer to**
20 **provide and receive documentation confirming the employee's participation**
21 **and completion of substance use treatment services;**

22 **(b) Comply with the employer's drug policy; and**

23 **(c) Comply with the administrative regulations promulgated by the Cabinet for**
24 **Health and Family Services in conjunction with the Office of Drug Control**
25 **Policy.**

26 **(5) To participate in the program an employer shall:**

27 **(a) Develop and distribute a written drug policy to persons it employs;**

1 (b) Require an employee to participate in recommended drug education and
2 licensed substance use disorder treatment services as a condition of
3 employment;

4 (c) Have the right to discipline or terminate an employee who does not comply
5 with the agreed treatment services or the employer's drug policy;

6 (d) Comply with the administrative regulations promulgated by the Cabinet for
7 Health and Family Services, and the Office of Drug Control Policy; and

8 (e) Secure all records and information concerning an employee's drug test
9 results, treatment assessments, and treatment reports in a confidential
10 manner and shall maintain this information separately from the employee's
11 personnel file. The employer shall share this information:

12 1. Internally only with those in the employee's chain-of-authority who
13 need the information to perform responsibilities related to supervision
14 or support of the employee; and

15 2. Externally only when the employee has provided specific written
16 authorization to disclose specific facts to specific parties for a specific
17 purpose.

18 (6) An employer may:

19 (a) Pay for all or part of the employee's substance use disorder education and
20 treatment services; and

21 (b) Accept a voluntary wage assignment from the employee to pay for part of
22 the employee's substance use disorder treatment. The wage assignment
23 shall not reduce the employee's remaining net compensation below the
24 federal minimum wage during any pay period.

25 (7) If an employer complies with the requirements of this section:

26 (a) The employer shall not be liable for a civil action alleging negligent hiring,
27 negligent retention, or negligent supervision for a negligent act by the

- 1 employee as a result of the employee's substance use disorder;
2 (b) The employer's participation in a drug education and substance use
3 disorder treatment program shall not be admissible as evidence in an action
4 against the employer, the employer's agent, or the employer's employee; and
5 (c) Referral and treatment for drug education and substance use disorder
6 treatment by the employer shall not be sufficient to constitute compliance
7 with this section unless the employee has complied with all other
8 requirements of this statute and associated administrative regulations.