

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 only:*

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 purpose of this section is to foster economic opportunities for individuals*
11 *with histories of substance use disorder and to encourage employer participation*
12 *in substance use disorder treatment programs.*

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

18 *(a) Enumerating elements necessary in an employer's drug policy if the*
19 *employer elects to participate in an employer-facilitated substance use*
20 *disorder treatment program;*

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

23 *(c) Containing referral information for clinical assessments of employees,*
24 *education, and treatment options;*

25 *(d) Requiring the employee provide its employer with proof of the employee's*
26 *active participation in a licensed drug education and substance use disorder*
27 *treatment program and demonstrated successful compliance with the*

- 1 recommendations of the initial clinical assessment; and
- 2 (e) Establishing follow-up drug testing for the employee.
- 3 (4) The Cabinet for Health and Family Services in conjunction with the Office of
4 Drug Control Policy shall:
- 5 (a) Promote voluntary participation for all employers regardless of the number
6 of employees; and
- 7 (b) Develop and deliver resources and training for employers including the
8 following information:
- 9 1. The definition of substance use disorder as defined in the current
10 edition of the American Psychiatric Association's Diagnostic and
11 Statistical Manual of Mental Disorders;
- 12 2. Signs and symptoms of a substance use disorder;
- 13 3. A list of licensed treatment options for substance use disorder;
- 14 4. Information about acceptable use of treatment records covered by the
15 federal Health Insurance Portability and Accountability Act;
- 16 5. Information about substance use disorder treatment, return to use,
17 and supportive work environments for treatment and recovery; and
- 18 6. A list of qualified health professionals that an employer may use to
19 provide onsite drug abuse prevention education and substance use
20 disorder treatment services for employees.
- 21 (5) To participate in a treatment program the employee shall:
- 22 (a) Provide the employer with a signed consent authorizing the employer to
23 provide and receive documentation confirming the employee's participation
24 and completion of substance use treatment services;
- 25 (b) Comply with the employer's drug policy; and
- 26 (c) Comply with the administrative regulations promulgated by the Cabinet for
27 Health and Family Services in conjunction with the Office of Drug Control

1 Policy.

2 (6) To participate in the program an employer shall:

3 (a) Develop and distribute to persons it employs a written drug policy,
4 procedure, or protocol including, without limit, a test or series of tests to
5 objectively measure substances that can create substance use disorders, that
6 is in compliance with state and federal law;

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

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

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

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

18 1. a. Internally only with those in the employee's chain-of-authority
19 who need the information to perform responsibilities related to
20 supervision or support of the employee; and

21 b. Externally only when the employee has provided specific written
22 authorization to disclose specific facts to specific parties for a
23 specific purpose; or

24 2. As ordered by the court.

25 (7) An employer may:

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

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

5 (8) If an employer complies with the requirements of this section:

6 (a) The employer shall not be liable for a civil action alleging negligent hiring,
7 negligent retention, or negligent supervision for a negligent act by the
8 employee as a result of the employee's substance use disorder unless it can
9 be shown that the employer violated subsection (6) of this section, or knew
10 or should have known, that the employee had a recurrence of his or her
11 substance use disorder and was acting under the influence of the substance
12 at the time of the alleged negligent act;

13 (b) The employer's participation or nonparticipation in a drug education and
14 substance use disorder treatment program shall not be admissible as
15 evidence in an action against the employer, the employer's agent, or the
16 employer's employee except that it may be admitted as evidence of the
17 participating employer's liability limitation, mitigation of damages, or as
18 evidence of a participating employer's noncompliance with subsection (6) of
19 this section; and

20 (c) Referral and treatment for drug education and substance use disorder
21 treatment by the employer shall not be sufficient to constitute compliance
22 with this section unless the employee has complied with all other
23 requirements of this statute and associated administrative regulations.

24 (9) This section shall not form the basis of any individual private right of action and
25 subsection (8)(a) of this section shall operate as an affirmative defense for which
26 an employer bears the burden of proving compliance. However, nothing in this
27 section shall bar a plaintiff from commencing a cause of action for any common

1 *law claim for any injury to person or property or for wrongful death in any civil*
2 *action alleging negligent hiring, negligent retention, or negligent supervision,*
3 *against an employer.*