



DRUG TESTING OF POTENTIAL JOB APPLICANTS

INTENT LANGUAGE

SOCIAL SERVICES APPROPRIATIONS SUBCOMMITTEE
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ISSUE BRIEF

SUMMARY

The Social Services Appropriations Subcommittee is reviewing drug testing of potential job applicants in response to intent language passed during the 2015 General Session (H.B. 3, *Current Fiscal Year Supplemental Appropriations*, item 88). Although the intent language applies only to the Department of Human Services, the chairs of the Social Services Appropriations Subcommittee asked that the departments of Health and Workforce Services and the Utah State Office of Rehabilitation also respond. None of the four agencies involved test job applicants for drugs. All of the agencies do some limited testing of current employees if there is a reasonable suspicion of drug use. Each of these agencies follow the general guidelines provided in the Department of Human Resource Management (DHRM) *State of Utah Drug and Alcohol Policy and Procedures*. This document was initially developed in the early 1990s to mirror the federal *Drug Free Workplace Act*. The policy allows drug testing of final candidates for *highly sensitive* positions. Highly sensitive is defined in two broad categories: *safety sensitive* and *data sensitive*. These definitions come from federal law. The safety sensitive category includes “directly impacting the safety or welfare of the general public” but does not specifically include any category covering vulnerable social services populations. Administrative rule also allows all final applicants to be drug tested. Administrative Rule (R-477-14-1) and the previous policy document allow agencies to drug test all employees based upon reasonable suspicion. DHRM staff and agency staff have suggested that pre-employment drug testing is a point-in-time snapshot which would allow an applicant to stop drug abuse for several weeks but then subsequently resume use. They suggest that it could be of higher value to do random testing based upon reasonable suspicion which is currently allowed by policy. H.B. 145, *Vulnerable Adult Worker Amendments*, passed during the 2015 General Session, permits the Department of Human Services to: 1) conduct criminal background screening of employees and volunteers; 2) require each applicant 18 years of age or older to submit fingerprints to the Office of Licensing (OL) for a national criminal history search; and 3) allows OL to then submit an applicant’s personal identifying information to the Bureau of Criminal Identification within the Department of Public Safety for retention, monitoring, and notification of new criminal activity associated with the applicant. Such criminal background screening procedures should pick up severe drug abuse where that abuse has caused a criminal record. Drug abuse would not be picked up by those who are using drugs but do not, as yet, have a criminal record. The *Legislative Action* section following poses several questions regarding whether the Legislature wants to provide input for future direction on drug testing of pre-employment applicants or current employees who work with vulnerable social services populations?

LEGISLATIVE ACTION

The Legislature may want to consider the following questions in its review of drug testing policies and practices of pre-employment candidates and current employees:

1. Given that administrative rule R-477-14-1 (Rules Governing a Drug-Free Workplace) subsection 6 states, “Final applicants, who are not current employees, may be subject to pre-employment drug testing at agency discretion, except as required by law,” does the Legislature want to implement a pilot program for drug testing of job applicants who deal with vulnerable social services client populations?
2. Does the Legislature want to direct the departments of Health, Human Services, Workforce Services, and the Utah State Office of Rehabilitation to come back with information regarding: 1) the number of drug tests of current employees administered during FY 2015, 2) the programs where those drug tests took place, and 3) the number and nature of personnel actions taken as a result of those drug tests in order to have information to consider future action.

3. The Department of Human Resource Management (DHRM) Drug and Alcohol Testing Policy and Procedures provides for drug testing of job applicants for highly sensitive positions. Given that there is currently only the general sub-definition of “directly impacting the safety or welfare of the general public,” does the Legislature want to consider requesting changes to the Department of Human Resource Management policy with regard to drug testing for pre-employment applicants or current employees for those who deal with vulnerable social services client populations?
4. Does the Legislature want to consider changes to statute with regard to drug testing for pre-employment applicants or current employees who deal with vulnerable social services client populations?

DISCUSSION AND ANALYSIS

H.B. 3, *Current Fiscal Year Supplemental Appropriations*, Item 88, from the 2015 General Session included the following intent language: *The Legislature intends the Department of Human Services and the Department of Human Resource Management provide information to the Office of the Legislative Fiscal Analyst no later than June 1, 2015 regarding the following: 1) a listing of programs throughout the Department of Human Services by agency and by program documenting where drug testing of job applicants is taking place as well as where drug testing of job applicants is not currently taking place and 2) any formal or informal state policies regarding the use or discouragement of drug testing of job applicants.*

The chairs of the Social Services Appropriations Subcommittee asked the departments of Health and Workforce Services and the Utah State Office of Rehabilitation to also respond to the intent language. The following are the four agency responses:

Department of Health’s Response to the Intent Language

The Utah Department of Health does not have a policy on pre-employment drug testing unless it is a position that Department of Human Resource Management (DHRM) designates as a highly sensitive position and/or required by a federal law or federal regulations. Currently, the staff members of the Forensic Toxicology Program in the Utah Public Health Laboratory are classified by DHRM as Safety Sensitive. The Utah Public Health Laboratory is under the Division of Disease Control and Prevention. Number of FTEs in Forensic Toxicology: 10 FTEs.

Department of Human Services’ Response to the Intent Language

Currently none of the agencies, institutions, or programs of the Department of Human Services test job applicants for drugs. DHS tests employees for drugs if there is a reasonable suspicion of drug use. Drug testing may also occur following a vehicular accident or when there is a "critical incident", as defined in the [State of Utah Drug and Alcohol Policy and Procedures]

Department of Workforce Services’ Programs’ Response to the Intent Language

DWS has never had a practice or policy of drug testing job applicants. The only policy we have in place has to do with reasonable suspicion drug testing of CURRENT employees, but not job applicants.

Utah State Office of Rehabilitation’s Response to the Intent Language

USOR has never had a practice or policy of drug testing job applicants. The only policy we have in place has to do with reasonable suspicion drug testing of current employees.

BACKGROUND

The departments of Health, Human Services, Workforce Services and the Utah State Office of Rehabilitation all do some limited testing of current employees if there is a reasonable suspicion of drug use. Each of these agencies follow the general guidelines provided in Department of Human Resource Management (DHRM) administrative rules or in its *State of Utah Drug and Alcohol Policy and Procedures* in administering drug testing. The *State of Utah Drug and Alcohol Policy and Procedures* was initially developed in the early 1990s to mirror the federal *Drug Free*

Workplace Act and was meant to assist DHRM in monitoring a single set of drug testing policies. The policy allows drug testing of final candidates for *highly sensitive* positions. These definitions were those established by the *Drug Free Workplace Act*. Highly sensitive is defined in two broad categories: *safety sensitive* and *data sensitive*. The safety sensitive category includes “directly impacting the safety or welfare of the general public” but does not specifically include any category covering vulnerable social services populations. Administrative Rule (R-477-14-1) and the *State of Utah Drug and Alcohol Policy and Procedures* allow agencies to drug test all employees based upon reasonable suspicion. H.B. 145, “Vulnerable Adult Worker Amendments,” passed during the 2015 General Session, permits the Department of Human Services to: 1) conduct criminal background screening of employees and volunteers; 2) require each applicant 18 years of age or older to submit fingerprints to the Office of Licensing (OL) for a national criminal history search; and 3) allows OL to then submit an applicant’s personal identifying information to the Bureau of Criminal Identification within the Department of Public Safety for retention, monitoring, and notification of new criminal activity associated with the applicant. H.B. 145 did not deal with drug testing but should identify any applicants or employees with a criminal record involving drugs.