

## §682. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

**1. Applicant.** "Applicant" means any person seeking employment from an employer. "Applicant" includes any person using an employment agency's services. [PL 2017, c. 407, Pt. A, §106 (AMD).]

**2. Employee.** "Employee" means a person who is permitted, required or directed by any employer to engage in any employment for consideration of direct gain or profit. A person separated from employment while receiving a mandated benefit, including but not limited to workers' compensation, unemployment compensation and family medical leave, is an employee for the period the person receives the benefit and for a minimum of 30 days beyond the termination of the benefit. A person separated from employment while receiving a nonmandated benefit is an employee for a minimum of 30 days beyond the separation.

A. A full-time employee is an employee who customarily works 30 hours or more each week. [PL 1995, c. 324, §3 (NEW).]  
[PL 1995, c. 324, §3 (AMD).]

**3. Employer.** "Employer" means any person, partnership, corporation, association or other legal entity, public or private, that employs one or more employees. "Employer" also includes an employment agency. [PL 2017, c. 407, Pt. A, §106 (AMD).]

**3-A. Medically disqualified.** "Medically disqualified" means that an employee is prohibited by a federal law or regulation, or any rules adopted by the State's Department of Public Safety that incorporate any federal laws or regulations related to substance use testing for motor carriers, from continuing in the employee's former employment position due to the result of a substance use test conducted under the federal law or regulation or the Department of Public Safety rule. [PL 2017, c. 407, Pt. A, §106 (AMD).]

**4. Negative test result.** "Negative test result" means a test result that indicates that:

A. A substance is not present in the tested sample; or [PL 2017, c. 407, Pt. A, §106 (AMD).]

B. A substance is present in the tested sample in a concentration below the cutoff level. [PL 2017, c. 407, Pt. A, §106 (AMD).]

[PL 2017, c. 407, Pt. A, §106 (AMD).]

**5. Positive test result.** "Positive test result" means a test result that indicates the presence of a substance in the tested sample above the cutoff level of the test.

A. "Confirmed positive result" means a confirmation test result that indicates the presence of a substance above the cutoff level in the tested sample. [PL 2017, c. 407, Pt. A, §106 (AMD).]  
[PL 2017, c. 407, Pt. A, §106 (AMD).]

**6. Probable cause.** "Probable cause" means a reasonable ground for belief in the existence of facts that induce a person to believe that an employee may be under the influence of a substance, provided that the existence of probable cause may not be based exclusively on any of the following:

A. Information received from an anonymous informant; [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

B. Any information tending to indicate that an employee may have possessed or used a substance off duty, except when the employee is observed possessing or ingesting any substance either while on the employer's premises or in the proximity of the employer's premises during or immediately before the employee's working hours; or [PL 2017, c. 407, Pt. A, §106 (AMD).]

C. A single work-related accident. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]  
[PL 2017, c. 407, Pt. A, §106 (AMD).]

**7. Substance use test.** "Substance use test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances. "Substance use test" does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.

A. "Screening test" means an initial substance use test performed through the use of immunoassay technology or a federally recognized substance use test, or a test technology of similar or greater accuracy and reliability approved by the Department of Health and Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of substances.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests. [PL 2017, c. 407, Pt. A, §106 (AMD).]

B. "Confirmation test" means a 2nd substance use test that is used to verify the presence of a substance indicated by an initial positive screening test result and is a federally recognized substance use test or is performed through the use of liquid or gas chromatography-mass spectrometry. [PL 2017, c. 407, Pt. A, §106 (AMD).]

C. "Federally recognized substance use test" means any substance use test recognized by the federal Food and Drug Administration as accurate and reliable through the administration's clearance or approval process. [PL 2017, c. 407, Pt. A, §106 (AMD).]  
[PL 2017, c. 407, Pt. A, §106 (AMD).]

**8. Substance.** "Substance" means any scheduled drug, alcohol or other drug, or any of their metabolites.

A. "Alcohol" has the same meaning as found in Title 28-A, section 2, subsection 2. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]

B. "Drug" has the same meaning as found in Title 32, section 13702-A, subsection 11. [PL 2007, c. 695, Pt. B, §5 (AMD).]

C. "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11. [PL 1989, c. 536, §§1, 2 (NEW); PL 1989, c. 604, §§2, 3 (AFF).]  
[PL 2017, c. 407, Pt. A, §106 (AMD).]

#### SECTION HISTORY

PL 1989, c. 536, §§1,2 (NEW). PL 1989, c. 604, §§2,3 (AMD). PL 1989, c. 832, §§4,5 (AMD). PL 1995, c. 324, §3 (AMD). PL 2001, c. 556, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2007, c. 695, Pt. B, §5 (AMD). PL 2017, c. 407, Pt. A, §106 (AMD).

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