
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 219 Session of
1993

INTRODUCED BY HART, HELFRICK, LEMMOND, CORMAN, SALVATORE AND
FISHER, JANUARY 12, 1993

REFERRED TO LABOR AND INDUSTRY, JANUARY 12, 1993

AN ACT

1 Requiring employers to implement a drug-free workplace program;
2 providing for duties of a public employer; requiring
3 certification by contractees and grantees; and providing for
4 sanctions for noncompliance.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Drug-Free
9 Workplace Act.

10 Section 2. Definitions.

11 The following words and phrases when used in this act shall
12 have the meanings given to them in this section unless the
13 context clearly indicates otherwise:

14 "Contractee." Any person, partnership, corporation,
15 organization or other entity with 25 or more employees at the
16 time of issuing the contract or a department, division or other
17 unit thereof directly responsible for the specific performance
18 under a contract of \$50,000 or more from this Commonwealth or

1 any of its political subdivisions. The term does not include
2 subcontractors of a contractee.

3 "Contractor." Any department, board, agency, authority or
4 instrumentality of the Commonwealth with 25 or more employees or
5 any political subdivision or any agency, authority or
6 instrumentality thereof with 25 or more employees which has been
7 granted authority to enter into a contract with any organization
8 for the purpose of the performance of work not usually performed
9 by the issuing organization.

10 "Controlled substance." Any substance or material as defined
11 in Schedules I through V of section 202 of the Controlled
12 Substances Act (Public Law 91-513, 84 Stat. 1242) or as defined
13 in the act of April 14, 1972 (P.L.233, No.64), known as The
14 Controlled Substance, Drug, Device and Cosmetic Act.

15 "Conviction." A finding of guilty or imposition of a
16 sentence or both by a Federal or State judge. The term includes
17 a plea of nolo contendere, disposition in lieu of trial,
18 probation without verdict or accelerated rehabilitative
19 disposition.

20 "Criminal drug statute." Includes any of the following acts:

21 (1) The Controlled Substances Act (Public Law 91-513, 84
22 Stat. 1242).

23 (2) The act of April 14, 1972 (P.L.233, No.64), known as
24 The Controlled Substance, Drug, Device and Cosmetic Act.

25 (3) Any other similar statute of another jurisdiction.

26 "Drug-free workplace." A site for the performance of work at
27 which employees are prohibited from engaging in the unlawful
28 manufacture, distribution, dispensation, possession or use of a
29 controlled substance or alcoholic beverage in accordance with
30 the requirements of this act.

1 "Employee." An employee of a grantee or contractee engaged
2 in the performance of work pursuant to the provisions of a grant
3 or contract awarded by the Commonwealth or any of its political
4 subdivisions, including any agency, authority, department,
5 bureau, board, commission or instrumentality thereof.

6 "Employee assistance program." Referral services or
7 counseling programs which offer assessment or treatment to
8 employees for substance abuse, alcohol and mental health
9 problems.

10 "Grantee." Any person, partnership, corporation,
11 organization or other entity with 25 or more employees at the
12 time of issuing the grant or a department, division or other
13 unit thereof directly responsible for the specific performance
14 under a grant of \$50,000 or more from the Commonwealth or any of
15 its political subdivisions. The term does not include
16 subcontractors of a grantee.

17 "Public employee." Any person elected or appointed on a
18 full-time, part-time, temporary or intermittent basis by the
19 Commonwealth or any of its political subdivisions, including any
20 agency, authority, department, bureau, board, commission or
21 instrumentality thereof.

22 "Public employer." Any department, board, agency, authority
23 or instrumentality of the Commonwealth with 25 or more employees
24 or any political subdivision or agency, authority or
25 instrumentality thereof with 25 or more employees which has been
26 granted authority to expend public funds to employ individuals
27 who are necessary to pursue and complete the employer's mission.

28 Section 3. Plan for drug-free workplace.

29 (a) General rule.--A public employer shall develop a plan
30 for achieving a drug-free workplace.

1 (b) Contents.--The plan shall include the following:

2 (1) A statement:

3 (i) Notifying public employees that the unlawful
4 manufacture, distribution, dispensation, possession or
5 use of a controlled substance or alcohol in the workplace
6 is prohibited and that they are to refrain from using
7 controlled substances or abusing alcohol, whether on or
8 off duty, as a condition of employment in public service.

9 (ii) Specifying the actions that will be taken
10 against employees for violation of this prohibition.

11 (iii) Notifying the employee that, as a condition of
12 employment, the employee will abide by the terms of the
13 policy statement and will notify the employer of any
14 conviction of a criminal drug statute occurring on the
15 workplace or of a conviction under 75 Pa.C.S. § 3731
16 (relating to driving under influence of alcohol or
17 controlled substance), or similar statute in another
18 jurisdiction, occurring while the employee is traveling
19 for work purposes, within five days of the conviction.

20 (2) The establishment of a drug-free awareness program
21 to inform employees about:

22 (i) The dangers of controlled substance and alcohol
23 abuse in the workplace.

24 (ii) The political subdivision's policy of
25 maintaining a drug-free and alcohol-free workplace.

26 (iii) The availability of controlled substance and
27 alcohol abuse counseling, rehabilitation and employee
28 assistance programs.

29 (iv) The penalties that may be imposed on employees
30 for controlled substance or alcohol abuse violations

1 occurring in the workplace.

2 (3) Supervisory training to assist in identifying and
3 addressing controlled substance use and alcohol abuse by
4 employees.

5 (4) A provision for self-referrals as well as
6 supervisory referrals to treatment for substance abuse
7 problems, with respect for individual confidentiality
8 consistent with safety and security issues.

9 (5) Imposition of sanction on any employee convicted of
10 a criminal drug statute violation occurring in the workplace
11 or conviction under 75 Pa.C.S. § 3731, or similar statute in
12 another jurisdiction, while traveling for work purposes,
13 including termination; or requiring an employee to
14 satisfactorily participate in a controlled substance or
15 alcohol abuse counseling or rehabilitation program.

16 Section 4. Duties of public employer.

17 (a) Referral for treatment.--A public employer, in addition
18 to appropriate personnel action, if any, shall refer an employee
19 who is found to use controlled substances or alcohol at the
20 workplace or to have a substance abuse problem that impairs his
21 ability to conduct his work activities in an adequate and timely
22 manner to a program for assessment, counseling or referral for
23 treatment or rehabilitation of controlled substance abuse
24 problems.

25 (b) Discipline.--A public employer shall initiate action to
26 discipline any employee who is found to use controlled
27 substances or abuse alcohol at the workplace, provided that this
28 action is not required for an employee who:

29 (1) voluntarily identifies himself as a user of
30 controlled substances or an abuser of alcohol and who

1 volunteers for controlled substance or alcohol treatment
2 prior to being identified through other means;

3 (2) obtains counseling or rehabilitation through a
4 State-approved controlled substance or alcohol counseling or
5 rehabilitation treatment program; and

6 (3) thereafter refrains from using controlled
7 substances.

8 (c) Rehabilitation period.--During the rehabilitation
9 period, the public employee shall not be separated from public
10 employment solely on the basis of the employee's substance
11 dependence. A public employer shall not allow any employee to
12 remain on duty in a position which would involve public health,
13 safety or security prior to successful completion of
14 rehabilitation through a State-approved controlled substance or
15 alcohol counseling or rehabilitation treatment program. However,
16 the individual responsible for the supervision of the employee
17 may, at his discretion, allow an employee to return to duty in a
18 less sensitive position or one which would not jeopardize public
19 health or safety. A statement made by an employee to a
20 supervisor or coworker or other person in order to comply with
21 this section shall not be admissible in any civil,
22 administrative or criminal proceeding as evidence against the
23 employee.

24 (d) Termination.--A public employer shall initiate action to
25 terminate any public employee who is found to be using
26 controlled substances or alcohol on duty or engages in
27 controlled substance activities and does either of the
28 following:

29 (1) Refuses to obtain counseling or rehabilitation.

30 (2) Does not thereafter refrain from using controlled

1 substances.

2 Section 5. Ineligibility for public employment.

3 (a) First conviction of criminal drug statute.--Any person
4 who has been convicted for the first time of a criminal drug
5 statute shall be ineligible for any public employment for a
6 period of three months from the date of conviction.

7 (b) Two or more convictions of criminal drug statute.--Any
8 person who has been convicted two or more times of a criminal
9 drug statute shall be ineligible for any public employment for a
10 period of five years from the most recent date of conviction.

11 Section 6. Contractees and grantees.

12 A company or organization may not receive a contract or grant
13 for the procurement of any goods, construction or services from
14 any Commonwealth agency or any political subdivision unless the
15 company or organization has certified to the contractor that it
16 will provide a drug-free workplace by establishing a drug-free
17 awareness program in accordance with section 3 to inform
18 employees about the dangers of controlled substance and alcohol
19 use in the workplace, corporate policy in regard to maintaining
20 a drug-free workplace and any available controlled substance or
21 alcohol counseling, rehabilitation or employee assistance
22 programs offered by the employer.

23 Section 7. Sanctions for noncompliance.

24 (a) Suspension of payments and termination.--Each contract
25 awarded by a Commonwealth agency or political subdivision shall
26 be subject to suspension of payments, termination or both and
27 the contractee or grantee who entered into the contract with the
28 contractor is subject to suspension or debarment in accordance
29 with the requirements of this section if it is determined that:

30 (1) The contractee or grantee has made a false

1 certification under section 3 or 7.

2 (2) The contractee or grantee violates the certification
3 by failing to carry out the requirements of section 7.

4 (3) The contractee or grantee does not take appropriate
5 remedial action against employees as specified in section
6 3(b)(5).

7 (4) The number of employees of the contractee or grantee
8 who have been convicted of criminal drug statute violations
9 reasonably indicates that the contractee or grantee has
10 failed to make a good faith effort to provide a drug-free
11 workplace as required by this act.

12 (b) Ineligibility for award of any contract.--Upon issuance
13 of any final decision under this act requiring debarment of a
14 contractee or grantee, the contractee or grantee is ineligible
15 for award of any contract or grant by any public contractor in
16 this Commonwealth for a period, specified in the decision, of at
17 least one year but not to exceed five years. However, any
18 sanction levied against a contractee or grantee under this act
19 may be waived by the head of an agency or the equal, appropriate
20 governmental administrator of any political subdivision of the
21 Commonwealth if that administrator determines that the sanction
22 would severely disrupt the operations of the contractor to the
23 detriment of the general public.

24 (c) Employee assistance program.--Upon request, the Employee
25 Assistance Program shall provide technical assistance to any
26 employer to assist with the implementation of this act.

27 (d) List of violators.--A list of the names and addresses of
28 contractees and grantees providing a drug-free workplace or
29 debarred for failure to comply with the provisions of this act
30 shall be promulgated by the Department of General Services,

1 provided to the Governor's Drug Policy Council and made
2 available for public review. The list shall be updated and
3 published each month. A State agency or political subdivision
4 shall not award a contract or grant to any person or
5 organization on the published list of violators until that
6 person or organization has complied with this act.

7 (e) Notification of Department of General Services.--Every
8 State agency or political subdivision which awards contracts or
9 grants without review by the Department of General Services
10 shall immediately notify the Department of General Services of
11 any contractor or grantee that has an award canceled on the
12 basis of a violation of this act.

13 (f) Notification of contractee and grantee.--At the time of
14 entering into a contract or issuing a grant that results in the
15 application of this act, the contractor shall notify the
16 contractee or grantee of the application of this act and of the
17 necessary compliance.

18 Section 8. Administrative procedures.

19 Administrative procedures for the implementation of this act
20 shall be promulgated by the Governor's Drug Policy Council,
21 consistent with the guidelines established for State employees
22 by the Office of Administration for distribution to all State
23 agencies and political subdivisions.

24 Section 9. Effective date.

25 This act shall take effect in 90 days.