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## 1997 Survey of Rhode Island Law: Legislation: Labor Relations: An Act Relating to Labor and Labor Relations - Drug Testing

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**Labor Relations.** *An Act Relating to Labor and Labor Relations—Drug Testing.* Provides guidelines under which employers may subject employees to drug testing. These guidelines include: (1) requisite suspicion to request the employee to undergo drug testing, (2) employee privacy, (3) referral to a substance abuse professional if testing proves positive, (4) an opportunity for the employee to explain the test results and (5) conditions for pre-employment drug testing. Effective, July 3, 1997. 1997 R.I. Pub. Laws ch. 152.

This legislation (the Act) amends sections 28-6.5-1 and 28-6.5-2 of the Rhode Island General Laws. The Act's stated purpose is to create a proper balance between the public-policy concerns of preventing on-the-job substance abuse and the preservation of privacy rights for employees.<sup>1</sup> Through confidential testing with heightened reliability requirements, the Act seeks to maintain employee privacy rights while providing a means to detect substance abuse.<sup>2</sup>

The Act provides that an employer must meet certain requirements prior to the imposition of a drug test upon an employee. An earlier version of the Act only required that an employer find "specific objective facts."<sup>3</sup> Now, however, in order to impose a drug test, an employer must find "reasonable grounds . . . based on specific aspects of the employee's job performance and on specific contemporaneous observations, capable of being articulated, concerning the employee's appearance, behavior, or speech."<sup>4</sup>

An employee may not be fired immediately for positive test results. Rather, that employee must be referred to a substance-abuse professional for treatment and counseling.<sup>5</sup> Also, any employer who engages in drug testing must have a written policy for drug-abuse prevention available for employees.<sup>6</sup> All test results are to be confidential, unless another employee has a "job-related

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1. R.I. Gen. Laws § 28-6.5-1 (1995 & Supp. 1997).

2. 1996 R.I. Pub. Laws ch. 152.

3. R.I. Gen. Laws § 28-6.5-1(a)(1).

4. *Id.*

5. *See id.* § 28-6.5-1(a)(3) (Supp. 1997).

6. *See id.* § 28-6.5-1(a)(7).

need to know,"<sup>7</sup> or if it is necessary for the employer to defend itself against any legal action brought by the employee.<sup>8</sup>

The effect of the amendments creates added protection for any employee that is subject to drug testing by imposing on the employer further procedural requirements than under the prior law. Sections 28-6.5-1(4) and 28-6.5-1(3) specify that testing must apply to urine, blood or any other bodily fluid or tissue.<sup>9</sup> Also, any test with positive results are required to be confirmed by a federally certified laboratory.<sup>10</sup>

Under the Act, an employer may not fire an employee for testing positive to drug testing. Instead, the employee must be referred to a substance-abuse professional for counseling.<sup>11</sup> The amended Act provides that this referral in lieu of termination be conditional; additional post-treatment testing may be required of the employee and evidence of continued drug use despite treatment may result in termination.<sup>12</sup>

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7. *Id.* § 28-6.5-1(a)(8).

8. *See id.*

9. R.I. Gen. Laws §§ 28-6.5-1, 28-6.5-2 (Supp. 1997).

10. *See id.* § 28-6.5-1(4) (Supp. 1997).

11. *Id.* § 28-6.5-1(3) (Supp. 1997).

12. *Id.*