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First Annual Report of Substance Abuse Testing to the Join Standing Committee on Labor of the 114th Maine Legislature

Maine Department of Labor

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INTRODUCTION


The Departments of Labor and Human Services were given rule-making authority. The Department of Human Services' Office of Alcoholism and Drug Abuse Prevention (OADAP) was charged with the development of rules covering approval of employee assistance programs under the law. The Public Health Laboratory, within the Department of Human Services, was charged with the development of rules relating to the approval of testing facilities. The Department of Labor was given the responsibility to adopt rules governing the submission and review of individual employer testing policies.

The statute required that the rules be adopted before December 1, 1989. Public hearings were held on three sets of rules on October 2-3, 1989. Final adoption of all rules took place in November.

The statute's transition section allowed for testing under programs in existence prior to September 30, 1989 until January 1, 1990. After January 1, 1990 programs would need to comply fully with the law.

REPORT

Title 26 MSRA §690 requires the Department of Labor to report annually to the Joint Standing Committee on Labor on the status of substance abuse testing under the law. Since 1989 was the year of implementation, there is very little to report in some areas.

1. LIST OF EMPLOYERS. As of December 31, 1989, there were no employers that had approved policies under the law, although twelve employers had submitted plans for consideration.

2. PERSONS TESTED. Since there were no approved policies, reportable testing of applicants or employers did not occur. All twelve policies submitted for consideration prior to December 31 wished to test applicants. Three included employee testing.

3. RANDOM OR ARBITRARY TESTING. There was no reportable random or arbitrary testing of employees. Only two of the twelve policies expressed an interest in random or arbitrary testing.

4. RESULTS. There were no statistical reports required for 1989.
5. DESCRIPTION.

A. LABORATORIES. Application forms and related materials were sent to laboratories that requested them beginning in early November. Two applications were received by December 31. One laboratory was licensed. That laboratory is the American Medical Laboratories of Fairfax, Virginia.

B. EMPLOYEE ASSISTANCE PROGRAMS. Between the adoption of rules and December 31, five applications for employee assistance programs were received. All five applications were approved. The programs are: Boise Cascade; Mid-State Machine Products, Inc.; FMC Corporation Marine Colloids Division; Citibank of Maine; and, Cianbro Corporation.

C. EMPLOYER POLICIES. Of the twelve employer policies that were submitted prior to December 31, only six were submitted at a time that allowed for agency action prior to the end of the year. Final agency action cannot occur until ten days from the date of employee notification of submission has passed. Therefore, any policy where notification occurred after December 21 could not be acted upon before the end of the year.

All of the six submissions reviewed were denied. Common to all these submissions was the failure to have an approved laboratory. Other concerns include failure to meet employee consultation requirements as well as standards for random or arbitrary testing. Inconsistent formats made review difficult in some cases and clarification of intent was needed in others.

ADDENDUM

Several developments worth mentioning have occurred since the first of the year.

The Legislature passed, and Governor McKernan signed into law, L.D. 2145, which allowed a limited extension of the law's transition period through March 1, 1990 to certain employers.

The Department of Human Services' Public Health Laboratory has approved one additional testing facility. It is CompuChem Laboratories, Inc. of New Jersey.

Pratt and Whitney is the only additional employee assistance program that has been approved.

Forty-two policies have been submitted for review, of which twenty-two could have been acted upon by February 28, 1990. To date, the Department has approved seven policies. These are: Statler Tissue (applicant); Cianbro Corporation (applicant and employee); James River (applicant); Bath Iron Works (applicant); Maine Poly, Inc. (applicant); Saco Defense, Inc. (applicant); and, Oakhurst Dairy (applicant). Eleven policies have been denied. Eleven employers have been asked to make minor revisions to their policies. The remaining policies are in the process of review.

March 1, 1990