



Disqualification for Discharge Involving Drugs

What the law says: This matter is covered by Section 29(1)(m) of the *Michigan Employment Security Act*. The law says that an individual will be disqualified from receiving unemployment benefits if the individual was fired from the job for illegally using or possessing a drug ("controlled substance") at the workplace; for refusing to take a drug test; or for failing a drug test.

For the disqualification to be imposed, the drug test must be given in a non-discriminatory way. To be given in a "non-discriminatory" way, the test must be given impartially and objectively in accordance with a collective bargaining agreement; employer rule, policy, or notice; or a labor-management contract. For example, a drug test may be required after a worker has had an accident at work, or it may be given to workers selected randomly.

Further, a worker who disagrees with the test result and expresses that disagreement to the employer must be given a confirmatory test on the same sample that also gives a positive result.

A worker who is disqualified from receiving benefits under this provision can requalify for benefits by doing either one, or a combination of both, of the following for 26 weeks:

- Certify to the Unemployment Insurance Agency (UIA) that he or she has met all of the requirements to receive a benefit payment (such as being able to work, available for work, and seeking work); and/or
- Earn at least \$220.00.

However, even after the 26-week requalification period has been satisfied, the unemployed worker's original benefit entitlement is reduced by 13 weeks, and no benefits can be paid to the individual based on work with the employer involved in the firing due to the involvement with drugs. Benefits can be paid based only on work with other employers not involved in a drug disqualification (or a disqualification for theft, willful destruction of property, assault and battery, or theft after notice of layoff or discharge).

Examples: The employer asks a worker to take a drug test after the worker has an accident at the worksite. The worker refused and is fired. This worker would be disqualified from receiving unemployment benefits, as the basis for giving the worker the test was the accident, and this is a non-discriminatory basis upon which to test the employee.

If a worker is fired for testing positive for a drug ("controlled substance") for which the worker has a valid prescription and which the worker is using in a medically approved amount, the worker would not be disqualified from receiving unemployment benefits, because the controlled substance would not have been used or possessed *illegally*.

Proof at the Hearing: If either the employer or unemployed worker appeals the case to an Administrative Law Judge, then the employer must prove that the worker used or possessed a drug ("controlled substance") illegally, or that the worker refused or failed a drug test that was administered in a non-discriminatory way.

A report by a drug testing facility showing a positive result is conclusive proof at the hearing of the result, unless there is substantial evidence presented at the hearing to the contrary. If there is such contrary evidence, though, the Administrative Law Judge may request testimony of the drug-testing laboratory as to the results of the test, the testing method used, and the "chain of custody" of the sample tested.

For Further Help: The UIA Advocacy Program can provide assistance to employers and/or unemployed workers in preparing for an Administrative Law Judge hearing. Call 1-800-638-3994, Item 2.