

# Employer LINC™

LEGAL INFORMATION, NEWS AND COMMENTARY FOR EMPLOYERS

EMPLOYMENT LAW UPDATE 09.29.2011

## LABOR & EMPLOYMENT PRACTICE GROUP

**Charles S. Plumb**, Group Leader  
charlie.plumb@mcafeetaft.com

**Michael K. Avery**  
michael.avery@mcafeetaft.com

**Timothy J. Bomhoff**  
tim.bomhoff@mcafeetaft.com

**Elizabeth Bowersox**  
elizabeth.bowersox@mcafeetaft.com

**Heidi Slinkard Brasher**  
heidi.brasher@mcafeetaft.com

**Brandon L. Buchanan**  
brandon.buchanan@mcafeetaft.com

**Vickie J. Buchanan**  
vickie.buchanan@mcafeetaft.com

**Jared M. Burden**  
jared.burden@mcafeetaft.com

**Brian A. Burget**  
brian.burget@mcafeetaft.com

**John A. Burkhardt**  
john.burkhardt@mcafeetaft.com

**Todd Court**  
todd.court@mcafeetaft.com

**Mark Folger**  
mark.folger@mcafeetaft.com

**Sam R. Fulkerson**  
sam.fulkerson@mcafeetaft.com

**Lauren Barghols Hanna**  
lauren.hanna@mcafeetaft.com

**Michael F. Lauderdale**  
michael.lauderdale@mcafeetaft.com

**Kathy R. Neal**  
kathy.neal@mcafeetaft.com

**Zachary A.P. Oubre**  
zach.oubre@mcafeetaft.com

**Tony G. Puckett**  
tony.puckett@mcafeetaft.com

**Natalie K. Ramsey**  
natalie.ramsey@mcafeetaft.com

**Paul A. Ross**  
paul.ross@mcafeetaft.com

## Oklahoma's new drug testing law: Are you ready?

Earlier this year, Oklahoma Governor Mary Fallin signed into law a set of sweeping changes to Oklahoma's drug and alcohol testing act which were championed by the business community and welcomed by Oklahoma employers (*see May 18, 2011, EmployerLINC Employment Law Update on the reverse side*).

### WHAT EMPLOYERS NEED TO DO NOW

The new act becomes effective on November 1, 2011. If an employer wishes to take advantage of the revised law, it must revise its existing policy or enact a new written drug testing policy.

Because the new act does not become effective until November 1, 2011, the current version of the drug testing statute remains in effect. The current law requires 30 days written notice to amend or change an existing drug testing policy. Thus, unless you are an employer who has already updated your policy and given proper 30 days notice, it is our recommendation that you wait until November 1, 2011, or thereafter to publish a drug testing policy in compliance with the new act which requires 10 days written notice. An employer must comply with the notice and dissemination requirements of the new act as well as the 10-day notice requirement, so the earliest a new policy could become effective is November 11, 2011.

As always, the attorneys at McAfee & Taft stand ready to provide you guidance in updating your policies and properly communicating those changes to your workforce.



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# Sweeping changes to Oklahoma employer drug testing law

Oklahoma has long been considered an employee-friendly state on the issue of drug and alcohol testing by employers. As Oklahoma employers know all too well, the Oklahoma Standards for Workplace Drug and Alcohol Testing Act places significant restrictions on an employer's ability to conduct testing and creates several hyper-technical and procedural obstacles for employers to navigate. The unfortunate result has been frequent litigation by disgruntled former employees, often with the employee being reinstated despite testing positive for drugs or alcohol.

Objections by employers to this state of the law have finally won out. On May 9, 2011, Oklahoma Governor Mary Fallin signed into law a set of sweeping changes designed to improve the Act and to provide employers more flexibility in eliminating undesirable employees. McAfee & Taft's Labor & Employment attorneys, led by Sam Fulkerson, played a significant role in assisting The State Chamber of Oklahoma in proposing, drafting and championing these changes.

Highlights of the new law, which becomes effective November 1, 2011, include the following:

- Testing of independent contractors and employees of independent contractors is now expressly permitted, provided the contractual agreement allows for such testing and other workers at the job site are similarly subject to testing
- Less stringent policy requirements and substantially less technicality in testing policies
- No list of substances needed
- Less notice required – Employers only need to give employees 10 days advance notice before implementing new or changed policies
- The Act's "reasonable suspicion" standard has been replaced by a "reasonable belief" standard
- The workers' compensation and unemployment prohibitions for individuals testing positive have been strengthened
- Reduction of the statute of limitations to one year
- Elimination of the employer-sponsored EAP requirement
- Provision for the award of attorneys fees to a successful defendant
- Repeal of criminal provisions

Oklahoma employers who wish to conduct drug and alcohol testing between now and November 1, 2011, must continue to adhere to the provisions of the current statute. However, employers should seriously consider creating revised drug and alcohol testing policies to be ready to take full advantage of the greatly-simplified Act at that time. Employers who choose not to revise those policies may face the argument that the employer is contractually obligated to continue following the onerous technical requirements of the current Act.

**Kristin M. Simpson**  
kristin.simpson@mcafeetaft.com

**Joshua W. Solberg**  
josh.solberg@mcafeetaft.com

**Mark D. Spencer**  
mark.spencer@mcafeetaft.com

**Curtis J. Thomas**  
curtis.thomas@mcafeetaft.com

**Peter T. Van Dyke**  
peter.vandyke@mcafeetaft.com

**Susan E. Walker**  
susan.walker@mcafeetaft.com

**Dara K. Wanzer**  
dara.wanzer@mcafeetaft.com

**James R. Webb**  
jim.webb@mcafeetaft.com

**Nathan L. Whatley**  
nathan.whatley@mcafeetaft.com

**Amy D. White**  
amy.white@mcafeetaft.com

**Sharolyn C. Whiting-Ralston**  
sharolyn.ralston@mcafeetaft.com

**Elizabeth Scott Wood**  
elizabeth.wood@mcafeetaft.com

**McAfee & Taft**  
ATTORNEYS & COUNSELORS

[www.mcafeetaft.com](http://www.mcafeetaft.com)

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