

NECA Drug Testing and Section 7 Rights

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NECA/IBEW Joint Resolution (1990)

Joint Resolution of NECA and the IBEW on Substance Abuse in the Electrical Industry

WHEREAS the National Electrical Contractors Association and the International Brotherhood of Electrical Workers are vitally concerned with jobsite performance and safety of all workers on construction projects and in the electrical industry; and

WHEREAS NECA and the IBEW recognize that alcoholism, drug dependence, and other behavior-altering conditions are highly complex problems in the workplace which under most circumstances can be successfully treated; and

WHEREAS NECA and the IBEW also realize the importance of providing a safe and healthy work environment for all employees; and

WHEREAS substance abuse in many cases results in the users becoming chemically dependent, thereby altering acceptable behavior in the workplace; and



NECA/IBEW Joint Resolution (1990)

Joint Resolution of NECA and the IBEW on Substance Abuse in the Electrical Industry, cont.

WHEREAS NECA and the IBEW must confront the problem of substance abuse in the workplace because an employee's physical and mental health are directly related to the job safety and productivity of all persons in the electrical construction industry; and

WHEREAS many abusers need and want help; and

WHEREAS NECA and the IBEW are committed to continue to provide the users and purchasers of electrical labor and services a product of the finest quality and economy: Therefore be it

RESOLVED. That NECA and the IBEW do not condone substance abuse in the work place: and be it

RESOLVED further. That NECA and the IBEW encourage and support the formulation of Local Substance Abuse Programs throughout the electrical industry.



Category 1 Language

Section 11.01. The dangers and costs that alcohol and other chemical abuses can create in the electrical contracting industry in terms of safety and productivity are significant. The parties to this Agreement resolve to combat chemical abuse in any form and agree that to be effective, programs to eliminate substance abuse and impairment should contain a strong rehabilitation component. The **local parties** recognize that the implementation of a drug and alcohol policy and program must be subject to all applicable federal, state, and local laws and regulations. Such policies and programs must also be administered in accordance with accepted scientific principles and must incorporate procedural safeguards to ensure fairness in application and protection of legitimate interests of privacy and confidentiality. **To provide a drug-free workforce for the Electrical Construction Industry, each IBEW local union and NECA chapter shall implement an area-wide Substance Abuse Testing Policy. The policy shall include minimum standards as required by the IBEW and NECA.** Should any of the required minimum standards fail to comply with federal, state, and/or local laws and regulations, they shall be modified by the local union and chapter to meet the requirements of those laws and regulations.

Minimum Standards

THE NECA/IBEW LOCAL AREAWIDE SUBSTANCE ABUSE TESTING POLICY REQUIRED MINIMUM STANDARDS - March 1, 2005

- Each employer shall have the right to request drug-free applicants for employment from the drug-free applicant pool for each specific designated job or the employer may choose to hire only drug-free applicants for all employees.
- Provides for applicant, random and reasonable suspicion testing and has rehabilitation component.
- Provides for independent testing, MRO review and TPA.
- Superseded by government or owner mandates with more exacting standards.
- Local Union not responsible for testing, costs and are INDEMNIFIED from ascertaining or monitoring drug free status of any employee.

Minimum Standards Q&A

QUESTIONS AND ANSWERS CONCERNING THE SUBSTANCE ABUSE TESTING PROGRAM - March 1, 2005

1. Does our local area have to adopt this new language and implement a substance abuse testing program? **Yes. This new Category I Substance Abuse Language is mandatory and must be inserted into every construction agreement in the country, and each area must implement a substance abuse testing policy.**
8. If this program only applies to applicants, does that mean current employees cannot be tested under the program? **No. The negotiations for this program are specifically intended to give the employer the right to require current employees become and remain compliant (i.e., submit to testing) within the guidelines of the minimum standards and any locally agreed upon requirements. Therefore, the contractor may choose only to employ applicants and employees who become and remain compliant with the substance abuse program.**
10. There have been several references to employers' policies and employers' choices under this program. Are employers free to establish any rules they want? **No. The program as written requires the local parties to develop and implement a substance abuse testing program that meets certain minimum standards. The local parties may negotiate additional provisions that are in accord with the minimum standards. Within those parameters and the managements' rights clause, employers would be free to promulgate company policies that state how and to what extent that company will utilize the program.**

Drug Testing: National and Local Concerns

- Federal Law
 - Cannabis still illegal
 - Americans with Disabilities Act (ADA)
 - National Labor Relations Act (NLRA)
 - Family Medical Leave Act (FMLA)
- Davis Bacon/PLA
 - Drug-free Workplace Act
- Owner Requirements
- State and Local Law
 - Prohibitions on THC testing
 - Medical use
 - Prescription Drugs



Drug Testing and Workplace Safety

- Employers must provide a workplace free from recognized hazards (OSHA General Duty Clause)
- DOT and Safety Sensitive positions require drug testing that includes marijuana
- Employers have a right, and responsibility, to ensure workplace safety
- Relying solely on reasonable suspicion and post incident testing puts great stress on employer

Drug Testing and Insurance

- Insurance industry is struggling with THC
- No test for current impairment clouds legal liability landscape
- Exposure increased for willful failure to test applicants?

NLRB Priorities

- **Section 7 Rights**
- Union Access
- Independent Contractors
- Deferrals to Arbitration
- Replacement Workers
- Front Pay



Section 7 Rights

- Section 7 of the NLRA provides:
 - "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection," as well as the right "to refrain from any or all such activities."
- It is unlawful for an employer to interfere with, restrain, or coerce employees in the exercise of their rights.

Section 7 Practical Concerns

- “Protected and Concerted” – what does that really mean?
- What are the top areas of concern for NECA contractors?
 - Handbooks and workplace policies
 - Social Media and Acceptable Use
 - When can you take a cell phone/look at texts or emails?
 - When can you demand a post be removed?
 - Confidentiality

New NLRB Case on Settlement

- This February, the Board in *McLaren Macomb* determined “a severance agreement is unlawful if its terms have a reasonable tendency to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights, and that employers’ proffer of such agreements to employees is unlawful.”
- It found confidentiality and non-disparagement provisions unlawful as worded.

Separation and Settlement Agreements

- Is *McLaren Macomb* retroactive?
- Does the normal 6-months ULP statute of limitations apply?
- Can the Union waive Section 7 rights?

5 things that may surprise you about Section 7 Rights

1. Applies to Union and Non-Union Employees
2. The “Solo” Strike
3. Dress Code Requirements
4. Media Interviews
5. Social Advocacy



Questions?

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