

§ 95-28.2. Discrimination against persons for lawful use of lawful products during nonworking hours prohibited.

(a) As used in this section, "employer" means the State and all political subdivisions of the State, public and quasi-public corporations, boards, bureaus, commissions, councils, and private employers with three or more regularly employed employees.

(b) It is an unlawful employment practice for an employer to fail or refuse to hire a prospective employee, or discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the prospective employee or the employee engages in or has engaged in the lawful use of lawful products if the activity occurs off the premises of the employer during nonworking hours and does not adversely affect the employee's job performance or the person's ability to properly fulfill the responsibilities of the position in question or the safety of other employees.

(c) It is not a violation of this section for an employer to do any of the following:

- (1) Restrict the lawful use of lawful products by employees during nonworking hours if the restriction relates to a bona fide occupational requirement and is reasonably related to the employment activities. If the restriction reasonably relates to only a particular employee or group of employees, then the restriction may only lawfully apply to them.
- (2) Restrict the lawful use of lawful products by employees during nonworking hours if the restriction relates to the fundamental objectives of the organization.
- (3) Discharge, discipline, or take any action against an employee because of the employee's failure to comply with the requirements of the employer's substance abuse prevention program or the recommendations of substance abuse prevention counselors employed or retained by the employer.

(d) This section shall not prohibit an employer from offering, imposing, or having in effect a health, disability, or life insurance policy distinguishing between employees for the type or price of coverage based on the use or nonuse of lawful products if each of the following is met:

- (1) Differential rates assessed employees reflect actuarially justified differences in the provision of employee benefits.
- (2) The employer provides written notice to employees setting forth the differential rates imposed by insurance carriers.
- (3) The employer contributes an equal amount to the insurance carrier on behalf of each employee of the employer.

(e) An employee who is discharged or otherwise discriminated against, or a prospective employee who is denied employment in violation of this section, may bring a civil action within one year from the date of the alleged violation against the employer who violates the provisions of subsection (b) of this section and obtain any of the following:

- (1) Any wages or benefits lost as a result of the violation;
- (2) An order of reinstatement without loss of position, seniority, or benefits; or
- (3) An order directing the employer to offer employment to the prospective employee.

(f) The court may award reasonable costs, including court costs and attorneys' fees, to the prevailing party in an action brought pursuant to this section. (1991 (Reg. Sess., 1992), c. 1023, s. 1.)