

EFFECTS OF DRUG AND ALCOHOL MISUSE ON WORKER'S COMPENSATION BENEFITS IN LOUISIANA

The following is a reprint of Louisiana Law

SUBPART D. DEFENSES

Defenses

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() No compensation shall be allowed for an injury caused

(a) by the injured employee's willful intention to injure himself or to injure another, or

(b) by the injured employee's intoxication at the time of the injury, unless the employee's intoxication resulted from activities which were in pursuit of the employer's interests or in which the employer procured the intoxicating beverage or substance and encouraged its use during the employee's work hours, or

(c) to the initial physical aggressor in an unprovoked physical altercation, unless excessive force was used in retaliation against the initial aggressor.

() In determining whether or not an employer shall be exempt from and relieved of paying compensation because of injury sustained by an employee for any cause or reason set forth in this Subsection, the burden of proof shall be upon the employer.

() For purposes of proving intoxication, the employer may avail himself of the following presumptions

(a) If there was, at the time of the accident, . . . percent or less by weight of alcohol in the employee's blood, it shall be presumed that the employee was not intoxicated.

(b) If there was, at the time of the accident, in excess of . . . percent but less than . . . percent by weight of alcohol in the employee's blood, such fact shall not give rise to any presumption that the employee was or was not intoxicated, but such fact may be considered with other competent evidence in determining whether the employee was intoxicated.

(c) If there was, at the time of the accident, . . . percent or more by weight of alcohol in the employee's blood, it shall be presumed that the employee was intoxicated.

() Percent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred cubic centimeters of blood.

() If there was, at the time of the accident, evidence of either on or off the job use of a nonprescribed controlled substance as defined in U.S.C. . . . , Schedules I, II, III, IV, and V, it shall be presumed that the employee was intoxicated.

() The foregoing provisions of this Section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether the employee was under the influence of alcoholic beverages or any illegal or controlled substance.

()(a) For purposes of this Section, the employer has the right to administer drug and alcohol testing or demand that the employee submit himself to drug and alcohol

