

Legal Torque

WORKPLACE DRUG TESTING

-Cathy Bormans-

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In the first issue we discussed the proposed new law which would make it an offence to drive while impaired by illegal drugs. In this issue we discuss drug testing in the context of employment.

Workplace drug testing is problematic because it involves balancing employees' rights to privacy against employers' obligations to ensure the safety of their workers. The statutory requirement to maintain a safe work environment certainly justifies a workplace drug testing programme in high risk industries such as transportation. There can be additional benefits for employers of having a drug testing programme as workplace drug testing may also increase worker productivity and efficiency.

An employer needs to be careful when introducing a drug testing programme. An employer can unilaterally introduce drug testing in the workplace but the drug testing policy must be reasonable and the employer should consult staff before implementing a policy. The introduction of drug testing will often be seen by employees as eroding the relationship of trust and confidence. Random drug testing in particular should therefore be introduced with care.

In order to carry out drug testing an employer must have a comprehensive drug testing policy. That policy should as a minimum cover the following:



- The relevant concerns for the employer's business and why it is necessary for that business to carry out drug testing. The concern is likely to be the employer's desire to provide a safe and hazard free work environment particularly given that the Health and Safety in Employment Act specifically includes as a hazard drugs and alcohol.
- When the employee may be tested for alcohol and/or drugs, for example:
 - * Where an accident or near miss has occurred;
 - * Where there is reasonable cause to suspect that an employee's behaviour is an actual or potential source of harm as a result of the employee being affected by drugs or alcohol;

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* Randomly and without cause or suspicion where the employee works or has applied to work in a safety sensitive area in the workplace. While there has been no decision specifically relating to commercial truck drivers it is inevitable that they will be regarded as working in a safety sensitive area and therefore can be subject to random drug testing.

- The duty of employees to remain alcohol and drug free at all times while on duty or in the workplace, including upon arrival at work.

On a final note, employers need to remember that:

1. A positive drug test only establishes that an employee has recently used drugs. Drug tests cannot identify whether the performance of the employee was impaired by the use of those drugs.
2. Any disciplinary action that occurs as a result of a failed drug test must comply with natural justice requirements.

If you have any queries about workplace drug testing please contact Cathy Bormans on (09) 915 2412.

- What to test for.
- A process for confidentiality of results and information.
- Any educational or awareness programmes available for employees.
- Any employer assistance programmes available to the employee.

Transport Team Contact Details

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