



Drug and Alcohol Testing in Employment

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Before implementing drug and alcohol testing seriously consider:

- Do you have a safety sensitive work environment?
- What impact will testing have on your workplace? Is it practical to test? Is there a drug and alcohol problem in the workplace?
- Do you have a unionized workplace? (If so, introducing drug and alcohol testing will be more challenging.)
- What is the appetite for the risk that the testing will be found to be discriminatory or violate an applicable collective agreement?
- Are you willing to take the time to draft a clear and relevant Policy?
- Are you willing to train your management team on the Policy and how to enforce (e.g. signs of impairment)?



1. Pre-employment – generally problematic (but exceptions)

- “...a positive test does not show future or even likely future impairment on the job, yet an applicant who tests positive only once is not hired” – Entrop v. Imperial Oil (Ont. C.A.)
- What do you do if there is a positive test? eg. refuse to hire and risk human rights complaint or accommodate?



2. Reasonable cause testing – generally permissible

- Permitted with respect to safety-sensitive positions.
- If going to test, ensure that supervisors ordering the test:
 - Follow the Policy (yes, you need a Policy)
 - Use objective criteria as basis to test (“he looked stoned” is not good enough)
 - Are able to defend why testing was ordered. Checklists are helpful.



3. Post-incident – generally permissible

- Permitted with respect to safety-sensitive positions.
- Only test those who could reasonably have contributed to the incident.



4. Random

- Safety sensitive workplace; and
- Evidence of drug and alcohol problem in workplace.
- Unions often challenge random testing. Therefore, easier to impose in non-unionized workplace.
- Random testing has a positive deterrent impact!

5. Unannounced testing

- Rehabilitation Program – Permissible



These materials are intended to provide brief informational summaries of legal developments and topics of general interest.

The materials should not be relied upon as a substrate for consultation with a lawyer with respect to the reader's specific circumstances. Each legal or regulatory situation is different and requires review of the relevant facts and applicable law.

If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our firm to discuss your need for specific legal advice relating to the particular circumstances of your situation.

Due to the rapidly changing nature of the law, Stewart McKelvey is not responsible for informing you of future legal developments.