
Employment Law – Drug and Alcohol Testing

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Employment Law – Background

Drug and Alcohol Testing should be introduced with consultation in a company policy. The rationale is to prevent or rehab rather than discipline employees. However, employers need to consider the reasonableness of implementing a policy. In addition, employers also need to consider whether it breaches privacy law.

Employment Law – Issues to Consider

In essence:

- Drug and alcohol testing should be introduced on work, health and safety grounds
- this is because industrial tribunals have generally determined that testing is an intrusion of individual privacy. Therefore, it can only be justified on work, health and safety grounds
- an employer has no control over what employees do in their own leisure time. Although conduct that may put an a person at risk or damage the company's business and reputation can warrant control measures
- because such a policy is to be considered a workplace health and safety matter, consultation with all staff is required
- the policy is especially relevant in medium to high risk industries for instance manufacturing and construction
- furthermore, some industries will require such a policy under the relevant workplace health and safety law
- employers are obligated to attempt to eliminate the risk for employees impaired by drugs or alcohol. Conversely, employees may argue an intrusion into their personal lives
- failure to educate employees about the terms of the drug and alcohol policy can result in disputes in the workplace
- furthermore, the lack of a company drug and alcohol policy can also have negative implications for employers in unfair dismissal claims

Employment Law – Company Policy

A company policy on drug and alcohol testing should:

- aim to educate employees about the expected standards
- explain to employees their responsibilities
- stipulate the consequences of a breach
- refer to the types of substances which can cause impairment. Notably, alcohol, cannabis, methamphetamines including cocaine and ecstasy, and opioids such as heroin
- also consider referring to legal and prescription drugs such as sleeping pills because

they also cause impairment

Employment Law – Method of Testing

In essence:

- the two most common methods of testing for illicit drugs are saliva and urine testing
- oral testing is more focussed on acute impairment
- urine testing is more likely to uncover drug use patterns
- the Full Bench of the (then) Fair Work Australia concluded that oral testing should therefore be adopted for a drug and alcohol policy
- urine testing is appropriate in certain circumstances

Employment Law – Tips for Employers

Our **Matthews Folbigg Workplace Solutions** employment law team recommends employers:

- seek the assistance of an employment lawyer to prepare an appropriate drug and alcohol policy
- communicate to employees the drug and alcohol policy to employees
- consult with all employees the implementation of the drug and alcohol policy
- provide ongoing training and education to employees
- speak to an employment lawyer to determine the appropriate method of testing for the workplace
- consult an employment lawyer to consider the relevant privacy legislation. Consideration should be in conjunction with the company's privacy policy
- prepare new employment law policies as required
- eliminate the risk of employees coming to work impaired by drugs or alcohol
- draft changes to current drug and alcohol policy with the assistance of an employment lawyer
- finally, engage an employment lawyer to consider relevant workplace health and safety law for certain industries

Employment Law – More Information

Please call the leading employment lawyers in Parramatta, the **Matthews Folbigg Workplace Solutions** employment law team on **9635-7966** to speak with one of our employment lawyers.