

## Drug testing good for companies operating dangerous work sites

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From a single phone interview, John Chiasson secured a lucrative job on a Fort McMurray construction project.

There was only one catch: the offer was conditional on passing a drug test. Mr. Chiasson had smoked marijuana five days before the test. He figured it would have cleared his system. He was wrong.

Kellogg Brown & Root believed having a potentially impaired worker on a dangerous work site created serious safety risks. For the company there was no question as to what should be done. Mr. Chiasson was fired.

In response, he filed a human rights complaint. His complaint was upheld by the Human Rights Commission which said the effect of Kellogg's drug policy was to prevent cannabis addicts from being hired. This, it concluded, discriminated on the basis of disability. Determined to fire employees using drugs or alcohol on its dangerous construction sites, Kellogg appealed.

The Alberta Court of Appeal viewed banning casual drug use by employees in the same fashion as prohibiting drinking and driving. As the court noted, just because someone drinks and drives a company vehicle does not mean they are alcoholics and therefore protected by human rights. As a matter of public safety, if caught, they should lose their right to operate a motor vehicle. Employees who use illicit drugs should not be in the workplace performing hazardous tasks. The Court refused to extend human rights protection when safety is at risk and pointedly called it illogical to do so.

This is a major departure from earlier cases that found drug testing acceptable only where the employer proves the employee tested was impaired while performing his duties. Previously, general or random drug testing was largely prohibited. The Alberta Court of Appeal imposed no such requirement. Drug testing is justified to accomplish the legitimate goal of a safe workplace free of impairment.

Employers should not bow to unions or human rights tribunals on this issue. Where public safety is involved, early intervention through drug and alcohol testing will limit the risk of calamitous injuries and lawsuits against employers.

Employers can do the following:

- Implement a policy of drug testing aimed at safety, not aimed at screening out drug

addicts.

- Terminate employees based on the results of drug tests provided the worker is not an addict, but simply a casual user.
- A result showing traces of an illicit drug is sufficient -- it is no longer necessary to prove the employee was impaired in performing his job.
- Once the policy is in place, ensure it is applied consistently.

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