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DRUG TESTING IN THE WORKPLACE

Drug and alcohol testing in the workplace is becoming more and more common in New Zealand.

Employees who are under the influence of drugs or alcohol are a danger to themselves and others in the workplace, not only to other employees but customers also. So employers are introducing drug and alcohol policies to create safer work environments, and to ensure that the risk of accidents to their employees and possibly their customers is minimised. Employers also have a duty, under the Health and Safety in Employment Act, to take all practicable steps to provide a safe working environment.

Take the example of a zoo where keepers are responsible for ensuring the gates to the enclosures are properly locked. Imagine if the keeper was under the influence of drugs and forgot to lock the gate properly. The animal could escape its enclosure and injure or even kill another keeper or visitor to the zoo. Not only does alcohol and drug use in these situations potentially cause injuries or death, but will most likely damage the reputation and affect profitability of the company and may lead to closure of the company.

Random drug testing is it lawful? Yes but only in relation to employment roles which are safety sensitive where there would be an immediate and direct impact on safety. For example operating heavy machinery, care of dangerous animals, operating on patients and aircraft engineers making pre-flight checks.

Does drug and alcohol testing impinge on employees' right to privacy? Under the Privacy Act an employer can collect personal information on employees as long as it is for a lawful purpose. The collection and retention of drug and alcohol test results in the course of employment is likely to be seen as a lawful purpose due to the fact that employers have a duty to provide a safe work environment.

Can employees refuse to take a drug and alcohol test? This depends on the policy in place. If the policy provides that refusal to undertake a drug or alcohol test amounts to serious misconduct, then an employee's refusal could lead to disciplinary action or even dismissal. If the employer decides to go down the path of disciplinary action or dismissal then they are still required to follow a fair and reasonable process.

What if the test is positive? As above it depends on the policy and the individual circumstances of the case. For example some policies provide that if an employee tests positive for drugs or alcohol the employee can retain their employment as long as the employee undertake a rehabilitation programme.

20 MINUTE FREE

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