



The Vermont Legislative Research Shop

Drug-Free Workplace Laws

The Constitutionality of Drug Testing in the Workplace

Court opinions on drug testing in the workplace have been based primarily upon the employee-at-will doctrine. The court considers the employee-at-will doctrine to be a necessary, but informal social contract, which assumes that the employee is there on personal will (ACLU 2002). The employment-at-will doctrine avows that, when an employee does not have a written employment contract and the term of employment is of indefinite duration, the employer can terminate the employee for good cause, bad cause, or no cause at all (Bureau of Labor Statistics, January 2001). Therefore, the court has ruled that the employment-at-will doctrine outweighs employees' privacy rights (ACLU 2002).

In the majority of cases heard by the courts, an employer's right to terminate an employee who failed a drug test has been upheld. There have only been a few cases won by private sector employees who contested the results of a drug test. The courts granted certiorari, based on outcomes of the drug test, which were inaccurate. Overall, employees who have contested their employer's right to administer drug test based on privacy grounds have had their case dismissed. These results are due to the importance of the employee-at-will doctrine (ACLU 2002).

An exception has been made in the state of California. California's highest state court as ruled that the right to privacy printed in the *state constitution* has often protected private sector employees. However, there are no federal constitutional barriers concerning mandatory drug testing in the work place (ACLU 2002).

Current Legislation

What the U.S. Congress Has Done

The Federal Government has taken steps to promote drug-free workplaces through the 1998 Drug Free Workplace Program.

The 1998 Drug-Free Workplace Program appropriated \$4 million for a demonstration program through the 1999-2000 fiscal year to aid small business in the establishment of drug-free workplace programs. The monies were distributed through the Small Business Administration (SBA). The logic behind giving money exclusively to small businesses, according to SBA

compensation payments if alcohol or drugs are found to be the proximate cause of the employee's injury. Most states also allow an employer to deny or reduce workers' compensation payments if alcohol or drugs are found to be the proximate cause of the employee's injury. More recently, however, some states, such as Alabama, Arkansas, Florida, and Georgia, have taken action to promote drug-free workplace programs by offering a premium



U.S. Small Business Administration (SBA). October 30, 2001. "Organizations Picked to Help Small Businesses Eliminate Workplace Drug and Alcohol Abuse."
<http://www.sba.gov/news/drugfree/nr01-52.html>

U.S. Small Business Administration (SBA). January 11, 2002. "Report to Congress: U.S. Small Business Administration"

Kansas
Kent

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Montana

§39-2-304

(1997) Drug testing with restriction, is permitted of employees "engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position." Testing must be in accordance with 49 CFR part 40 of the DOT's regulationn,.T573t, n,.T561.6641t,

Oregon

§279.312
(1999) Requires that all public contracts include a condition that the contractor demonstrate an employee drug-testing program.

§438.435
(1993) Permits all types of drug testing but does request all tests be analyzed at state approved laboratories. Alcohol testing is only allowed if there is reasonable suspicion the employee is under the influence or if the employee consents.
§802.200
(1999), §803.370
(1999), § 825.955
(1999) Requires motor carriers have drug testing programs, specifies penalties for failure to establish program. Specifies that positive test results be entered into employee driving record.

Pennsylvania

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Vermont		§511-520 (1993) Pre-employment testing is permitted if 10 days notice is given and is conducted with a physical examination. For cause testing is permitted if the employer has probable cause to believe an employee is under the influence of drugs while on the job. An employee testing positive must be given the opportunity to participate in an EAP.
Virginia		
Washington		
West Virginia	§25-1-11 (1999) Departments of Corrections employees and job applicants subject to testing.	
Wisconsin		
Wyoming		

Source: *National Conference of State Legislatures*. <http://204.131.235.67/programs/employ/drugtest.htm>