Schaffer Law, LLC
Labor and Employment Law

Navigating Connecticut's Drug Testing Laws

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Most employers are familiar with Connecticut's drug testing statute that regulates urine-based sampling and analysis. In a nutshell, under the law, an employer who has reasonable suspicion that an employee is under the influence may send the employee for a urine based test. Before taking any adverse action, including termination, the initial test must be confirmed by a more sensitive second test. Conn. Gen. Stat. §§ 31-51x and 31-51u. Similar testing protocols apply to prospective employees, however, reasonable suspicion is not needed to test job candidates. 31-51v.

Employers often ask whether they may use other forms of testing, such as hair, saliva, or blood, and if so, may such tests be conducted without reasonable suspicion? For instance, can they be done on a random basis, or following an on-duty accident?

A recent Superior Court decision suggests that employers may perform non-urine based tests, and that the statutes outlined above apply only to urine-based testing. In Schofield v Loureiro Engineering Associates, the Court dismissed a terminated employee's claims that his employer violated the state drug testing statutes when it ordered him to take a hair follicle drug test, without reasonable suspicion of drug use. It found that because the employer did not use a urinalysis drug test, the statutes were inapplicable. It also noted that the Superior Court in an earlier case, *Atlantic Pipe Corporation v. Laborers International Union*, (CV074015994S) (2008), reached a similar conclusion.

In *Atlantic Pipe* a union employee who was fired for failing a drug test was reinstated by an arbitrator, but required to undergo random testing for a year following his return. The

company filed suit to vacate the arbitration award because it claimed, among other things, that random testing violated the state drug testing statutes. The union countered that non-urine forms of testing could be utilized without violating the statutes, which were limited to urine tests. The Court agreed with the union that random testing was permissible, provided methods such as saliva or hair sampling were used in lieu of urine.

While these cases imply that non-reasonable suspicion testing using methods other than urine are permissible, it should be noted that the *Schofield* Court failed to dismiss plaintiff's wrongful termination in violation of public policy claim. Therefore, while random testing using methods other than urine may not violate state drug testing statutes, doing so could violate public policy.

However, in analyzing the merits of a wrongful termination in violation of public policy claim, it would appear that keeping drugs out of the workplace through the use of reliable, non-invasive testing methods, such as hair and saliva tests, would be consistent with public policy. In fact, shortly after the *Schofield* decision was released, the legislature passed Public Act 15-72 permitting hair follicle drug testing when ordered by a qualified health care provider such as a physician, physician's assistant, or advanced practice registered nurse. While not tied to employment situations per se, the Act at least recognizes other forms of drug testing are valid.

Given the small uncertainty surrounding the public policy issue, employers may want to proceed with caution before instituting random, or post-accident testing, absent reasonable suspicion, or any testing using methods other than urinalysis.

For more information or assistance, contact scott@schaffer-law.com or 860-216-1965.

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