

Randomized alcohol testing in the workplace rejected by Supreme Court

On Friday, June 14, 2013, the Supreme Court of Canada ruled that the decision made by the New Brunswick Labour Arbitration Board should be upheld and randomized alcohol testing should be removed from Irving Pulp and Paper Ltd. Mill's policy.

In a 6 to 3 decision, the Supreme Court ruled that the employer did not have a significant issue with alcohol in the workplace and as such the policy was unreasonable. The Supreme Court felt that the risk to employee privacy was substantial, whereas the health and safety concerns argued by Irving were not evident. In rendering its judgment, the Supreme Court laid the circumstances in which randomized drug testing may be justified:

- Where there are reasonable grounds to believe an employee was impaired while on duty.
- Where an employee was directly involved in a workplace accident or significant incident.
- Where the employee returns to work after treatment for substance abuse.

The case stems from a 2006 policy unilaterally adopted by Irving Pulp and Paper Ltd. in St. Johns, in which employees in 'safety sensitive positions' were required to submit to randomized drug testing. A policy grievance was filed by Local 30 of the Communications, Energy and Paperworkers Union of Canada (CEP). The union argued that requiring employees to submit to random breathalyzer and bodily fluid samples was unreasonable and that testing should only be required when there is reasonable cause and signs of impairment - i.e. smell of alcohol, slurred speech, etc.

Irving argued that the policy was justified given the nature of the work, including exposure to hazardous chemicals, high voltage electricity, rotating equipment, and a high-pressure boiler. The company also submitted that the mill had a history of substance abuse involving alcohol and cited 8 cases between 1991 and 2006 when the policy was implemented.

A New Brunswick arbitration board allowed the grievance on the basis that Irving had not demonstrated a need for the policy. The New Brunswick Court of Appeal dismissed the grievance in 2011, ruling that the hazards of the workplace justified the policy. In overturning Irving's policy, the Supreme court has set the national standard for employers seeking to implement drugs and substance policies in the workplace. The Court awarded "costs throughout" to CEP.

To review how the Supreme Court's ruling may affect your alcohol and substance policies in the workplace, please contact us.