



Business Protection Plan

AS AN EMPLOYER, DO YOU HAVE THE RIGHT TO REQUIRE EMPLOYEES TO SUBMIT TO ALCOHOL AND DRUG TESTING? THE ANSWER MAY NOT BE AS OBVIOUS AS YOU THINK. . .

It is probably safe to say that most employers do not want their employees intoxicated or under the influence of drugs or alcohol while on the job. An easy solution to that problem would be to require employees to submit to random drug and alcohol testing, right? Well, not so fast. While employers are permitted to perform drug and alcohol testing of employees under certain circumstances, Minnesota law is very specific as to what this means.

First and foremost, prior to conducting drug and/or alcohol testing of any kind, an employer must have a written drug and alcohol testing policy in place and the subject employees must be aware of the same. If such a policy is implemented, employers may request or require employees to undergo drug and alcohol testing as part of a routine physical examination no more than one time per year upon two weeks written notice. Employers may also request or require employees to undergo drug and alcohol testing on a random selection basis if they are employed in positions where an impairment caused by drug or alcohol usage would threaten the health or safety of any person. Employers may similarly require employees to undergo drug and alcohol testing if the employer has a reasonable suspicion that the employee is under the influence of drugs or alcohol, has violated an internal employer policy regarding drug use, has sustained or caused a personal injury, or has caused a work-related accident. Even if an employer's testing procedures are aligned with the applicable statutory requirements, it worth noting that an employee nonetheless has the right to refuse to undergo drug or alcohol testing.

All testing must be conducted in an objectively fair manner. This means that certain chain-of-custody requirements must be adhered to. Tests are also required to be performed at testing laboratories meeting specific standards. Any positive tests must be re-tested and confirmed.

So, if you have an employee who tests positive for drugs in their system while on the job, you can fire them on the spot, right? Not necessarily. First, an employee who tests positive is entitled to have the same sample re-tested a second time at the employee's expense. In addition, an employee who tests positive is entitled to submit a written notice to explain why the test may have come up positive. Finally, and most surprising, the first time an employee tests positive on a drug and alcohol screen, an employer actually can NOT terminate them. A first time offender must be given the opportunity to complete, at their expense (not the employer's), a treatment program. If the offending employee refuses to participate in treatment or fails to successfully complete treatment, the employee may, at that point, be terminated.

The moral of the story: drug and alcohol screening can be a valuable tool if utilized properly. However, it is critical to follow all necessary statutory processes and procedures in order to avoid legal pitfalls arising from improper testing practices.

To review your Business Protection Plan and to get any other questions you may have answered, contact our office at (763) 389-0178 to schedule a meeting or send us an email by [clicking here](#).



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