

ASK A LAWYER

Employers must meet strict rules for drug testing

Q. Under what circumstances is a New Jersey employer permitted to test its employees for drugs?

In addressing the problem of drug and alcohol abuse in the workplace, many employers have turned to drug testing. Employers should be aware, however, that drug testing is only permissible under certain circumstances.

Drug testing of applicants is permitted as long as the employer makes clear that the applicant's job offer is conditioned upon a negative drug test. With regard to current employees, employers may consider "for cause," post-accident and random drug testing. While the New Jersey pri-

ivate employer must ensure that it complies with any collective-bargaining agreements and private-employment contracts, it is generally permitted to test current employees "for cause" or upon reasonable suspicion of their drug use.

An on-the-job accident in and of itself may not be a sufficient basis for a drug test. Employers must limit random drug testing to only those employees who hold "safety-sensitive" positions of employment. To be "safety-sensitive," the position must implicate the safety of the employee or other employees.

Before conducting any type of

drug testing, employers should establish a comprehensive written drug-testing program that has been reviewed by counsel. A complete program will address the type of test(s) the employer intends to perform, the timing of such test(s), the frequency of such test(s), and the consequences of a positive test or a refusal to submit to a test.

The policy should also ensure applicants and employees that the company will maintain the employee's privacy and dignity, and will keep all information obtained by the test confidential. A comprehensive drug testing program should also include access

to an employee-assistance program for those with alcohol or substance-abuse problems.

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