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RANDOM DRUG AND ALCOHOL TESTING – OSHA TRUMPS ADA

**By
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INTRODUCTION

As most employers are aware, employee impairment at the workplace due to drug and alcohol use is a chronic problem. By some studies conducted of workplace accidents, twenty percent or more of employees at the typical workplace are impaired due to drug and alcohol usage on any given day. Post accident drug and alcohol tests confirm the significant numbers of fatalities and serious injuries that have been caused by such impairment. A recent federal court decision, EEOC v. United States Steel Corporation, et al., __ F. Supp. __, Civil Action No. 10-1284 (USDC W.D. Pa., Feb. 20, 2012) gives employers added support for random drug and alcohol testing to combat these safety risks.

CASE

The case involved a U.S. Steel facility in Clairton, Pennsylvania which had established a random drug and alcohol testing program for its probationary employees at its coke production plant. The company's goal was a "drug and alcohol free workplace." A probationary employee was selected for a random breath alcohol test which indicated the presence of alcohol. The employee claimed that the positive test result was attributable to her diabetic condition. She was terminated and filed a charge with the EEOC claiming she was discriminated against under the Americans with Disabilities Act (ADA). The EEOC brought a court action against the company claiming that the random alcohol test violated the ADA.

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ADA

The ADA does not permit employers to conduct medical examinations of employees once the employee has commenced employment, unless the employer can establish that the medical examination is “job-related and consistent with business necessity.” The EEOC claimed that the company had not met its burden to permit such testing.

The Court disagreed and found that the company had proved that the coke plant was an extremely dangerous workplace given the nature of the equipment, molten coke and the various employee job duties in the vicinity of the operation. The Court also recognized that the drug and alcohol testing was related to legitimate safety concerns, including the obligation under OSHA’s General Duty Clause, to protect employees against hazards to their safety and health. The Court held “there is no question that maintaining workplace safety is a legitimate and vital business necessity.”

After an extensive analysis, the Court granted the company’s motion for summary judgment dismissing the lawsuit.

CONCLUSION

This decision is meaningful as it provides strong support for employer efforts to maintain workplace safety by eliminating injuries due to drug and alcohol impairment. Employers should consider the efficacy of such programs as a means of reducing such injuries and a means to prove to OSHA that they are taking all reasonable means to eliminate accidents caused by such impairment.

There is one important caveat regarding such programs. Where this decision relates to federal law, employers must also determine whether there are any state law restrictions on such programs and tailor such programs to comply accordingly.