

# Alberta Arbitration Board Rejects Random Drug And Alcohol Testing Policy



The Alberta Arbitration Board released its decision with respect to the policy grievance filed by Unifor, Local 707A, against the introduction by Suncor Energy Inc., Oil Sands of random alcohol and drug testing (Policy) of safety-sensitive employees at Suncor oil sands operations. Unifor grieved the Policy, asserting that it is intrusive and extraordinary because it subjects all employees to drug and alcohol testing, regardless of any precipitating event. On the other hand, Suncor defended its Policy and argued that it met the test from the Supreme Court of Canada's recent decision *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd*, 2013 SCC 34, by establishing "evidence of a problem with alcohol and drugs" in its workplace.

The Board allowed Unifor's grievance and rejected the Policy. With respect to random alcohol testing, the Board found that Suncor's positive alcohol tests did not establish a significant problem or legitimate safety risk. In addition, Suncor's unparticularized evidence failed to demonstrate evidence of a problem with alcohol with respect to its Unifor employees. Overall, the Board found Suncor's Policy to be an unreasonable exercise of management rights.

With respect to random drug testing, the Board found that Suncor's testing method of urinalysis failed to identify current impairment. Suncor's testing method identified employees who recently used drugs, but this did not meet the threshold of a legitimate business interest which would justify the significant intrusion into employees' privacy. The Board also rejected Suncor's argument that the "out of control drug culture" justified random drug testing. Overall, the Board rejected Suncor's random drug testing for a number of reasons, including failure to include a time limit for review, failure to target as narrowly as possible, failure to use the most accurate or least intrusive testing methods and failure to include provisions for communicating false positive results to employees.

The Board went on to discuss what would have amounted to a reasonable Policy. The Board stated that principles from Alberta's Drug and Alcohol Risk Reduction Project should have been applied, including a time-limited trial project, measurement of effects and results, respect for employees' dignity, a dispute solution mechanism, a clear "under the influence of alcohol or drugs" prohibition, consistent training and oral fluid testing.

Suncor intends to seek judicial review of this decision by the Board.

## **What does this mean for employers?**

The Unifor and Suncor decision confirms that random drug and alcohol testing is extremely difficult for employers to justify. However, the decision also provides useful guidance in crafting a reasonable and enforceable policy. Employers may consider creating drug and alcohol policies that include: a time-limited trial project, the measurement of effects and results, safeguards to maintain employees' dignity, a dispute solution mechanism, an "under the influence of drugs" prohibition, consistent training and oral fluid testing.

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