

Drugs in the Workplace – Special Report



Drug and alcohol testing has become one of the most contentious contemporary issues in Canadian labour and employment law. Everyone understands that the use of alcohol and certain drugs can impair an individual's ability to work safely and, depending on the workplace, lead to serious injury, property damage and associated liabilities. Rapid and significant changes to the legal status of marijuana have also led to broader concerns about impairment at work. Testing for drug and alcohol use in the workplace may reduce risks in some circumstances, but often raises concerns regarding privacy, unlawful discrimination and the reasonable exercise of management rights.

An employer's right to test and discipline employees for workplace drug and alcohol use or impairment comes down to a balancing of competing interests:

- The employer's interest, nay imperative, in maintaining a safe workplace; and
- The employees' right to privacy and, where the employee has a dependency or addiction, accommodations for disabilities.

Responsibility for making this crucial balance falls not to legislators but courts, arbitrators, human rights and other tribunals who have to draw the lines in particular cases. And while it's been going on for decades, the process of lawmaking via litigation assumed an added importance when Canada officially legalized marijuana in October 2018.

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