Searching an Employee's Locker for Illegal Drugs – Ask The Expert



QUESTION

We received an anonymous in-house report that one of our employees is dealing illegal drugs and engaging in trafficking activity in the workplace and might even be keeping them in his locker. We've done a preliminary investigation and found credible evidence to confirm it. Are we allowed to search the employee's locker for drugs?

ANSWER

It depends.

EXPLANATION

In general, employers have a right to conduct searches of company property for legitimate business purposes, including ensuring health and safety. Drug use and trafficking constitute a safety risk and, based on your description, you would seem to have reasonable cause to suspect that the employee is engaging in it. However, while a locker room is company property, a locker itself is more like personal property and thus subject to privacy rights.

The key question: Does the employee have a reasonable expectation of privacy in his locker? The answer to that question largely depends on you. It will be difficult for the employee to assert personal privacy rights if you've established (and made workers aware of) clear policies banning drug and alcohol use at the site. Ideally, those policies will expressly state that:

- You have the right to take necessary action to enforce the policy, including carrying out searches of employees' lockers and personal effects for banned drugs and alcohol; and
- Employees have no reasonable expectations of privacy in their lockers and other personal effects subject to search.

The other potential fly in the ointment is human rights laws, which come into play if the employee subject to search has a drug or alcohol dependency or other condition

that would be deemed a disability requiring reasonable accommodations. However, reasonable accommodations isn’t an issue where an employee is engaged in trafficking activity. Even if an employee in that situation was disabled, allowing them to engage in trafficking at the workplace would impose undue hardship on an employer.