

Supreme Court of Canada Strikes Down Alcohol Testing Policy

The June 2013 Supreme Court of Canada decision of *Communications, Energy and Paperworkers Union of Canada v. Irving Pulp & Paper* is the latest pronouncement on the controversial issue of alcohol and drug testing in Canadian workplaces.

In this decision, the Communications, Energy and Paperworkers Union of Canada challenged Irving Pulp & Paper's alcohol testing policy. Each year, the company imposed mandatory and unannounced breathalyzer testing on approximately ten percent of randomly-selected employees who held safety-sensitive positions in its mill facility. An employee testing positive for alcohol would be subject to disciplinary action, up to and including dismissal, determined on a case-by-case basis. The Union challenged the policy arguing that the privacy considerations outweighed the employer's interest in random alcohol testing as a workplace safety measure.

The majority of the Supreme Court agreed, noting that employers are not entitled to impose random and unannounced alcohol testing on the sole basis that their workplaces are dangerous. In fact, the Court went even further to apply this principle to drug testing as well.

In safety-sensitive work environments, the Court concluded that testing will be appropriate only where "reasonable cause" exists, such as after a workplace incident, where there is reason to believe the employee was impaired while on duty, or where an employee is returning to work after treatment for substance abuse. Random testing will be permissible only where there is evidence of enhanced safety risks, such as an existing workplace problem with substance abuse. While the dangerousness of the workplace is relevant, it is not the sole factor in determining whether random testing is appropriate. Furthermore, the Court found that eight alcohol-related incidents at the mill over a fifteen-year period did not justify the implementation of the testing policy. The Court noted that random alcohol testing in the absence of a demonstrated problem with alcohol use in the workplace may be possible in "extreme circumstances", but did not elaborate further on the point.

In an especially strongly-worded dissent, three of the nine Justices disagreed with the majority opinion, stating that "to require that an employer tie alcohol use to actual incidents at the mill... is not only unreasonable, it is patently absurd".

The dissenting opinion suggests that there may be further developments in this area of the law in the future; however, at least for the time being, the principles set forth in the majority decision are binding for employers in all Canadian jurisdictions, and we continue to urge employers to exercise caution with respect to alcohol and drug testing. Please contact e2r Solutions® if you have any questions regarding alcohol and drug testing in your workplace.

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