

Court: Drug testing is not an inherent invasion of employee privacy

Employers can drug test employees as part of a safety program. The mere existence of a properly designed testing program does not invade a worker's right to privacy.

Recent case: Susan worked as a school bus driver, a position that requires having an active commercial driver's license.

To maintain that license, she was required to submit to random drug screenings to assure she could operate school buses safely. Susan tested positive for illicit substances after taking a prescribed pain medication for sciatica. The testing company's medical officer called her to inform her of the positive result and asked her to submit any medical information that would explain the result. Susan did not and lost her job.

She then sued, alleging that the testing policy violated her right to privacy under Pennsylvania law because it required her to disclose private medical information.

The court disagreed. It noted that unlike a case in which the drug policy required workers to tell their supervisors about every medication taken *before* a positive test, under this policy, only workers who tested positive had to provide information—and only if they wanted to explain the result. Susan's case was dismissed. (*Wilkerson v. Klinger*, MD PA, 2017)

Final note: The court also noted that having a driver's license was a job requirement and that federal law requires drug testing to maintain a license. Plus, the test policy was designed to preserve as much privacy as possible.