Legislated Drug Testing In The Workplace

July 04, 2018

No Place in Bill C-45 for Workplace Drug Testing – For Now

With the impending legalization of cannabis later this year, there has been growing concern from many employers regarding the potential implications of recreational drug use and impairment in the workplace. As Bill C-45 (the *Cannabis Act*) has weaved its way through the House and Senate in its various forms and iterations, employers are anxiously awaiting the federal government's decision regarding the recommendations of various employer groups to permit limited mandatory workplace drug testing in connection with its cannabis legislation.

For now, it appears that any amendments to Bill C-45 to address workplace drug testing will not be forthcoming. The federal government has, however, recently signalled that the door is not closed on revisiting the legislation and imposing mandatory drug testing for certain safety-sensitive jobs in the future.

Suncor – An Update

Random drug and alcohol testing policies are potentially one step closer to reality with the Supreme Court's refusal to hear the union's appeal of a 2017 decision of the Alberta Court of Appeal.

This case began in 2012, after Suncor attempted to implement random drug and alcohol testing at some of its worksites. The union grieved the policy on the basis that it unreasonably infringed upon employees' right to privacy, among other privacy-related issues, and was initially successful at arbitration.

In 2016, the Alberta Court of Queen's Bench rejected the arbitration decision on judicial review and ordered that the matter be heard by a new arbitration panel. The union appealed that decision, and the matter landed before the Alberta Court of Appeal in 2017. The court affirmed the lower court's decision and the matter was sent back to a fresh arbitration panel.

The union appealed again unsuccessfully. On June 14, 2018, the Supreme Court dismissed the union's application for leave for appeal, with the matter now returning to a new arbitration panel. Significant questions currently remain unanswered surrounding the future application of random drug and alcohol policies in the workplace, and how a new panel will approach the often controversial balancing of employers' safety concerns vs. employees' privacy rights.

Takeaway for Employers?

Despite the recent activity and other significant cases which have been decided since 2012, the state of the law remains unsettled. The only guidance as to what will or will not be permitted regarding drug and alcohol testing and policies comes from a patchwork of judicial and arbitral decisions.

For now, employers should consider the following when it comes to drug and alcohol testing and policies:

- Ensure that serious workplace safety issues, risks and workplace problems with drugs and alcohol are well-documented and tracked;
- Ensure that drug and alcohol policies express a clear purpose or objective which speaks to the need for such a policy and/or drug and alcohol testing;
- Ensure that drug and alcohol policies addresses important issues such as employee disclosures of addiction, accommodation, potential return to work considerations, consequences for policy breaches and/or any other considerations that are relevant to the specific workplace;
- Have open conversations with employees about drug and alcohol use in the workplace and ensure drug and alcohol policies are reviewed with, and readily available to, employees;
- Regularly review and revise your drug and alcohol policies to ensure that they are detailed, specific and comprehensive, and are updated to reflect the most recent developments in the case law.

By

Kamini Dowe

Expertise

Labour & Employment

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.