

Can a municipal employer subject employees who do not hold a CDL license to random drug and alcohol tests?

As a general rule, *no*, a municipal employer may *not* request or require employees who do not hold a CDL license to submit to random drug and alcohol testing. Vermont law explicitly prohibits random drug testing of employees unless required under federal law. 21 § V.S.A. 513. Twenty-one V.S.A. § 513(b) states, “*An employer shall not request, require or conduct random or company-wide drug tests except when such testing is required by federal law or regulation.*”

The definition of “drug” includes alcohol and those substances listed or classified by the U.S. Drug Enforcement Administration. 21 V.S.A. § 511(3). The regulations promulgated by the Federal Highway Administration pursuant to the Omnibus Transportation Employee Testing Act of 1991 apply only to those employees who operate commercial motor vehicles and are subject to commercial driver’s license requirements. 49 C.F.R. 382.103. Therefore, unless an employee actually operates a commercial vehicle, he or she is not required by federal law (and thus Vermont law) to submit to random drug and alcohol testing, regardless of whether or not he or she performs safety-sensitive functions.

As with many laws, there is an exception to the general employee drug-testing prohibition. An employer may require an individual employee to submit to a drug test if *all* of the following conditions are met:

- (1) The employer has *probable cause* to believe the employee is using or is under the influence of a drug on the job.
- (2) The employer has available for the employee tested a *bona fide rehabilitation program* for alcohol or drug abuse and such program is provided by the employer or is available to the extent provided by a policy of health insurance or under contract by a nonprofit hospital service corporation.
- (3) The employee *may not be terminated* if the test result is positive and the employee agrees to participate in and then successfully completes the employee assistance program. However, the employee may be suspended only for the period of time necessary to complete the program, but in no event longer than three months. The employee may be terminated if, after completion of an employee assistance program, the employer subsequently administers a drug test in compliance with requirements #1 and #4 that produces a positive result.
- (4) The *drug test must be administered* in accordance with requirements specified in 21 V.S.A. § 514.

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