

When Is Mandatory Alcohol or Drug Testing of Workers OK?



QUESTION

In which of the following situations is mandatory alcohol or drug testing of workers permissible'

- A) Random alcohol testing of workers who operate heavy machinery.**
- B) Random drug testing of all workers for a construction company.**
- C) Testing of any worker who's been involved in a safety incident.**
- D) Drug testing of all new workers within 48 hours of their hiring.**

ANSWER

A. Employers can require random alcohol testing of workers in safety-sensitive positions, such as those who operate heavy machinery.

EXPLANATION

Requiring workers to take drug and/or alcohol tests is a complicated topic that's generated a lot of cases. Workers who are impaired on the job pose a safety risk to themselves and others. But testing can infringe on their personal rights and discriminate against workers who are addicted. So courts have tried to strike a balance between these conflicting interests.

The correct answer is based on a landmark Ontario Court of Appeal decision in a case regarding an oil refinery's mandatory alcohol and drug testing program for workers in safety-sensitive jobs. That court ruled that the employer could require workers in safety-sensitive positions to submit to random breathalyser testing for alcohol use. That's because a positive breathalyser test reliably indicates current impairment due to alcohol. The court reasoned that random alcohol testing was a reasonably necessary job requirement to prevent safety hazards caused by impaired workers in safety-sensitive positions. Thus, the policy didn't violate human rights laws preventing discrimination of addicted workers [[Entrop v. Imperial Oil Ltd.](#), [2000] O.J. No. 2689, July 21, 2000].

WHY THE WRONG ANSWERS ARE WRONG

B is wrong because unlike random alcohol testing, random *drug* testing generally isn't permissible. The landmark *Entrop* decision and a more recent Ontario Court of Appeal decision distinguished random drug testing from random alcohol testing of workers in safety-sensitive jobs. That's because alcohol testing generally indicates *current* impairment but drug testing doesn't reliably indicate a worker's current impairment—just whether the worker used drugs in the past. Indications of past drug use don't provide evidence of a worker's current ability to perform his job, said one court [[Entrop v. Imperial Oil Ltd.](#), [2000] O.J. No. 2689, July 21, 2000; see also, [Imperial Oil Ltd. v. Communications Energy & Paperworkers Union of Canada Local 900](#), [2009] ON C.A. 420, May 22, 2009]. In addition, although many workers for a construction company have safety-sensitive positions, others, such as a payroll clerk or architect, don't. And drug and/or alcohol testing—random or otherwise—is generally only permissible of workers who have safety-sensitive jobs, such as truck drivers or back hoe operators [[Entrop](#)].

C is wrong because employers can't impose mandatory drug and

alcohol testing on *all* workers after a safety incident. So-called 'post-incident' testing may generally be required when the worker involved had a safety-sensitive job and there's no less intrusive way to detect impairment. This answer is based on Ontario arbitration regarding a railway worker who crashed a truck into a freight car while driving in the rail yard. That court said that drug testing was permissible because there were reasonable grounds to suspect drug or alcohol impairment. For example, the manager requiring the test felt the conduct leading to the incident was uncharacteristic of the worker and involved poor judgment. Also, the freight cars usually make a lot of noise but the worker claimed he didn't see or hear the freight car coming. And there was no 'satisfactory explanation' for why the incident couldn't have been avoided. But the court cautioned, 'This is not to say that every accident will justify a urine test' and the facts of each case are important [[Canadian National Railway Co. v. National Automobile, Aerospace, Transp. & General Workers Union of Canada](#), [2007] CanLII 43492 (ON L.A.), Oct. 16, 2007]. Thus, it isn't correct to state that *any* worker can be required to take a post-incident drug or alcohol test.

D is wrong because employers can't require mandatory drug testing for all new hires. This answer is based on a federal human rights case involving a bank that tried to impose mandatory drug testing on new workers within 48 hours of receiving the job offer. The federal appeals court said the policy was discriminatory. Even if it applied to all new hires equally, it had an adverse effect on one group—those with drug or alcohol addictions. Additionally, the court explained that the bank's policy wasn't 'reasonably necessary' and didn't constitute a bona fide occupational requirement because drug testing wouldn't provide evidence of the worker's current ability to perform his job duties. And banking isn't a safety-sensitive industry, which has looser rules on drug testing [[Canadian Human Rights Commission v. Toronto Dominion Bank](#), [1998] 4 F.C. (CanLII), July 23, 1998].

Insider Says: For more information on drug and alcohol testing, see '[DRUG & ALCOHOL TESTING, Part 1: What Are the Legal Limits on Testing Policies](#)' July 2010, p. 1 and [Part 2: How to Create an Enforceable Testing Policy](#), Aug. 2010, p. 1. At [OHSInsider.com](#), you can also download these tools: [Model Post-Incident Drug and/or Alcohol Testing Procedures](#) and [Checklist for Reasonable Cause Testing for Drugs and/or Alcohol](#).