

## Who To Call

If you belong to a union, you should first consult your union representative.

If you are an employee of the federal government or of a federally regulated enterprise, you may consult the *Privacy Commissioner of Canada*.

Phone: 1-800-267-0441

If you are an employee of the provincial government or one of its agencies, or an employee of a local public body (such as a hospital, university, school board or municipality) you may consult the *Information and Privacy Commissioner of B.C.*

Phone: (604) 387-5629

If you are a unionized or non-unionized employee in the private sector, and your employer is federally regulated, you may consult the *Canadian Human Rights Commission*.

Phone: (604) 666-2251

If your company is provincially regulated, you may consult the *B.C. Council of Human Rights*.

Phone: 1-800-663-0876

Any employee may consult the *B.C. Civil Liberties Association* for information regarding drug testing in the workplace. Copies of our official position paper are available free of charge.

Phone: (604) 687-2919

For a small fee, you may speak with a lawyer who practices employment or labour law by calling the *Lawyer Referral Service* of the *Canadian Bar Association*.

Phone: 1-800-663-1919



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# The facts about drug testing in the workplace

## B.C. Civil Liberties Association

## Almost half of Canadian business executives favour drug testing of their employees.

### What is drug testing?

Drug testing is a laboratory procedure which looks for evidence of drug consumption by analyzing urine samples. If tested, you must provide a sample in front of an observer to make sure it is not tampered with. Most people find this process highly embarrassing. Samples are sent to a laboratory for analysis, after which the employer is notified of the results.

### Why do employers want to test their employees?

Supporters of drug testing say it will:

- reduce the demand for drugs in our society
- promote the health and safety of the persons being tested, their co-workers and the public
- ensure maximum productivity and honesty of employees.

### Why oppose drug testing?

Opponents of drug testing argue that:

- The procedure for providing a urine sample is a degrading invasion of privacy.
- The information obtained is unreliable, and the results are often irrelevant to employers' real concerns about drug-related workplace problems.

- There are better ways to address these problems — such as employee assistance programs and adequate employer supervision.

### Do employers really need to test their employees for drugs?

Not usually. Employers *do* have a responsibility to make sure employees do not pose a safety risk to co-workers and the public by being impaired on the job.

For example, there would be obvious concerns if airline pilots or snow plow operators were intoxicated or high while working.

**But a positive urine test result does *not* prove that an employee was impaired on the job.**

All it shows is that the employee *may* have used a drug some time before the test.

In most cases, employers can use other ways to ensure that employees are doing their jobs safely and effectively, and are not impaired by drugs.

These include clear rules against being impaired at work, employer supervision and evaluation, peer prevention, performance testing, and employee assistance programs.

# Traces of legal medicines (such as cough syrups, nasal sprays and ear drops) can be confused with those of illegal drugs.

## **Why should I be concerned about being tested for drugs?**

Even if you don't use drugs, an error in testing could place you under suspicion. If you *do* use drugs in your spare time — even if you are never impaired on the job — you could be subject to harsh penalties, such as suspension or dismissal.

Whether or not you use drugs, urine testing can reveal intimate facts about you that your employer has no right to know, such as:

- whether you are epileptic or diabetic
- whether you are under treatment for a heart condition, menopause or depression
- whether you are pregnant.

## **Is drug testing accurate?**

Urine tests cannot test for drugs directly. They test for *metabolites* — traces of substances taken before the test which are no longer active in your system but can still be detected.

The most accurate methods of urine analysis are time-consuming and expensive, and even then can be wrong *at least* 10% of the time. Companies often use cheaper methods which have a higher error rate. Surveys conducted in the United States have shown error rates as high as 30%.

Traces of legal medicines (such as cough syrups, nasal sprays and ear drops) can be confused with those of illegal drugs.

## **If I refuse to take a drug test, can I be disciplined or fired?**

Yes. If you don't belong to a union, you probably have little legal protection against drug testing.

If you do belong to a union, there is no simple answer. It depends on the specific wording of the collective agreement. If this can be interpreted to allow drug testing, you may *have* to take the test; and if you refuse, you *could* be suspended, demoted, or fired. You should contact your union representative before agreeing to or refusing any test.

Regardless of any collective agreement, your employer *may* be able to test you if you are suspected of drug impairment on the job or of drug dependence. If there is evidence of a significant problem with drug use at your workplace, and there is no other reasonable means to monitor employees, your employer *may* also be able to do random drug testing.

## **If I test positive for drugs, can I be disciplined or fired?**

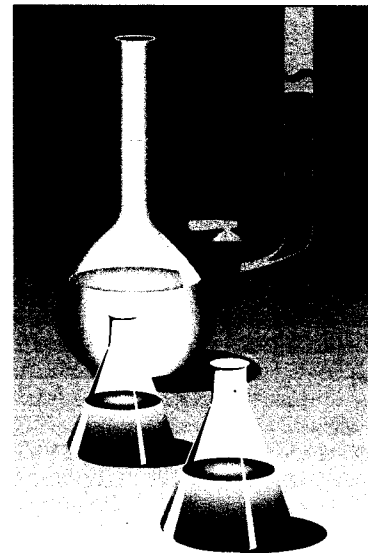
Possibly. If you are in a union, you might successfully argue that your employer has not proven that you were impaired at work. If you do not belong to a union, you have much less protection.

In either case, you might be able to use human rights laws to protect yourself. But to use these laws, you would have to prove that your drug use was a disability — i.e., an addiction rather than casual use.

## **If I am applying for a job, can a prospective employer ask me to take a drug test?**

Yes. Generally, there are no laws preventing employers from making a drug test a condition of your employment.

If you refuse to take a test and are not hired, human rights laws *may* give you some protection. However, these laws will probably not provide you with much immediate assistance. If you have concerns, you should consult a lawyer before making a decision.



## **What about my rights under the Charter?**

This is probably the most often asked question about drug testing. Unfortunately, there is little *Charter* law in the area of employee drug testing.

The *Canadian Charter of Rights and Freedoms* applies only to the laws and actions of the federal and provincial governments and their agencies. It does not apply to the policies and actions of private employers. The *Charter* therefore does not protect private sector employees from unreasonable drug testing.

## **What should I do if my employer demands a drug test?**

The answer depends on where you work.

If you belong to a union, you should first contact your union representative.

Whether or not you belong to a union, you should consult one of the organizations listed on the back panel of this brochure. →

**Law in this area is new and constantly changing. This brochure is for general information only, not legal advice. Readers are advised to consult one of the agencies listed on the back before acting on any of the information provided here.**