

INSIGHTS

Federal Court Rejects ADA Suit Over Random Alcohol Testing of Probationary Plant Employees

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A federal judge in Pennsylvania has dismissed an Equal Employment Opportunity Commission challenge to U.S. Steel Corporation's random alcohol testing of probationary employees at one of the company's most safety sensitive facilities. The Court's ruling in this carefully watched suit is significant for employers because it represents a forceful rejection of one of the more extreme positions the EEOC has taken in interpreting how the Americans with Disabilities Act (ADA) regulates workplaces.

EEOC's Restrictive Interpretation of Employer Rights

The EEOC has adopted a very restrictive view of an employer's right to conduct across-the-board medical examinations or inquiries of current employees even when the examination or inquiry is plainly motivated by workplace safety concerns. According to the EEOC, employers are prohibited in most circumstances from conducting generalized medical examinations, including random alcohol testing or periodic physical examinations of current employees.

The EEOC has pointed to a provision of the ADA that provides that an employer may not "require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, *unless* such examination or inquiry is shown to be job-related and consistent with business necessity." 42 U.S.C. § 12112(d)(4)(A). Conducting random testing for the unlawful use of drugs, as opposed to testing for the use of alcohol, does not create the same legal impediments because a test for the unlawful use of drugs is generally not regarded as a "medical examination" under the ADA.

The very limited exceptions to this prohibition on across-the-board medical examinations or inquiries of current employees that the EEOC has recognized include examinations of certain public safety employees in police and firefighter positions as well as, of course, examinations or inquiries that are required by other federal agencies, such as the Department of Transportation.

EEOC Lawsuit Against U.S. Steel

In the U.S. Steel suit, the EEOC argued that across-the-board medical examination or inquiries, including random or other generalized alcohol testing, could not be justified by the business necessity defense even in a highly safety sensitive work environment. Rather, the EEOC has taken the position that alcohol testing can only be justified based upon individualized suspicion that the particular employee to be tested was under the influence of alcohol at work.

U.S. Steel argued in a motion for summary judgment that given the highly safety sensitive nature of the plant at issue, where employees work with materials that are at temperatures of more than 2,100 degrees, random testing was justified as a matter of business necessity.

The judge in the case granted U.S. Steel's motion and dismissed the EEOC's claims finding that the random alcohol testing of probationary employees was justified by the business necessity defense. The Court first pointed out that there was no disputing that safety in and of itself can be a matter of business necessity. As a result, according to the Court, the only question remaining was whether the policy of random alcohol testing served that asserted business necessity. After analyzing the facts at issue, the judge found that the alcohol testing policy plainly served the business necessity of workplace safety.

In doing so, the Court specifically rejected the EEOC's position that across-the-board medical examinations or inquiries of current employees could only be justified in the case of law enforcement or firefighting employees. The Court explained that there was no legitimate basis for not extending the same rationale to employees in other highly safety sensitive positions. Also, the Court noted that in this instance selecting employees for testing based on individualized suspicion would not work effectively because personal protective equipment obscures the U.S. Steel employees' faces and speech.

Additionally, the Court concluded that the random alcohol testing approach was not inconsistent with the ADA's goal of preventing employers from targeting specific employees with disabilities based upon stereotypes and misconceptions. The Court pointed out that, after all, random testing, as opposed to individualized suspicion testing, was not potentially based upon conclusions about particular individuals with disabilities.

The Court also noted that the testing program at issue was the product of negotiations with the union representing plant employees and not a process unilaterally imposed by the employer.

Takeaways

The decision in the U.S. Steel case offers employers new hope that more federal courts will reject the EEOC's very restrictive view of the right to conduct across-the-board medical examinations or inquiries, including, across-the-board random alcohol testing of employees in certain safety sensitive positions. While this decision is encouraging, employers need to recognize that the EEOC continues to adhere to its position regarding this issue and other federal courts may ultimately side with the EEOC. Nonetheless, the Court's decision in the U.S. Steel suit is an encouraging sign for employers that courts, recognizing the importance of workplace safety, may adopt a far more reasonable and pragmatic view than the EEOC on this question of across-the-board medical examinations and inquiries of current employees.