

Alcohol Abuse Suspected On The Job: Hospital's Policy To Require Screening Upheld By Court.

A nursing assistant reported for work smelling of alcohol. His nurse manager sent him for an evaluation by a nurse practitioner in the employee health office. The nurse practitioner suspected he was impaired and asked the medical director to see him and confirm her suspicions.

The nursing assistant called his union rep who advised him to refuse any further testing. For his refusal the nursing assistant was terminated. The unemployment judge ruled he was terminated for cause and the Commonwealth Court of Pennsylvania agreed.

To require an employee to choose whether to be tested or to be fired the employer must already have a policy in place for suspected intoxication on the job.

If the employer already has a policy in place and the employee has been made aware it, an employee who smells of alcohol or who acts intoxicated can be sent for testing.

An employee cannot be forced to be tested for alcohol, but can be terminated for cause if there is valid suspicion of intoxication and the employee refuses to be tested.

COMMONWEALTH COURT
OF PENNSYLVANIA
December 8, 2005

The employer's established policy must be communicated to all employees so they will be aware of the consequences, which may include termination, if they are justifiably suspected of intoxication and refuse to be screened. Such a policy could be in the collective bargaining agreement with the union.

This employee's job history included a prior incident of intoxication on the job. He had signed a written agreement stipulating that just one more violation of the employer's policies could result in termination.

Smelling of alcohol on the job is employee misconduct, the court ruled, whether or not consumed on the premises and whether or not the employee can still fulfill his duties. Brannigan v. Unemployment Board, __ A. 2d __, 2005 WL 3310251 (Pa. Cmwlth., December 8, 2005).