

Employer to Pay for Emotional Distress Triggered by Random Workplace Drug Testing

Friday, June 19, 2015

This week, in *Aro v. Legal Recovery Law Offices, Inc.*, California Court of Appeal affirmed an intentional infliction of emotional distress award in favor of two employees who were pressured into taking a random, “on-demand” drug test.

The Facts

Prior to the drug test at issue, the employer provided employees a revised 2011 employee manual stating, in pertinent part, that the Company reserves the right to test employees for the use of illegal drugs or alcohol where an employee’s job carries a risk of injury or accident, or after an accident or probable cause. The Plaintiffs were provided the revised handbook containing the drug test policy by e-mail. However, when they asked what changes were made to the handbook, management advised that they should read it and “figure it out” themselves.

In October 2011, the two Plaintiffs were unexpectedly required, along with all other employees, to take a drug test in a public bathroom. Both Plaintiffs initially resisted consenting to the drug test, at which point they were told that management would “figure out what to do” with them later, and that they would be suspended and sent home in the interim.

The Plaintiffs ultimately agreed to the urine test. During the test, someone watched them in the bathroom. One of the Plaintiffs later complained to management that he felt compelled to consent to the test due to “intimidation,” and that he did not feel comfortable providing the sample because of the “gestapo” posted outside. There was no evidence that the two Plaintiffs were individually suspected of drug use.

The Plaintiffs ultimately sued for breach of implied covenant of good faith and fair dealing and intentional infliction of emotional distress, among other claims. After bench trial, the trial judge awarded the Plaintiffs approximately \$15,000 each for noneconomic damages. The employer appealed.

The Law

The Court of Appeal affirmed the trial court’s ruling. First, the Court determined that the Workers’ Compensation rules in California do not prevent the Plaintiffs from recovering monetary damages for emotional distress. Generally, an emotional distress claim is preempted if it arose out of the ordinary scope and risks of an employment relationship. The Court reasoned that the random drug test administered in this case violated a fundamental right to privacy, which is protected by the California Constitution, and therefore exceeded the risks and expectations inherent in the employment relationship.

Next, based on the evidence presented at trial, the Court of Appeal concluded that the employer’s conduct was sufficiently extreme and outrageous to constitute an intentional infliction of emotional distress. First, there was no ample notice of a random drug test to the employees, and there was also no individualized suspicion of drug use by the two Plaintiffs. The Plaintiffs were asked to sign a consent form in front of other employees, and were threatened with suspension when they resisted. Moreover, evidence suggests that the Plaintiffs were subjected to the random drug test only after they complained to the employer of unpaid overtime. Finally, Plaintiffs’ testimony created ample evidence that the random drug test caused them to suffer anxiety and humiliation, with

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one of the Plaintiffs experiencing heightened blood pressure after the test.

The Takeaway

In analyzing workplace drug tests, California courts will continue to weigh employees' privacy interests with the employer's business necessity for conducting the test. Similarly, random drug tests in California will continue to face heightened scrutiny. Employers should periodically review their drug test policies and consult counsel to ensure compliance with state and local requirements in this regard.

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