

Court Upholds Random Alcohol Testing Of New Coke Plant Employees

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For the last couple of years, the Equal Employment Opportunity Commission (EEOC) has been targeting companies that have implemented random employee drug-testing for class-action lawsuits. Under the Americans with Disabilities Act (ADA), employers are generally limited as to when they can administer medical examinations, including drug tests. The two main exceptions to this limitation are when the examination is job-related and consistent with business necessity (which remains, in the words of the court, “a nebulous concept”), and when confirmation is needed to support an accommodation request. While workplace safety is considered a business necessity, the question at issue in *EEOC v. U.S. Steel* was whether U.S. Steel’s policy of randomly testing a subset of new, probationary employees in its Clairton, Pa. coke production plant narrowly and sufficiently served that rationale.

The EEOC argued that random drug-testing is a *per se* ADA violation, because in its estimation drug tests can only be administered pursuant to an individualized, reasonable suspicion that an employee is intoxicated. The Western District of Pennsylvania, in its opinion [available here](#) (PDF), disagreed, ruling that under the circumstances, the random drug-testing policy for new employees passed muster under the ADA. The EEOC’s reliance on its own Enforcement Guidelines did not convince the court, which gave no deference to the manual.

The court found that the dangerous, safety-sensitive nature of the work being performed – probationary employees worked in and around molten hot coke, toxic gasses, bio-sludge, and heavy machinery – was very important. “No level of intoxication is acceptable on the job in these circumstances.” Further, U.S. Steel only tested probationary employees as opposed to veteran workers, because such new employees had less training, familiarity with rules, skills, and experience than their regular employee counterparts, and were more likely to show up to work intoxicated. “The EEOC’s vision of the ADA would defy common sense by prohibiting random alcohol testing on new employees under the counterintuitive and unsupported premise that they are not more likely to engage in risky behavior like abusing alcohol at work.”

The Court was also careful to point out that with all the protective gear worn by the employees, it was very difficult to single out those who may be intoxicated. “[The] extraordinary conditions ... present within a coke and chemical plant ... make the singular reliance on for-cause testing completely inadequate. Because of the hazardous nature of factory operations, all employees must wear heavy protective gear that obscure their faces and muffle their speech.” Finally, the court determined that the policy did not discriminate against those with disabilities or undermine the purposes of the ADA.

Although the facts of this case make the ruling a rather narrow one, it does make the point that not all random drug-testing is *per se* illegal, and that under the right facts, targeting such a policy toward a subset of safety-

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sensitive positions may well be workable. Obviously, we would not suggest going forward with such a policy without guidance from experienced counsel. It seems likely the EEOC will not take this defeat without a fight, so we will be monitoring whether the agency decides to pursue an appeal of this ruling.