



on the job

TRACKING DEVELOPMENTS IN EMPLOYMENT LAW

11.08.10

An Employer Can Prohibit An Employee From Using Legal Prescriptions

By Caroline A. Grech-Clapper

Drug screening is not a violation of the Americans with Disabilities Act if there is a job-related business necessity. In *Bates v Dura Automotive Systems, Inc.*, 2010 FED App. 0339P (6th Cir.), the United States Court of Appeals considered whether an employer could test for drugs that were typically prescribed by a physician.

Dura alleged that it required the testing because it noticed a higher rate of workplace accidents. Dura was concerned that the increased accidents were related to legal or illegal drug use. Dura implemented a policy that prohibited employees from using legal prescription drugs if they adversely affected safety, company property, or job performance. Employees were then screened for substances it believed could be dangerous in the workplace. The policy required screening employees for twelve substances including those commonly found in legal prescription drugs such as Xanax, Lortab, and Oxycodone.

Seven of the employees tested positive for one of the prohibited substances. In each case, the individual had a legal prescription for a drug containing that substance. Dura gave each employee an opportunity to transition to drugs without the prohibited substances, but refused to consider letters from doctors stating that the employees' work performance would not be affected by the drugs. Eventually, Dura terminated the employees when they continued taking the medications.

The employees sued Dura claiming that its testing violated the Americans with Disabilities Act. The trial court concluded that six of the employees are not disabled as a matter of law. The trial court found that there was a disputed issue of material fact as to whether Dura's justification for the drug testing fell within the exception in

SECRET WARDLE NOTES:

Before implementing any drug testing for employee use of legal prescription drugs, the employer must have a legitimate business reason. A legitimate business reason would be one that impacts safety, company property, or job performance. In this case there was a finding that the company had a legitimate business reason to require the testing and the right to terminate individuals who failed the testing. The court made a finding that none of the six individuals were actually disabled and therefore, they had no protection under the Americans with Disabilities Act. An employer may not discriminate against a genuinely disabled person.

CONTINUED...

the Americans with Disabilities Act for testing that is job related and consistent with business necessity. The trial court held that individuals do not need to be disabled to assert claims under section 12112(b)(6) of the Act. The trial court certified the issue for interlocutory appeal.

The Sixth Circuit reviewed the facts and law of the case. It considered whether an individual must be disabled to pursue a claim under section 12112(b)(6) of the Act. The court reasoned that although non-disabled individuals may bring claims under some provisions of the Act, the plain text of subsection (b)(6) only covers individuals with disabilities. Although other sections of the Act apply to non-disabled individuals, the Act's primary purpose is to prevent discrimination against disabled individuals. The court held that for an individual to pursue a claim under 42 USC section 12112(b)(6) the individual must be disabled. The Court also explained that in this case Dura had a legitimate business reason to prohibit the use of certain legal prescriptions.

In this case, the employees relied on a section of the Americans with Disabilities Act 42 USC 12112(b)(6) that was specific and applied only to those with an actual disability. The section of the Act they relied on provides that an employer may not screen out individuals with a disability. In this case there was a finding that these plaintiffs did not have a disability and therefore, the Act did not apply to them.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2010 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Employment Law Practice Group Chair

Bruce A. Truex

Editor

Bonny Craft

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for On the Job, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at swsubscriptions@secrestwardle.com, or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowners' Alert – Defense strategies for property owners and managers
No-Fault Newsline – A road map for motor vehicle insurers and owners
On the Beat – Responding to litigation affecting law enforcement
Safeguards – Helping insurers protect their clients
Standards – A guide to avoiding risks for professionals
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability