

## YOUR RIGHTS : ADDICTION AND ALCOHOL/DRUG TESTING

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*Human Rights:  
It's  
Everyone's  
Business...*

*Why Not Make It  
Yours?*

Simon has been coming to work with alcohol on his breath. His job performance has been slipping. Yesterday, his manager had to send him home because he was clearly intoxicated. Today, Simon was dismissed from his employment. The dismissal may be discriminatory.

XYZ Company has introduced an alcohol and drug testing policy that states all employees will be subject to random testing and each employee will be subject to one scheduled yearly test. The consequence of a positive test is immediate dismissal. This policy may be discriminatory.

### ADDICTION

Under human rights law, drug or alcohol addiction is considered a disability. See *Your Rights: Physical and Mental Disability* for more information. Employers, property owners and organizations or businesses that are offering accommodations or services to the public must accommodate persons with disabilities to the point of undue hardship.

When an employee has an alcohol or drug addiction that is affecting job performance, accommodation usually includes granting the employee leave to seek treatment and allowing them to return to their position when able. Reasonable accommodation does not include allowing the employee to be at work while under the influence, or continuing to employ an employee who refuses to do anything about his or her addiction.

In the example above, Simon's employer dismissed Simon without inquiring about his situation and/or allowing him to seek treatment if necessary. This may be considered discrimination on the basis of the disability of addiction.

### ALCOHOL AND DRUG TESTING

This area of human rights law is still developing. The PEI Human Rights Act does not contain specific provisions regarding drug and alcohol testing. One of the most recent human rights legal decisions on this issue is Imperial Oil v. Entrop (2000), 37 C.H.R.R. D/481. The Ontario Court of Appeal held that:

- Random testing for alcohol use is acceptable for employees in safety-sensitive positions ONLY.
- Random testing for drug use is NEVER acceptable. Drugs can be detected in a person's system long after consumption. Therefore, a positive drug test does not necessarily mean that your performance is impaired.
- Alcohol and drug testing is acceptable in situations where there is just cause to believe an employee is under the influence at work or if an incident occurs, such as an accident that may have been a result of alcohol or drug use.

The court also held that sanctions for a positive test must accommodate the employee. Therefore, automatic dismissal may be discriminatory. 2001/03