

## **If You Drug And Drive...**

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*Driving under the influence of alcohol and drugs is illegal, though the penalties vary from state to state. David Lalic writes in Owner Driver -*

HAVING A truck off the road can be very expensive. It can happen if the driver has been convicted of driving under the influence of alcohol or drugs.

The laws in relation to drugs and alcohol vary from state to state. For example, in New South Wales, driving under the influence of alcohol can be in certain ranges and the parliament has decided that particular penalties will apply if an offender is in a low, mid or high range.

Being found with drugs in your system is quite a different matter. It would be bizarre if there were ranges of penalties for something that is illegal. For this reason the parliament in New South Wales has simply looked at the presence of prescribed illicit drugs in the driver's oral fluid, blood or urine.

In court in drug matters it is not possible to argue the mid-range or low range position but it may be possible to argue that the drug is not present in the system. For example, the amount may be so small as to be insignificant.

The High Court has said that the law should not concern itself with trifles. This opens up a whole scope for argument about what a trifle amount might be.

Under Occupational Health and Safety laws, employers have an obligation to keep a workplace safe. This must mean dealing with drug taking in the workplace.

One way to confront drug taking in the trucking industry is to do random testing. While this appeals to a simple logic as a solution to the issue of drug use in the workplace, it can be argued strongly that it does not address the real problem and can be counterproductive.

There are a number of types of tests available to employers, each which have advantages and disadvantages.

The testing of blood for example, requires laboratory analysis and is highly intrusive with risk of injury/health risks such as needlestick or infection. Oral fluid testing or saliva testing are also limited. Other forms of testing like urinalysis, hair testing or sweat testing take time and require outside laboratory support.

Employers who conduct workplace drug testing argue that they have a legal, moral and economic concern regarding work related drug use and as such, testing is necessary to address these concerns.

The problem with this logic is that tests generally only identify workers on a particular day who might have used drugs and do not address the source of the drug related risk.

Problem issues with workplace drug testing include moral issues. Workers might view testing as a disciplinary measure that attempts to extend control by the employer beyond the workplace. There are also significant privacy matters.

For example, for a valid test a worker might be required to provide information about prescribed medication. This information, perhaps, the truck driver would never have been required to provide to the employer.

“Workers might view testing as a disciplinary measure.”

There is no doubt that an employer should face up to a problem of drug use in the workplace.

The question is how best that should be done. It appears that the best and most effective way to deal with drug use in the workplace is to use the consultative process that involves both the workers and management.

Through this process the risk to all parties of drug-related harm should be identified and strategies developed and implemented to reduce the risk.

***If you wish to discuss the differences between an employee and a contractor further, contact David Lalic from Jackson Lalic Lawyers on 02 9262 1770 or [dlalic@jacksonlalic.com.au](mailto:dlalic@jacksonlalic.com.au)***