

# Pre-Employment and Random Drug Testing

By Debbi Sellers

For public employers, suspicionless drug testing (e.g., testing done absent any suspicion of wrongdoing, such as random or pre-employment testing) is allowed in limited circumstances. For Commercial Driver License holders, random drug testing is required by federal law. Other job categories where suspicionless drug testing is allowed are police officers, firefighters and Emergency Medical Technicians (EMT). In addition, suspicionless drug testing is permissible for any job that is considered to be “safety sensitive”.

When determining whether a particular position is safety sensitive, Washington State courts have offered little guidance. The principal Washington State court decision is *Robinson vs. City of Seattle*, 102 Wn. App. 795, 10 P.3d 452 (2000). In that case, the Court of Appeals held that pre-employment drug testing of applicants in non-safety sensitive positions is unconstitutional under the Right of Privacy Clause of the Washington Constitution. Washington courts would likely look to federal court analyses regarding what positions genuinely implicate public safety. Federal courts typically look at the immediacy of the threat posed by an employee who is impaired by drugs or alcohol. The U.S. Supreme Court reasoned in *Skinner v. Railway Labor Executives’ Ass’n*, 489 U.S. 602 (1989), that a safety sensitive position is one in which the duties involve such a great risk of injury to others that even a momentary lapse of judgment can have disastrous consequences.

Examples where courts have found jobs to be safety sensitive include heavy equipment operators, work involving the operation of natural gas and liquefied natural gas pipelines and other hazardous materials, drivers of sanitation trucks, and the operation, repair, or maintenance of passenger-carrying motor vehicles such as busses or shuttles. Courts have rejected drug testing policies that apply to carpenters, library assistants and plumbers, and persons who operate motor vehicles (non-CDL required positions) on an occasional basis, such as when dropping off mail or supplies.

Other public agency jobs that might be considered safety sensitive are lifeguards, waste water treatment plant operators, 911 dispatchers, and those who transport seniors or children even if the work is occasional, doesn’t require a CDL and is not part of the employee’s primary job duty.

Your WCIA Risk Management Representative is available to assist in reviewing drug testing policies.