Book Reviews

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Book Reviews

Drug Testing in the Workplace

Robert DeCresce, et al.
The Bureau of National Affairs, Inc.
Washington, D.C.
1989/300 pp. Hardcover $45

Drug Testing: A Workplace Guide To Designing Practical Policies and Winning Arbitrations

Lloyd Loomis
The Bureau of National Affairs, Inc.
Washington, D.C.
1990/300 pp. Paper, $95 plus appendices

While most of the literature in this expanding area of the law is outdated before it is published, the best works will contain something of lasting value. This is especially true of Drug Testing in the Workplace by Robert DeCresce, Mark Lifshitz, Adrianne Mazura and Joseph Tilson, released in 1989 by BNA Books. Drug Testing in the Workplace was written prior to the U.S. Supreme Court’s landmark decisions in Skinner v. Railway Labor Executives Association, 109 S.Ct. 1402 and National Treasury Employees Union v. Von Raab, 109 S.Ct. 1348, both decided on March 21, 1989; accordingly, the book’s discussion of the legal context of drug testing, and the policies affecting employers and unions, while valuable as a springboard for research, is rapidly losing its direct applicability. By contrast, the lengthy chapter addressed to the science of drug testing (Chapter 3) and the shorter chapter on the chemistry and psychopharmacology of selected drugs (Chapter 4), are among the best in the available legal literature, and are likely to remain so for a considerable period of time.

The particular value of these two chapters, which comprise almost one quarter of a very slim book, lies in their utility in preparing for examination and cross-examination of expert witnesses in employee drug cases. The following excerpt, taken at random from the discussion of amphetamines in Chapter 4, illustrates the point:

The EMIT assay is broadly cross-reactive for many sympathomimetic amines, the most important of which are ephedrine and phenylpropanolamine. These
decongestants are used in numerous over-the-counter cold, allergy and diet preparations such as Nyquil, Primatene Mist, Coricidin, Vicks Formula 44D, Robitussin, Sucrets, Dexatrim, Alka-Seltzer Plus, Alerest and Bayer's children's capsules. False positive results could occur for about 12 hours after a dose if the urine is acidic; with an alkaline urine positive results might persist for several hours longer. An optional EMIT amphetamine confirmation kit will usually eliminate interferences caused by ephedrine and phenylpropanolamine. Phenylephrine and pseudoephedrine may also cross-react in the EMIT assay, according to the manufacturer. They are present in products such as Sudafed, Robitussin PE, ChlorTrimeton, and Dristan. In contrast, the FPIA assay for amphetamines shows little, if any, cross-reactivity with over-the-counter cold preparations containing phenylpropanolamine or ephedrine.

Phenethylamine, a product of urine decomposition, may accumulate in specimens after 1 or 2 days. In order to prevent this product from forming and falsely evaluating results, urine should be refrigerated and preserved with 1% sodium fluoride if testing is delayed. Specimens can be stored in this manner for up to one year. Last, the presence of glucose in the urine may cause false positive results with EMIT.

The influential National Institute on Drug Abuse Guidelines for Federal Workplace Drug Testing (April 1988) are reprinted as the final chapter of *Drug Testing in the Workplace.*

*Drug Testing: A Workplace Guide to Designing Practical Policies and Winning Arbitrations,* principally authored by Lloyd Loomis and issued by BNA as a special report, will find its largest audience among management-side labor lawyers involved in the process of designing or negotiating drug policies, or litigating drug-related employee discipline cases. More recent than *Drug Testing in the Workplace,* this paperback volume cites *Consolidated Rail Corp. v. Railway Labor Executives Assoc.,* 109 S.Ct. 2477, the June 1989 decision allowing Conrail to institute periodic and return-from-work drug and alcohol testing without negotiating with the union. The report summarizes many of the important judicial, NLRB, and, especially, arbitration decisions relating to drug use, possession, sale, and testing. It contains an excellent checklist for guiding employers' drug policies and testing programs. The report discusses a wide variety of
technical and legal issues. It concludes with an appendix, comprising almost half the volume, containing the full text of selected arbitration cases, Federal statutes, guidelines and testing procedures (including those of HHS and DOT), sample union contracts (the National Master Freight Agreement and the National Master UPS Agreement) and the full text of the company policy adopted by Loomis' own employer, the Atlantic Richfield Company.

Both of these books are highly recommended.
Joseph L. Hayes
President, NAALJ, 1991