

The Finnish legislation on workplace drug testing

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Abstract

In Finland, the Act on the Protection of Privacy in Working Life (759/2004) that entered into force in 2004 incorporates provisions related to drug use testing, e.g. on the employers' right to process in certain situations information on job applicants' and employees' drug use. In the same context, provisions were added to the Occupational Health Care Act (1383/2001) on the employer's obligation to draw up, together with the staff, a written programme dealing with alcohol and drugs for the workplace. The programme defines the overall objectives for and the practices to be observed at the workplace in order to prevent substance abuse and to refer the problem users to treatment. The Occupational Health Care Act also includes provisions on drug tests and the drug test certificate as well as on reimbursement of the expenses of drug tests. Furthermore, the Act lays down a definition of drug tests. Every workplace shall have a plan/programme on drug-free workplace, where the jobs in which the workers have to present a drug test certificate to the employer must be defined. This plan/programme shall be discussed in cooperation on tripartite basis at the workplace.

A Government decree on drug use testing (218/2005) has been issued in virtue of the Occupational Health Care Act. It lays down provisions on the practical performance of drug tests, i.e. taking and analysis of samples, and interpretation of the test results. The purpose of the Government decree is to ensure that workplace drug testing is carried out in a way presupposed by a good occupational health care practice and the laboratory quality standards, taking into account the integrity and protection of privacy of the persons tested as well as their other fundamental rights.

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1. Introduction

An employer's activity includes the need to collect personal data on employees. Protection of privacy, on the other hand, entails the greatest possible right of a job applicant, employee and civil servant to know and decide about the processing and content of his or her own personal data and the right to be assessed on the basis of correct personal data. Therefore, it is important for the parties of working life to know how matters relating to the processing of personal data are resolved specifically at the workplace. It is important that all the parties, authorities, employers and employees, are involved in the reparation of the legislation on workplace drug testing. The Act

on the Protection of Privacy in Working Life (759/2004) [1], subsequently the Act on Data Protection in Working Life entered into force on the 1 October 2004. The Act includes workplace drug test regulations based on the point of view of the employers' right to process personal data on employees [2,3].

2. The purpose of the workplace drug test legislation

The new constitution of Finland (731/1999) [4] entered into force on 1 January 2000. It is enacted in the constitution that everyone has the right to life, personal liberty and integrity. The personal integrity of the individual shall not be violated, nor shall anyone be deprived of liberty arbitrarily or without a reason prescribed by an Act. The constitution of Finland limits employers' right to ask an employee to be drug tested and to process data concerning employee drug test results.

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The Act on the Status and Rights of Patients (785/1992) [5] regulates the relationship between health professionals and patients in all the health care processes. The central principle in the processes is the patient's autonomy. Workplace drug testing is a health care process and must follow the principles of this law.

The purpose of the Act on Data Protection in Working Life is to respond to questions concerning the protection of private life specifically in the area of working life. It relates, especially, to the relationship between employee and employer. The Act applies to employment relationships. The scope of application covers all employment relationships regardless of whether they are based on the Employment Contracts Act, the Seamen's Act, the Act on the Employment Relationship of a Household Employee or whether they are relationships based on an apprenticeship contract.

The Act applies to civil service relationships and to comparable service relationships. The Act relates to state, municipal and church officials or to people in the service of independent public institutions. At the same time, civil servants are also affected by certain special provisions in other legislation, including the Act on the Publicity of the Activity of the Authorities, the Register Act, the Act on State Officials, the Church Act, etc. Where applicable, the Act also applies to job applicants and people applying for civil service relationship positions.

2.1. Necessity requirement

An employer may process only personal data that are directly necessary as regards an employee's employment relationship, relating to the management of the rights and obligations of the parties to the employment relationship or the benefits provided to employees by the employer or which are due to the special nature of the work. So drug testing must be well motivated from the point of view of the work.

2.2. Destruction of unnecessary information (record keeping rules)

Outdated or unnecessary data must not be kept. The provisions of the Personal Data Act (986/2000) [6] on this matter are also applied in working life.

2.3. General preconditions for collecting personal data of employees and the employer's obligation to inform the employees

According to the Personal Data Act health information is sensitive information, and so an employer's right to process data on an employee's health has been particularly restricted by law. Data concerning drug tests is also considered sensitive information.

An employer may process an employee's health information only when the employee personally supplies him or her with the data or if the employee has given informed consent (the employee has signed the consent form) for such information to

be passed on to the employer. Whenever an employee personally passes on information concerning his or her health, this meets the characteristics of informed consent. Nevertheless, an employer may not process, even with the employee's consent, any information on health if it is not specially authorised by the Act.

2.4. An employer's right to process certificates concerning drug tests

The Act includes provisions on the right of an employer to process drug test certificate data, not the actual drug tests. The provisions start from the assumption that the job applicant or employee himself submits the certificate on the drug test to the employer. The certificate must only show that an employee has undergone a drug test and that an examination has been made as to whether he has used drugs for purposes other than medical ones so that his working capacity has become deteriorated. The definition of "drug" is the same as in the Drugs Act to which the Act refers covering, thus, all drugs mentioned in the Drug Act. Since the data on drug tests is sensitive health information, the same restrictions of the right of keeping, confidentiality and handling of the data are applied to its processing as to processing of other health information.

2.5. Certificates on drug tests during recruitment

An employer is entitled to ask the person chosen for the job for a certificate on a drug test. A job applicant is not obliged to submit a certificate. The employer may, however, when considering to employ a person, not take into consideration a job applicant who does not submit the certificate to the employer. Thus, in practice, the selection will probably be conditional on the person chosen for the task submitting the certificate. As for civil servants, the submitting of the certificate may be a prerequisite for appointment.

The right to process the data entered into the certificates on drug tests is based on the preconditions for the right of processing, based on work tasks, and laid down by law. For this reason, data based on general screening tests must not be processed. The employer may ask for a certificate on a drug test if the job applicant shall work in such tasks which require accuracy, trustworthiness, independent judgement or a very good reaction capacity. These requirements mean more precise preconditions than the workers' general capacity to work carefully in whatever job.

A further precondition is that according to general experience certain non-desired effects may be caused by persons who are working while intoxicated or who are drug addicts. That is why the tasks must be such that working when intoxicated or as drug addict may:

- endanger the life, health or occupational safety of the employee or some other person(s)
- endanger national safety including national defence
- endanger traffic safety
- increase the risk of significant environmental damage

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