

Public Employer Could Not Subject Applicant to Pre-Employment Drug Test, Florida Federal Court Holds

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A federal court in Florida has held that the City of Key West's policy of drug testing all applicants for employment was applied to an applicant in an unconstitutional manner. *Karen Cabanas Voss v. City of Key West*, Case No. 13-10106-CV-King (S.D. Fla. May 9, 2014).

The City of Key West conducts **drug testing of all applicants**, as well as "reasonable suspicion" testing of all employees, and random testing of employees in "public safety positions" (such as firefighters and police officers) and "safety-sensitive" positions (such as commercial drivers). Voss applied for a job as a Solid Waste Coordinator, which primarily was an office job. After she was offered the job, Voss was instructed to report for a pre-employment drug test. She refused to do so and the City did not hire her based on her refusal to test.

Voss challenged the City's drug testing policy, arguing that it was unconstitutional as applied to her. Specifically, public employer drug testing which utilizes urinalysis is a "search" that falls within the ambit of the Fourth and Fourteenth Amendments. To be reasonable under the Fourth Amendment, a search ordinarily must be based on individualized suspicion of wrongdoing. However, the U.S. Supreme Court has recognized particularized exceptions where the government proffers a "special need" or "important governmental interest" which is furthered by the intrusion. Voss argued that the City failed to make the required showing of a "special need" or "important governmental interest" which justified the invasion of her Fourth Amendment privacy interest.

The City attempted to establish a "special need" by arguing that it was generally interested in the "safe, effective and efficient delivery of public services." The Court rejected this "symbolic" interest as a "special need" and stated that a more specific showing was required. The City then argued that the Solid Waste Coordinator position was "safety-sensitive." That argument also was rejected because the position consisted mostly of office duties, and the position was not subject to random testing (like all other safety-sensitive positions). Finally, the Court rejected the City's argument that pre-employment drug testing is reasonable because applicants can refrain from applying for positions that require pre-employment drug testing. The Court again disagreed, stating that "there is no precedent in this circuit which holds that the government can violate a person's rights under the Fourth Amendment so long as prior notice of the impending violation is given." Summary judgment was granted to Voss.

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