

Admissions of Drug Use By Employees Are Not The Same As Positive Test Results in Minnesota

Article By:

V. John Ella

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Minnesota Vikings running back Adrian Peterson, who recently was booked on felony child abuse charges in Montgomery County, Texas, reportedly admitted that he “smoked a little weed” in violation of the conditions of his bond, which required drug testing. While giving a urine sample last month, he allegedly told an employee of the testing company that he had used marijuana, according to documents obtained by local media. “In light of this statement, and the fact that it was made during the urinalysis testing process, and the term ‘weed’ is a common slang term for marijuana, the State urges the defendant has smoked marijuana while on bond for the current offense,” said a court document cited by the Houston Chronicle.

Peterson’s alleged admission highlights a common occurrence when employees are confronted with a requirement to take a drug test: they often confess. Sometimes they suggest that the employer need not bother with the test because they know they will test positive. Under the Minnesota Drug and Alcohol Testing in the Workplace Act (“DATWA”), admissions of drug use and a positive drug test have very different legal ramifications. In Minnesota, “an employer may not discharge an employee for whom a **positive drug test result** . . . was the first such result for the employee on a drug or alcohol test requested by the employer” unless the employee has been given the opportunity to participate in and complete a drug counseling or rehabilitation program.

In one unreported District of Minnesota decision, a bank employee came forward and admitted to methamphetamine addiction and requested time off for treatment, which was allowed (without a drug test). After he returned and was acting erratically, the employer sent him for testing and he tested positive. He later was terminated after starting but not completing a second treatment regimen, and the court ruled that the termination was unlawful because he had not been allowed to complete the second treatment program, since the first treatment was not connected to a “positive drug test result.”

Conversely, if an employee confesses to drug use on work premises in violation of company policy, a Minnesota employer might be allowed to terminate the employee immediately, without any requirement to allow the employee to attend a treatment program, as long as there was no drug test and therefore no “positive drug test result” to invoke the DATWA statute.

With regard to federal drug testing, (for example, commercial motor vehicle drivers under U.S. DOT regulations), an employer should proceed with a drug test when mandated, regardless of the employee's confession. Drug testing laws in other states vary widely, but in some circumstances a confession is not the same as a positive drug test result. Four other states do not permit employers to terminate employment after a first-time positive test result: Iowa (but only for a positive alcohol test, not drugs), Maine, Rhode Island and Vermont. Employers should consult with legal counsel before taking adverse employment actions that could violate state or local drug testing laws.

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