

Federal Appeals Court Upholds Dismissal of Public Employee For Failing Random Drug Test

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The Unified Government of Wyandotte County/Kansas City, Kansas did not violate a public employee's Fourth Amendment rights by requiring the employee to submit to a random drug test or by terminating his employment when he tested positive for cocaine, according to a recent decision by the U.S. Court of Appeals for the Tenth Circuit. *Washington v. Unified Government of Wyandotte County, Kansas*, 847 F.3d 1192 (10th Cir. 2017).

Roberick Washington was employed as a lieutenant at the Wyandotte County Juvenile Detention Center. Because the Unified Government classified the lieutenant position as safety-sensitive, Washington was required to submit to periodic, unannounced drug tests. While the Unified Government's drug and alcohol testing policy stated that "failure to pass a drug or alcohol test is just cause for discipline including discharge," an internal Human Resources guide recommended suspension for those employees testing positive for the first time.

In 2012, Washington was selected for a random drug test and was fired after testing positive for cocaine. He subsequently sued the Unified Government, alleging that the random drug test violated his Fourth Amendment rights against unreasonable searches; that the Unified Government deprived him of his constitutional interest in continued employment; and, that the Unified Government breached an implied contract by terminating his employment and not suspending him as suggested by the Human Resources guide. The Unified Government moved for summary judgment, which the District Court for the District of Kansas granted.

The Tenth Circuit upheld the District Court's grant of summary judgment. With regard to Washington's Fourth Amendment claim, the Tenth Circuit held that the Unified Government's search (*i.e.*, random drug test) was reasonable given the safety-sensitive nature of the lieutenant position, noting that random testing by public employers is defensible where the tested individuals would threaten workplace or public safety. The Unified Government argued that it administered random drug testing to juvenile lieutenants to "ensure the safety and welfare of the children housed in the Juvenile Detention Center." While Washington argued that there existed material issues of fact about whether the position actually was safety-sensitive – according to Washington, his responsibilities largely were administrative – the Court disagreed, noting that Washington was required to report to the detention facility floor in certain emergency situations, and that he filled in for

“undeniably safety-sensitive” positions when other employees were late or absent. That he only “sporadically” filled in for these “undeniably safety-sensitive” positions was irrelevant, as the Court held “the frequency or regularity . . . does not affect our conclusion, since his on-call status made paramount his preparedness.” The Court did note, however, that its analysis might change if Washington’s job duties “were entirely administrative, or if he were not employed in a juvenile corrective facility.”

With regard to his claim that the Unified Government deprived Washington of his constitutional right to continued employment, the Court held that public employment in Kansas is presumptively at-will, and that the HR guide did not limit this at-will status, as the guide included a disclaimer that it did “not modify the status of employees as employees-at-will or in any way restrict the Unified Government’s right to bypass the disciplinary procedures suggested.” For those reasons, the Court also upheld dismissal of the breach of implied contract claim.

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