



Appeals Court Upholds Wrongful Discharge Claim Stemming From Failure to Follow Drug-Testing Guidelines

Insights

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An at-will employee who disputed his positive drug test for cocaine can sue his employer for wrongful discharge because the employer violated state regulations on drug testing, a Louisiana appeals court recently ruled in *Sanchez v. Georgia Gulf Corp.*, La. Ct. App., No. 2002 CA 1617, 8/13/03.

Specifically, the court concluded that because the company failed to have Danny Sanchez's drug test reviewed by a medical review officer before firing him, the drug test must be found invalid as a matter of law. In allowing Sanchez to proceed on his wrongful discharge claim, the court said that the situation "if established at trial, is precisely the type of devastating result that may occur where an employee is deprived of the opportunity to explain [drug test] results."

At the district court level, the employer moved for summary judgment, arguing that because Sanchez was an at-will employee, there could be no claim for wrongful termination. In response, Sanchez argued that a state law governing employment-related random drug testing (LSA-R.S. 49:1001 *et seq.*) provided a statutory basis for his damages claim. He argued that since the employer failed to meet certain requirements of the law--such as review of the test results by a medical review officer and questioning of the employee as to medications he may have been taking--he had a statutory claim for damages.

The employer conceded that it had not followed the procedures regarding medical review, but argued that the law did not prohibit an employer from taking disciplinary measures based on a positive drug test, even if the procedures had not been followed. The trial court disagreed, finding that the law granted an employee a cause of action when he was discharged because of drug tests obtained without compliance with the procedures set out in the law and concluded that the "positive" test result was invalid as a matter of law. The employer appealed and the court of appeal affirmed the lower court.

According to the appeals court, "The drug-testing statute represents a comprehensive procedure that employers must follow in conducting drug testing of its employees that is designed to assure accurate and unadulterated tests and results . . ." "Although LSA-R.S. 49:1007 does not prescribe the specific result that will follow from non-compliance, we conclude that failure to comply with the provisions of this statute would defeat the purpose of the drug-testing statute."

The review of tests by a medical review officer "is essential for the protection of employers, who want to ensure a drug-free work environment, and for employees, who voluntarily submit to these drug screens," the court said. "Absent a requirement that such results be reviewed by a qualified medical review officer, an employee who falsely tests positive is deprived of the ability to explain those results. As the legislature apparently recognized, the detrimental effect to the employee's career could be devastating."

The employer has applied for review by the Louisiana Supreme Court.