

Department of Corrections, random drug testing

Number: INFORMAL

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Mr. Harry K. Singletary, Jr., Secretary
Florida Department of Corrections
2601 Blair Stone Road
Tallahassee, Florida 32399-2500

Dear Secretary Singletary:

You have asked this office for clarification of Attorney General's Opinion 96-81 concerning whether the Department of Corrections is authorized to subject its employees to random drug testing pursuant to section 944.474(2), Florida Statutes (1996 Supp.). The Department of Corrections seeks direction on whether it can subject all of its employees, regardless of the nature of their duties or the location in which their duties are performed, to random drug testing without violating constitutional protections.

In enacting section 944.474, Florida Statutes (1996 Supp.), the Florida Legislature expressed its concern that the Florida correctional system provide a safe and secure environment for inmates and for staff. Section 944.474, reflects this concerns as follows:

"(1) It is the intent of the Legislature that the state correctional system provide a safe and secure environment for both inmates and staff. A healthy workforce is a productive workforce, and security of the state correctional system can best be provided by strong and healthy employees. The Department of Corrections may develop and implement an employee wellness program. The program may include, but is not limited to, wellness education, smoking cessation, nutritional education, and overall health-risk reduction, including the effects of using drugs and alcohol.

(2) Under no circumstances shall employees of the department test positive for illegal use of controlled substances. An employee of the department may not be under the influence of alcohol while on duty. In order to ensure that these prohibitions are adhered to by all employees of the department and notwithstanding s. 112.0455, *the department may develop a program for the random drug testing of all employees. The department may randomly evaluate employees for the contemporaneous use or influence of alcohol through the use of alcohol tests and observation methods.*" (e.s.)

Thus, the Legislature has authorized the department to develop and implement a random drug testing policy for all of its employees without regard to the type of job they do or where they may be performing that job. This office cannot substitute for the Legislature in making such a determination and it is within the discretion of the department to develop a drug testing policy to reflect its needs and concerns.

Drug and alcohol abuse are clearly issues of current concern to the Legislature and the people of this state. As this office discussed in Attorney General's Opinion 96-81, the Legislature has

specifically authorized the implementation of various drug-free workplace programs. Section 440.102, Florida Statutes (1996 Supp.), establishes such a program for employees covered by the Workers' Compensation Law. A parallel program for state government is established by section 112.0455, Florida Statutes (1996 Supp.). However, random drug testing is not authorized by the drug-free workplace programs provided for by these statutes.

This is not the case with the Department of Corrections program set forth in section 944.474, Florida Statutes. The Legislature has made a determination that, because of the nature of the duties and responsibilities of Corrections personnel, all of the Department's employees should be subject to random drug testing.

As discussed above, the Legislature has specifically authorized the Department to develop and implement a policy of random drug testing for all of its employees. This office must give full weight to the Legislature's determination that these measures are necessary to insure a "safe and secure environment for both inmates and staff" of the Department of Corrections.

Sincerely,

Joslyn Wilson
Director, Opinions Division
Assistant Attorney General

JW/tgk