

Workplace Drug Testing: New Iowa Court of Appeals Ruling Signals Best Practices for Employers

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by William J. Miller and Joshua Hughes

On January 10, 2024, the Iowa Court of Appeals filed its opinion in Hampe v. Charles Gabus Motors, Inc., et al., which involved a former employee who was terminated for refusing to submit to a random workplace drug test. While the court of appeals' ruling does not impose any new requirements on employers, the ruling provides clarity on an employer's obligations when complying with Iowa Code 730.5, Iowa's private sector drug testing law.

Hampe was brought by a former employee (Hampe) of Charles Gabus Motors, Inc. ("Gabus"). Gabus' workplace policies required employees to submit to random drug tests when called to do so. In preparation for an upcoming random drug test, Gabus contacted its drug-testing vendor to obtain a randomized list of employees for testing, including a list of "alternates." The vendor supplied a list for Gabus based on previously provided employee census information. Hampe was selected as an alternate, but because enough individuals from the "primary" list were not at work on the day of the test or otherwise away, Hampe was selected for testing. When Hampe reported to the on-site location to provide a urine sample, the medical review officer discarded the samples Hampe initially provided because the samples were out of the appropriate temperature range or insufficient in quantity. Hampe, who was only briefly at work that day and had been caring for a sick child at home, chose to leave rather than wait and provide a third sample. Gabus terminated Hampe's employment for refusing to submit to a random drug test.

Hampe sued Gabus and the vendor, Mid-Iowa Occupational Testing ("Mid-Iowa"). Hampe alleged that Gabus failed to conduct the random drug test in compliance with Iowa Code 730.5, that Mid-Iowa assisted Gabus in these violations, and that his common law rights to privacy, among others, were violated. The Polk County District Court granted summary judgment to Gabus and Mid-Iowa, finding either there was no violation of the statute, the employer had immunity, or Hampe was not "aggrieved" within the meaning of the statute.

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On appeal, the Iowa Court of Appeals reversed and remanded the district court in part. The court of appeals affirmed the dismissal of all claims against the vendor, Mid-Iowa. But it found three fact issues relating to Gabus' administration of the random drug test.

First, the court found issues relating to the testing pool. When employers conduct a random drug test on a pool of employees including "the entire population of the worksite," the population of potential test subject cannot include "employees who are not scheduled to be at work at the time the testing is conducted" because of either a regular schedule issue or if the employee requested leave prior to when the test was announced. See Iowa Code § 730.5(8)(a)(1). Here, Gabus previously provided Mid-Iowa a list of its total employee population, and Mid-Iowa produced a list of random test subjects from that database without respect to whether any employee would be at work on the date of test. That, the court of appeals observed, raised a fact issue of whether Gabus substantially complied with the statute, which required further proceedings in the trial court.

Secondly, Hampe alleged that the supervisor responsible for administering the drug testing did not complete annual training required by Iowa Code 730.5(9)(h). Here, the court of appeals determined that training records produced by Gabus were facially different from the requirements in the statute: one record showed only 60 minutes of annual training where 120 were required, another failed to cover topics required by the statute. The court of appeals determined there was a question of fact as to whether Hampe was "aggrieved" by such training failures, and accordingly sent the claim back to the district court.

Finally, the court of appeals examined the employer's written policy for random drug tests. Hampe alleged that Gabus' policy was invalid as written. Iowa law requires employer drug testing policies to provide "uniform requirements for what disciplinary or rehabilitative actions an employer *shall* take against an employee or prospective employee upon the receipt of a confirmed positive test result for drugs or alcohol or upon the refusal of the employee or prospective employee to provide a testing sample." Iowa Code § 730.5(9) (emphasis added). Here, Gabus' policy provided that "Employees who violate the policy *may* be disciplined or terminated." Because this policy provided Gabus discretion to select different adverse actions upon notice of a violation, the court of appeals returned this claim to the district court for additional litigation.

The court of appeals' decision in *Hampe* provides three key takeaways for employers conducting any kind of workplace drug testing in Iowa:

- **Ensure proper testing pools.** When an employer conducts a random drug test selected from among all the workers at a jobsite, the chance of being selected must be truly random. Prior to obtaining randomized names to test, employers should confirm that the "total population" omits any employees who are not scheduled to work on the day of testing, including employees who have been approved to take personal time off or another leave. Generally, any employee that the employer has reason to know will not be on the jobsite on the day of the testing should be excluded. For this reason, employers working with vendors should ensure proper employee lists are used for selection. Likewise, employers should be mindful of changes in schedules between the time a randomized list is generated and the testing is

announced: employees who provide notice prior to the announcement of testing that they will not be at work on the testing date should be excluded from the randomized population.

- **Document and annually review training requirements.** Iowa Code requires an employer to designate supervisory personnel responsible for drug and/or alcohol testing to receive annual training. Iowa Code § 730.5(9)(h). That individual needs to complete two hours of training their first year, but only one hour of training each subsequent year. Trainings must cover recognition of drug and/or alcohol abuse, documentation of drug/alcohol abuse, and referral of employees to drug/alcohol abuse resources. In this case, the employee designated by Gabus failed to obtain two hours of training in her first year as “designated personnel” for Gabus, which was in 2016. Despite the long difference in time and the fact that the individual completed subsequent annual trainings, the court found the failure to obtain two hours of initial training to be a facial violation requiring additional fact development at a trial. Employers seeking to avoid a similar outcome should ensure that *all* records of training relating to Iowa’s drug and alcohol testing statute are not only sufficient in time and content, but remain well-documented for so long as that employee remains the “designated personnel” responsible for drug testing.
- **Ensure policies are non-discretionary and compliant.** Finally, employers should carefully review their drug and alcohol testing policies to ensure they comply with the strict requirements of the Iowa Code. While the *Hampe* case turned on the employer’s discretion in the policy, employers should also review the statute for other required elements in such policies. Iowa Code 730.5(9) identifies required contents of a drug testing policy, including notice and disclosure requirements, information about contesting a result, and importantly, the consequences for violating the policy.

Given the strict requirements and in some cases substantial penalties at issue with drug testing, employers should ensure that their testing policies are reviewed regularly and comprehensively. Decisions like *Hampe*, which shed light on narrow issues under the drug testing statute and how Iowa courts approach those issues, are useful guideposts to determine best practices and policies to avoid. Be sure to contact your trusted Dorsey & Whitney LLP advisor or the authors if you have any questions or need any assistance relating to drug testing or any other topic.