

LEGAL UPDATE

DDPA news item: Shop floor remains alcohol (test) free!

Datum: 27 March 2019

On 15 March 2019, the Dutch Personal Data Authority (DDPA) published a [news item](#) in which the DDPA shared its view on employers testing employees for the use of alcohol, drugs or medicines during working hours. The DDPA takes the view that this is prohibited in most cases. It is only permissible to test staff for the use of alcohol, drugs and medicines under specific legislation, provided that a number of strict conditions are met. However, there are alternatives to control any safety risks associated with potential alcohol, drug and medicine use.

Special personal data

Employers feel the need to be able to determine whether their employees are under the influence of alcohol, drugs or medicines with a view to safety at work. However, the results of alcohol, drug and medicine tests say something about a person's health and may only be processed under strict conditions under the General Data Protection Regulation (GDPR).

Statutory exception

In principle, the GDPR does not allow the processing of health data. This prohibition can be repealed if one of the exceptions mentioned in the GDPR or the Dutch GDPR (Implementation) Act applies. The DDPA indicates that there are specific situations in which general safety can take precedence over employee privacy. The DDPA is of the opinion that all cases in which alcohol, drug and drug tests are permitted should be laid down in a specific law. Examples of occupations where such tests are permitted are skipper, pilot or engine driver.

Appropriate measures

However, if an employer is allowed to test for the use of alcohol, drugs or medicines, the employer must take appropriate measures to protect the fundamental rights of the staff concerned. For example, an employer cannot just test all staff or collect more personal data than necessary and the employer must protect personal data properly. In addition, current legislation only permits authorised officials or persons appointed by the Minister to administer the tests.

How should an employer deal with any safety risks?

Besides the employer, the company doctor remains authorised to process staff health data. It is permitted to refer an employee to the company doctor in cases of doubt about their ability to work due to possible alcohol, drug and medicine ingestion. The company doctor can then indicate whether or not the employee is fit to perform the stipulated work. In that case, the employer does not process the results of alcohol, drug and medicine tests, but is thus able to manage any safety risks on the shop floor.

The DDPA states that companies in sectors for which there are no such statutory exceptions yet but where there is a perceived need to carry out such tests in order to control the safety risks could request the legislator to introduce such legislation. Another possibility mentioned by the DDPA is to operate active HR policies to combat the consumption of alcohol, medicines and drugs shortly before or during working hours.

This is a Legal Update from Elze 't Hart and Sabina Kloppers.

For more information:

Elze 't Hart
+31 30 25 95 578
elzethart@vbk.nl

Sabina Kloppers
+31 30 25 95 580
sabinakloppers@vbk.nl