

## Drug testing policies for private vs. public employers

In a case involving a private employer, the Colorado Court of Appeals recently ruled that “there is no public policy exception that entitles an at-will employee to refuse to comply with a [private] employer’s previously existing written policy requiring drug testing.” They concluded that the trial court did not err when it concluded that the plaintiff failed to prove wrongful termination.

### **The Case**

The plaintiff, Melynda Slaughter, sued her employer, John Elway Dodge Southwest/AutoNation, for wrongful termination. The trial court dismissed her claim, and she filed an appeal.

Slaughter alleged that she was required to take a drug test in order to qualify for the position. She consented to the employer taking a hair sample for the drug test. Later, the company promoted her and gave her a raise.

Almost a year after the company hired her, she was informed that her drug test result was positive for marijuana, a fact the employer previously overlooked. The employer told her she could either take another drug test, resign, or be terminated; so she consented to submitting another hair sample for the drug test.

The next day the employer told Slaughter that the drug test had been inconclusive and that she must submit another hair sample. She refused, and the company fired her.

The court concluded that based on the Constitution and statutes of Colorado, a private employee doesn’t have a clearly expressed right to refuse drug testing. The court also noted that § 8-73-108 (5) (e) (IX.5), C.R.S. 2004, provides that an employer won’t be charged for unemployment benefits when it has a previously established written drug policy and terminates the employee because a drug test showed the presence of marijuana in the employee’s system during working hours.

### **What This Case Means to Counties**

The Colorado Court of Appeals drew a distinction between the plaintiff and employees of public entities in this case specifically. The Court of Appeals noted that drug testing of public employees constitutes a search under the Fourth and Fourteenth Amendments.

Therefore, a public employer cannot conduct a similar drug test without individualized suspicion of wrongdoing and following clearly delineated due process procedures.

For more information, contact CTSI at 303-861-0507.