



STAFF REPORT ACTION REQUIRED with Confidential Attachment

Random Testing- Legal Status Update

Date:	May 18, 2017
To:	TTC Board
From:	Chief Executive Officer
Reason for Confidential Information:	<ul style="list-style-type: none">• This report is about labour relations.• This report is about litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board.• This report contains advice that is subject to solicitor-client privilege, including communications necessary for that purpose.

Summary

In March 2016, the Board agreed, in principle, to implement random drug and alcohol testing, on condition that staff report back on implementation, program design and funding.

In November 2016, staff reported back to the Board with a detailed implementation plan, and sought funding for this. At that time, it was noted that costs were exclusive of potential legal action taken by ATU, Local 113, and that staff would report back on that if required.

Following the Board's final approval for the program design and funding required to implement random testing, the TTC communicated publicly that it would be implementing random drug and alcohol testing for designated positions, in March 2017. The program ultimately launched May 8, 2017.

This report provides the Board with an update on the legal status of the TTC's random drug and alcohol testing program.

Recommendations

It is recommended that the Board:

1. Receive the information as set out in the Confidential Attachment;

2. Approve the confidential recommendations as set out in the Confidential Attachment; and
3. Not release the information as set out in the Confidential Attachment as it relates to labour relations, litigation affecting the municipality or local Board and contains advice that is subject to solicitor-client privilege.

Decision History

In 2008, the Board approved the introduction of post incident, reasonable cause, and certification new hire testing.

The Board in 2011 approved the introduction of random testing.

https://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2011/November_23_2011/Minutes/index.jsp

In 2015 the TTC provided the Board an update including the TTC's experience in relation to existing caselaw.

In March 2016, the Board approved the implementation of random testing subject to certain details being reported on in advance of program implementation.

https://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/April_27/Minutes/index.jsp

In November 2016 the Board approved the final program design and costs association with the program launch.

http://www.ttc.ca/About_the_TTC/Commission_reports_and_information/Commission_meetings/2016/December_20/Minutes/index.jsp

Accessibility/Equity Matters

There are potential accessibility and equity matters relating to this report. More specifically, the introduction of random drug and alcohol testing directly impact persons suffering from alcohol or drug substance use disorders. The implementation of random drug and alcohol testing would hopefully incentivize such persons to come forward to get help. TTC has in place extensive support mechanisms available to individuals who are suffering or suspect they may be suffering from such disorders. Should such individuals decide not to come forward and get help, but later be found to be impaired at work due to a random test, then there could be employment ramifications for them, depending on the circumstances. The TTC has a duty to accommodate persons with a disability to the point of undue hardship, and the implementation of this program will not, in the TTC's view, negatively impact or in any way expunge the TTC of its obligations.

Comment

Upon announcing the implementation of random alcohol and drug testing at the TTC, the TTC's largest union, ATU, Local 113, commenced a Court Application seeking an injunction to prevent the implementation of random drug and alcohol testing while the ongoing arbitration (relating to the policy grievance regarding the entire Fitness for Duty Policy), was determined. The Court Application was heard on February 28 and March 1, 2017 and TTC agreed to delay the commencement of random alcohol and drug testing until after the Court issued a decision.

On April 4, 2017, the Court issued its decision which denied the Union's application for an injunction. The TTC was also awarded costs in the amount of \$100,000.00, which was the sum mutually agreed to between the parties.

A copy of the judgment can be found at

<https://www.canlii.org/en/on/onsc/doc/2017/2017onsc2078/2017onsc2078.html?searchUrlHash=AAAAAQASIkZpdG5lc3MgZm9yIGR1dHkiAAAAAAE&resultIndex=4>

Random drug and alcohol testing was implemented May 8, 2017.

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Attachment:

Attachment: Attachment 1 - Confidential Attachment