



**For Action
with Confidential Attachment**

Fitness for Duty Policy: Litigation Update

Date: February 10, 2022
To: TTC Board
From: General Counsel

Reason for Confidential Information

This report is about litigation or potential litigation, including matters before administrative tribunals.

This report also contains advice or communications that are subject to solicitor-client privilege, including communications necessary for that purpose.

Summary

This report provides a status update regarding the ongoing litigation of the TTC's Fitness for Duty (FFD) policy.

Recommendations

It is recommended that:

1. The TTC Board adopt the confidential recommendations set out in Confidential Attachment 1.
2. Authorize that the information provided in Confidential Attachment 1 remain confidential in its entirety, as it contains information subject to solicitor-client privilege.

Financial Summary

The financial details are contained within the confidential attachment.

The Chief Financial Officer has reviewed this report and agrees with the financial impact information.

Equity/Accessibility Matters

No equity or accessibility impacts have been identified.

Decision History

In October 2011, the TTC Board approved the introduction of random drug and alcohol testing.

<https://www.ttc.ca/public-meetings/board/2011/board-meetings-oct-19?tab=1>

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

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2016/March-23/Decisions/6_Fitness_for_Duty.pdf?rev=f872ef0e9a1a4832a59c99dbf048643e&hash=ED246A4069DA8D2CF9EA6AE696D26620

In November 2016, the TTC Board approved the implementation of random testing.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2016/November-30/Decisions/Random_Drug_and_Alcohol_Testing_Implementation.pdf?rev=1ab32153159b469890d1c5e853ce35ea&hash=A7AF258FEAFBAD40D165BAB98E8B1FB1

In January 2020, the TTC Board approved the extension of the Purchase Order with Blakes, Cassels & Graydon LLP, the TTC's counsel on FFD matters.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2020/January_27/Reports/4_Fitness_for_Duty_Policy_Litigation_Update.pdf?rev=d4ad8b73da69441297c76ff916bf4e3c&hash=A307FF6028AD60CA09A540865DD309DE

In September 2020, the TTC received an update on the outstanding grievance arbitration and approved an increase to the Purchase Order with Blakes, Cassels & Graydon LLP.

https://ttc-cdn.azureedge.net/-/media/Project/TTC/DevProto/Documents/Home/Public-Meetings/Board/2020/September_24/Reports/3_Fitness_for_Duty_Policy_Litigation_Update.pdf?rev=a33ac92f5f3241aba98751cd9a9684df&hash=24A54649B12A1894FC056B746FAB4770

Issue Background

In 2010, the TTC implemented the Fitness for Duty (FFD) policy. The policy provided for drug and alcohol testing of employees in designated positions in specific circumstances (post-incident, reasonable cause, pre-employment and post-treatment monitoring). The Amalgamated Transit Union (ATU) Local 113 filed a grievance challenging this policy.

In 2017, the TTC introduced random drug and alcohol testing, which is also subject to a legal challenge by ATU Local 113.

The grievance relating to the TTC's FFD policy is ongoing, and this report provides a status update.

Comments

N/A

Contact

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Signature

A handwritten signature in blue ink, appearing to read 'M. Atlas'.

Michael Atlas
General Counsel

Attachments

Confidential Attachment 1 – Fitness for Duty Policy Litigation Update