

Stay Connected

View our profile on [LinkedIn](#)

[Visit our blog](#)

Meet Nancy Gray



In a diverse legal career that has spanned over three decades, attorney Nancy Gray has represented hundreds of clients in a variety of civil matters, including labor and employment (management/employee); sexual harassment,

Can You Drug Test Your Employees? What Employers Should Know About California Law

Since the Reagan Administration mandated drug testing federal employees in 1988, companies across America have followed suit. Whether large or small, approximately 40% of all businesses require a drug screen during the hiring process, and many require random or periodic testing thereafter.

If you are one of these employers, or are considering starting a drug testing program for new or existing employees, you need to be aware that California law takes the average citizen's right to privacy seriously. An employer who drug tests employees without good reason or in violation of California standards may find itself on the wrong end of a lawsuit.

Testing Prospective Employees

California does not have a specific set of laws that regulate employee drug testing in the state. Instead, the rules were created by state court judges and have developed over time. Because the California Constitution gives employees a right to privacy,

discrimination, wrongful termination; commercial, contract and business issues.

Among other highlights, Ms. Gray served as Assistant District Attorney in New York, spent seven years with a national law firm working on complex pharmaceutical and medical device cases, and successfully litigated and coordinated cases around the country. She has a unique expertise in matters pertaining to the adulteration of extra virgin olive oil.

Ms. Gray has also lectured and written on a variety of topics, including expert testimony, drug and medical device regulation, sexual harassment, employment practices and child performer issues.

In 1997, she started her own firm, based in Los Angeles.

Having been raised in New York City, Nancy enjoys dramatic, musical and comedy theater as well as pro sports. She is a PADI-certified scuba diver. Among her favorite reading material is Bon Appetit and anything pertaining to criminal behavior and behavioral profiling.

Accreditations

The logo for Super Lawyers, featuring the words "Super Lawyers" in a stylized, bold, gold-colored font with a black outline, set against a white background.

judges have balanced privacy rights with the legitimate safety concerns of employers.

Courts in California have often upheld an employer's decision to drug test potential employees as part of the application process. Testing applicants is usually within the boundaries of the law so long as the employer tests all potential employees applying for the same position.

In order to drug screen applicants for a position, employers must notify the applicant of the testing requirement, and complete the testing in a way that is reasonable and minimally intrusive.

Testing Current Employees

While it is relatively safe to test job applicants for drug use, current employees have a stronger right to privacy than do prospective employees. Because these workers already have a job or a career, they have more to lose than do applicants who do not yet have the job. Accordingly, testing current employees can only be done if the employer has a compelling reason.

For some positions, including those in the transportation industry, federal and state law mandates that employees be tested for drugs and alcohol. Employers have an obligation to comply with these regulations in order to keep employees and non-employees safe.

Outside of workers involved in the transportation industry, random or routine drug screening is generally not allowed except in certain circumstances. When an employee works in a field or area where injuries are common or when their job requires a high level of security, then random tests are more likely to be upheld by a court as long as the employees are given an appropriate amount of notice before the test (usually 30 days).

Finally, employee drug tests are usually

Directions



About Gray & Associates P.C.



Attorney Nancy Gray of Gray & Associates, P.C. has more than 30 years of experience providing personalized attention and creative solutions to her clients' legal issues.

Whether you need a strong litigator, a labor and employment advocate, or a savvy business law attorney, you can rely on Gray & Associates to provide you with excellent

allowed if the employer has a reason to believe that the employee is intoxicated at work, or if the employee has caused or been injured in an accident. Drug and alcohol tests after an accident are standard for many companies, and California courts have clearly approved of an employer's right to test an employee after an injury.

For employees who are believed to be impaired at work, the employer must have more than just a suspicion. If the employer has reasonable, objective proof that the worker is impaired, then a drug test is usually permissible.

What about Prescriptions Drugs or Marijuana?

Many employees or prospective employees have valid prescriptions for medications or medical marijuana, which will appear in the results of a drug test. In cases like these, if the employee has a valid prescription for the drug, then an employer should be very wary of taking any negative employment actions based on the results of the test-if the drug is necessary to treat a medical condition, an employer could be liable for disability discrimination if that employee were fired. However, employers do have the right to refuse to hire an applicant who tests positive for marijuana, even if the use is medicinal.

Help for Employers

Employers have a right to maintain a drug-free work environment, and have a vested interest in the safety of their employees. While these interests are important, employers must still remember that they are required to respect the privacy of their workers.

Employers are required to keep each worker's medical information, including drug test results, confidential and private. An employer could be liable for violating medical privacy laws if the results of an employee's drug test

legal representation. Click [here](#) to read more.

Practice Areas

- Civil litigation and trials
- Commercial law
- Contracts
- Sexual harassment
- Employment law
- Employment contracts
- Intellectual property litigation
- Trademark litigation
- Unfair competition
- False Advertising
- Business law
- Entertainment law

are leaked to unauthorized parties.

In addition, an employer could be sued for damages or could be faced with an injunction if an employee feels that the tests are violating his or her right to privacy. In order to prevent these situations, it is helpful for employers to have a clearly defined drug and alcohol use policy, that describes the situations where drug tests are required as well as the consequences of failing a test.

If you are an employer or employee concerned about your company's drug testing policy, speak with an experienced employment law attorney who can review your business' rules and regulations. Attorney Nancy Gray has represented both employers and employees on a wide variety of employment law issues, and can help you or your company stay on the right side of the law. For your free initial consultation with a California employment attorney, call (310) 452-1211 or visit [our website](#).

GrayFirm.com - 310.452.1211 - NGray@GrayFirm.com