

## **REASONABLE SUSPICION TESTING STANDARDS AS DEFINED BY AMERICAN COURTS**

One of the more common questions asked is "what constitutes reasonable suspicion in order to require an employee to be drug-tested?" A number of courts have developed definitions of what constitutes reasonable suspicion within a Fourth Amendment context and may be useful as a guideline. Several cases are cited below.

The U.S. Supreme Court calls the reasonable suspicion standard "the sort of common-sense conclusion about human behavior upon which practical people . . . are entitled to rely." *New Jersey v. TLO*, 469 U.S. 325, 346 (1985). Further, it has defined reasonable suspicion as requiring only something more than an "unarticulated hunch." *Alabama v. White*, 490 U.S. 325, 330 (1990)

Factors used to satisfy this standard include a "pattern of abnormal or erratic behavior." (*American Federation of Government Employees v. Martin*, 969 F.2d 788, 790, n.1 [9<sup>th</sup> Cir. 1992])

"Reasonable suspicion must be based on an analysis of all the circumstances as they appeared to the official making the judgment at the time." (*Nocera v. New York City Fire Commissioner*, 921 F. Supp. 192, 199 [S.D.N.Y. 1996])

Supervisors making a reasonable suspicion determination must point to "specific objective facts and rational inferences that they are entitled to draw from those facts in light of their experience." *Security and Law Enforcement Employees, District Council 82 v. Carey*, 737 F.2d 187, 202 [2d Cir. 1984]) (quoting *Hunter v. Auger*, 672 F.2d 668, 674 [8<sup>th</sup> Cir. 1982])

Another court noted that a reasonable suspicion determination could be based on an "incident," defined as "any unusual occurrence such [as] an accident, altercation, passenger's complaint, or the observation of bizarre behavior." *Burka v. New York City Transit Authority*, 739 F. Supp. 814, 829 (S.D.N.Y. 1990)

The above citations all serve to make the point that documentation is crucial when a company has a reasonable suspicion testing program. That documentation may be helpful should the company (and supervisor) be required to defend a "reasonable suspicion" decision in court.

*Source: Brief of Amicus Curiae filed by the Institute for a Drug-Free Workplace in the Appellate Court for the State of Connecticut. December 13, 1996*