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IGNORANCE IS NOT BLISS

The Eighteenth Century English poet Thomas Gray once wrote "where ignorance is bliss, 'tis folly to be wise." Unfortunately, this defense doesn't exactly hold water in a court of law.

A perfect example of why this is the case can be found in an order issued September 16, 2010 in the Federal District Court for the Northern District of Oklahoma, which sits in Tulsa. In the case, the federal Judge was asked to decide whether or not an Oklahoma employer violated the terms of Oklahoma's Standards for Workplace Drug and Alcohol Testing Act (the "Act"). Any Oklahoma employer that chooses to conduct drug or alcohol testing on applicants or employees must comply with this Act.

The facts of the case were simple. The defendant was a company that provided outsourced technology services to other companies. The defendant was hired by another company to handle its technology support. As part of the contract between the two parties, the company that hired the defendant required the defendant to conduct drug testing on its employees, to include testing for amphetamines, barbiturates, cocaine, marijuana, opiates, phencyclidine, benzodiazepines, methadone and propoxyphene.

The plaintiff in the case was an employee who was tested for drugs. She came up positive for the presence of Phenobarbital, which is an anti-convulsant medication used to control seizures, and which may also be prescribed to relieve anxiety or as a sleep aid. It is classified as a barbiturate and can be habit forming. Based on the positive test result, the employee was fired in October 2009.

Here is the rub. Even though the Act says that an employer can test for barbiturates, the Oklahoma State Department of Health Regulations ("Regulations") say otherwise. According to the Regulations, licensed drug testing facilities may only test for drugs that fall into Schedules I, II or III of the federal Controlled Substances Act. Phenobarbital is a Schedule IV substance, and so, according to the Regulations, cannot be the subject of a valid and enforceable drug test in Oklahoma.

Then things got worse for the employer. Rejecting the company's argument that it was only doing what was asked of it by a third party, and that it was unaware of the diametrically opposed instructions in the Act and the Regulations, the Court ruled that "ignorance of the law is no excuse." The Court therefore found that the company had "willfully" violated the Act, because it had failed to take the time to familiarize itself with the nuances of the Act.

The lesson to learn here is simple. Ignorance is not bliss when it comes to Oklahoma's drug testing Act. And, if you conduct drug and alcohol testing in your workplace, it most certainly would not be folly to take some time to review the Act and your company's drug and alcohol testing policy to ensure that you don't ever find yourself in a similar situation.