

# Violations of Oklahoma Employee Drug Testing Law Remedied

Attention: Employees in Oklahoma who are not subject to federal Department of Transportation (DOT) testing.

There is a state law requiring strict compliance for employee drug and alcohol testing procedures. And it applies to both the public and private sectors.

A few years ago, when Conoco and Phillips Petroleum merged, the new company revamped its drug testing policies. The union at the company's Ponca City refinery objected that the revamped policy was not in compliance with the state drug testing laws, but the company chose to proceed anyway.

Subsequently, the company drug-tested a particular employee. Although the test came back "negative" on each one of the panel of nine drugs, it came back "positive" for a drug not listed in the policy. The employee was fired.

Frasier, Frasier & Hickman, LLP, brought suit on behalf of the worker. The company requested the Court to throw the case out on the grounds that the company had "substantially" complied with the state law in conducting its drug test. The court relied on a scholarly article the com-

pany lawyer had written 20 years before pointing out the law must be "strictly" complied with.

The trial court agreed.

Rather than throw the case out as the company wanted, the trial court ruled that the testing of the employee was illegal.

ConocoPhillips then requested mediation. Recently the case was successfully settled, with the company requiring that the settlement compensation amount be confidential.

"Employers are constantly pushing the line on drug testing and commonly crossing it," Steve Hickman said. "We find public and private sector employers regularly violating the law."

An example is that the City of Tulsa requires all applicants for jobs to take a drug test, a procedure that is clearly illegal under current law.

"The drug testing laws are complicated enough that anyone fired as a result of a drug test should have a lawyer look at the situation to make sure the testing was valid," said Hickman.

## CASE FILE

# Arbitration and Pension Plan Case Finds for Employee

Jerry Norton was a long-time employee of the Byron Jackson pump plant in east Tulsa. During his time there, the plant sold several times. It was finally sold by Flowserve to Ruhrpumpen effective January 1, 2001. The prior owners had all carried over the same pension; but the new company started over.

The union-negotiated pension plan from Byron Jackson to Flowserve had a "62+25" benefit – a person who had 25 years of service and reached the age of 62 would receive a full pension as though he was 65. Shortly after the sale to Ruhrpumpen, Norton turned 62 and claimed the benefit. Flowserve denied the claim, adding an additional requirement – that the person be employed at the time he turned 62.

Frasier, Frasier & Hickman, LLP, filed

a lawsuit to obtain benefits for Norton – and which would also affect numerous other employees who would later turn 62. Claims for pension benefits in the private sector are governed by a Nixon-era law known as "ERISA." This law stacks the deck against workers and in favor of companies to the extent that even the federal court of appeals has said that ERISA can be a "fruitless and thorny" ground for employees.

Because the pension plan had been made pursuant to a collective bargaining agreement and because it provided for arbitration, the federal court referred the case to arbitration. Attorneys for Frasier, Frasier & Hickman, LLP, argued, on behalf of Norton, that the plan only had two requirements to get the benefit – that the person be 62 years of age and have

25 years of service with the company.

The company argued that there was a third requirement, not written in the plan, but obviously true, that the person must also be employed at the age of 62. The arbitrator held that the federal law required the plan to be interpreted as it was written, not as the company wished that it had been written. The arbitrator ruled in favor of Norton.

The federal court upheld the arbitrator's decision and ordered the Flowserve pension plan to pay Norton his back benefits.

In a subsequent development, the company has amended the plan to comply with the arbitrator's award and make it clear that each person with 25 years of service will receive the benefit upon reaching age 62.