

Updates to Roadside Drug Testing in New Zealand

In 2022 the Land Transport (Drug Driving) Amendment Act 2022 was introduced to contemplate roadside oral fluid testing for substances including a new list of prescription medications. At the time, the amendment could not be implemented due to a number of practical considerations including the lack of devices that could test to the level required by the legislation.

This new updates would amend the Land Transport Act 1998 to resolve issues with the current oral fluid testing regime and allow its implementation for example by changing the criteria for the testing device. The Minister of Police will need to be satisfied with the accuracy of the device but will no longer need to be satisfied that an approved device will only return a positive result if it detects the presence of a qualifying drug.

Obligations around impairment

Ensuring that the risk of impairment is managed is a critical aspect of health and safety obligations under New Zealand's Health and Safety at Work Act 2015.

It's well known that prescription medication can cause side effects, for example, drowsiness, fatigue, reduced cognition, and reduced reaction times. The types of prescription medication that are listed in the Bill include codeine, diazepam, lorazepam, oxycodone, tramadol, and triazolam.

The risk of impairment would be greater in some industries, including industries where employees drive or operate machinery. Failure to take appropriate steps in managing drug impairment could expose employers to legal liability in the event of an accident.

Considerations for employers

Clear communication and education are key in this area. We recommend employers take steps to educate or refresh employees on the following:

- The impact of drug or medication use on workplace safety.
- The new roadside drug testing regime and what it means for them as employees.
- Company policies regarding drug use, testing, and how a positive test result (including a roadside testing drug test) could affect their employment.
- The importance of disclosing any prescribed medications that could risk impacting the safety at work including driving.

Our advice is to act on the recommendation from medical professionals and seek to understand the risks a prescription medication might pose to an employee. Employers are entitled to request medical information so far as it relates to the employee's work.

If an employer identifies that impairment could be a risk for employees at work, it could request that any employees taking prescription medication attend their medical professionals and seek to understand if the medication they are taking creates a risk of impairment or side effects that may impact the workplace. If the medical professional indicates there is potential impairment risk then the employer could reasonably request the employee disclose those details.

Employers must carefully navigate privacy issues when dealing with drug testing results or personal medical information. Take the opportunity now to review your privacy protocols and ensure personal information is handled sensitively and stored securely.

Conclusion

The current changes are contentious. The New Zealand Law Society Te Kāhui Ture o Aotearoa have publicly shared its submissions stating the Bill should not proceed because, among other things, it is inconsistent with the Bill of Rights Act 1990.

Updates to Roadside Drug Testing in New Zealand (Continued)

Regardless of whether these changes go ahead, it is a reminder to all employers regarding the risk of impairment. We encourage employers to be proactive in considering and addressing these risks and setting clear expectations for employees around information sharing.

Want to know more?

If this article raises any questions or concerns, please get in touch with one of our [Employment Team](#).