

Worker's drug testing suit preempted

June 04, 2018

PS&H employment partner, [Alicia Samolis](#), commented on a recent federal court decision [McMahon v. Verizon New England, Inc.](#), favoring an employer's motion to terminate a union member employee who declined an alcohol test. The plaintiff claimed that the drug and alcohol testing provisions included in his union collective bargaining agreement preempts the RI state statute, allowing him to avoid performing a drug and alcohol test.

Though Alicia was not involved in the case, she was quoted in the article published by Lawyers Weekly and noted the practical effect of the UBTCEA.

"In reality, even though we don't have an outright statutory ban on drug testing, nobody does it because it's so procedurally burdensome," she said. "It's as close as you can get to saying no drug testing."

However, Samolis pointed out that section 301 has been interpreted broadly.

"The court focused on the fact that the collective bargaining agreement resolved the matter through a settlement," Samolis said. "The whole purpose of section 301 is to have the CBA resolve disputes."

Samolis said an employee should be allowed to waive a statutory violation after-the-fact as consideration for a reinstatement settlement. But she questioned whether a collective bargaining provision authorizing drug testing would be enforceable.

"I would not advise one of my clients to be the first to argue in front of a judge that a CBA with a drug testing provision preempts the state statute," she added.

Click [here](#) to read the full article published by RI Lawyers Weekly.

<https://www.psh.com/workers-drug-testing-suit-preempted/>