

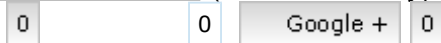
New York Court of Appeals Creates Negligent Drug Testing Claim

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Landon v. Kroll Laboratory Specialists, No. 2013-142 (N.Y. Ct. of Appeals Oct. 10, 2013) (Lippman, C.J.): A recent decision by the New York Court of Appeals has far-ranging implications in the area of employee drug testing. In *Landon*, New York’s highest court held that an individual may sue a drug-testing laboratory for damages caused by incorrect results. The Court’s creation of a new cause of action against drug-testing laboratories—negligent testing—is likely to significantly alter the landscape of employee drug testing in New York State.

Eric Landon sued Kroll Laboratory Specialists when its drug test of Landon produced an alleged false positive result for marijuana, and Landon was then forced to defend his violation of probation before a criminal probation board. Landon’s negligence claim against Kroll was premised on his theory that Kroll’s standard for a positive test result was lower than professionally accepted testing standards and thus constituted a breach of its duty of care. After a judge in New York Supreme Court, Orange County granted Kroll’s motion to dismiss, the Appellate Division, Second Department reversed, finding that despite the lack of a contractual relationship between the parties Kroll owed Landon a duty to administer the drug test in accordance with professionally accepted standards. The Second Department also noted that the “importance attached to the results of drug tests can hardly be overstated,” as they “may form the basis for decisions affecting the very core of people’s lives.” The Court of Appeals adopted the Second Department’s reasoning in affirming the ruling.

Kroll will likely yield a host of changes in the area of employee drug testing. Employers will likely see an increase in test costs, altered procedures for laboratories, and significant changes to the agreements that govern the contractual relationships between employers and laboratories. Although there are no statutory limitations on workplace drug testing in New York State, employers should consider providing an appeal and dispute resolution process to avoid potential liability should New York courts continue to expand the negligent testing cause of action.

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