

If you have questions regarding the information in this alert or would like to receive further information regarding our Labor and Employment Department, please contact:

William D. Sargent
Department Chair
313.465.7538
wsargent@honigman.com

Laura A. Brodeur-McGeorge
313.465.7312
lbrodeur@honigman.com

Sean F. Crotty
313.465.7336
scrotty@honigman.com

Matthew S. Disbrow
313.465.7372
mdisbrow@honigman.com

Cameron J. Evans
313.465.7370
cevans@honigman.com

Christopher R. Kazanowski
313.465.7332
ckazanowski@honigman.com

Russell S. Linden
313.465.7466
rlinden@honigman.com

Tara E. Mahoney
313.465.7442
tmahoney@honigman.com

Robert J. Muchnick
313.465.7498
rmuchnick@honigman.com

Mary L. Pate
269.337.7828
mpate@honigman.com

Stanley H. Pitts
313.465.7516
spitts@honigman.com

Luke A. Suchyta
313.465.7546
lsuchyta@honigman.com

Non-Disabled Employees Who Tested Positive for Prescription Drugs Recover Significant Damages Under the ADA

Multiple former-employee plaintiffs recently recovered nearly \$900,000 in damages from their former employer after they were fired for violating the employer's drug-testing protocol when they tested positive for prescription drugs the plaintiffs were legally taking.

In *Bates v. Dura Auto. Sys. Inc.*, No. 1:08-0029 (M.D. Tenn. Aug. 29, 2011), the court affirmed a jury verdict in favor of the plaintiffs who claimed their former employer violated the Americans with Disabilities Act (ADA) when they were discharged after they tested positive for prescription drugs that the employer believed were unsafe in a manufacturing environment.

The court held that the employer's drug-testing protocol subjected the plaintiffs to "medical examinations" and/or "disability-related inquiries" under the ADA. As such, the employer had to prove that the drug-testing protocol was "job-related" and "consistent with business necessity." The court affirmed the jury's verdict finding that it was reasonable for the jury to conclude that the protocol was inconsistent with business necessity where the protocol "entirely ignored common sense considerations that should have been taken into account, including whether the employee's physician cleared the employee to work at the facility while on the relevant drug and the specific employee's safety record." Further, although the plaintiffs were not disabled as defined by the ADA, they were permitted to recover damages under Section 12112(d) of the ADA because that section does not require plaintiffs to be "disabled" to be entitled to a recovery. The jury also awarded the plaintiffs over \$400,000 in punitive damages; the court affirmed that award holding that it was reasonable for the jury to conclude that the employer acted with "reckless indifference" even though it may not have known to a certainty that its drug-testing protocol violated the ADA.

In light of this recent decision, employers are advised to have their drug-testing policies and practices, especially those involving prescription drug testing, reviewed by counsel.