



Express Search



▶ NEWS ▶ HR STREAM ▶ IR/HR JOBS ▶ WHAT'S ON ▶ RESOURCES ▶ ABOUT US ▶ FREE TRIAL ▶ SUBSCRIBE ▶ CONTACT

Latest News

SESSION ACTIVE

▶▶ FWA backs saliva test regime; ACTU praises Facebook privacy move; & more

29 March 2012 3:48pm

[FWA says saliva testing best for detecting impairment](#)

[ACTU welcomes Facebook move to protect privacy](#)

[Victorian teachers threaten industrial action; 12% deal ratified for WA counterparts](#)

[Public sector union secretary to break branch records during sixth term](#)

[Cochlear bargaining orders case to resume in late May](#)

[High Court hears Barclay adverse action appeal](#)

FWA says saliva testing best for detecting impairment

Fair Work Australia has blocked energy distributor Endeavour Energy from introducing random on-site urine testing for drugs such as cannabis.

Senior Deputy President Jonathan Hamberger found that oral fluid testing was the best way to determine whether employees were under the influence of drugs at work.

Endeavour was seeking to introduce a new drug and alcohol policy and took the matter to FWA after the CEPU, ASU and APESMA opposed some elements, including the type of testing (the company wanted to test for drugs via urine tests, while the unions preferred saliva testing), blood alcohol levels (the company sought a uniform 0.02 blood alcohol limit while unions wanted 0.05 for most employees) and the introduction of urine testing for all new employees and current employees engaged in new roles (the unions argued for saliva testing).

Senior Deputy President Hamberger found saliva testing was more likely than urine testing to identify drug users - particularly of cannabis - who were still under the influence and therefore most likely to pose a safety risk in the workplace.

He heard evidence from medical practitioners that "while urinalysis may be a more reliable indicator of past drug use, saliva testing is a more reliable indicator of very recent use and therefore more likely to also indicate potential impairment or intoxication".

Senior Deputy President Hamberger also heard that urine testing only detected inactive cannabis metabolites that presented in urine well after use, rather than the psychoactive component that actually affected a user's performance for the immediate few hours after consuming the drug, when intoxication was at its highest level.

National Centre for Education and Training on Addiction deputy director [Ken Pidd](#) described this as "a serious limitation in using urinalysis to identify cannabis-related risk to workplace safety".

Senior Deputy President Hamberger expressed concern about the fairness of urine testing, given it could identify the presence of cannabis consumed days or even weeks before the test.

"This means a person may be found to have breached the policy even though their actions were taken in their own time and in no way affect their capacity to do their job safely," he said.

"The employer has a legitimate right (and indeed obligation) to try and eliminate the risk that employees might come to work impaired by drugs or alcohol such that they could pose a risk to health or safety. Beyond that the employer has no right to dictate what drugs or alcohol its employees take in their own time.

"It is precisely because it only detects for recent use that oral fluid testing is a better indicator of

[LOGOUT](#) ▶▶

[SETTINGS](#) ▶▶

WORKPLACE
express

IR & HR Jobs

Relations Advisors

Senior Labour
Relations Advisors -
Perth

**Senior Industrial
Organiser -
Melbourne**

Senior Industrial
Organiser - Melbourne

[Click here to
see more jobs](#)

IRS INDUSTRIAL RELATIONS SOCIETY OF NSW

53RD ANNUAL CONFERENCE
SEBEL HARBOURSIDE KIAMA
18 to 20 May 2012

EMPLOYMENT RELATIONS
THE GLOBAL REALITY

Pres. Boland IRCNSW
V/Pres. Watson FWA
Federal & NSW Ministers
and Shadows for IR
Richard Tanner Virgin Aust.
Chris Christodoulou Unions NSW
Professor Andrew Stewart
Bruce Miles Counsel
Lincoln Crawley CEO Manpower
Capt. Barry Jackson Pres. AIPA
Ingmar Taylor Counsel
Steve Knott Pres. AMMA

From \$700 Conference, Meals & Accom.

SPONSORS:

- Piper Alderman
- Harmes Workplace Lawyers
- Clayton Utz
- Haywards
- Assoc. Dayroll Specialists

www.irs.org.au - CLE Points

WORKPLACE
express

The source for IR/HR news

[RSS 1.0](#)

the likely impairment as a result of smoking cannabis."

He said urine testing might be more "accurate" than saliva testing in detecting whether an employee has "at some stage taken certain substances".

"However, that is not necessarily the goal of a workplace drug testing regime," he said, pointing to his comments in [Shell](#), highlighting the intrusion into employees' privacy constituted by drug tests (see [Related Article](#)).

Senior Deputy President Hamberger said drug concentration limits should be determined by [Australian Standard 4760-2006](#), while limits for benzodiazepines should be set by the company in consultation with its testing service provider, [Medvet](#).

Employer's proposed blood alcohol limited unreasonable

Senior Deputy President Hamberger ruled that only workers in high-risk roles (identified through a risk analysis) should be subjected to a 0.02 limit, while 0.05 should be acceptable for other staff.

He said it was unreasonable to impose the lower limit across the board just because some workers were involved in high-risk activities.

"There is simply no need for a 'one size fits all' approach," he said.

Senior Deputy President Hamberger said the company shouldn't begin its random drug testing until six weeks after it completed an education program. '

He also ruled that employees shouldn't be required to disclose details of prescription medication, as this would constitute an "unreasonable invasion of privacy", "unless and until" they have returned a positive result.

Senior Deputy President Hamberger's ruling appears to be at odds with another recent ruling by FWA on a similar issue.

In a decision last year, FWA Vice President Michael Lawler [found](#) that saliva testing was flawed, and allowed an employer to retain its urine-testing regime (see [Related Article](#)).

[Endeavour Energy v Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and others \[2012\] FWA 1809 \(26 March 2012\)](#)

ACTU welcomes Facebook move to protect privacy

The ACTU has welcomed moves by social networking site Facebook to safeguard against employers forcing employees to hand over access to their personal information.

ACTU president Ged Kearney said today that unions had been "increasingly concerned" about employers seeking to "delve into their employees' personal lives" and were pleased that Facebook had "taken affirmative action to send a message that this is not okay".

Facebook's chief privacy officer, Erin Egan, on Friday said in a [statement](#) that the company had seen a "distressing increase in reports of employers or others seeking to gain inappropriate access to people's Facebook profiles or private information".

She said the "most alarming" of these practices was the reported incidences of employers asking prospective or actual employees to reveal their passwords.

She said Facebook in response had made it a violation of its [Statement of Rights and Responsibilities](#) (see point five of "Safety") to share or solicit a Facebook password.

She said as well as invading privacy, asking prospective employees for their passwords could cause unanticipated problems for the employers - such as opening themselves to an age discrimination claim if they didn't hire an older worker whose birth date was part of their private information.

"Employers also may not have the proper policies and training for reviewers to handle private information. If they don't - and actually, even if they do - the employer may assume liability for the protection of the information they have seen or for knowing what responsibilities may arise based on different types of information (eg if the information suggest the commission of a crime)," she said.

"Facebook takes you privacy seriously. We'll take action to protect the privacy and security of our

user, whether by engaging policymakers or, where appropriate, by initiating legal action, including by shutting down applications that abuse their privileges."

Victorian teachers threaten industrial action; 12% deal ratified for WA counterparts

AEU Victorian President Mary Bluett has written to Victorian Premier, Ted Baillieu, notifying him that teachers will begin a campaign of protected industrial action during next school term if a satisfactory agreement is not reached.

In the [letter](#), Bluett says AEU members had hoped "that negotiations could have been positively concluded without resorting to industrial action", particularly in the light of the Government's pre-election commitment to "make Victorian teachers the highest paid in the nation". However, at a State Council meeting on 23 February, the union passed a resolution calling for the government to enter into intensive negotiations with a deadline for agreement to be reached by 16 April – the first day of the Victorian second school term.

The resolution said that seven months of negotiations had failed to progress issues such as pay, career structure, workload, contract employment and productivity offsets.

If there is no breakthrough by April 16, the union resolved to seek a protected action ballot which would cover such actions as state-wide, regional and sub-branch stop works of between one and 24 hours, bans and limitations, and protests if any Victorian Government MPs visited a public school.

The union says the Government has not agreed to any shift from its 2.5% wage policy since meetings began in August.

The union is seeking a 30% pay rise over three years, arguing that Victoria's most senior teachers are paid 8.9% less than those in WA and 3.5% behind NSW.

The union says that senior WA and NSW teachers are paid \$7,441 and \$2,822 respectively more than Victorian teachers at the same level.

The WA Industrial Relations Commission has today registered the latest agreement reached by the WA Government and the State's 27,000 teachers and administrators which will keep them as the highest paid in Australia.

The agreement, reached between the WA Government and the State School Teachers' Union, will provide wage increases of 12% across three years (3.75%, 4% and 4.25% respectively).

Commerce Minister Simon O'Brien said the agreement demonstrated the ability of the Government's wages policy to "deliver fair, balanced and economically sustainable outcomes for the Government and its employees".

Public sector union secretary to break branch records during sixth term

Karen Batt will become the longest-serving secretary in the Victorian public sector union's 126-year history during her sixth term.

Batt, the CPSU executive and branch council delegates have been returned unopposed in this year's elections.

Batt was elected Secretary in 1993 in a four-cornered contest and was then challenged by other union members in 1996 and 2000. She has, however, been elected unopposed in elections held since 2004.

Peter Lilywhite will serve another four year term as president, while Catherine Davies and Mark Nestor will remain as vice-presidents. Jim Walton will again serve as assistant branch secretary.

[Results of CPSU Victoria elections, AEC](#)

Cochlear bargaining orders case to resume in late May

Fair Work Australia's Commissioner Helen Cargill will on May 31 resume hearing the competing bids for bargaining orders from Cochlear and the AMWU (see [Related Article](#)).

The case has already run for five days last week (see transcripts for [Monday](#), [Tuesday](#), [Wednesday](#), [Thursday](#) and [Friday](#)) and will return for two days from May 31 and then on June 25.

High Court hears Barclay adverse action appeal

The High Court was today in Canberra hearing Bendigo TAFE's appeal against the Federal Court full bench ruling that it took unlawful adverse action against a teacher when it suspended him for sending an email as part of his role as an AEU delegate (see the High Court's [summary](#) and [background material](#) on the case.

PRINT PAGE 

Further Information

- Related Article [Shell should use oral fluid drug testing, not urine sampling, says AIRC](#)
- Related Article [FWA refuses to force shift from urine to saliva testing](#)
- Related Article [Cochlear fails to narrow AMWU's proposed bargaining order](#)

Advanced Search

Search for


Within From: Jan 1999

To: Apr 2012

Display 10 25

Words

Articles

SEARCH 

[Latest News](#) | [HR Stream](#) | [IR/HR Jobs](#) | [What's On](#) | [Resources](#) | [About Us](#)
[Free Trial](#) | [Subscribe](#) | [Feedback](#) | 

Specialist News

© Specialist News 2012