



## Ohio Supreme Court to consider whether direct observation method of employee drug-testing is an invasion of privacy

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Under current Ohio law, requiring an employee to submit a urine sample for drug testing does not violate the employee's right of privacy. However, on January 28, 2020, the Ohio Supreme Court will hear oral argument regarding whether a certain method of collecting the sample—direct observation—is permissible.

In [Lunsford v. Sterilite of Ohio, LLC](#), the Ohio Fifth District Court of Appeals reversed the Stark County Court of Common Pleas' decision. The court of appeals held that current and former employees of Sterilite stated a valid claim for invasion of privacy, alleging that they were required to produce a urine sample while a monitor for U.S. Healthworks (the lab administering the drug tests and also a defendant in the case) "kept his or her eyes fixed on the employee's groin area."

Both Sterilite and U.S. Healthworks appealed to the Ohio Supreme Court, arguing the invasion of privacy claims should have been dismissed. Sterilite argues it has a legitimate business interest in ensuring that employees don't tamper with their urine samples and that employees can't challenge mandatory drug screenings as an invasion of privacy.

The employees, on the other hand, argue that the case isn't about whether employers may conduct drug testing by collecting employees' urine samples. Rather, they argue that the direct observation method itself is an unreasonable invasion of privacy under earlier precedent.

Given the creative ways in which some employees seek to avoid testing positive for drugs or alcohol during employer-mandated testing, the Ohio Supreme Court decision could have a profound effect on an employer's ability to effectively maintain a drug-

free and safe workplace.

