

## **1087 EMPLOYEE DRUG-FREE WORKPLACE AND DRUG AND ALCOHOL PREVENTION POLICY**

All Department of Human Services (DHS) employees are prohibited from using or possessing controlled substances or alcohol while on duty or working with the presence of alcohol or illegal drugs in the employee's body, or abusing legal drugs. Abusing legal drugs includes using drugs prescribed for another person. Legal drugs are defined as medications prescribed by a licensed physician or medical facility for an employee or another person. Illegal drugs are defined as those for which the possession, use, or manner of use is prohibited by state law or the Controlled Substances Act, 21 U.S.C. § 801 *et seq.* Employees who engage in drug or alcohol abuse or illegal drug use face the risk of disciplinary actions including termination and the forfeiture of worker's compensation, medical and indemnity benefits.

### **I. Policy will be Strictly Applied**

- (A) This rule will be strictly applied according to its terms. Only terms or conditions appearing under this policy apply. For example, no Administrative Review is required to implement disciplinary action pursuant to this policy. This policy is to be administered in coordination with the DHS Policy 1078, Amendment 98 of the Arkansas Constitution, the Americans with Disabilities Act, and in coordination with part of DHS Policy 1084, Employee Discipline.
- (B) Nothing in this rule abrogates the employment at will doctrine. Nothing in this policy prevents disciplinary action for performance or conduct issues related to drug or alcohol use. Any departmental error that is trivial or formal or merely academic and that does not prejudice the substantive rights of an affected party and that in no way affected the final outcome of the case will be deemed harmless error and will not be grounds for overturning the agency decision.

### **II. Drug and Alcohol Test Information is Confidential**

All data, information, and results related to employee drug and alcohol testing are confidential. Disclosure of information will only be to those individuals whose official business duties necessitate disclosure or as required by law. All documents should be kept in a locked file cabinet with limited access. No data, information or results of an employee drug test should be maintained in personnel files.

### **III. Three Levels of Drug Testing to be Used**

- (A) Pre-Employment Test: All persons selected for new employment or a change of employment within DHS must submit to a drug test as a precondition of employment. All hiring decisions are contingent on the selectee passing the drug test. This applies to current DHS employees as well as external applicants.
- (B) Reasonable Cause or Suspicion Test: All employees are subject to reasonable cause drug and alcohol screening due to a reasonable cause or suspicious behavior. Any DHS employee involved in an accident while on DHS business

that causes property damage, and/or an injury to the employee or others should be tested.

- (C) Random Test: Employees in federally funded or designated safety sensitive job classifications or positions or engaged in drug prevention activities are subject to random drug testing as a condition of employment, or those subject to Employee Assistance Program (EAP) testing.

#### **IV. Pre-Employment Drug Testing Process**

- (A) All applicants selected for employment (includes applicants for temporary, emergency, and extra help positions) will be notified in writing (DHS Form 1956, Pre-Employment Drug Testing Process Applicant Notice) at the time of application or interview that an offer of employment is conditional upon passing a pre-employment drug test. The written notification will inform applicants of the consequences of: (a) failing to appear for testing, (b) a test indicating positive for drugs or alcohol, (c) failing to provide an appropriate specimen, and (d) failing to cooperate during a testing procedure.

Note: An applicant or employee who refuses or fails to complete and pass the required drug test will not be eligible for selection for hire.

- (B) Upon conditional selection of an individual for employment, the hiring official must notify the selectee that the selectee is conditionally selected for employment contingent upon his/her successfully passing a pre-employment drug test. The hiring official or designee will provide instructions for taking the test.
- (C) DHS will select the drug testing site and pay for the initial drug test. The hiring official or designee must submit the DHS Drug Test Authorization E-mail Transmittal Form 1957 to Human Resources (HR).
- (D) The drug test must be performed within 24 hours. Within 24 hours of the initial job offer notification the selectee must pick up a Chain of Custody form, take the form to the testing location, and provide a sample for testing. The testing process and results from the lab will be completed prior to the selectee reporting to work the first day.
- (E) Keeping in mind that some testing locations are closed on weekends and holidays, the hiring official or designee will not make the initial notification on the last workday before a weekend, holiday, or scheduled time off.
- (F) If extenuating circumstances beyond the selectee's control prevent the selectee from providing a sample within 24 hours, the selectee must request an extension within 24 hours of the initial notification of selection. Scheduling or transportation problems experienced by the selectee are not extenuating circumstances. The decision of whether to grant the extension will be made by the hiring supervisor in conjunction with the HR Liaison. The supervisor must notify

the selectee of the decision verbally within one working day, followed by written notification.

## **V. Drug Test Results**

- (A) Drug test results are forwarded directly to DHS HR. DHS HR then notifies the supervisor of the results and, if it is a pre-employment drug screen, whether the applicant is eligible or not eligible for hiring.
- (B) If the results of the drug test are positive for controlled substances, the hiring supervisor or designee will notify the selectee in writing of the results and the selectee will not be considered further for the position.
- (C) Employees testing positive for controlled substances will be handled in accordance with this policy.
- (D) Requests for expanded drug panels should be submitted for review by HR and the Office of Chief Counsel (OCC).

## **VI. Reasonable Suspicion Drug or Alcohol Testing Process**

- (A) DHS may require a blood test, urinalysis, or other drug/alcohol screening for employees any time there is reasonable cause to suspect the employee has violated the Substance Abuse Free Workplace Rules. If a supervisor orders a Drug/Alcohol Test due to a reasonable cause or suspicious behavior, they must document the employee's behaviors or performances of their job duties on a DHS 1955 - Reasonable Suspicion Documentation form, and then fill out and submit the DHS Drug Test Authorization E-mail Transmittal 1957 Form. The 1955 Form should be forwarded to the HR Liaison and also to the Compliance office at [DHS.HR.compliance@dhs.arkansas.gov](mailto:DHS.HR.compliance@dhs.arkansas.gov). Reasonable cause to suspect a violation of the rules may be established by any of the following:
  - (1) Observed impairment of job performance.
  - (2) Uncharacteristic or erratic behavior.
  - (3) The employee's attendance changes, e.g., habitual absenteeism.
  - (4) Direct observation (by a manager, supervisor, or other DHS employee) of drug or alcohol use or possession during working hours or while on DHS premises.
  - (5) A workplace accident, property damage, or an accident involving a DHS vehicle.
  - (6) Physical symptoms indicative of drug or alcohol use. Including, but not limited to, slurred speech, tremors, drowsiness, pupils dilated or constricted, irritability, hyperactivity, general motor impairment, disorientation, or the smell of alcohol on the person.

- (7) Arrest or conviction for a drug or alcohol related offense, or the identification of an employee as the subject of a criminal investigation into illegal drug possession, use, or trafficking.
- (8) Evidence that the employee has tampered with a previous drug or alcohol test.
- (9) Evidence that drugs have been tampered with or are missing from a unit or designated area to which the employee has access.
- (10) Any other facts or circumstances which would cause a reasonable person to believe that the employee is in possession of or under the influence of drugs or alcohol.

(B) Timeframe for Reasonable Cause/Suspicion Testing

An employee selected under reasonable cause/suspicion for drug or alcohol testing **must report to the designated testing site within four (4) hours of notification.** The employee is subject to reasonable cause testing only on scheduled workdays.

- (1) An employee failing to submit to testing within four hours of notification will be terminated. If the employee tampers with the sample or in any way falsifies test results, including the use of masking agents or chemicals, the employee will be terminated and will not be eligible for rehire.
- (2) If the employee is to be tested at a location other than the employee's work site, supervisors will be responsible for arranging transportation to the test site in cases of reasonable cause testing. If an alcohol test determines that the employee is under the influence of alcohol to the point of impairment, the supervisor will make arrangements for the employee to be transported to his or her place of residence.

## VII. Random Drug and Alcohol Testing Process

- (A) Definitions of Safety-Sensitive and Federally Funded Position (§ 2, Amend. 98 of the Ark. Const; Ark. Code. Ann. § 11-14-102)

“Safety-sensitive position” means:

- (1) Any position involving a safety-sensitive function pursuant to regulations governing drug or alcohol testing adopted by the United States Department of Transportation or any other rules, guidelines, or regulations adopted by any other federal or state agency, including DHS; or,
- (2) Any position specified in writing by DHS as a safety sensitive position in which a person performing the position while under the influence of drugs may constitute a threat to health or safety, including without limitation a position that requires any of the following activities:

- (a) Carrying a firearm,
  - (b) Performing life-threatening procedures,
  - (c) Working with confidential information,
  - (d) Working with documents pertaining to criminal investigations,
  - (e) Working with controlled substances, hazardous or flammable materials,
  - (f) Working with food, or medicine, or
  - (g) Working in a position in which a momentary lapse in attention could result in injury, illness, or death to another person including without limitation a position that includes the operating, repairing, maintaining, or monitoring of heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties; or,
- (3) A “designated position,” means a position in which a person is employed by a state agency to provide care, supervision, treatment, any other service, or has any direct contact with children, the elderly, persons with mental illness, developmental disabilities, or intellectual disabilities; or,
- (4) A “designated financial or information technology position” means a position specified by the Division Director or Office Chief within DHS in which the person placed in the position:
- (a) Has the authority or capability via computer access or otherwise to receive payments or to issue, initiate, or approve a contract, grant, warrant, payment, or procurement in any form,
  - (b) Approves security access to information systems,
  - (c) Authenticates and configures user security access to information systems,
  - (d) Acts in the capacity of information technology network, application, or system administrator,
  - (e) Manages or directs information technology network, application, or system administrators, or
  - (f) Develops, designs, programs, or maintains information technology networks, applications, or systems; or,

“Federally funded position” means any position, whether full time, part time, or extra help, that is paid or supported in part or in whole with federal funds.

- (B) Division directors, Office Chiefs, or designees, HR, and OCC will identify job classifications/positions within divisions or institutions that are safety sensitive, federally funded, or require integrity to a drug prevention job mission. These positions will be randomly selected at time intervals determined by HR. HR will create a random list, or the drug testing contractor will generate a list of names for the random drug testing. Once an employee is selected for testing, HR will notify the employee's supervisor and the employee must report for drug testing procedures.
- (C) Timeframe for Random Screening

An employee selected under random screening for drug or alcohol **must report to the designated testing site within twenty-four (24) hours of notification**. The employee is subject to random testing only on scheduled workdays. Division Directors or Office Chiefs may provide an extension for the test for extenuating circumstances. An employee failing to submit to testing within twenty-four (24) hours, without the Division Director/Office Chief extension, of notification will be terminated. If the employee tampers with the sample or in any way falsifies test results, including the use of masking agents or chemicals, the employee will be terminated and will not be eligible for rehire.

### **VIII. Failure to Provide Sample**

Normal drug screening uses a urinalysis test. If the employee or applicant is unable to provide a sample when he or she reports to the sampling site, the person to be tested may opt to provide a blood sample or a hair sample. If blood or hair is provided, the cost of testing will be at the employee or applicants own expense. If a breathalyzer is requested, the employee must comply with the request. Failure to provide whatever sample is requested or required will have the same consequences as testing positive for drugs or alcohol.

### **IX. If Employee or Selectee Disagrees with Findings**

If an employee or selectee disagrees with the findings of the drug or alcohol test, the employee may arrange to have a portion of the original sample retested at a laboratory certified by the Substance Abuse Mental Health Service Administration (SAMHSA). The employee must arrange and pay for the second test. The second test must be performed within five working days after learning the results of the first test. If the second test is negative for the presence of drugs or alcohol, the results from the second test are considered final.

### **X. Consequences for Violations**

The supervisor of an employee who tests positive for drugs or alcohol will be notified and the employee must abide by the following terms:

(A) First Offense: Suspension and Referral to EAP/Rehabilitation

- (1) Ten days suspension without pay. Disciplinary actions will not be applied for drug or alcohol suspensions.

Note: If the employee's conduct or performance of duties is affected due to violation of this policy, such conduct or performance can affect a performance evaluation and require disciplinary action through DHS-1173.

- (2) Sign and adhere to a DHS-1958 "Return to Work Agreement" to refrain from all illegal drug use, and alcohol during work times. Failure to sign or fulfill the terms of this agreement is a second offense.
- (3) An employee must enroll in the EAP and request substance abuse services and fully participate. An employee must obtain an EAP Certification stating the employee has enrolled prior to returning to work from the ten-day suspension. Failure to complete any of the above is a second offense.
- (4) An employee must participate in mandatory EAP and random drug and alcohol screening for at least one year. The employee is responsible for the cost of the drug and alcohol tests. Failure to complete these tests at the times determined by DHS is a second offense.

(B) Second Offense: Termination of Employment

- (1) Second offense includes the failure to meet any condition imposed as a result of a first offense.
- (2) Any employee committing a second offense under this policy will be immediately terminated. A terminated employee forfeits eligibility for workman's compensation, and medical and indemnity benefits.

**XI. Employee Assistance Program**

- (A) EAP is an established program capable of providing problem assessment, short-term counseling, referrals to other providers, follow-up services, and education and training.
- (B) If an employee in the course of employment voluntarily enters EAP or an approved treatment program requesting services related to substance abuse, DHS has the option of not requiring follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two-year period after completion of the program. Advance notice of a follow-up test will not be given to the employee to be tested.
- (C) DHS will not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment for a drug-related or alcohol-related problem, entering an employee assistance program for drug-related or alcohol-related problems or entering a drug or alcohol rehabilitation program, if the employee has not previously tested positive for drug or alcohol use.

## **XII. Searches and Investigations**

- (A) If there is evidence or reasonable suspicion of an employee using, selling, storing, or distributing illegal or controlled drugs on DHS premises, employees are on notice by this policy that a drug investigation, search, or both can be conducted at any time, with or without police involvement.
- (B) DHS and divisions reserve the right to seize all drugs, paraphernalia, or contraband found on the employer premises, including desks and lockers, and that management may turn over such evidence to the appropriate authorities for testing or prosecution. See DHS Policy 1065 Workplace Searches for more information.
- (C) DHS and divisions may use surveillance equipment in any work or office area (excluding bathroom areas).

## **XIII. Amendment 98 of the Arkansas Constitution: Medical Marijuana**

- (A) DHS takes the position that illegal drugs have no place in the work environment. Like many other states, Arkansas enacted law in 2016 permitting the use of medical marijuana under specific circumstances for qualifying patients or designated caregivers. DHS will not discriminate against an applicant or employee in hiring, termination, or any term or condition of employment, or otherwise penalize an applicant or employee, based upon the applicant's or employee's past or present status as a qualifying patient or designated caregiver.
- (B) Under the federal Controlled Substances Act, marijuana use for any purpose remains prohibited and marijuana is prohibited as a Schedule 1 illegal drug. While the Americans with Disabilities Act ("ADA") prohibits employers from discriminating against qualified individuals on the basis of a disability and requires reasonable accommodations to employees with disabilities, ADA protections are specifically excluded for employees currently engaging in the illegal use of drugs, including drugs that are unlawful under the Controlled Substances Act.
- (C) DHS receives federal funding through various grants and other programs. Federal grant funds require DHS to provide a drug-free workplace and drug-free awareness program in compliance with the Drug-Free Workplace Act. Failure to comply with the standards of that Act could result in reduction or loss of funds. DHS has adopted a zero-tolerance position and applies the standard to all safety-sensitive and federally funded positions. **Current use of marijuana is prohibited by individuals in safety-sensitive or federally funded positions.**
- (D) DHS will presume an individual is engaged in current use of marijuana when a positive test result for marijuana is received.

#### **XIV. Americans with Disabilities Act (ADA)**

The ADA specifically addresses illegal drug use, alcohol and testing programs. Current users of illegal drugs are excluded from ADA protections and subject to discipline or termination. While ADA protects alcoholism and alcoholics as a class, it also makes alcoholics subject to discipline and discharge if they are found intoxicated at work, or cannot meet the normal standards of performance and conduct policies. ADA also protects persons dependent on legally-obtained medications. However, supervisors are not able to determine what substances are influencing the employee's conduct or behavior, therefore, sending the employee for drug testing may be necessary to determine the cause. The testing must be done by an authorized lab and Medical Review Officer to determine whether there is use of illegal drugs, or use of lawful medications. (See DHS Policy 1078, Americans with Disabilities Act).

Replacement Notation: This policy replaces DHS Policy 1087 dated January 1, 2013.