

OREGON MILITARY DEPARTMENT	NUMBER: AGP- 99.100.02
ADJUTANT GENERAL PERSONNEL	EFFECTIVE DATE: June 1, 2023
SUBJECT: Drug Free Workplace and Drug/Alcohol Testing	

APPLICABILITY: This policy/procedure applies to all Oregon Military Department (OMD) state employees, permanent, limited duration, seasonal, represented, management service, executive service, temporary, and final applicants.

AUTHORITY/REFERENCE: DAS statewide policies 50.000.01 (Drug-Free Workplace) and 50.000.02 (Drug Testing of Employees in Designated Job Profiles); OAR 105-050-004 (Drug Testing of Final Applicants for Certain State Classifications/Positions), Title 49, CFR, Part 382 (Controlled Substances and Alcohol Use and Testing), and Federal Motor Carrier Safety Administration (FMCSA), OAR 125-155-0000 through 125-155-0900 State Vehicle Use and Access.

ATTACHMENTS: Last Chance Drug Rehabilitation Agreement (See page 12 sample).

PURPOSE: To provide the public with a drug-and alcohol-free service environment and employees with a drug/alcohol free workplace that promotes employee safety, health, and efficiency.

BACKGROUND: The OMD values the state employees who provide support to the Oregon National Guard. The OMD has both a responsibility and a commitment to ensure a drug/alcohol free workplace to provide a productive and safe work environment to all employees.

DEFINITIONS:

1. **Accident:** Any incident, involving a state employee, where someone is injured, or property is damaged.
2. **Adulterate/Alter a Sample:** The intentional consumption of chemicals or any other products that interfere with the drug and/or alcohol testing process or any other intentional act to render a urine sample unfit for testing or alter an alcohol test result.

3. **Alcohol Test:** A breathalyzer test administered by a Breath Alcohol Technician (BAT) to determine the presence of alcohol.

4. **Breath Alcohol Technician (BAT):** Individuals who instruct and assist individuals in the alcohol testing process and operate an Evidential Breath Testing Device.

5. **Controlled Substances:** The term “drug” and “controlled substances” are used interchangeably in this policy. They refer to one or more of the following controlled substances as identified in schedules I through V of Section 202 of the Controlled Substance Act (21 USC 812) and CFR 1308.11 through 1308.15 unless authorized by a legal prescription or are exempt from State or Federal Law.

6. **Controlled Substance Test:** A urine test performed by a licensed testing facility to determine the presence of controlled substances.

7. **Conviction:** Found guilty in a court of law for a crime.

8. **Diluted Specimen:** A urine specimen that has a specific gravity less than 1.003 and a creatinine of less than 20.

9. **Distribution:** To hand out, giveaway, trade or sell to an individual.

10. **Employee:** Any full-time, part-time, limited duration, seasonal, and temporary state employee.

11. **Employer:** One who directs the work and has discretionary power over a state employee.

12. **Final Applicant:** Any person who is the final applicant to a position, where a bona fide job offer has been made subject to passing a pre-employment, controlled substance test.

13. **Injury:** An injury requiring professional medical attention.

14. **Manufacture:** To make or produce.

15. **Medical Review Officer (MRO):** A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by an employer’s drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with their medical history and any other relevant biomedical information.

16. **Possession:** To have an item, which an individual is in physical control of or located within an item of personal property or in the property under control by an individual.

17. Refusal to Test: Refusal to submit to a controlled substance or alcohol test means that an employee or applicant:

- A. Fails to provide adequate urine for a controlled substance test without a valid medical explanation after they received notice of the requirement for urine testing pursuant to this policy and provisions of a Drug Testing of Employees in Designed Job Profiles Policy 50.000.02 and any applicable bargaining agreements.
- B. Fails to provide adequate breath for testing without a valid medical explanation after they received notice of the requirements for breath testing pursuant to this policy.
- C. Engages in any conduct that clearly obstructs the testing process.
- D. Fails to show up for a test within a reasonable amount of time after being directed.
- E. Fails to remain at the testing site until the testing process is complete.
- F. Fails to permit the observation of testing (if required).
- G. Fails to comply with the direction of the testing facility (ex. Empty pockets).

18. Reasonable Suspicion: Specific, articulated observations concerning the appearance, behavior, speech, or body odors of an employee. Reasonable suspicion observations may also be based on the known chronic and/or withdrawal effects of controlled substances. *This observation must be made by either an individual trained to make reasonable suspicion determinations, or the opinion of a medical professional employed by the agency.*

19. Safety-Sensitive Functions: Operating a commercial motor vehicle; loading and unloading; supervising of or assisting in loading and unloading, attending a commercial vehicle being loaded or unloaded, remaining in readiness to operate the vehicle; servicing, inspecting, or conditioning a commercial motor vehicle at any time; any time during an accident; any duty set forth in Title 49, CFR, Part 382; carrying a firearm for security purposes, performing work that could impact safety of self or others.

20. Split Specimen: A urine specimen that is subdivided into containers labeled as primary and split specimen.

21. Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or The International Certification Reciprocity Consortium/Alcohol & Other Drug Abuse). All must have knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substance related disorders.

22. Testing Facility: The facility performing drug/alcohol testing will be licensed and operated in accordance with ORS 438.010 and OAR 333-24-305 through 350.

23. Workplace: All property and facilities owned, leased or rented by the OMD including grounds, buildings, vehicles and other equipment as well as any site where an employee is performing work for the employer.

GUIDANCE:

1. General Standards: OMD is committed to achieving a workplace free from the effects of illegal drug and alcohol use for the safety and well-being of the public and staff while also complying with the Drug-free Workplace Act of 1988. OMD staff will be free from using drugs or alcohol in the workplace. OMD also recognizes that abuse of drugs and alcohol can become a problem for some staff. OMD supports staff in obtaining appropriate services and will support them during recovery, when possible.

Staff alcohol consumption or marijuana use is outside the scope of state employment and duties, must be limited to after work hours, after state duties have ended, off of state/OMD property, and state staff must not be impaired in the workplace. **Commercial Driver License (CDL) holders are prohibited from marijuana use at any time.** Drug testing is required as a condition of employment for staff required to hold a CDL or as provided by collective bargaining agreement.

A. Pre-Employment Testing:

Controlled Substance: All applicants who are applying for a covered position as outlined by position requirements designated by the Appointing Authority (unrepresented) or collective bargaining agreements (represented) or CDL holders are required to submit to a pre-employment-controlled substance test. An applicant whose urine specimen is diluted will no longer be considered for employment unless there is a documented medical reason or an additional specimen has been provided, tested and passed a drug screen within the time frame set by the OMD. An applicant whose diluted specimen has any detectable amounts of controlled substances, will not be given the opportunity to retest.

B. Post-Accident Testing:

Alcohol: Any state employee who while operating a state-owned motor vehicle *or* a personal motor vehicle while on official State business and is involved in any accident which involves a fatality or injury requiring professional medical attention and/or is deemed by competent authority to be at fault shall be tested for alcohol by a breathalyzer within two (2) hours of the incident but not later than eight (8) hours after the incident. If the test required is not administered within (2) hours following the accident, the employee's supervisor shall prepare a report stating the reason the test was not administered promptly. If the test is not administered within eight (8)

hours following the accident, all attempts to test shall cease and the supervisor shall prepare a report indicating why the test was not administered. All reports shall be forwarded to the OMD Adjutant General Personnel (AGP) Director.

Controlled Substances: Any state employee operating a state-owned motor vehicle or a personal motor vehicle while on official State business and is involved in any accident which involves a fatality or injury requiring professional medical attention and/or is deemed to be at fault by competent authority, shall be tested for controlled substances. If the test required is not administered within 32 hours following the accident, the employee's supervisor shall prepare a written report stating the reasons the test was not promptly administered. All reports shall be forwarded to the OMD AGP Director.

C. **Reasonable Suspicion Testing:**

Alcohol Testing: A state employee may be required to submit to an alcohol test when the employer has reasonable suspicion based on specific, articulated observations concerning the appearance, behavior, speech or body odors of the employee. *This observation must be made by either an individual trained to make reasonable suspicion determinations, or the opinion of a medical professional employed by the agency.* Testing for alcohol is to occur, if possible, within two (2) hours of the employee being notified of the test but in any case, not later than eight (8) hours following the employee notification.

Controlled Substances: A state employee will be required to submit to a controlled substance test when the employer has reasonable suspicion, based on specific, articulated observations concerning the appearance, behavior, speech, or body odors of an employee. Reasonable suspicion observations may also be based on the known chronic and/or withdrawal effects of controlled substances. *This observation must be made by either an individual trained to make reasonable suspicion determinations, or the opinion of a medical professional employed by the agency.* The test must be administered within 32 hours following a reasonable suspicion determination.

D. **Return to Duty Testing:**

Controlled Substances: State employees who test positive for controlled substance use while on duty shall undergo a return-to-duty controlled substance test with a verified negative result before returning to duty. Refer to the Federal Motor Carrier Safety Administration (FMCSA) for a CDL holder.

Alcohol: State employees who test positive for alcohol misuse while on duty shall undergo a return-to-duty test with a result indicating a BAC of less than .02 before returning to duty. Firefighters must have a BAC of 0.00. Refer to the FMCSA for a CDL holder.

E. **Follow-up Testing:**

Controlled Substances: State employees testing positive for controlled substances are subject to follow-up testing of not more than six (6) tests within the next twelve (12) months.

Alcohol Testing: State employees testing positive for alcohol are subject to follow-up testing of not more than six (6) tests within the next 12 months.

F. **Random Testing:**

- i. State employees may be subject to random testing for controlled substances and alcohol in accordance with Collective Bargaining Agreements and Federal Motor Carrier Regulations.
- ii. Before directing an employee to submit to an alcohol or controlled substance test for reasonable suspicion, the employee shall be notified that the test is required pursuant to this policy. Notification may be given orally or in writing.
- iii. Results of all alcohol and controlled substance tests shall be treated in a confidential manner as mandated by federal and state law.
- iv. No state employee shall refuse to submit to any alcohol or controlled substance test required under this policy. Any employee who refuses to submit to such testing shall be subject to disciplinary action up to and including termination.

G. **Pre-Duty Use (Alcohol):**

- i. Force Protection Officers shall not report for duty within eight (8) hours after consuming alcohol in accordance with Air Force Regulation 31-117, Arming and The Use of Force and Air Force Regulation 31-118, Security Forces Standards and Procedures.
- ii. Fire Protection personnel shall not report for duty within eight (8) hours after consuming alcohol.
- iii. No state employee shall report for duty within four (4) hours after consuming alcohol. This includes CDL holders.
- iv. No state employee will be impaired while in the workplace.

H. **Alcohol, Drug Consumption:** No state employee shall consume or be under the influence of alcohol or illegal substance while on the premises or on paid state time, encompassing the hours of their work shift, to include during lunch break. This also applies to remote working. State employees are not allowed to consume marijuana, alcohol, or any illegal or intoxicating substance before or while operating a state vehicle.

- I. **Alcohol Use Following an Accident:** No state employee required to take a post-accident alcohol test pursuant to this policy shall use alcohol for eight (8) hours following the accident or until they undergo a post-accident alcohol test, whichever occurs first.
- J. **Alcohol in State Vehicles:** Staff must not transport opened or unopened alcoholic beverages in a state-owned or leased vehicle or in a personal vehicle on official state business unless required to do so for official state business and directed in writing by their supervisor. In such permissible cases, the alcoholic beverage must be locked in the trunk of the vehicle.
- K. **Pre-Duty Use (Controlled Substance):** State employees will not be impaired while on paid state time, including from those that are prescribed for medical purposes.
- L. **Controlled Substance Use:** No state employee shall be on the premises or report for duty or remain on duty when the employee uses any controlled substance except when the use is pursuant to the instructions of a licensed physician who has advised the employee that the substance does not adversely affect the employee's abilities.

2. **Cost for Testing:** The Department will pay for all testing except for follow-up testing and split specimen testing. Split specimen testing and follow-up testing will be paid by the affected employee at the time the test is taken. The employer will reimburse the employee for split specimen testing **IF** the test results are returned as negative.

RESPONSIBILITIES:

- 1. **The Adjutant General:** Has overall responsibility to ensure the Department is in compliance with this policy.
- 2. **Adjutant General State Personnel Director:** Manages the implementation of this policy and ongoing testing as required.
- 3. **Adjutant General Safety Specialist:**
 - A. Is the Designated Employer Representative and is responsible for the coordination of the Alcohol and Drug Testing Program through program directors, managers, and supervisors.
 - B. Acts as the liaison between the Department and the vendor providing the services.
 - C. Manages the notification process to supervisors for employee testing.
 - D. Confidentially reports positive test results to the supervisor and strictly limits the knowledge to those who have a need to know.

- E. Will promote a drug/alcohol free workplace by circulating materials, which inform employees, directors, managers, and supervisors of the effects of drug/alcohol impairment in the workplace and behavioral symptoms of impairment.
- F. Coordinate training for appropriate supervisors of CDL holders to take the reasonable suspicion testing for supervisors.

4. Managers and Supervisors:

- A. Discuss with HR any behavior or job-performance factor that may indicate the use of drugs, alcohol, or other violations of this policy.
- B. Ensure individuals authorized to make reasonable suspicion determinations have been trained, particularly if supervising CDL holders.
- C. Ensure if an employee is suspected of being impaired at work due to suspicion of drug or alcohol misuse that information is documented on the behavior and does not allow the employee to continue to perform the function. If an employee is removed from the workplace, the supervisor should discuss the situation with the AGP Director prior to taking any action. Each situation involving reasonable suspicion will be handled on a case-by-case basis.
- D. Ensures all candidates of classifications specified in the paragraphs under the "Guidance" section 1. A and B that are offered employment complete a pre-employment drug test.
- E. If possible, be present at collection sites when reasonable suspicion or post-accident testing occurs.
- F. Notify the AGP Director when notified by staff when there is a loss of acceptable driver license status or citation, arrest, or conviction.
- G. Required to report an observation or report of state employees who appear to be under the influence of alcohol or drugs to the AGP Director.

5. State Employees:

- A. Are expected to report to work fit for duty and refrain from the misuse of controlled substances and alcohol, as stated in this policy.
- B. Any state employee taking prescription and/or non-prescription medications which might impair the employee's ability to perform the duties of their position in a safe manner shall notify their supervisor of that fact and receive prior authorization to work.

- C. Shall notify the AGP Director in writing of any criminal drug statute citation, arrest, or conviction for a violation, not later than three business days.
- D. State employees whose position requires driving as an essential function of their job shall immediately inform their supervisor or the AGP Director when there is a loss of acceptable driver license status.
- E. Report any observations of state employees who appear to be under the influence of alcohol or drugs to a supervisor or manager.

6. Final Applicant (if required for position):

- A. Shall sign a release for a pre-employment drug test.
- B. Shall pass a pre-employment drug screening test prior to beginning employment.
- C. Shall not receive a final employment offer following a positive drug test.

TESTING:

1. Drug Testing:

- A. Tests must not be delayed except for state or national emergencies. All elements of the alcohol and controlled substances testing program shall be provided through a private vendor selected through the competitive bidding process under contract with the Department of Administrative Services or the OMD.
- B. Drug testing procedures for employees include split specimen techniques. The state employee provides a urine specimen that is subdivided into containers labeled as primary and split specimen in front of the employee during the collection process. A chain of custody document is completed and both specimens are forwarded to a certified laboratory under contract with the state. Only the primary specimen is used in the urinalysis. If the test is positive for one or more drugs a confirmation test will be performed. The split specimen remains sealed and stored. All positive drug test results are reviewed and interpreted by an MRO under contract with the state, before they are reported to the Safety Specialist. If the laboratory reports a positive result to the MRO, the MRO contacts the employee and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen. If the employee provides appropriate documentation and the information is verified through the employee's physician, the MRO will report the test as negative.
- C. The MRO will make three (3) attempts to contact the state employee. If the MRO is unsuccessful at contacting the employee, the results will be determined as positive. If the test result of a primary specimen is positive, the employee may request the MRO

have the split specimen be tested in a different certified laboratory for the presence of drug(s) for which a positive result was obtained in the test of the primary specimen. The MRO shall honor such a request if it is made within **72 hours** of the employee having been notified of a verified positive test result after speaking with the MRO. Cost of split specimen testing is the responsibility of the employee.

2. Alcohol Testing:

- A. Two breath tests are required to determine if a person has a prohibited alcohol concentration, a screening test and confirmation test. Any result from the screening test is considered negative if the alcohol concentration is less than .02 for employees or .00 for Firefighters and CDL holders. If the alcohol concentration is .02 or greater, a confirmation test must be conducted.
- B. The Evidential Breath Testing shall be conducted by BATs employed by a drug/alcohol testing organization under contract with the State of Oregon.

- 3. Confidentiality of Test Results:** State employee alcohol/drug test results and records are maintained under strict confidentiality by the OMD AGP Office, the drug testing laboratory, the MRO, and the alcohol testing facility. Direct supervisors will be informed if the test is returned positive. The results can only be released to conduct official business unless there is expressed written consent of the employee.

Exceptions to the confidentiality of the test results are limited to provisions of the public records law and the public employee collective bargaining act as well as decision makers in arbitration, litigation, or administrative proceedings arising from a positive drug or alcohol test. Except as required or allowed by law or expressly authorized and required under Title 49, CFR, Part 382, the Department shall not release to a third-party information contained in records required to be maintained under this section.

CONSEQUENCES FOR ENGAGING IN PROHIBITED CONDUCT:

- 1. **Action:** State employees who engage in prohibited conduct as described in this policy may subject themselves to disciplinary action up to and including dismissal from state service. Final applicants who engage in prohibited conduct shall no longer be considered for employment for the position for which they applied.
- 2. **Use of Paid Time:** A state employee will be granted paid time for reasonable suspicion, post accident, and return to duty testing. This includes time traveling to and from the test site if such travel is required.
- 3. **Attendance in Rehabilitation Program:** Employees shall utilize paid leave to participate in a rehabilitation program. When the employee has exhausted all of their leave time, they may be placed on leave without pay to participate in a rehabilitation program and for performing follow-up testing in order to return to work.

4. **Positive Drug/Alcohol Test Results:** A state employee who tests positive by reasonable suspicion, post accident or periodic testing may be subject to disciplinary action up to and including termination.

A. Upon receiving notification from the vendor of an employee testing positive for controlled substance or alcohol use, the appointing authority shall facilitate a pre-disciplinary investigation.

B. As a result of the assessment and the discovery conducted at the pre-disciplinary investigation, the appointing authority shall decide on the appropriate action(s) such as disciplinary action up to and including termination.

INQUIRIES/QUESTIONS: Questions may be directed to AGP at (503) 509-2152.

A handwritten signature in cursive script that reads "Tracy Garcia".

Tracy Garcia
HR Director
Adjutant General State Personnel

SAMPLE

LAST CHANCE DRUG REHABILITATION AGREEMENT

The following agreement is entered into between the Oregon Military Department and _____ henceforth to be referred to as employer and employee respectively. This agreement serves as notice to the employee of what is expected for continued employment with the employer.

1. I agree to be evaluated by a qualified Substance Abuse Professional (SAP), and if required, I shall immediately enroll and continue in a certified drug/alcohol abuse inpatient or outpatient rehabilitation program recommended by the SAP. I understand that should I fail to successfully complete the recommended treatment program, my employment with the employer will be terminated.
2. I agree to comply with and complete the conditions of any "aftercare plan," as recommended by my treatment counselor. If I must be absent from any aftercare session, I will notify the employer. The employer has my consent to verify attendance at required meetings. If I do not continue the aftercare program, I understand that my employment is terminated.
3. I agree that the signing of this agreement shall allow my employer to contact treatment or health care providers who may have information regarding my drug/alcohol condition and my compliance with the SAP recommended treatment and terms of this agreement. I authorize these providers to discuss all information regarding my drug and/or alcohol abuse and or treatment program with my employer.
4. I agree to return to work immediately upon successful completion of the drug/alcohol rehabilitation program. I further agree that should I be required to attend an outpatient program, which my time away from work for such appointments will only include the time necessary for the appointment and travel to and from the appointment.
5. I understand this agreement constitutes a FINAL WARNING and is non-precedent setting for any other employees with the employer in the future. Each case will be reviewed on a case-by-case basis and will be reviewed on its own merit.
6. I understand the Employee Assistance Program (EAP) is available to me should personal problems arise in the future which may have an affect on my ability to remain in compliance with the employer's drug/alcohol policy and this agreement.
7. I understand that violation of the employer's drug/alcohol policy at any time in the future will result in my termination of employment.
8. All parties to this agreement understand that the undersigned employee will be terminated should he/she exhibit deficient performance or conduct.
9. I understand the terms and conditions of this agreement. I also understand that this agreement does not guarantee me employment for any set period of time. I have had the opportunity to discuss it with my representative. I sign this agreement free from duress or coercion. This agreement will be retained in my official personnel file for a period of three (3) years.

Personal Commitment:

I pledge and agree to abide by the terms of this agreement. I understand that a violation of, or noncompliance with, any of these terms will result in my termination of employment. I further pledge to remain free from all illegal drugs and not to abuse legal drugs during my term of employment.

SAMPLE DO NOT SIGN
Employee _____ Date _____

SAMPLE DO NOT SIGN
Appointing Authority _____ Date _____

SAMPLE DO NOT SIGN
Employee Representative _____ Date _____