



DEPARTMENT OF CORRECTIONS
Human Resources



Title:	Drug and Alcohol Testing of Employees	DOC Policy: 20.5.18
Supersedes:	N/A	
Applicability:	All employees. Refer to applicable collective bargaining agreements for specific provisions for represented employees	
Directives Cross-Reference:	None	

I. PURPOSE

To help ensure the work place is free from the effects of drug and alcohol abuse.

II. DEFINITIONS

- A. "Controlled substance" is defined in accordance with ORS 475.005(6). Prohibited drugs/controlled substances include marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and substances specified in schedules I through V of Section 202 of the Controlled Substances Act, 21 USC 811, 812 and as defined in 21 CFR 1300.11 through 1300.15 unless authorized by a legal prescription or are exempt from federal or State law.
- B. "Under the influence" of controlled substances including marijuana or alcoholic intoxicants covers not only all the well-known and easily recognized conditions and degrees of impairment and intoxication, but also conditions which deprive the user of that clearness of intellect and control the employee would otherwise possess.
- C. Reasonable suspicion of prohibited drug use, possession, manufacture, distribution, or selling, or for prohibited alcohol use is based on:
 - 1. Direct observation of abnormal behavior or impairment to mental or physical behavior/performance, e.g., slurred speech, alcohol on the breath, difficulty in walking or performing job activities, etc.;
 - 2. Direct observation of use, possession, etc.
 - 3. The opinion of a medical professional (doctor, nurse or other related professional practitioner qualified by education or experience) employed at the work site that an employee is using a prohibited drug;
 - 4. Documented or verified information concerning the workplace manufacture, distribution, selling, possession or use of a prohibited drug, or use of alcohol on the job or before reporting for duty;
 - 5. A work-related accident in conjunction with an above basis for a reasonable suspicion.

III. POLICY

In maintaining an alcohol and drug-free workplace, the Department of Corrections implements a program of drug and alcohol testing of employees. The presence or treatment of a substance use problem will not excuse an employee from meeting performance, safety or attendance standards or following other department instructions.

A. In addition to specific testing provisions for employees who are required to possess a Commercial Driver's License (CDL) in the performance of their duties (see DOC Policy 20.5.19), specific testing provisions for certain employees in the Inspections Division (see DOC Policy 20.5.20), and specific testing provisions for certain represented employees (see applicable collective bargaining agreements), the following testing provisions are implemented:

1. Management and executive service employees are subject to reasonable suspicion drug and alcohol testing. Refusal to submit to such testing may result in disciplinary action.
2. Any employee who is not otherwise subject to mandatory reasonable suspicion testing may be requested to voluntarily submit to reasonable suspicion drug and alcohol testing. Unless otherwise provided by policy or collective bargaining agreement, refusal to submit to such testing shall not result in disciplinary action; however, the employee may be disciplined for exhibiting inappropriate behavior in the workplace, if appropriate and applicable.

B. Prohibited Conduct: The following conduct is prohibited:

1. The buying, selling, or providing, or possession for the purpose of buying, selling, or providing controlled substances including marijuana while on department property or in any vehicles or equipment used for department business, or during work hours, including paid rest and meal periods.
2. Being under the influence of alcoholic intoxicants, or consuming alcoholic intoxicants while in any vehicles or equipment used for department business at any time, or on department property during work hours, including rest and meal periods.
3. Being at work with a blood alcohol content that reaches or exceeds .02% by volume of alcohol in the blood.
4. Possession of any controlled substance including marijuana while on department property or in any vehicles or equipment used for department business at any time, including rest and meal periods. However, this excludes substances that have been legally prescribed for an employee's own use.
5. Being under the influence of any controlled substance or having such substances "present in the body" while on department property or in any vehicles or equipment used for department business at any time, including rest and meal periods. An employee has controlled substance "present in the body" when the employee tests "positive" in blood or urine tests administered by the department for drug and alcohol testing. An employee shall be deemed to test "positive" for cannabinoids (marijuana or hashish) if his or her urine test indicates 50 or more nanograms THC metabolites/ml. However, this excludes substances that have been prescribed for an employee's own use.

6. Abusing any substance which is lawfully prescribed by regularly taking it in excessive quantities or by unlawfully obtaining it for purposes of abuse.

C. Reasonable Suspicion Testing:

1. Where the department has a reasonable suspicion that an employee subject to mandatory reasonable suspicion testing is under the influence of any alcoholic intoxicants or controlled substances, or has a controlled substance, present in the body, the department may require that the employee immediately consent and submit to field and impairment tests and sampling (blood, urine or Breathalyser test) at an approved laboratory. The department shall pay for the costs of the tests. A refusal to consent and submit to any of these tests shall be deemed the same as a positive test result.
2. When a represented employee is notified he or she is required to consent and submit to such test or searches as described in Section G of this policy, or, if not required voluntarily submits to such test, he or she may request the presence of an official union or association representative to witness the tests or searches. The test or searches may not be unduly delayed in order to wait for a representative. The absence of a representative shall not be grounds for the employee to refuse to consent and submit to such tests or searches; however the department shall make every reasonable effort to provide such representative. The presence of a representative shall not disrupt or interfere with the tests or searches.
3. Before a supervisor, acting on behalf of the department under this policy, may require an employee to consent and submit to any test(s) specified in this section, the supervisor must first obtain concurrence from the supervisor's department head or designee that the information available to the department about the subject employee is sufficient to form the basis of a reasonable suspicion that prohibited conduct will be established as a result of such test(s).
4. The employee shall give consent to a blood, urine or Breathalyser test by signing a consent form. The form shall contain the following information:
 - a. Employee's consent to release test results to the department;
 - b. The procedure for confirming an initial positive test result for a controlled substance;
 - c. The consequences of a confirmed positive test result for a controlled substance;
 - d. The consequences of a positive test for alcohol, including one at or above .02% by volume of alcohol in the blood;
 - e. A listing provided by the employee of legally prescribed and over-the-counter medications which may be in the employee's body. At the employee's option, this information may be submitted in a sealed envelope to be opened only by the Medical Review Officer if the test result is positive;

- f. Acknowledgment of the employee's right to explain a confirmed positive test result for a controlled substance, or a positive test for alcohol to the Medical Review Officer;
 - g. The consequences of refusing to consent to the blood, urine, or Breathalyser test.
 - 5. The department shall contract for drug testing services with a state-licensed laboratory which shall be required to follow all state and federal testing protocols. The drug testing process shall be one that is scientifically proven to be at least as accurate and valid as urinalysis using an immunoassay screening test, with all positive screening results being confirmed utilizing gas chromatography/mass spectrometry before a sample is considered positive. The alcohol testing process shall be one that is scientifically proven to be at least as accurate and valid as (1) urinalysis using an enzymatic assay screening test, with the positive screening results being confirmed using gas chromatography before a sample is considered positive or (2) breath sample testing using breath analyzing instruments which meet NIDA/SAMSHA testing standards.
 - 6. If a blood or urine test is confirmed as positive, the department will instruct the laboratory to retain the blood or urine sample for a period of not less than thirty (30) calendar days from the date the test results are communicated to the employee for the purpose of allowing the employee to conduct an independent test of the sample at his or her own expense at a laboratory approved by the State of Oregon.
 - 7. The procedure to obtain, handle and store blood and urine samples and to conduct laboratory tests shall be documented to establish procedural integrity and chain of evidence. Such procedures shall be administered with due regard for the employee's privacy and the need to maintain confidentiality of test results to an extent which is not inconsistent with the needs of this policy. The employee shall be notified of the results of all tests conducted pursuant to this policy. Additionally, all facts and circumstances upon which the reasonable suspicion testing is based, shall be documented and given to the employee when he or she is notified of the test results.
- D. Discipline and Other Action: Prohibited conduct described in Sections B., 1.; B., 4.; and B., 5. above shall result in termination. Prohibited conduct described in Sections B., 2.; B., 3.; and B., 6. shall result in actions specified in Section E. below.
- E. Consequences of Test Results:
 - 1. Test results which do not positively establish the employee has engaged in prohibited conduct as described in Sections B. 2.; B., 3.; and B., 6. of this policy shall result in no further action against the employee related to an alleged violation of those sections. The employee shall be informed of such test results in writing. Persons who do not test positive shall not have any record of the test placed in his or her official personnel file. Working files may contain records of the observations which led to the reasonable suspicion testing but not records of the test itself. The behavior which necessitated the test may be grounds for disciplinary action in accordance with the applicable labor agreement or department

policy. If the employee subsequently demonstrates similar behaviors, these records may be relied upon by the employer in disciplinary proceedings.

2. If an employee who tests positive and has not previously committed prohibited conduct specified in Sections B., 2.; B., 3.; and B., 6. in this policy, the employee shall immediately submit to a medical evaluation by a doctor selected and paid for by the department. The purpose of the evaluation will be to determine the extent of the employee's use of, and dependence on, the applicable substance(s) and, if necessary and appropriate, recommend a program of treatment, including but not limited to rehabilitation and counseling to prevent future use. If a program of treatment is recommended by the doctor, the employee shall enroll in it immediately. Failure by the employee to enroll in the recommended program or to complete it successfully may result in his or her termination from employment. The cost of such treatment shall be at the employee's expense except as it may be covered by insurance. The employee may take paid leave or leave without pay for the period of treatment.
3. The first instance of an alcohol test result of .02 - .039 shall not be considered a positive test result for alcohol for the purpose of requiring a medical evaluation by a doctor. It will however, require that the employee be removed from duty until the employee's next scheduled shift. An employee may use vacation and/or sick leave benefits for this time period. An alcohol test result of .04 or greater will subject the employee to all provisions of this policy.
4. If an employee who tests positive and has previously committed prohibited conduct specified in Sections B., 2.; B., 3.; and B., 6. and subsequently is found to have committed such prohibited conduct a second time within three years, he or she shall be subject to discipline up to and including termination. The level of discipline imposed for subsequent instances of such prohibited conduct beyond three years may be termination but shall be determined on a case by case basis.

F. Voluntary Rehabilitation:

1. The primary objectives of the department's drug and alcohol policy are to maintain employee performance and good health and a safe work environment. If, prior to a requirement by the department that the employee submit to any of the tests specified in Section E. of this policy, the employee notifies a supervisor he or she has drug or alcohol problems that require treatment, then in that event the employee shall immediately submit to a medical evaluation by a doctor selected and paid for by the department and shall enroll in a treatment program recommended by the doctor. An employee may seek such evaluation and treatment from the employee's own doctor, at the employee's expense. The employee shall notify the employer of the name of the doctor. An employee who enters rehabilitation and successfully completes rehabilitation under the terms of this paragraph shall not be subject to discipline. The cost of such treatment shall be at the employee's expense except as it may be covered by insurance. The employee may take paid leave or leave without pay for the period of treatment.

2. If an employee has previously enrolled in a voluntary rehabilitative treatment described above and subsequently again volunteers for such treatment in advance of being required to submit to any of these tests specified in Section E. of this policy, then the employee shall immediately submit to a medical evaluation by a doctor selected and paid for by the department and shall successfully complete the treatment program recommended by the doctor. An employee may seek such evaluation and treatment from the employee's own doctor, at the employee's expense. The employee shall notify the employer of the name of the doctor. If the employee fails to complete the treatment program successfully, he or she shall be subject to discipline up to and including termination. The cost of such treatment shall be at the employee's expense except as it may be covered by insurance. The employee may take paid leave or leave without pay for the period of treatment.
- G. Searches: The department reserves the right to conduct searches of department equipment or facilities generally for any reason, and may search anything or area in which the employee has an expectation of privacy (i.e., desk, locker, outer garment clothing or personal property) to the extent permitted by law. Refusal by the employee to submit to a lawful search shall result in termination. Strip searches and frisk searches shall be undertaken in the event of a criminal investigation and only for probable cause as determined by the investigating law enforcement department.
- H. Consequences of Search Results:
1. Reasonable suspicion searches which do not reveal the presence of alcohol or controlled substances (excluding any substance lawfully prescribed for the employee's use which has not been obtained for the purpose of abuse), shall result in no further action against the employee related to an alleged violation of Section B., 4. The employee shall be informed of such search results in writing.
 2. Searches which reveal the presence of alcohol or controlled substances, (but excluding any substance lawfully prescribed for the employee's use which has not been obtained for the purpose of abuse) shall result in those consequences specified in Sections D. or D., 2. and E., 3. as though a positive blood or confirmed urine test had been administered.
- I. Supervisory personnel shall receive training in how to recognize and deal effectively with substance abuse in the work place.

IV. IMPLEMENTATION

This policy will be adopted immediately without further modification.